ANNEX I

Investigation of the causes of the bankruptcy of Lehman Brothers Treasury Co B.V.

Amsterdam, 1 March 2013

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Bankruptcy Trustees

Preliminary remarks

Pursuant to article 68 of the Dutch Bankruptcy Act, the court appointed bankruptcy trustees ("**Bankruptcy Trustees**") of Lehman Brothers Treasury Co B.V. ("**LBT**") are charged with the administration and liquidation of the bankrupt estate of LBT. In this context, the Bankruptcy Trustees are also held to investigate the causes of the bankruptcy. This investigation report contains the results of this investigation.

The investigation by the Bankruptcy Trustees consisted of two phases. During the first phase of the investigation, the Bankruptcy Trustees focused on the relevant facts and events that led up to the granting of the provisional suspension of payments (*voorlopige surseance van betaling)* on 19 September 2008 and the subsequent declaration of bankruptcy (*faillissement*) on 8 October 2008 of LBT. The first phase has resulted in part A of this investigation report. Given the connection between LBT on the one hand, and Lehman Brothers Holdings Inc. ("**LBHI**") and other entities belonging to the Lehman Brothers group (the "**Lehman Brothers Group**") on the other hand, part A of this report also incorporates an overview of key facts and events that led up to the demise of LBHI and, subsequently, of the Lehman Brothers Group.

During the second phase of the investigation, the Bankruptcy Trustees have formulated their views on the internal and external causes of the bankruptcy based on the findings of the investigation presented in part A. This second phase of the investigation cumulated into part B of this report, which sets out the findings of the Bankruptcy Trustees in this respect by providing an analysis of the main causes of the bankruptcy and the role and responsibilities of the directors, stakeholders and other third parties in relation thereto.

As part of the investigation, interviews were held with the directors of LBT (the "**Directors**"). Each of these directors has cooperated in providing information and answering questions. All Directors have used the opportunity to comment on both the minutes of the interviews as well as the findings in part A. In addition, both the Dutch Central Bank as well as LBT's auditor have commented on the findings in part A.

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Part A: Description of facts and events leading to the declaration of bankruptcy of LBT

1. LBT as part of the Lehman Brothers Group

1.1 Group structure

At the time of its collapse the Lehman Brothers Group was an investment bank and provider of many other financial services, serving the financial needs of corporations, governments, institutional clients and high-net-worth individuals worldwide. The group had headquarters in New York, London and Tokyo and operated through a network of offices around the world.

LBHI is the ultimate parent company of the Lehman Brothers Group and was incorporated in December 1893. During the years preceding its collapse, LBHI was - *inter alia* - used to source long term funding for the Lehman Brothers Group and to provide funding for the daily working capital needs of various subsidiaries in the Lehman Brothers Group.

In 2008 LBHI directly or indirectly held numerous subsidiaries. For this investigation mainly Lehman Brothers U.K. Holdings (Delaware) Inc. ("**LB UK Holdings**") and Lehman Brothers Holding plc. ("**LBH (UK)**") are relevant. LBH (UK) was the parent company of the U.K. based entities Lehman Brothers International (Europe) ("**LBIE**") and Lehman Brothers Limited ("**LBL**"). LB UK Holdings was the parent company of LBT. A simplified overview of the corporate structure of the Lehman Brothers Group is attached to this report as **Annex 2**.

LBHI filed for Chapter 11 bankruptcy protection with the United States Bankruptcy Court Southern District of New York on 15 September 2008.[1]

1.2 LBT, a financing company of the Lehman Brothers Group

LBT was incorporated on 8 March 1995 as a limited liability company under Dutch law (*besloten vennootschap*). According to its articles of association (*statuten*), LBT's primary objective was the financing of companies belonging to the Lehman Brothers Group by means of borrowing, lending and raising money and by participating in financial transactions. In practice, LBT issued - through various parties acting as intermediaries - financial instruments, in particular structured notes ("**Notes**"), to investors ("**Noteholders**").[2] Each of

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1 Chapter 11 of the U.S. Bankruptcy Code contains a reorganization procedure for debtors.

