



Lehman Brothers and IndyMac: Comparing Resolution Regimes

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Summary

In the United States, the insolvencies of depository institutions are not handled according to the procedures of the U.S. Bankruptcy Code. Instead, they and their subsidiaries are subject to a separate regime prescribed in federal law, called a conservatorship or receivership. Under this regime, the conservator or receiver, which generally is the Federal Deposit Insurance Corporation (FDIC), is provided substantial authority to deal with virtually every aspect of the insolvency. The failure of most other financial institutions within bank, thrift, and financial holding company umbrellas (including the holding companies themselves) generally are dealt with under the Bankruptcy Code.

Two clear lessons of the 2008 recession are that no financial institution, regardless of its size, complexity, or diversification, is invincible, and the failure of large or highly interconnected financial firms can negatively impact other companies and the financial system as a whole. Congress, as a result, is left with the question of how best to handle the failure of these so-called “systemically significant financial companies” (SSFCs). Some have proposed legislation that would impose a conservatorship/receivership regime, much like that for depository institutions, on insolvent financial institutions that are deemed systemically significant. Others have proposed resolving these institutions through a new chapter of the Bankruptcy Code.

In order to make a policy assessment concerning the appropriateness and likely effectiveness of these proposals, it is important to understand both the similarities and differences between insured depositories and other financial institutions large enough or interconnected enough to pose systemic risk to the U.S. economy upon failure, as well as the differences between the Bankruptcy Code and the FDIC’s conservatorship/receivership authority.

To address these questions, other CRS reports analyze the FDIC’s conservatorship and receivership powers over failed banks and thrifts and compare the FDIC’s resolution regime with the Bankruptcy Code. This report seeks to build on those reports by examining the specific failures of two large financial institutions: IndyMac Bancorp, Inc. and Lehman Brothers Holdings Inc. (LBHI).

*It should be noted that the resolutions of these two companies and their subsidiaries are still ongoing. As a result, many details about their failures have yet to surface, much less be fully synthesized. At times, there are gaps in the information provided in this report, either as a result of the dearth of information publicly available or the opaqueness of that which is available. For example, **Table 2** in this report generally does not include information regarding the primary business activities of LBHI’s foreign subsidiaries, but certain foreign subsidiaries were included in the table to provide some perspective as to the breadth of LBHI’s global reach, as well as in the financial services its subsidiaries provided. While this report is not an exhaustive analysis of the resolution of these two companies, in conjunction with our other reports, it does attempt to enhance the debate regarding how to structure the insolvency regimes for financial institutions.*

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Introduction

In the United States, the insolvencies of depository institutions (i.e., banks and thrifts with deposits insured by the Federal Deposit Insurance Corporation (FDIC)) are not handled according to the procedures of the U.S. Bankruptcy Code.¹ Instead, they and their subsidiaries are subject to a separate regime prescribed in federal law, called a conservatorship or receivership.² Under this regime, the conservator or receiver, which generally is the FDIC, is provided substantial authority to deal with virtually every aspect of the insolvency. The failure of most other financial institutions within bank, thrift, and financial holding company umbrellas (including the holding companies themselves) generally are dealt with under the Bankruptcy Code.³

Two clear lessons of the 2008 recession are that no financial institution, regardless of its size, complexity, or diversification, is invincible, and the failure of large or highly interconnected financial firms can negatively impact other companies and the financial system as a whole. Congress, as a result, is left with the question of how best to handle the failure of these so-called “systemically significant financial companies” (SSFCs). In March of 2009, Treasury Secretary Timothy Geithner proposed legislation that would impose a conservatorship/receivership regime, much like that for depository institutions, on insolvent financial institutions that are deemed systemically significant.⁴ Others have proposed resolving these institutions through a new chapter of the Bankruptcy Code. Representative Spencer Bachus, Ranking Member of the Financial Services Committee, offers such a proposal in H.R. 3310, the Consumer Protection and Regulatory Enhancement Act of 2009.

In order to analyze and assess these proposals, it is helpful to understand both the similarities and differences between insured depositories and other financial institutions large enough or interconnected enough to pose systemic risk to the U.S. economy upon failure, as well as the differences between the Bankruptcy Code and the FDIC’s conservatorship/receivership authority.

To address these issues, other CRS reports analyze the FDIC’s conservatorship and receivership powers over failed banks and thrifts⁵ and compare the FDIC’s resolution regime with the

¹ 11 U.S.C. §§ 109(b)(2) and (d).

² The basic difference between a conservatorship and a receivership is that a conservatorship involves operating the institution as a going concern to protect its assets until it stabilizes or is closed and a receiver appointed. A receiver is charged with liquidating the institution and winding up its affairs. A conservatorship may indicate that the FDIC aims to restore the institution to solvency or that the FDIC had to act quickly without the usual lead time for investigation. In either case, a conservatorship may be followed by a receivership if a determination is made that the institution is not viable. For an in-depth analysis of the FDIC’s conservatorship/receivership powers, see CRS Report RL34657, *Financial Institution Insolvency: Federal Authority over Fannie Mae, Freddie Mac, and Depository Institutions*, by (name redacted) and (name redacted). Fannie Mae, Freddie Mac, and the Federal Home Loan Banks are subject to a conservatorship/receivership regime modeled after that for insured depositories.

³ 11 U.S.C. § 109.

⁴ The proposal is to be known as the “Resolution Authority for Systemically Significant Financial Companies Act of 2009.” Text can be found at <http://www.ustreas.gov/press/releases/reports/032509%20legislation.pdf>. It is unclear exactly which financial firms would be considered “systemically significant.” For a detailed analysis of the proposal, see CRS Report R40526, *Insolvencies of “Systemically Significant Financial Companies” (SSFCs): Proposal for Federal Deposit Insurance Corporation (FDIC) Resolution*, by (name redacted).

⁵ CRS Report RL34657, *Financial Institution Insolvency: Federal Authority over Fannie Mae, Freddie Mac, and Depository Institutions*, by (name redacted) and (name redacted).

Bankruptcy Code.⁶ This report seeks to build on those reports by examining the specific failures of two large financial institutions: IndyMac Bancorp, Inc. and Lehman Brothers Holdings Inc. (LBHI).

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Bankruptcy Code vs. Insured Depository Resolution

As previously mentioned, another CRS report (CRS Report R40530, *Insolvency of Systemically Significant Financial Companies: Bankruptcy vs. Conservatorship/Receivership*, by (name redacted))⁷ provides a more in-depth analysis of the differences between the Bankruptcy Code and the conservatorship/receivership regimes for banks and thrifts. However, a brief summary of that report's conclusions may provide some necessary background for the understanding of the resolution process of IndyMac and Lehman Brothers.

In sum, the U.S. insolvency regime for banks and thrifts is designed to provide the FDIC the ability to intervene early and resolve financially troubled banks and thrifts quickly. The FDIC is granted vast powers to make unilateral decisions, grounded in statutorily defined guidance, in an administrative setting with only limited judicial review, and where generally only ex post damages are available. The focus is primarily on protecting depositors and the FDIC's Deposit Insurance Fund, and little emphasis is placed on attempting to rehabilitate insolvent institutions.⁸

The Bankruptcy Code, on the other hand, is designed to give creditors and management in reorganizations a say in major decisions of bankruptcy proceedings. All bankruptcy proceedings are judicial in nature. Most decisions are reviewable by a higher court, and in some situations, decisions receive ex ante review. While the majority of corporate bankruptcies are liquidations,

⁶ CRS Report R40530, *Insolvency of Systemically Significant Financial Companies: Bankruptcy vs. Conservatorship/Receivership*, by (name redacted), *Insolvency of Systemically Significant Financial Companies: Bankruptcy vs. Conservatorship/Receivership*, by (name redacted). The report discusses six important differences between the two resolution regimes:

- (1) Overall objectives of each regime;
- (2) Insolvency initiation authority and timing;
- (3) Oversight structure and appeal;
- (4) Management, shareholder, and creditor rights;
- (5) FDIC "superpowers," including contract repudiation versus Bankruptcy's automatic stay; and
- (6) Speed of resolution.

⁷ *Id.*

⁸ Eva H.G. Hüpkens, *THE LEGAL ASPECTS OF BANK INSOLVENCY: A COMPARATIVE ANALYSIS OF WESTERN EUROPE, THE UNITED STATES AND CANADA* (2000).

the Code puts much greater emphasis on rehabilitating default firms than the depository counterpart. As a result, complex bankruptcies can take years to complete.⁹

IndyMac

IndyMac Bancorp, Inc. (IndyMac Bancorp) was a thrift holding company, which was regulated on a consolidated basis by the Office of Thrift Supervision (OTS).¹⁰ It held four subsidiaries, including IndyMac Bank, F.S.B. (IndyMac Bank), a federally chartered thrift. (**Table 1** provides a list of IndyMac Bancorp's subsidiaries, their places of incorporation, their primary business activities, and their primary regulators, if applicable, as of the company's 2007 10-K filing with the SEC. **Table 1** also includes each subsidiary's current status.)

IndyMac Bank was largely engaged in residential mortgage activities. According to its 2007 10-K filing, it was the seventh largest thrift in the U.S.; the eighth largest mortgage servicer; and the ninth largest originator of residential mortgages.¹¹ By the end of March 2008, the thrift held a total of more than \$30 billion in assets and more than \$19 billion in deposits, the majority of which were FDIC-insured.¹²

On Friday, July 11, 2008, IndyMac Bank was closed by the OTS, and the FDIC was appointed its conservator (and, subsequently, receiver)¹³ as a result of losses on mortgage-related assets and runs by depositors.¹⁴ When an insured bank or thrift becomes insolvent, the institution's charterer,¹⁵ its primary federal regulator, or the FDIC is authorized to act *ex parte* (i.e., without notice or a hearing) to seize the institution and its assets and install the FDIC as conservator or receiver.¹⁶ The basic difference between a conservatorship and a receivership is that a

⁹ Robert R. Bliss and George G. Kaufman, *U.S. Corporate and Bank Insolvency Regimes: A Comparison and Evaluation*, 2 Va. L. & Bus. Rev. 143 (2007).

¹⁰ IndyMac Bancorp, Inc., S.E.C. Form 10-K, p. 8, filed Feb. 29, 2008, available at <http://www.sec.gov/Archives/edgar/data/773468/000095014808000053/v38189e10vk.htm>. As a consolidated regulator, OTS had the power to order reports and conduct examinations of the holding company and its subsidiaries with the requirement that OTS "to the extent deemed feasible, use ... reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority." 12 U.S.C. § 1467a(b)(4).

¹¹ *Id.*

¹² FDIC Press Release, *FDIC Establishes IndyMac Federal Bank, FSB as Successor to IndyMac Bank, F.S.B., Pasadena, California*, Jul. 11, 2008, available at <http://www.fdic.gov/news/news/press/2008/pr08056.html>.