2 See § 2 about the Notes issued by LBT.

the Notes in principle provide for a guarantee by LBHI of the obligations of LBT.

LBT on-lent all proceeds from the issuance of the Notes to LBHI. This was done based on a loan agreement (the "**Loan Agreement**") dated 26 May 2000 (**Annex 3**). LBHI used these funds for general corporate purposes, including the funding of the businesses of other affiliates.

Furthermore, the payment of all amounts owed to LBT under loan agreements with LBHI or any other group company within the Lehman Brothers Group was guaranteed by LBHI by means of an independent guarantee (the "**Independent Guarantee**") dated 16 September 1997 (**Annex 4**). The Independent Guarantee was put in place for certain tax purposes. Within this context LBHI also guaranteed that LBT would earn a yearly margin of at least 0.125% of the amount of the outstanding Notes.

LBT covered the risks related to the Notes by entering into *hedging*-agreements with certain other Lehman Brothers Group entities. These entities subsequently could cover the risks that they assumed in this manner from LBT by entering into *hedging*-agreements with external market parties.

LBT filed for a provisional suspension of payments (*voorlopige surseance van betaling*) on 19 September 2008 with the Dutch District Court of Amsterdam, with the appointment of Ms. W.A.H. Melissen as supervisory-judge (*rechter-commissaris*) (the "**Supervisory Judge**") and Mr. R.J. Schimmelpenninck as administrator (*bewindvoerder*) (the "**Administrator**"). On 8 October 2008, following a request of the Administrator, the same court withdrew the provisional suspension of payments and simultaneously declared LBT bankrupt, with appointment of Ms. W.A.H. Melissen as Supervisory-Judge. Mr. R.J. Schimmelpenninck was appointed bankruptcy trustee. On 13 October 2009, the District Court of Amsterdam also appointed Mr. F. Verhoeven as bankruptcy trustee.

1.2.1. LBT Directors

From 2006 onwards, the board of LBT ("**Board of Directors**") was comprised of at least four members, two of which were employed by Equity Trust Co. N.V. ("**Equity Trust**"), a Dutch corporate services company. At the time of LBT's bankruptcy, Messrs. W.H. Kamphuijs (from 30 December 2005) and J.C.W. Van Burg (from 2 September 2008) acted as directors and were also employed by Equity Trust. Messrs. L.M. Fuller (from 11 September 1996) and C. Fischer (from 26 November 2007), both employed by Lehman Brothers Group entities, also acted as directors of LBT. Messrs. Kamphuijs, Van Burg, Fuller and Fischer were listed in the Commercial Registry of the Dutch Chamber of Commerce (*Handelsregister*) as managing directors under the articles of association (*statutair bestuurders*) at the time the provisional suspension of payments procedure was requested. According to LBT's articles of association, any two Directors were authorized to jointly represent and bind LBT.

None of the Directors received a remuneration for their services as director of LBT directly from LBT or any other Lehman Brothers entity.

Equity Trust

Equity Trust performed its services based on an administrative management agreement with LBT dated 24 March 1995 (the "**Administrative Management Agreement**", **Annex 5**). Under this agreement, Equity Trust initially instructed its employees Kamphuijs and De Schutter to act as Directors from 30 December 2005 onwards. As of 2 September 2008, De Schutter was replaced by Van Burg, who was also employed by Equity Trust.

Pursuant to the Administrative Management Agreement, Equity Trust was responsible for handling certain corporate, secretarial and administrative matters. This included: i) providing a registered office for LBT; ii) maintaining the shareholders' register and minutes of board meetings and shareholders' meetings; iii) filing and forwarding copies of bank correspondence, statements and supporting documents; iv) filing and forwarding copies of correspondence in connection with the different programs of Notes ("**Note Programs**"); v) filing and forwarding copies of other correspondence and vi) arranging for the filing of statutory and regulatory returns, annual accounts and tax returns with the local authorities.