¹³ FDIC Press Release, *FDIC Implements Loan Modification Program for Distressed IndyMac Mortgage Loans*, Aug. 20, 2008, available at <http://www.fdic.gov/news/news/press/2008/pr08067.html>.

¹⁴ FDIC Press Release, *FDIC Establishes IndyMac Federal Bank, FSB as Successor to IndyMac Bank, F.S.B., Pasadena, California*, Jul. 11, 2008, available at <http://www.fdic.gov/news/news/press/2008/pr08056.html>.

¹⁵ State-chartered banks are chartered by state banking authorities. The primary federal regulator of a federally chartered bank or thrift is its chartering authority. National banks are chartered by the Office of the Comptroller of the Currency (OCC); federal thrifts or savings associations are chartered by the Office of Thrift Supervision (OTS). The primary federal regulator of state-chartered banks is either the Board of Governors of the Federal Reserve System (Fed) or the FDIC, depending upon whether the institution is a member bank, i.e., a member of the Federal Reserve System (FRS).

¹⁶ The Federal Deposit Insurance Act (FDI Act) specifies judicial review for only one type of conservatorship or receivership appointment—FDIC's appointment of itself as receiver or conservator if depositors have been unable to access their funds 15 days after the appointment by the state of a receiver or conservator. 12 U.S.C. § 1821(c)(4). There are also other statutes that provide for post-seizure judicial review in certain instances, e.g., 12 U.S.C. § 203(b) (appointment of a conservator for a national bank). It has also been held that judicial review is available under the Administrative Procedure Act. *James Madison Ltd. By Hecht v. Ludwig*, 82 F. 3d 1085 (D.C. Cir. 1996).

conservatorship involves operating the institution as a going concern to protect its assets until it stabilizes or is closed and a receiver appointed.¹⁷ A receiver is charged with liquidating the institution and winding up its affairs.

The FDIC transferred most of IndyMac Bank's assets, including its FDIC-insured deposits, to a newly chartered thrift, IndyMac Federal Bank, F.S.B. (IndyMac Federal).¹⁸ On Monday, July 14, 2008, IndyMac Federal opened, under FDIC control as conservator, offering virtually all services that had been provided by IndyMac Bank prior to the thrift's closure three days before. Individuals were able to access, and if desired, withdraw all of their FDIC-insured deposits (at that time, up to \$100,000). Additionally, individuals were able to immediately access 50% of all uninsured deposits based on the FDIC's preliminary assessment of returns from winding down the thrift.¹⁹

IndyMac Bank's failure also brought down the holding company (IndyMac Bancorp, Inc.), which filed a petition for a Chapter 7 bankruptcy liquidation on July 31, 2008.²⁰

OneWest Bank, FSB (OneWest Bank) acquired most of IndyMac Federal's assets and all of its deposits in a deal that was finalized on March 19, 2009. As part of this deal, the FDIC agreed to guarantee against potential losses on certain loans acquired from IndyMac Federal.²¹ Upon the acquisition, OneWest Bank had no immediate plans to close any of the former IndyMac Federal branches. OneWest Bank also offered positions to many of IndyMac Federal's former employees.²² At the same time as the acquisition, the OTS appointed the FDIC as receiver of IndyMac Federal.²³

¹⁷ A pass-through conservatorship, as used for IndyMac Bank, is chosen because there is no provision for a bridge bank for a thrift institution. In a straight conservatorship, which is rarer than the pass-through version, the institution is operated on a temporary basis under its existing charter. Robert R. Bliss and George G. Kaufman, *U.S. Corporate and Bank Insolvency Regimes: A Comparison and Evaluation*, 2 Va. L. & Bus. Rev. 143, 151, n. 20 (2007). See also Patricia A. McCoy, *Banking Law Manual* § 15.03 (Lexis Pub. (2d ed.)) (hereinafter, McCoy).

¹⁸ FDIC Press Release, *FDIC Establishes IndyMac Federal Bank, FSB as Successor to IndyMac Bank, F.S.B., Pasadena, California*, Jul. 11, 2008, available at <http://www.fdic.gov/news/news/press/2008/pr08056.html>.

¹⁹ Kate Pickert and Fielding Cage, *The Making of a Panic*, Time Magazine, available at <http://www.time.com/time/2008/indymac/>.

²⁰ IndyMac Bancorp, Inc. Ch. 7 Bankruptcy Petition, U.S. Bankr. Ct. S.D.Cal. (2008), available at [http://www.cacb.uscourts.gov/cacb/Notices.nsf/New%20Cases%20of%20Interest/4029A3A3BDD0D72188257498005AB9E7/\\$FILE/08-21752_IndyMacBancorp.pdf](http://www.cacb.uscourts.gov/cacb/Notices.nsf/New%20Cases%20of%20Interest/4029A3A3BDD0D72188257498005AB9E7/$FILE/08-21752_IndyMacBancorp.pdf).

²¹ Share Loss Agreement Between FDIC and OneWest Bank, FSB, Mar. 19, 2009, available at <http://www.fdic.gov/about/freedom/IndyMacSharedLossAgrmt.pdf>.

²² OneWest Press Release, *Transfer of IndyMac Federal Bank, FSB Assets to OneWest Bank, FSB Frequently Asked Questions For Customers, the Media and the Public*, available at http://www.indymacbank.com/bankauto/content/eng/OWB_Customer_FAQ.pdf.

²³ FDIC Press Release, *FDIC Closes Sale of IndyMac Federal Bank, Pasadena, California*, Mar. 19, 2009, available at <http://www.fdic.gov/news/news/press/2009/pr09042.html>.

Table 1. IndyMac Bancorp Subsidiaries: Pre- and Post-Bankruptcy

| Company Name | Incorporation | U.S. Regulator | Primary Business Activities | Current Status |
|--|--|-----------------|---|--|
| IndyMac Bank, F.S.B. | Federally chartered, but based in Pasadena, California | OTS | Banking and residential mortgages ²⁴ | Closed by OTS, FDIC appointed conservator and then receiver; assets and liabilities largely transferred to IndyMac Federal; ²⁵ subsequently, IndyMac Federal largely acquired by OneWest Bank ²⁶ |
| IndyMac Intermediate Holdings, Inc. | Delaware | ²⁷ | Wholly owned subsidiary of IndyMac Bancorp ²⁸ | Unclear |
| Financial Freedom Senior Funding Corporation | Delaware | State regulated | Reverse mortgages ²⁹ | Assets and liabilities largely transferred to IndyMac Federal; ³⁰ subsequently, largely acquired by OneWest Bank |
| IndyMac Retained Assets, Inc. | Delaware | ³¹ | Mortgage-backed securities and mortgage servicing ³² | Assets and liabilities largely transferred to IndyMac Federal; ³³ Largely acquired by OneWest Bank ³⁴ |

Source: Information in the Table comes from various sources, including SEC and bankruptcy filings.

²⁴ IndyMac Bancorp, Inc., S.E.C. Form 10-K, p. 8, filed Feb. 29, 2008, available at <http://www.sec.gov/Archives/edgar/data/773468/000095014808000053/v38189e10vk.htm>.

²⁵ FDIC Press Release, *FDIC Establishes IndyMac Federal Bank, FSB as Successor to IndyMac Bank, F.S.B., Pasadena, California*, Jul. 11, 2008, available at <http://www.fdic.gov/news/news/press/2008/pr08056.html>.

²⁶ Loan Sale Agreement Between FDIC and OneWest Bank, FSB, Mar. 19, 2009, available at <http://www.fdic.gov/about/freedom/IndyMacLoanSaleAgrmt.pdf>.

²⁷ CRS could not identify this company's primary regulator. As a subsidiary to a thrift holding company, OTS had authority to regulate it on a consolidated basis, meaning OTS had the power to order reports and conduct examinations with the requirement that OTS "to the extent deemed feasible, use ... reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority." 12 U.S.C. § 1467a(b)(4).

²⁸ IndyMac Bancorp, Inc., S.E.C. Form 10-K, p. 8, filed Feb. 29, 2008, available at <http://www.sec.gov/Archives/edgar/data/773468/000095014808000053/v38189e10vk.htm>.

²⁹ OneWest Press Release, *Transfer of IndyMac Federal Bank, FSB Assets to OneWest Bank, FSB Frequently Asked Questions For Customers, the Media and the Public*, available at http://www.indymacbank.com/bankauto/content/eng/OWB_Customer_FAQ.pdf.

³⁰ Amended and Restated Insured Deposit Purchase and Assumption Agreement Between FDIC as Receiver of IndyMac Bank and FDIC as Conservator of IndyMac Federal Bank, Jul. 11, 2008, available at http://www.fdic.gov/bank/individual/failed/IndyMac_P_and_A.pdf.

³¹ CRS could not identify this company's primary regulator. As a subsidiary to a thrift holding company, OTS had authority to regulate it on a consolidated basis, meaning OTS had the power to order reports and conduct examinations with the requirement that OTS "to the extent deemed feasible, use ... reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority." 12 U.S.C. § 1467a(b)(4).

³² IndyMac Bancorp, Inc., S.E.C. Form 10-K, p. 7-8, filed Feb. 29, 2008, available at <http://www.sec.gov/Archives/edgar/data/773468/000095014808000053/v38189e10vk.htm>.

³³ Amended and Restated Insured Deposit Purchase and Assumption Agreement Between FDIC as Receiver of IndyMac Bank and FDIC as Conservator of IndyMac Federal Bank, Jul. 11, 2008, available at http://www.fdic.gov/bank/individual/failed/IndyMac_P_and_A.pdf.

³⁴ Loan Sale Agreement Between FDIC and OneWest Bank, FSB, Mar. 19, 2009, available at <http://www.fdic.gov/about/freedom/IndyMacLoanSaleAgrmt.pdf>.

Litigation After IndyMac's Failure

The conservatorship/receivership regime for insured-depositaries is almost entirely administrative in nature with only limited judicial appeal. Judicial review of the FDIC's actions as conservator or receiver is limited to a handful of situations. For instance, disputes about claims against a receiver are to be resolved first by the FDIC in accordance with its regulations, subject to judicial review under the Administrative Procedure Act.³⁵ Also, the FDIC has the power to repudiate certain contracts entered into by the institution, under certain conditions.³⁶ The statute limits damages to "actual direct compensatory damages."³⁷ Even when judicial review is allowed, the only remedy generally available is damages. In other words, aggrieved parties usually cannot stop or reverse FDIC decisions. Conflicts as to the amount of "actual direct compensatory damages" may be settled in court.³⁸

A number of judicial actions have been raised against the FDIC as conservator or receiver of IndyMac Bank and IndyMac Federal. Many of these actions allege violations of the Truth in Lending Act, violations of the Real Estate Settlement Procedures Act, fraud, and other claims stemming from individual mortgages in foreclosure. However, these actions appear to have been largely dismissed or stayed until the conservatorship/receivership administrative proceedings have been exhausted.³⁹

IndyMac Loan Modification Program

In August 2008, the FDIC, as conservator over IndyMac Federal, established a loan modification program for borrowers of mortgages—who were having difficulty meeting their payment obligations—either owned or serviced by IndyMac Federal. The FDIC set eligibility requirements based on both borrower-characteristics (e.g., debt-to-income thresholds) and mortgage-characteristics (e.g., only primary residence mortgages). According to FDIC Chairman Sheila Bair, approximately 13,000 mortgages were modified while IndyMac Federal was under conservatorship.⁴⁰ Additionally, OneWest agreed to continue the loan modification program as part of its acquisition agreement.⁴¹

³⁵ 12 U.S.C. §§ 1821(d)(3)-(8).

³⁶ 12 U.S.C. § 1821(e)(1). The statute contains specific provisions relating to various types of contracts and leases. These include contracts for the sale of real property, 12 U.S.C. § 1821(e)(6); service contracts, 12 U.S.C. § 1821(e)(7); and any certain securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or similar agreement that the FDIC determines to be a "qualified financial contract." 12 U.S.C. §§ 1821(e)(8) - (10). Contracts with a Federal Home Loan Bank and the Federal Reserve Bank may not be repudiated. 12 U.S.C. § 1921(e)(13).

³⁷ 12 U.S.C. § 1821(e)(3).

³⁸ Robert R. Bliss and George G. Kaufman, *U.S. Corporate and Bank Insolvency: An Economic Comparison and Evaluation*, Federal Reserve Bank of Chicago (2006), available at http://www.chicagofed.org/publications/workingpapers/wp2006_01.pdf.

³⁹ See, e.g., *Combs v. FDIC*, 2009 U.S. Dist. LEXIS 77870 (E.D. Mich. 2009); *Ibarra v. Plaza Home Mortgage*, 2009 U.S. Dist. LEXIS 80581 (S.D. Cal. 2009); *Madison v. First Magnus Financial Corporation*, 2009 U.S. Dist. LEXIS 81452 (D. Ariz. 2009).

⁴⁰ Sheila Bair, Chairman of the FDIC, *Remarks by FDIC Chairman Sheila Bair to the National Association of Realtors Midyear Legislative Meeting and Trade Expo*, May 12, 2009, transcript available at <http://www.fdic.gov/news/news/speeches/chairman/spmay1209.html>.

⁴¹ Share Loss Agreement Between FDIC and OneWest Bank, FSB, Mar. 19, 2009, available at <http://www.fdic.gov/about/freedom/IndyMacSharedLossAgrmt.pdf>.

The FDIC was able to establish and implement the loan modification program as a result of the authority granted to it as conservator. The FDIC, acting in its traditional role as regulator, likely would not have wielded so much control over IndyMac's (or any other insured depository institution's) mortgages outside of its conservatorship/receivership powers.

Lehman Brothers Holdings Inc.

LBHI Structure and Activities

Before filing a Chapter 11 bankruptcy petition on September 15, 2008, Lehman Brothers Holdings Inc. (LBHI) was a global financial institution providing "services in equity and fixed income sales, trading and research, investment banking, asset management, private investment management and private equity" in 40 different countries.⁴² It was the fourth largest U.S. investment bank with \$639 billion in assets.⁴³ The company was structured as a financial conglomerate with numerous subsidiaries and affiliates incorporated across the globe.⁴⁴ LBHI, incorporated in Delaware and headquartered in New York, was voluntarily regulated on a consolidated basis by the Securities and Exchange Commission (SEC) as part of the now defunct Consolidated Supervised Entity program.⁴⁵ LBHI employed close to 30,000 people as of the end of November 2007. LBHI management remains in control of the company as debtor-in-possession, subject to supervision of the bankruptcy court. After the holding company filed for bankruptcy, at least 19 of LBHI's subsidiaries petitioned for Chapter 11 protection (collectively, LBHI Chapter 11 debtors). These cases have been consolidated, for procedural purposes.⁴⁶ The docket for these cases consists of more than 5,500 documents as a result of more than 60,000 claims against the companies.⁴⁷

However, not all of LBHI's subsidiaries and affiliates can be debtors under Chapter 11 of the U.S. Bankruptcy Code (the Code).⁴⁸ Consequently, various pieces of the Lehman family are subject to different resolution proceedings in this country and abroad. For instance, Lehman Brothers Inc. is subject to a Securities Investor Protection Act (SIPA) insolvency proceeding—a special resolution

⁴² Lehman Brothers Holdings Inc., S.E.C. Form 10-K, p. 5, filed Jan. 29, 2008, available at http://www.sec.gov/Archives/edgar/data/806085/000110465908005476/a08-3530_110k.htm.

⁴³ Ben Hallman, *A Moment's Notice*, Amer. Lawyer, Dec. 1, 2008, available at <http://www.law.com/jsp/PubArticle.jsp?id=1202426213501>.

⁴⁴ Some believe that LBHI's failure, along with the U.S. government's decision to not provide the company assistance, triggered the panic of 2008. See, e.g., William Sterling, *Looking Back at Lehman: An Empirical Analysis of the Size and Timing of the Shock and the Effectiveness of Countermeasures*, Oct. 30, 2009, available at <http://www.trilogysadvisors.com/worldreport/200910.Lehman.pdf> ("In this paper, we will argue that the facts are clear: The Lehman bankruptcy represented a massive financial shock that was clearly the trigger for the fall 2008 panic." Others believe the panic was triggered by other events. See, e.g., John Taylor, "How Government Created the Financial Crisis," Wall St. Journal, Feb. 9, 2009, available at <http://online.wsj.com/article/SB123414310280561945.html> ("Research shows the failure to rescue Lehman did not trigger the fall panic.").

⁴⁵ SEC Press Release, *Chairman Cox Announces End of Consolidated Supervised Entities Program*, Sept. 26, 2008, available at <http://www.sec.gov/news/press/2008/2008-230.htm>.

⁴⁶ Debtor's Motion for an Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivatives Contracts, U.S. Bankr. Ct. S.D.N.Y., Case No. 08-13555, Docket No. 1498.

⁴⁷ Lehman Brothers Holdings Inc. (Chapter 11), Epiq Systems, available at <http://lehman-docket.com>.

⁴⁸ See 11 U.S.C. § 101.

proceeding for SEC-registered broker-dealers.⁴⁹ Other companies under the LBHI umbrella are subject to insolvency regimes in other countries. To help coordinate these multi-nation proceedings, administrators from the U.S., Australia, Germany, Hong Kong, the Netherlands, and Singapore have signed on to a *nonbinding* insolvency proceeding protocol.⁵⁰ The holding of assets in multiple countries that are subject to claims by creditors incorporated in different countries and that are to be distributed in accordance with varying insolvency rules from multiple sovereign states has led to some confusion, conflict, and litigation.⁵¹ Additionally, some subsidiaries, thus far, have avoided insolvency proceedings altogether.⁵² Others have been acquired, in whole or (more often) in part, by other corporations.

⁴⁹ 15 U.S.C. §§ 78aaa, *et seq.* For a general overview of the SIPA resolution process, *see* U.S. Courts, Bankruptcy Basics: SIPA, available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/sipa.html>. Lehman Brothers Inc. customer claims were still being settled as of July 1, 2009, with the expectation that settlement will continue for the foreseeable future. LBI Securities Investor Protection Corporation (SIPC) Proceeding, *Statement Regarding Customer Claims and Distributions*, Jul. 1, 2009, available at <http://chapter11.epiqsystems.com/clientdefault.aspx?pk=978bd245-11be-4d4b-83db-d6a3283b2962&l=1> (“The Trustee [James W. Giddens] has received over 12,000 customer claim forms representing over 80,000 accounts. The Trustee has established teams of professionals who have been working to reconcile and resolve issues. These include teams working on the multibillion dollar claims submitted on an omnibus or group basis by Barclays, LBIE [Lehman Brothers International (Europe)], and other Lehman entities’ claims by prime brokerage account holders and over 7,000 timely filed individual customer claims after identification and elimination of duplicates. The Trustee has already determined 3,350 of these claims. The Trustee has also issued approximately 1,500 deficiency letters and reached out to customers to obtain required information with respect to claims that lack meaningful information or are defective on their face.

“The Trustee is reviewing remaining claims and issuing letters of determination as rapidly as possible. Under SIPA and the procedures approved by the Court, when the Trustee issues a determination denying a customer claim in whole or in part, the claimant has a right to object, and the dispute must be resolved or submitted for Court determination. Some of these disputes will involve whether certain categories of transactions qualify for customer treatment under SIPA as well as valuation questions. Some will involve substantial dollar amounts. It may be a considerable time before some of these disputes can be finally resolved through the Bankruptcy Court and appeals process. The Trustee will reserve for disputed claims until resolution becomes final.”).

⁵⁰ Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-.....92e1-9ec425933bd0>. This protocol provides the following background:

Commencing on September 15, 2008 and periodically thereafter ..., the Debtors commenced (or in some cases, had initiated against them) plenary insolvency, administration, liquidation, rehabilitations, receivership, or like proceedings (“Plenary Proceedings”) in different jurisdictions (“the Plenary Fora”) and before different courts and governmental, regulatory, or administrative bodies ..., as well as proceedings that are secondary or ancillary to a Plenary Proceeding ... in different jurisdictions other than the Plenary Fora....

In certain of the Proceedings, the Debtors remain authorized to operate their businesses and manage their properties as “Debtors in Possession,” while in others, liquidators, administrators, trustees, custodians, supervisors or curators have been appointed to manage the Debtors’ affairs and represent their insolvency estates.... Furthermore, in certain of these Proceedings, one or more statutory committee of creditors or equity holders has or have been appointed....

Given the integrated and global nature of Lehman’s businesses, many of the Debtors’ assets and activities are spread across different jurisdictions, and require administration in and are subject to the laws of more than one Forum. The efficient administration of each of the Debtors’ individual Proceedings would benefit from cooperation....

Id. at 1-2.

⁵¹ See, e.g., Randall Smith, Ianthe Jeanne Dugan, and Cassell Bryan-Low, *Lehman Creditors To Get Payout Plan*, Wall Street Journal, Oct. 5, 2009, available at <http://online.wsj.com/article/SB125470896979863433.html>.

⁵² For example, Lehman Brothers Bank, a federal savings bank, and Lehman Brothers Commercial Bank, an industrial loan company, are both active companies, albeit under different names (Aurora Bank FSB and Woodlands Commercial (continued...))

Table 2 provides a list of many of the company's important subsidiaries, their places of incorporation, their primary business activities, and their primary U.S. regulators, if applicable, as of the company's 10-K filing (for fiscal year ending November 30, 2007) with the SEC. **Table 2** also includes each company's current status. **Table 3** at the end of this report is a more complete list of LBHI's subsidiaries and affiliates from the same 10-K filing.