Fuller and Fischer

Fuller was appointed to LBT's Board of Directors in 1996. Fuller also held several other positions within the Lehman Brothers Group; he was employed by LBIE's branch office in Zürich, Switzerland as Chief Administrative Officer, and was a member of the board of directors of Lehman Brothers Equity Finance SA (Luxembourg) ("**LBF (Luxembourg)**"), Lehman Brothers AB (Sweden) ("**LB (Sweden)**") and Lehman Brothers Finance SA (Switzerland) ("**LBF Switzerland**"). Within the Lehman Brothers Group he ranked as an Executive Director. As director of LBT, Fuller's role was mainly to facilitate any support that was required by LBT from other Lehman Brothers entities.[3]

Mr. Fischer was appointed to LBT's Board of Directors in November 2007. He started his employment with the Lehman Brothers Group in 1997 with Lehman Brothers Bankhaus AG in

[3] Interview with Fuller.

Germany ("**LBB**"). In 1998 he was transferred to LBIE's branch office in Frankfurt, after which he moved back to LBB. He was primarily involved in the operational departments of these entities. His most recent function within LBB was that of Head of Operations.[4] Fischer became involved with LBT as of April 2002, when LBB started performing some operational treasury tasks. These tasks were, among others matters, the processing and executing of payments. Fischer was appointed to the Board of Directors of LBT in November 2007, but did not become active as a board member until February 2008.[5]

Functioning of the Board of Directors

There was no formal division of tasks among the Directors. However, the tasks of the directors employed by Equity Trust were limited to performing services in accordance with the Administrative Management Agreement. This meant that their activities only involved the corporate secretarial and administrative matters described above.

In its day-to-day functioning LBT relied on intercompany service level agreements pursuant to which LBT could make use of the expertise, systems and resources of other Lehman Brothers entities. The books and records of LBT were kept electronically on central IT systems, as were the books and records of the majority of Lehman Brothers entities. These systems were managed from Lehman Brothers' London and New York headquarters. LBT made use of these systems under a service agreement with LBL.[6] The Directors had limited access to the information contained in these systems.

Meetings of LBT's Board of Directors took place on a regular basis.[7] Meetings were held by means of conference calls. At these meetings, the Equity Trust board members would participate from their offices in the Netherlands; Fuller would dial in from Switzerland and Fischer from Frankfurt. Representatives of the legal and financial departments of LBL supporting LBT's activities would call in from London if needed.

LBT bank accounts

LBT held - in total - 49 bank accounts. These bank accounts were held at ABN AMRO Bank N.V. (“**ABN AMRO**”), Bank of New York Mellon Co, (“**Bank of New York Mellon**”) and JP Morgan Chase Bank N.A. (“**JP Morgan**”). The ABN AMRO account was used for internal LBT

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4 Interview with Fischer.

5 Interview with Fischer.

6 Previously some operational tasks performed under the service agreement had been performed by the Zürich branch of LBIE.

7 See about the meetings of the Board of Directors § 5.1.

matters. The accounts at Bank of New York Mellon and JP Morgan were used for intercompany transactions. LBT had separate bank accounts for each currency.

1.2.2. Daily operations of LBT and the involvement of LBIE

LBT's primary activity was the issuance of Notes. These Notes were issued under the following four programs:

- the *EMTN Program* (“**EMTN Program**”);
- the *German Note Program* (“**German Note Program**”);
- the *Swiss Certificates Program* (“**Swiss Certificates Program**”); and
- the *Italian Inflation Linked Note Program* (“**Italian Inflation Linked Note Program**”).

The vast majority of Notes, both in terms of quantity and principal amounts involved, was issued under the EMTN Program.

With regard to the EMTN Program, LBIE acted as Dealer, Arranger and Calculation Agent. Reference is made to the amended and restated distribution agreements (“**the Amended and Restated Distribution Agreement**”).[8] This appointment was repeated in the base prospectuses of the EMTN Program (the “**Base Prospectus**”).[9] LBIE’s appointment as Calculation Agent was provided for - following the Amended and Restated Distribution Agreement - in the final terms (“**Final Terms**”) related to each separate issuance of (a series of) Notes. LBIE’s appointment as Dealer, Arranger and Calculation Agent *de facto* meant that it had a significant influence on LBT’s daily operations.