This report also discusses some of the important developments since LBHI filed for bankruptcy, including acquisitions by Barclays Capital Inc. (Barclays) and Nomura Holdings Inc. (Nomura),⁵³ the termination and netting of hundreds of thousands of Lehman's derivative contracts, as well as relevant provisions of the U.S. Bankruptcy Code that guided these major developments.

Table 2. LBHI Subsidiaries and Affiliates: Pre- and Post-Bankruptcy

| Company Name | Incorporation | U.S. Regulator | Primary Business Activities | Current Status |
|----------------------------------|---------------|--|--|---|
| Lehman Brothers Inc. | Delaware | SEC; CFTC (Commodity Futures Trading Commission); SIPC (Securities Investor Protection Corporation); Ontario Securities Commission of Canada | SEC registered broker-dealer; SEC registered investment adviser; CFTC registered futures commission merchants | Subject to SIPC bankruptcy proceeding (U.S.); assets may have been largely either sold to Barclays or transferred to Neuberger Berman Group LLC ⁵⁴ |
| Neuberger Berman, LLC | Delaware | SEC; SIPC | SEC registered broker-dealer; SEC registered investment adviser; CFTC registered futures commission merchants; CFTC registered commodity pool operator and/or commodity trading advisers | Now Neuberger Berman Group LLC after an employee buyout of majority ownership; LBHI retains remaining ownership interest ⁵⁵ |
| Neuberger Berman Management Inc. | New York | SEC | SEC registered broker-dealer; SEC registered investment adviser | Now Neuberger Berman Management LLC; remains a subsidiary of Neuberger Berman, LLC ⁵⁶ |

(...continued)

Bank, respectively). See **Table 1**.

⁵³ Barclays and Nomura did not necessarily purchase entire subsidiaries. Instead, they may have purchased certain assets and liabilities of particular LBHI subsidiaries. Additionally, the purchase agreements do not clearly delineate from which subsidiaries the assets and liabilities were purchased. As a result, **Table 1** uses language such as "assets may have been largely acquired" to describe the current status of particular subsidiaries.

⁵⁴ SIPC Press Release, *James W. Giddens, Lehman Brothers Inc. SIPC Trustee, Reports on Progress of Customer Claim Processing*, Feb. 25, 2009, available at <http://www.sipc.org/media/release25Feb09.cfm>.

⁵⁵ Neuberger Berman Press Release, *Neuberger Berman Becomes Independent*, May 4, 2009, available at https://www.nb.com/MYP/NB/PUB/24771/NFA/H/K/E/S/doc/050409_NB_Becomes_Independent_Press_Release.pdf.

⁵⁶ See SEC Filings for Neuberger Berman Management LLC.

| Company Name | Incorporation | U.S. Regulator | Primary Business Activities | Current Status |
|--|----------------------|-----------------------|--|--|
| Lehman Brothers OTC Derivatives Inc. | Delaware | SEC | SEC registered over-the-counter (OTC) derivatives dealer | Voluntary Ch. 11 Bankruptcy (U.S.) ⁵⁷ |
| Lehman Brothers Financial Products Inc. | Delaware | ⁵⁸ | Financial services | Assets may have been largely acquired by either Barclays or Neuberger Berman Group LLC; remainder of company subject to voluntary Ch. 11 bankruptcy (U.S.) ⁵⁹ |
| Lehman Brothers Derivative Products Inc. | Delaware | ⁶⁰ | Derivatives | Assets may have been largely acquired by either Barclays or Neuberger Berman Group LLC; remainder of company subject to voluntary Ch. 11 bankruptcy (U.S.) ⁶¹ |
| Lehman Brothers Special Financing Inc. | Delaware | ⁶² | Financial services | Assets may have been largely acquired by either Barclays or Neuberger Berman Group LLC; remainder of company subject to voluntary Ch. 11 bankruptcy (U.S.) ⁶³ |
| Lehman Commercial Paper Inc. | New York | ⁶⁴ | Financial services | Assets may have been largely acquired by either Barclays or Neuberger Berman Group LLC; remainder of company subject to voluntary Ch. 11 bankruptcy (U.S.) ⁶⁵ |
| Lehman Brothers Asset Management Inc. | Delaware | SEC; CFTC | SEC registered investment adviser; CFTC registered commodity pool operator and/or commodity trading advisers | Assets may have been largely acquired by either Barclays or Neuberger Berman Group LLC |
| Lehman Brothers Bancorp, Inc. | Delaware | OTS | Bank holding company (holding only thrifts and industrial loan corporations) | Remained an active bank holding company as of October 13, 2009 ⁶⁶ |

⁵⁷ In re Lehman Brothers OTC Derivatives Inc., U.S. Bankr. Ct. S.D.N.Y. Case No. 08-13893, petition available at <http://chap11.epiqsystems.com/clientdefault.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0&l=1>.

⁵⁸ CRS could not identify this company's primary regulator; it could be an unregulated hedge fund.

⁵⁹ In re Lehman Brothers Financial Products Inc., Case No. 08-13902 Bankr. Ct. S.D.N.Y. (2009), petition available at <http://chap11.epiqsystems.com/clientdefault.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0&l=1>.

⁶⁰ CRS could not identify this company's primary regulator; it could be an unregulated hedge fund.

⁶¹ In re Lehman Brothers Derivative Products Inc., Case No. 08-13899 Bankr. Ct. S.D.N.Y. (2009), petition available at <http://chap11.epiqsystems.com/clientdefault.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0&l=1>.

⁶² CRS could not identify this company's primary regulator; it could be an unregulated hedge fund.

⁶³ In re Lehman Brothers Special Financing Inc., Case No. 08-13888 Bankr. Ct. S.D.N.Y. (2009), petition available at <http://chap11.epiqsystems.com/clientdefault.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0&l=1>.

⁶⁴ CRS could not identify this company's primary regulator; it could be an unregulated hedge fund.

⁶⁵ In re Lehman Commercial Paper Inc., Case No. 08-13900 Bankr. Ct. S.D.N.Y. (2009), petition available at <http://chap11.epiqsystems.com/clientdefault.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0&l=1>.

⁶⁶ OTS Institution Search, Lehman Brothers Bancorp, Inc., available at <http://www.ots.gov/?p=InstitutionSearch&hid=H3497>.

| Company Name | Incorporation | U.S. Regulator | Primary Business Activities | Current Status |
|---|----------------------|---|--|---|
| Lehman Brothers Bank, FSB | Delaware | OTS; FDIC | Federally chartered savings bank (lending, real estate financing, commercial and residential mortgage-backed securities) | Changed its name to Aurora Bank FSB on April 27, 2009; currently operative ⁶⁷ |
| Lehman Brothers Commercial Bank | Utah | FDIC; Utah Commissioner of Financial Institutions | Industrial loan company | Changed its name to Woodlands Commercial Bank on February 6, 2009; currently operative ⁶⁸ |
| Lehman Brothers Trust Company N.A. | New York | OCC | National trust bank | Neuberger Berman Group LLC announced on July 23, 2009 it will acquire the trust company ⁶⁹ |
| Lehman Brothers Trust Company of Delaware | Delaware | State Bank Commissioner of the State of Delaware | Non-depository limited purpose Delaware trust company | Neuberger Berman Group LLC announced on July 23, 2009 it will acquire the trust company ⁷⁰ |
| Lehman Brothers Commodity Services Inc. | Delaware | Federal Energy Regulatory Commission (FERC) | FERC-authorized power marketer (sells wholesale physical power) | Sold to EDF Trading North America Management LLC and EDF Trading North America Inc. ⁷¹ |
| Eagle Energy Partners I, L.P. | Texas | FERC | Energy marketing and services company | Sold to EDF Trading North America Management LLC and EDF Trading North America Inc. ⁷² |
| Lehman Brothers Alternative Investment Management LLC | Delaware | N/A | Hedge fund manager | Changed name to NB Investment Management LLC ⁷³ |
| Congress Life Insurance | Most U.S. States | Multiple State Insurance Departments | Insurance | Appears to remain operative, at least in some states ⁷⁴ |

⁶⁷ Aurora Bank FSB, Frequently Asked Questions, available at <https://www.aurorabankfsb.com/faq.html>.

⁶⁸ See FDIC, Institution Directory, Woodlands Commercial Bank history, available at http://www2.fdic.gov/idasp/confirmation_outside.asp?inCert1=58009.

⁶⁹ Neuberger Berman Group LLC Press Release, *Neuberger Berman to Acquire Trust Company*, July 23, 2009, available at <https://www.nb.com/public/DMA/Japan/news/TrustCo%20Agreement.pdf>.

⁷⁰ Neuberger Berman Group LLC Press Release, *Neuberger Berman to Acquire Trust Company*, July 23, 2009, available at <https://www.nb.com/public/DMA/Japan/news/TrustCo%20Agreement.pdf>.

⁷¹ FERC Press Release, *FERC Authorizes Lehman-EDF Transaction*, October 30, 2008, available at <http://www.ferc.gov/news/media-alerts/2008/2008-4/10-30-08-factsheet.pdf>.

⁷² FERC Press Release, *FERC Authorizes Lehman-EDF Transaction*, October 30, 2008, available at <http://www.ferc.gov/news/media-alerts/2008/2008-4/10-30-08-factsheet.pdf>.

⁷³ London Stock Exchange Aggregated Regulatory News Service, *Lehman Brothers Diversified Arbitrage (Ireland) Fund Plc (the "Company") – Update to Operations*, RNS No. 7943R May 6, 2009.

| Company Name | Incorporation | U.S. Regulator | Primary Business Activities | Current Status |
|--|-----------------------|-------------------|--|---|
| Lehman Brothers International (Europe) | U.K. (United Kingdom) | N/A ⁷⁵ | Investment bank | Resolution administration (U.K.) ⁷⁶ |
| Lehman Brothers Finance S.A. | Switzerland | N/A ⁷⁷ | Equity derivatives | Ch. 15 bankruptcy proceeding (U.S.); primary liquidation proceeding under the supervision of the Swiss Federal Banking Commission (Switzerland) ⁷⁸ |
| Lehman Brothers Treasury Co. B.V. | Netherlands | N/A | Derivatives ⁷⁹ | Bankruptcy proceeding (Netherlands) ⁸⁰ |
| Lehman Brothers Bankhaus AG | Germany | N/A ⁸¹ | German bank (lending, real estate financing, commercial and residential mortgage-backed securities; German Depositors Protection Fund participant) | Insolvency proceeding (Germany) ⁸² |
| MNG Securities | Turkey | N/A | Equity securities brokerage firm ⁸³ | Unclear |

(...continued)

⁷⁴ See, e.g., Commonwealth of Massachusetts Division of Insurance, 2008 Annual Report, available at <http://www.mass.gov/Eoca/docs/doi/Media/2008AnnualReport.pdf>.

⁷⁵ Regulated by the U.K.'s Financial Services Authority, see Joint FSA/EUI Announcement, *Lehman Brothers International (Europe) in Administration*, Oct. 8, 2008, available at <http://www.fsa.gov.uk/pages/About/Media/notes/bn030.shtml>.

⁷⁶ FSA Press Release, Today, Lehman Brothers Holding Inc ("LBHI"), a U.S. investment bank, announced that it intends to file a petition under Chapter 11 of the U.S. Bankruptcy Code., Sept. 15, 2008, available at <http://www.fsa.gov.uk/pages/Library/Communication/Statements/2008/lehman.shtml>.

⁷⁷ Regulated by the Swiss Federal Banking Commission, see *In re Lehman Brothers Finance SA*, Case No. 09-10583 Bankr. S.D.N.Y. (2009), Ch. 11 dismissal available at <http://chap11.epiqsystems.com/clientdefault.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0&l=1>.

⁷⁸ *In re Lehman Brothers Finance SA*, Case No. 09-10583 Bankr. S.D.N.Y. (2009), Ch. 11 dismissal available at <http://chap11.epiqsystems.com/clientdefault.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0&l=1>.

⁷⁹ Lehman Brothers Treasury Co. B.V. Bankruptcy Public Notice 1, available at [http://www.lehmanbrotherstreasury.com/pdf/english/1st%20public%20bankruptcy%20report%20LBT%20\(22%20December%202008\)%20\(w\)%20\(2\).PDF](http://www.lehmanbrotherstreasury.com/pdf/english/1st%20public%20bankruptcy%20report%20LBT%20(22%20December%202008)%20(w)%20(2).PDF).

⁸⁰ Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0>.

⁸¹ Regulated by Germany's Federal Financial Supervisory Authority (BaFin), see BaFin Press Release, *BaFin orders moratorium on Lehman Brothers Bankhaus AG*, Sept. 15, 2008, available at http://www.bafin.de/cln_161/nn_720788/SharedDocs/Mitteilungen/EN/2008/pm__080915__lehman.html.

⁸² Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0>.

⁸³ Matthew Goldstein, *Lehman Brothers Holdings Inc. (Mexico Stock Exchange) Company Overview*, Reuters, available at <http://www.reuters.com/finance/stocks/companyProfile?symbol=LEHMQ.MX>.

| Company Name | Incorporation | U.S. Regulator | Primary Business Activities | Current Status |
|--|---------------|-------------------|---|--|
| Lehman Brothers Japan | Japan | N/A ⁸⁴ | Investment banking and securities ⁸⁵ | Bankruptcy proceeding (Japan) ⁸⁶ ; apparently largely acquired by Nomura ⁸⁷ |
| Lehman Brothers Investments Pte. Ltd. | Singapore | N/A | Foreign financial activities | Voluntary creditor's liquidation (Singapore) ⁸⁸ ; apparently largely acquired by Nomura ⁸⁹ |
| Sail Investor Pte. Ltd. | Singapore | N/A | Foreign financial activities | Voluntary creditor's liquidation (Singapore) ⁹⁰ |
| Lehman Brothers Asia Pacific (Singapore) Pte. Ltd. | Singapore | N/A | Foreign financial activities | Voluntary creditor's liquidation (Singapore) ⁹¹ |
| Lehman Brothers Asia Holdings Limited | Hong Kong | N/A | Foreign financial activities | Liquidation (Hong Kong) ⁹² ; apparently largely acquired by Nomura ⁹³ |
| Lehman Brothers Asia Limited | Hong Kong | N/A | Foreign financial activities | Liquidation (Hong Kong) ⁹⁴ |
| Lehman Brothers Futures Asia Limited | Hong Kong | N/A | Foreign financial activities | Liquidation (Hong Kong) ⁹⁵ |

⁸⁴ Regulated by the Japan's Financial Services Agency, see Associated Press, *Lehman Brothers Japan files for bankruptcy*, Japanese Times, Sept. 17, 2008, available at <http://search.japantimes.co.jp/cgi-bin/nb20080917a2.html>.

⁸⁵ BusinessWeek, *Lehman Brothers Holdings, Inc., Asia Pacific Operations Company Overview*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=49093257>.

⁸⁶ Associated Press, *Lehman Brothers Japan files for bankruptcy*, Japan Times, Sept. 17, 2008, available at <http://search.japantimes.co.jp/cgi-bin/nb20080917a2.html>.

⁸⁷ BusinessWeek, *Lehman Brothers Holdings, Inc., Asia Pacific Operations Company Overview*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=49093257>.

⁸⁸ Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0>.

⁸⁹ BusinessWeek, *Lehman Brothers Holdings, Inc., Asia Pacific Operations Company Overview*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=49093257>.

⁹⁰ Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ BusinessWeek, *Lehman Brothers Holdings, Inc., Asia Pacific Operations Company Overview*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=49093257>.

⁹⁴ Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0>.

⁹⁵ *Id.*

| Company Name | Incorporation | U.S. Regulator | Primary Business Activities | Current Status |
|---|---------------|----------------|------------------------------|---|
| Lehman Brothers Securities Asia Limited | Hong Kong | N/A | Foreign financial activities | Liquidation (Hong Kong) ⁹⁶ |
| Lehman Brothers Asia Capital Company | Hong Kong | N/A | Foreign financial activities | Liquidation (Hong Kong) ⁹⁷ |
| Lehman Brothers Commercial Corporation Asia Limited | Hong Kong | N/A | Foreign financial activities | Liquidation (Hong Kong) ⁹⁸ ; apparently largely acquired by Nomura ⁹⁹ |
| Lehman Brothers Australia Holdings Pty Limited | Australia | N/A | Foreign financial activities | Resolution administrators appointed (Australia) ¹⁰⁰ ; apparently largely acquired by Nomura ¹⁰¹ |
| Lehman Brothers Australia Limited | Australia | N/A | Foreign financial activities | Resolution administrators appointed (Australia) ¹⁰² ; apparently largely acquired by Nomura ¹⁰³ |
| Lehman Brothers Australia Granica Pty. Limited | Australia | N/A | Foreign financial activities | Resolution administrators appointed (Australia) ¹⁰⁴ ; apparently largely acquired by Nomura ¹⁰⁵ |

Source: Information in the Table comes from various sources, including SEC and bankruptcy filings.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ BusinessWeek, *Lehman Brothers Holdings, Inc., Asia Pacific Operations Company Overview*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=49093257>.

¹⁰⁰ Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0>.

¹⁰¹ BusinessWeek, *Lehman Brothers Holdings, Inc., Asia Pacific Operations Company Overview*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=49093257>.

¹⁰² Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0>.

¹⁰³ BusinessWeek, *Lehman Brothers Holdings, Inc., Asia Pacific Operations Company Overview*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=49093257>.

¹⁰⁴ Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0>.

¹⁰⁵ BusinessWeek, *Lehman Brothers Holdings, Inc., Asia Pacific Operations Company Overview*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=49093257>.

Developments Since LBHI's Bankruptcy Petition

Acquisition by Barclays

Barclays reportedly was interested in acquiring Lehman—or at least parts of Lehman—before LBHI filed for bankruptcy.¹⁰⁶ However, a deal could not be reached under the circumstances.¹⁰⁷

¹⁰⁶ For a glimpse into the circumstances that ultimately resulted in LBHI's bankruptcy and the subsequent Barclays acquisition from U.S. regulators' point-of-view, see David Wessel, *In Fed We Trust*, pp. 9-26 (Crown Publishing Group, a division of Random House, Inc., New York 2009). The following excerpts from an article written by Ben Hallman describe the situation from the point-of-view of the lawyers involved:

By the second week of September, investors had all but given up on Lehman Brothers Holdings Inc. Creditors wanted the 158-year-old investment bank to put up additional collateral to cover its bets in the derivatives market. Customers were scrambling to close accounts. Traders couldn't move the firm's commercial paper, or settle trades.

On Friday, September 12, Lehman's stock price plunged 90 percent. At about 6 p.m., Fed officials and Treasury Secretary Paulson called for an emergency meeting of some of Wall Street's top bankers at the New York Federal Reserve office. They told the bankers that the government would not bail out Lehman, and that it was up to Wall Street to sort out the mess, according to press reports. But it was London that almost saved the day. Barclays, a British bank that had been eyeing various parts of the Lehman business for months, was interested. That evening, [law firm] Simpson Thacher partners John Finley and Andrew Keller, representing Lehman, delivered a draft of a merger agreement to Barclays.

On Saturday, September 13, Weil[, Gotshal & Manges, another law firm,] ramped up its bankruptcy preparation efforts. A sale still seemed likely - even after word spread that Bank of America Corporation, which had also been in the running to buy Lehman, was instead purchasing Merrill Lynch & Co., Inc. for \$50 billion-but the precipitous fall in Lehman's share price the day before, along with all the bank's other problems, convinced the players that something significant was in store.

The Barclays deal fell apart on Sunday morning. ...

In the end, [Lehman's board of directors] felt that it had no choice. In a tearful session, they voted to dissolve. At 1 a.m. on Monday morning, [Harvey Miller, a Weil attorney,] filed papers with the U.S. Bankruptcy Court for the Southern District of New York, asking for Chapter 11 protection for Lehman Brothers Holding [Inc]. The long weekend was over, but for the weary Weil lawyers, the work had just begun. ...

Barclays ... wanted to buy Lehman's brokerage operation, Lehman Brothers Inc. How long would it take to put a deal together? [Miller] suggested 15 days. One of the Barclays representatives stood up, and said, "In that case, we're not interested." "Perhaps we can do better," Miller said.

Over the next five days, the lawyers drove a sale of Lehman Brothers Inc., the brokerage unit, through U.S. Bankruptcy Court. They worked knowing that every minute wasted was a minute that the value of the underlying business diminished, "like a melting ice cube on the dock," as Miller said in court. More than 100 Weil, Gotshal lawyers would take part - many of them working around the clock to finalize deals that would normally take months to complete.

Working around the clock, the lawyers crafted an agreement in about 40 hours. ... "We did in a few days what normally would take at least a month," says Lewkow, the Cleary lawyer. ... Time was so precious that the lawyers didn't even take the time to incorporate the final changes that had been handwritten in the margins of the sale agreement. They submitted it to Judge James Peck, a relatively new federal bankruptcy judge, after midnight, in the early hours of Wednesday morning, and immediately began work on an amendment to the agreement.

(continued...)

Instead, Barclays acquired “Lehman Brothers’ fixed income and equity sales, trading and research; prime services; investment banking; principal investing; and private investment management businesses in North America” and its Manhattan headquarters (valued at a minimum of \$1 billion)¹⁰⁸ from the bankruptcy estate.¹⁰⁹ The two companies entered into a purchase agreement on September 16, 2008,¹¹⁰ which ultimately was approved by Judge James Peck, a federal bankruptcy judge, in an order dated September 20, 2008. After a number of Lehman’s creditors appealed the sale order, the order was affirmed by a U.S. district court on March 13, 2009.¹¹¹ Since the original document was signed, Barclays and LBHI have agreed to a number of amendments to the original terms.¹¹² A number of disputes over the specific terms of the agreement also have arisen.¹¹³

Two features of the Bankruptcy Code likely made the Lehman acquisition more appealing post-bankruptcy petition than it otherwise would have been outside of bankruptcy. The first is the debtor-in-possession (DIP) financing provisions of 11 U.S.C. § 364, and the second is the ability to purchase debtor assets “free and clear” of liabilities, as provided by 11 U.S.C. § 363.

(...continued)

Judge Peck set an aggressive schedule, and on Friday, just 48 hours after the first hearing, the lawyers for all the parties, along with a motley collection of creditors, journalists, and hedge funders (including former first daughter Chelsea Clinton), packed into the claustrophobic courtroom. At 1 a.m. on Saturday, September 20, five days from the hour that the parent company had filed for protection in his court, Judge Peck approved a \$1.35 billion sale of the brokerage arm to Barclays. ‘I have to approve this transaction because it is the only available transaction,’ he said.

The sale required the unusual intervention of the Securities Investor Protection Corporation (SIPC), a government-chartered entity created 37 years ago to protect investor accounts in the event of a brokerage firm failure. Miller asked the SIPC to initiate a liquidation proceeding for the brokerage that would correspond with the bankruptcy hearing. This was necessary to complete a sale because a brokerage can’t technically file for Chapter 11 protection under federal bankruptcy law. The timing was important to allow for the seamless transfer of customer accounts from the Lehman to the Barclays platform.

Ben Hallman, A Moment’s Notice, *Amer. Lawyer*, Dec. 1, 2008, available at <http://www.law.com/jsp/PubArticle.jsp?id=1202426213501>.

¹⁰⁷ David Wessel, *In Fed We Trust*, pp. 18-20 (Crown Publishing Group, a division of Random House, Inc., New York 2009).

¹⁰⁸ David Wessel, *In Fed We Trust*, p. 20 (Crown Publishing Group, a division of Random House, Inc., New York 2009).

¹⁰⁹ Barclays Press Release, *Lehman Brothers Business Reopens Under Barclays Ownership*, Sept. 22, 2009, available at <http://www.barcap.com/About+Barclays+Capital/Press+Office/News+releases/News,1031,Lehman+Brothers+Business+Reopens+Under+Barclays+Ownership>.

¹¹⁰ Asset Purchase Agreement, LBHI, Lehman Brothers Inc., LB 745 LLC, and Barclays Capital Inc., Sept. 16, 2009, available at <http://chapter11.epiqsystems.com/ViewDocument.aspx?DocumentPk=2066f82a-f909-4491-b858-ca5406b46827>.

¹¹¹ *Bay Harbour Management LC v. Lehman Brothers Holdings Inc.*, Nos. 08 Civ. 8869 (DLC), 08 Civ. 8914 (DLC), (S.D.N.Y. 2009).

¹¹² See Executed Sales Documents, LBHI Key Documents, available at <http://chap11.epiqsystems.com/Documents.aspx?pk=de7ced2b-52e7-....-92e1-9ec425933bd0>.

¹¹³ Objection of Barclays Capital Inc. to Proposed Joinders in Debtors’ Motion For an Order Under Rule 2004 Authorizing Discovery From Barclays Capital Inc., U.S. Bankr. Ct. S.D.N.Y. Case No. 08-13555, Docket No. 4093. See, also, Diane Davis, *Court Allows Lehman Brothers to Investigate Sale of Barclays Capital Through Discovery*, *BNA Bankruptcy Law Reporter*, Jul. 29, 2009.

DIP financing to allow a bankruptcy debtor to continue operations while it progresses through the bankruptcy process, which may help the company avoid the need for liquidation. Under the Bankruptcy Code, the debtor may seek to have DIP financing loans be accorded senior priority over debts acquired prior to the bankruptcy petition.¹¹⁴ Issuing such debt outside of bankruptcy generally is not possible because loan agreements often include clauses limiting or prohibiting the borrowing company from subsequently incurring debt senior to that being provided.¹¹⁵

Barclays agreed to provide Lehman \$500 million in DIP financing as part of its purchase agreement,¹¹⁶ which was conditioned on being “free and clear” of all but a handful of voluntarily assumed liens and liabilities.¹¹⁷ The liabilities voluntarily assumed by Barclays include certain real property leases, certain repurchase agreements, and various benefits of retained employees.¹¹⁸ (Barclays announced that it offered employment to 10,000+ former Lehman employees.¹¹⁹) Disputes have arisen over the details of these assumed liabilities.¹²⁰

Acquisition by Nomura

The Tokyo-based investment bank, Nomura, has regional headquarters in New York, London, and Hong Kong, and conducts business in approximately 30 different countries.¹²¹ In October 2008, the company announced “the acquisition of Lehman Brothers’ franchise in the Asia Pacific region, including Japan and Australia”; the purchase of Lehman Brothers’ “European and Middle Eastern equities and investment banking operations”; and the acquisition of Lehman Brothers’ “service platform in India[, including] Lehman Brothers Services India Private Limited, Lehman Brothers Financial Services (India) Private Limited, Lehman Brothers Structured Finance Services Private Limited.”¹²² Nomura also acquired around 8,000 former Lehman employees. The company expected the acquisition to cost approximately \$2 billion.¹²³

¹¹⁴ 11 U.S.C. § 364.

¹¹⁵ Kenneth Ayotte and David A. Skeel, Jr., *Bankruptcy or Bailouts?*, Inst. for Law & Econ., Univ. of Penn., Research Paper No. 09-11 and Northwest Univ. School of Law, Research Paper No. 09-05, p. 8 (hereinafter Ayotte and Skeel).

¹¹⁶ Diane Davis, *Bay Harbour, Hedge Funds Challenge Sale of Lehman Assets to Barclays Capital*, BNA Bankruptcy Law Reporter, Sept. 25, 2008.

¹¹⁷ Asset Purchase Agreement, Art. II, LBHI, Lehman Brothers Inc., LB 745 LLC, and Barclays Capital Inc., Sept. 16, 2009, available at <http://chapter11.epiqsystems.com/ViewDocument.aspx?DocumentPk=2066f82a-f909-4491-b858-ca5406b46827>.

¹¹⁸ *Id.*

¹¹⁹ Barclays Press Release, *Lehman Brothers Business Reopens Under Barclays Ownership*, Sept. 22, 2009, available at <http://www.barcap.com/About+Barclays+Capital/Press+Office/News+releases/News,1031,Lehman+Brothers+Business+Reopens+Under+Barclays+Ownership>.

¹²⁰ Order, Pursuant to Fed. R. Bankr. P. 2004, Authorizing Discovery From Barclays Capital, Inc., U.S. Bankr. Ct. S.D.N.Y. Case No. 08-13555, Docket No. 4164. *See, also*, Diane Davis, *Court Allows Lehman Brothers to Investigate Sale of Barclays Capital Through Discovery*, BNA Bankruptcy Law Reporter, Jul. 29, 2009.

¹²¹ Nomura Press Release, *Nomura to further enhance global presence with acquisition of Lehman Brothers’ service platform in India*, Oct. 6, 2008, available at <http://www.nomuraholdings.com/news/nr/holdings/20081006/20081006.html>.

¹²² Nomura Holdings Inc. Investor Summary, *Acquisition of Former Lehman Brothers Operations*, Oct. 2008, available at http://www.nomuraholdings.com/investor/summary/financial/data/2009_2q_leh.pdf#page=5.

¹²³ *Id.*

“Safe-Harbor Protections” of Qualified Financial Contracts

A “stay” is a power by which creditors are, at least temporarily, prevented from pursuing their claims against a default entity. As one commentator explains:

Stays permit the resolution authority [the time to] collect and validate claims, to determine the best way to dispose of assets in an orderly, non-fire-sale manner, and to treat all like-priority creditors equally. Stays prevent creditor runs and keep contracts in force—the counter party is bound by the contract; claims on the insolvent firm remain pending; and collateral may usually not be liquidated. This facilitates the coordination of creditor claims.¹²⁴

The stay is an important tool under the U.S. Bankruptcy Code, especially for reorganizations. The Code establishes a general stay automatically upon petitioning for bankruptcy.¹²⁵ However, the Code provides a number of exceptions to the automatic stay, including for many securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, and netting arrangements (collectively, “qualified financial contracts”).¹²⁶ It is especially common for financial institutions to be parties to these contractual arrangements, making special protections provided for them all the more important in case of a financial institution’s insolvency.

Additionally, the Bankruptcy Code provides trustees the authority to avoid, i.e. claw-back or reverse, certain transfers (subject to certain limitations¹²⁷) made by debtors if five conditions are met: (1) the transfer was made “to or for the benefit of a creditor”; (2) the transfer was for a debt owed before the transfer; (3) the transfer “was made while the debtor was insolvent”; (4) the transfer occurred “on or within 90 days” of the petition or within one year if the transfer was made to an “insider”¹²⁸; and (5) the creditor received more from the transfer than it would have through bankruptcy proceedings.¹²⁹ The purpose of this avoidance power is to facilitate the equitable distribution of the bankruptcy estate’s assets among credit classes and to limit the “race to the courthouse” problem.¹³⁰ Most qualified financial contracts are exempted from the trustees’ general avoidance power.¹³¹

These so-called “safe-harbor protections” were provided, in part, to reduce the disruption to international financial markets caused by a financial firm’s bankruptcy.¹³² They have the effect of allowing counterparties to these contracts to terminate or liquidate (the collateral¹³³ held against)

¹²⁴ Robert R. Bliss and George G. Kaufman, *U.S. Corporate and Bank Insolvency: An Economic Comparison and Evaluation*, Federal Reserve Bank of Chicago (2006), available at http://www.chicagofed.org/publications/workingpapers/wp2006_01.pdf.

¹²⁵ 11 U.S.C. § 362(a).

¹²⁶ 11 U.S.C. § 362(b).

¹²⁷ See, e.g., 11 U.S.C. §§ 546, 547, 555, 556, 559, 560, 561.

¹²⁸ The term “insider” is defined at 11 U.S.C. § 101(31).

¹²⁹ 11 U.S.C. § 547(b).

¹³⁰ Collier on Bankruptcy § 5-547.01 (15th ed. rev.).

¹³¹ 11 U.S.C. §§ 546(e)-(j).

¹³² GuyLaine Charles, *OTC Derivative Contracts in Bankruptcy: The Lehman Experience*, NY Bus. L.J. Vol. 13, No. 1, p. 14 (Spring 2009) (hereinafter “*OTC Derivative Contracts in Bankruptcy*”).

¹³³ The collateral held on these contracts generally is under the control of the counterparty and usually consists of liquid assets, such as securities or cash. Robert R. Bliss and George G. Kaufman, *Derivatives and Systemic Risk: Netting, Collateral, and Closeout*, Federal Reserve Bank of Chicago, p. 7 (2005), available at <http://www.chicagofed.org/> (continued...)

the contracts and net or setoff each party's positions even after the default firm has filed a bankruptcy petition.¹³⁴ These legal constructs are explained by two prominent economists this way:

Close-out and netting consist of two separate but related rights, often combined in a single contract: 1) the right of a counterparty to unilaterally terminate contracts under specified conditions (close-out), and 2) the right to offset amounts due at termination of individual contracts between the same counterparties when determining the final obligation [(netting)].¹³⁵

Almost all qualified financial contracts have close-out and netting provisions that are triggered by an act of default, including filing for bankruptcy. These provisions have the potential to push ailing firms into insolvency and to deplete their assets.¹³⁶

The LBHI Chapter 11 debtors estimated that they were a party to around 930,000 qualified financial contracts prior to the bankruptcy petition, of which approximately 733,000 had been terminated as of November 13, 2008.¹³⁷ Counterparties to the many of these 700,000+ contracts seem to have at least attempted to terminate the contracts within a few days of LBHI's bankruptcy.¹³⁸ However, problems appear to have arisen in the close-out and netting process, which led the International Swaps and Derivatives Association (ISDA), a major trade association representing derivatives participants, to develop a Lehman derivatives protocol to help rectify these problems.¹³⁹ Those counterparties that held collateral against their contracts were able to terminate the contracts and keep the collateral as settlement.¹⁴⁰ Qualified financial contracts that were not collateralized could be closed-out and positions could be netted, but the counterparties, otherwise, were not able to collect what they were owed.¹⁴¹ These disruptions likely alleviated the strain that settling 700,000 contracts nearly simultaneously could have had on the derivatives market, as hundreds of counterparties sought replacement contracts/counterparties, and the LBHI bankruptcy estate, as collateral was seized outside of the automatic stay's protection.¹⁴²

The LBHI debtors alleged that, in many cases, the counterparties to the 200,000 or so qualified financial contracts that had not been terminated by mid-November were not doing so because they owed the debtors money (i.e. the LBHI Chapter 11 debtors were "in-the-money" on these contracts). The LBHI Chapter 11 debtors also claimed that, in other instances, counterparties were not making the payments required by the non-terminated contracts. As a result, the LBHI debtors sought approval from the bankruptcy court to assign the remaining qualified financial contracts to

(...continued)

publications/workingpapers/wp2005_03.pdf (hereinafter "*Derivatives and Systemic Risk*").

¹³⁴ *OTC Derivative Contracts in Bankruptcy* at 15.

¹³⁵ *Derivatives and Systemic Risk* at 4.

¹³⁶ Ayotte and Skeel at 31.

¹³⁷ Notice of Debtors' Motion For an Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivatives Contracts, U.S. Bankr. Ct. S.D.N.Y. Case No. 08-13555, Docket No. 1498.

¹³⁸ International Swaps and Derivatives Association, Inc. Press Release, *Lehman Risk Reduction Trading Session and Protocol Agreement*, Sept. 14, 2008, available at <http://www.isda.org/press/press091408lehman.html>.

¹³⁹ ISDA 2008 Lehman CDS Protocol, available at <http://www.isda.org/2008lehmancdsprot/2008lehmancdsprot.html>.

¹⁴⁰ Ayotte and Skeel at 31.

¹⁴¹ *Id.*

¹⁴² *Id.*

third parties in order to be able to collect value from the contracts.¹⁴³ The court received a number of objections to this motion from creditors. On December 16, 2008, the court issued its first ruling on the matter, granting the debtors' motion, in part, while making certain modifications to account for some of the creditors' objections.¹⁴⁴ Multiple other motions were raised and orders were issued in an attempt to settle disputes arising from the assumption of these qualified financial contracts.¹⁴⁵

LBHI Chapter 11 debtors and their counterparties also had a number of disputes regarding the value of certain qualified financial contracts. In late August 2008, the bankruptcy court ordered the parties to settle these disputes in mandatory arbitration to reduce the court's burden. However, the court also granted the parties more time to hammer out the details of the dispute resolution procedures after more than 50 counterparties raised objections to those procedures.¹⁴⁶

Conclusion

While both failed financial companies were relatively large, Lehman's business activities were far more complex and spread out across the globe. IndyMac operated almost exclusively within the United States and primarily engaged in mortgage-related activities through its FDIC-insured thrift. On the other hand, Lehman operated in dozens of countries and engaged in a wide range of financial activities that were primarily conducted within its non-depository subsidiaries. Some of these subsidiaries were subject to extensive federal oversight and regulation, while many were not.

Lehman's complexity and the adversarial nature of the bankruptcy process likely have been the primary causes of the vast judicial wrangling over Lehman's assets and the delay of paying out claims. Because of the FDIC's deposit insurance and authority to act unilaterally subject to limited judicial appeal, many claims against IndyMac already have been paid out and there has been little post-failure litigation related to IndyMac. However, more legal disputes may be raised in the near future as the FDIC completes the winding down of the thrift.

¹⁴³ Debtor's Motion for an Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivatives Contracts, U.S. Bankr. Ct. S.D.N.Y. Case No. 08-13555, Docket No. 1498.

¹⁴⁴ Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivatives Contracts, U.S. Bankr. Ct. S.D.N.Y. Case No. 08-13555, Docket No. 2257.

¹⁴⁵ See, e.g., Order Approving Consensual Assumption of Prepetition Derivative Contracts, U.S. Bankr. Ct. S.D.N.Y. Case No. 08-13555, Docket No. 2667.

¹⁴⁶ Matthew Goldstein, *Lehman derivatives disputes must be mediated- NY court*, Reuters, Aug. 26, 2009, available at <http://www.reuters.com/article/bankruptcyNews/idUSN2627330320090826>.

Table 3. List of LBHI Subsidiaries as of November 30, 2007

Pursuant to Item 601(b)(21)(ii) of Regulation S-K, subsidiaries of the Registrant have been omitted which, considered in the aggregate as a single subsidiary, would not have constituted a significant subsidiary (as defined in Rule 1-02(w) of Regulation S-X) as of November 30, 2007. Indentations indicate parent-subsidiary relationships.

| Tier | Name | Jurisdiction of Organization |
|-------------|---|-------------------------------------|
| 0 | Lehman Brothers Holdings Inc. | Delaware |
| 1 | Appalachian Asset Management Corp. | Delaware |
| 2 | Lehman Risk Services (Bermuda) Ltd. | Bermuda |
| 1 | ARS Holdings I LLC | Delaware |
| 1 | Banque Lehman Brothers S.A. | France |
| 1 | LB 745 LLC | Delaware |
| 1 | LB 745 Leaseco I LLC | Delaware |
| 1 | LBAC Holdings I Inc. | Delaware |
| 2 | Lehman Brothers Asia Capital Company | Hong Kong |
| 1 | LBCCA Holdings I LLC | Delaware |
| 2 | Falcon Holdings I LLC | Delaware |
| 3 | Falcon Holdings II Inc. | Delaware |
| 4 | CIMT Limited | Cayman Islands |
| 5 | TMIC Limited | Cayman Islands |
| 6 | MICT Limited | Cayman Islands |
| 7 | Falcon Investor I-X Inc. | Cayman Islands |
| 8 | Global Thai Property Fund | Thailand |
| 2 | Lehman Brothers Asia Capital Company | Hong Kong |
| 2 | Lehman Brothers Commercial Corporation Asia Limited | Hong Kong |
| 2 | Revival Holdings Limited | Cayman Islands |
| 3 | Global Korea Investments Ltd. | Cayman Islands |
| 4 | SOGKI Development Inc. | Cayman Islands |
| 5 | GKI Korea Development Limited | Malaysia |
| 6 | Maewha K-STARS Ltd. | Republic of Korea |
| 3 | Sunrise Finance Co., Ltd. | Japan |
| 1 | LBCCA Holdings II LLC | Delaware |
| 2 | Falcon Holdings I LLC | Delaware |
| 3 | Falcon Holdings II Inc. | Delaware |
| 4 | CIMT Limited | Cayman Islands |
| 5 | TMIC Limited | Cayman Islands |
| 6 | MICT Limited | Cayman Islands |

| Tier | Name | Jurisdiction of Organization |
|-------------|---|-------------------------------------|
| 7 | Falcon Investor I-X Inc. | Cayman Islands |
| 8 | Global Thai Property Fund | Thailand |
| 2 | Lehman Brothers Commercial Corporation Asia Limited | Hong Kong |
| 2 | Revival Holdings Limited | Cayman Islands |
| 3 | Global Korea Investments Ltd. | Cayman Islands |
| 4 | SOGKI Development Inc. | Cayman Islands |
| 5 | GKI Korea Development Limited | Malaysia |
| 6 | Maewha K-STARS Ltd. | Republic of Korea |
| 3 | Sunrise Finance Co., Ltd. | Japan |
| 1 | LB Delta Funding | Cayman Islands |
| 2 | LB Delta (Cayman) No 1 Ltd. | Cayman Islands |
| 1 | LBHK Funding (Cayman) No. 4 Ltd. | Cayman Islands |
| 2 | LBHK Funding (Cayman) No. 1 Ltd. | Cayman Islands |
| 1 | LB Russia Holdings LLC | Delaware |
| 2 | LB Russia Holdings Inc. | Delaware |
| 3 | OOO Lehman Brothers | Russia |
| 1 | Lehman ALI Inc. | Delaware |
| 2 | 314 Commonwealth Ave. Inc. | Delaware |
| 3 | Alnwick Investments (UK) Ltd. | United Kingdom |
| 3 | Bamburgh Investments (UK) Ltd. | United Kingdom |
| 4 | Gainsborough Investments BV | The Netherlands |
| 5 | Kenilworth Investments 1 Ltd. | Cayman Islands |
| 3 | Kenilworth Investments 2 Ltd. | Cayman Islands |
| 3 | Brasstown LLC | Delaware |
| 4 | Brasstown Mansfield I SCA | Luxembourg |
| 2 | Lehman Capital Investments 2 Ltd. | Cayman Islands |
| 2 | Property Asset Management Inc. | Delaware |
| 3 | L.B.C. YK | Japan |
| 3 | LB Capital Investments 2 Ltd. | Cayman Islands |
| 3 | LBS Holdings SARL | Luxembourg |
| 3 | Lehman Brothers Global Investments LLC | Delaware |
| 4 | New Century Finance Co., LTD. | Japan |
| 5 | Lehman Brothers Commercial Mortgage K.K. | Japan |
| 3 | Lehman Brothers Hy Opportunities Korea Inc. | Republic of Korea |
| 3 | Lehman Brothers P.A. LLC | Delaware |

| Tier | Name | Jurisdiction of Organization |
|-------------|---|-------------------------------------|
| 1 | Lehman Brothers AIM Holding LLC | Delaware |
| 2 | Lehman Brothers Alternative Investment Management LLC | Delaware |
| 1 | Lehman Brothers Asset Management Inc. | Delaware |
| 1 | Lehman Brothers Asset Management, LLC | Delaware |
| 1 | Lehman Brothers Asia Pacific (Singapore) PTE. Ltd. | Singapore |
| 2 | Lehman Brothers Asia Holdings Limited | Hong Kong |
| 3 | Lehman Brothers Equity Finance (Cayman) Limited | Cayman Islands |
| 3 | Lehman Brothers Securities N.V. | The Netherlands |
| 2 | Lehman Brothers Pacific Holdings Pte. Ltd. | Singapore |
| 3 | Lehman Brothers Asia Limited | Hong Kong |
| 3 | Lehman Brothers Futures Asia Limited | Hong Kong |
| 3 | Lehman Brothers Securities Asia Limited | Hong Kong |
| 3 | Lehman Brothers Investments PTE Ltd. | Singapore |
| 4 | Lehman Brothers Holdings Japan Inc. | Japan |
| 5 | Lehman Brothers Japan Inc. | Japan |
| 4 | Lehman Brothers Capital Private Limited | India |
| 4 | Lehman Brothers Securities Private Limited | India |
| 3 | Lehman Brothers Singapore PTE Ltd. | Singapore |
| 3 | SAIL Investor Pte Ltd. | Singapore |
| 1 | Lehman Brothers Australia Holdings PTY Limited. | Australia |
| 2 | Lehman Brothers Australia Granica PTY Limited | Australia |
| 3 | Lehman Brothers Australia Limited | Australia |
| 4 | LB Asset Management Ltd. | Australia |
| 1 | Lehman Brothers Bancorp Inc. | Delaware |
| 2 | Lehman Brothers Commercial Bank | Utah |
| 2 | Lehman Brothers Bank, FSB | United States |
| 3 | Aurora Loan Services LLC | Delaware |
| 2 | Lehman Brothers Trust Company, National Association | United States |
| 2 | Lehman Brothers Trust Company of Delaware | Delaware |
| 2 | Lehman Brothers Bancorp UK Holdings Limited | United Kingdom |
| 3 | MABLE Commercial Funding Limited | United Kingdom |
| 4 | ELQ Holdings B.V. | The Netherlands |
| 5 | ELQ Hypotheken N.V. | The Netherlands |
| 4 | Resetfan Limited | United Kingdom |
| 5 | Capstone Mortgage Services Ltd. | United Kingdom |

| Tier | Name | Jurisdiction of Organization |
|-------------|---|-------------------------------------|
| 5 | Southern Pacific Mortgage Limited | United Kingdom |
| 5 | Preferred Holdings Limited | United Kingdom |
| 6 | Preferred Group Limited | United Kingdom |
| 7 | Preferred Mortgages Limited | United Kingdom |
| 4 | Storm Funding Ltd. | United Kingdom |
| 1 | Lehman (Cayman Islands) Ltd. | Cayman Islands |
| 1 | Lehman Brothers Co-Investment Associates LLC | Delaware |
| 1 | Lehman Brothers Inc. | Delaware |
| 2 | Lehman Brothers Derivative Products Inc. | Delaware |
| 2 | Lehman Brothers Financial Products Inc. | Delaware |
| 2 | Lehman Brothers Investment Holding Company Inc. | Delaware |
| 3 | LB India Holdings Mauritius I Limited | Mauritius |
| 3 | LB India Holdings Mauritius II Limited | Mauritius |
| 2 | Lehman Brothers Securities Taiwan Limited | Taiwan |
| 2 | Lehman Brothers Special Financing Inc. | Delaware |
| 3 | LB3 GmbH | Germany |
| 3 | Lehman Brothers Commodity Services Inc. | Delaware |
| 4 | Eagle Energy Management, LLC | Delaware |
| 5 | Eagle Energy Partners I, L.P. | Texas |
| 2 | Lehman Commercial Paper Inc. | New York |
| 3 | Bromley LLC | Delaware |
| 3 | East Dover Limited. | Ireland |
| 3 | Ivanhoe Lane Pty Limited | Australia |
| 4 | Serafino Investments Pty Limited | Australia |
| 3 | LCPI Properties Inc. | New Jersey |
| 4 | LW LP Inc. | Delaware |
| 3 | M&L Debt Investments Holdings Pty Limited | Australia |
| 4 | M&L Debt Investments Pty Limited | Australia |
| 3 | Merit, LLC | Delaware |
| 3 | Pindar Pty Ltd. | Australia |
| 4 | Long Point Funding Pty Ltd. | Australia |
| 2 | LB I Group Inc. | Delaware |
| 3 | GRA Finance Corporation Ltd. | Mauritius |
| 3 | LB-NL Holdings I Inc. | Delaware |
| 4 | LB-NL Holdings L.P. | Delaware |

| Tier | Name | Jurisdiction of Organization |
|-------------|--|-------------------------------------|
| 5 | LB-NL U.S. Investor Inc. | Delaware |
| 6 | NL Funding, L.P | Delaware |
| 1 | Lehman Brothers (Luxembourg) S.A. | Luxembourg |
| 1 | Lehman Brothers OTC Derivatives Inc. | Delaware |
| 1 | Lehman Brothers Private Equity Advisers L.L.C. | Delaware |
| 1 | Lehman Brothers Private Funds Investment Company GP, LLC | Delaware |
| 2 | Lehman Brothers Private Fund Advisers LP | Delaware |
| 2 | Lehman Brothers Private Fund Management LP | Delaware |
| 1 | Lehman Brothers U.K. Holdings (Delaware) Inc. | Delaware |
| 2 | Ballybunion Investments No. 2 Ltd. | Cayman Islands |
| 3 | Ballybunion Investments No. 3 Ltd. | Cayman Islands |
| 4 | Dynamo Investments Ltd. | Cayman Islands |
| 5 | Ballybunion Partnership | Hong Kong |
| 2 | LB India Holdings Cayman I Limited | Cayman Islands |
| 3 | Lehman Brothers Services India Private Limited | India |
| 4 | Lehman Brothers Fixed Income Securities Private Limited | India |
| 2 | LB India Holdings Cayman II Limited | Cayman Islands |
| 2 | LB Lease & Finance No 1. Ltd. | United Kingdom |
| 2 | Lehman Brothers Capital GmbH, Co. | Germany |
| 2 | LB UK RE Holdings Ltd. | United Kingdom |
| 3 | Falcon LB Sarl | Luxembourg |
| 4 | LB SPV SCA | Luxembourg |
| 3 | LB UK Financing Limited | United Kingdom |
| 4 | LB SF No. 1 Ltd. | United Kingdom |
| 5 | Lehman Commercial Mortgage Conduit Ltd. | United Kingdom |
| 2 | Lehman Brothers Holdings Scottish LP | United Kingdom |
| 3 | Lehman Brothers Spain Holdings Limited | United Kingdom |
| 3 | Lehman Brothers Luxembourg Investments Sarl | Luxembourg |
| 4 | Woori-LB Fifth Asset Securitization Specialty Co., Ltd. | Republic of Korea |
| 4 | Woori-LB Fourth Asset Securitization Specialty Co., Ltd. | Republic of Korea |
| 4 | Lehman Brothers Asset Management France | France |
| 4 | Lehman Brothers UK Investments Limited | United Kingdom |
| 5 | LB Investments (UK) Limited | United Kingdom |
| 6 | LB Alpha Finance Cayman Limited | Cayman Islands |
| 6 | LB Beta Finance Cayman Limited | Cayman Islands |

| Tier | Name | Jurisdiction of Organization |
|-------------|--|-------------------------------------|
| 4 | Lehman Brothers U.K. Holdings Ltd. | United Kingdom |
| 5 | Lehman Brothers Holdings Plc | United Kingdom |
| 6 | Furno & Del Castano Capital Partners LLP | United Kingdom |
| 6 | LB Holdings Intermediate 1 Ltd. | United Kingdom |
| 7 | LB Holdings Intermediate 2 Ltd. | United Kingdom |
| 8 | Lehman Brothers International (Europe) | United Kingdom |
| 6 | Lehman Brothers Asset Management (Europe) Ltd. | United Kingdom |
| 6 | MBAM Investor Limited | United Kingdom |
| 6 | Lehman Brothers Europe Limited | United Kingdom |
| 6 | Lehman Brothers Limited | United Kingdom |
| 5 | Lehman Brothers (PTG) Limited | United Kingdom |
| 6 | Eldon Street Holdings Limited | United Kingdom |
| 7 | Thayer Properties Limited | United Kingdom |
| 8 | Thayer Group Limited | United Kingdom |
| 9 | Thayer Properties (Jersey) Ltd. | United Kingdom |
| 2 | Lehman Brothers Holdings Scottish LP 2 | United Kingdom |
| 3 | Lehman Brothers Holdings Scottish LP 3 | United Kingdom |
| 2 | Lehman Brothers Treasury Co. B.V. | The Netherlands |
| 1 | Lehman Brothers Bankhaus Aktiengesellschaft | Germany |
| 1 | Lehman Re Ltd. | Bermuda |
| 1 | Lehman Risk Advisors Inc. | Delaware |
| 1 | LIBRO Holdings I Inc. | Delaware |
| 2 | Lehman Brothers do Brasil Ltda | Brazil |
| 1 | Neuberger Berman Inc. | Delaware |
| 2 | Neuberger Berman Asset Management, LLC | Delaware |
| 2 | Neuberger Berman Investment Services, LLC | Delaware |
| 2 | Neuberger Berman Management Inc. | New York |
| 2 | Sage Partners, LLC | New York |
| 2 | Executive Monetary Management, Inc. | New York |
| 2 | Neuberger Berman, LLC | Delaware |
| 3 | Neuberger Berman Pty Ltd. | Australia |
| 3 | Neuberger & Berman Agency, Inc. | New York |

| Tier | Name | Jurisdiction of Organization |
|-------------|---------------------------------|-------------------------------------|
| 1 | Principal Transactions Inc. | Delaware |
| 2 | Louise Y.K. | Japan |
| 2 | Y.K. Tower Funding | Japan |
| 1 | Real Estate Private Equity Inc. | Delaware |
| 2 | REPE LBREP III LLC | Delaware |
| 1 | Southern Pacific Funding 5 | United Kingdom |
| 1 | Wharf Reinsurance Inc. | New York |

Source: LBHI 2008 10-K, Exhibit 21.01.

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