In its capacity of Dealer under the EMTN Program, LBIE assessed the market’s appetite for parties interested in investing in LBT Notes. Such investors would commit to LBIE, in its capacity of Dealer, to purchase certain Notes. LBIE would then subscribe for the relevant amount of Notes with LBT, under the assumption that all such Notes would be placed to the market. Financial institutions could be appointed to be eligible to subscribe - together with LBIE - to certain Notes that were being issued under a series of Notes.

In its capacity of Arranger under the EMTN Program, LBIE was the driving force behind initiating and structuring the EMTN Program, both from a commercial and from a legal perspective. In this respect, LBIE also took care of the necessary 'maintenance' of the ongoing EMTN Program, e.g. by reviewing Program documentation and deciding on any amendments. LBIE would also decide on an increase of the maximum principal amount

8 The Amended and Restated Distribution Agreements are available via http://www.lehmanbrotherstreasury.com.

9 The Base Prospectuses are available via http://www.lehmanbrotherstreasury.com. See § 2.1 about the structure of the Note Programs.

outstanding under the EMTN Program on LBT's behalf and would subsequently communicate such decision to LBT's Board of Directors. Also, the type of Notes to be issued, for example equity linked or commodity linked Notes, was decided upon by LBIE. In practice, LBT's Board of Directors of LBT would hold a meeting with the purpose of formalizing the decisions already made by LBIE.

Finally, in its capacity of Calculation Agent under the EMTN Program, LBIE was responsible for calculating the value of Notes, interest rates and amounts payable to investors upon redemption of Notes.

1.2.3. LBT's auditor

As from LBT's incorporation in 1995, (the legal predecessors of) Ernst & Young Accountants LLP ("**E&Y Netherlands**") acted as LBT's auditor (*externe accountant*). The annual accounts of the financial years ending on 30 November 1995 up to and including 30 November 2007 were all supplied with an unqualified audit opinion (*goedkeurende verklaring*) by E&Y Netherlands. Furthermore, in 2008 E&Y Netherlands reported to the Board of Directors on the interim financial situation of LBT as per the half year close (31 May 2008) ("**2008 Review Report**") and also issued several consent letters in relation to the inclusion of certain financial information in prospectuses published in regard to issuances of Notes.[10]

The audit of LBT's annual and interim accounts by E&Y Netherlands was part of a broader audit program which was extended to several other European Lehman Brothers Group entities. This audit program was commissioned to E&Y United Kingdom ("**E&Y UK**"). In this respect, the activities concerning the audit by E&Y Netherlands were performed in close cooperation with E&Y UK. According to E&Y Netherlands the initial audit of LBT took place in London and the outcome of this audit was subsequently sent to E&Y Netherlands accompanied by an 'interoffice opinion' or 'interoffice scope conclusion', which formed the basis for the audit file, upon which the auditor of E&Y Netherlands based his audit opinion.

1.3 Applicable tax rules and agreements

In order to comprehend the position of LBT being a financing company with its registered seat in the Netherlands, the relevant key tax regulations applicable to companies such as LBT are described in this paragraph.

[10] The need to issue an interim review report arose from the fact that LBT started issuing Notes in Japan from 2007 onwards and Japanese law required submission of both an annual and a semi-annual report with the Japanese authorities.

The Netherlands have traditionally been a relatively favorable tax jurisdiction for (intra group) financing activities, among others matters because of (i) its extensive tax treaty network (effectively arranging for a reduction of foreign withholding tax), (ii) the absence of any withholding tax on outgoing interest payments and (iii) the possibility to obtain an upfront tax ruling, arranging a relatively low taxable income for (intra group) financing activities. The tax rulings obtained by LBT will be discussed below.

1.3.1. 1995 Tax Ruling

As a Dutch financing company that attracted funds for the Lehman Brothers Group, LBT was obliged to take into account an at arm's length net fee (the "**Taxable Margin**"), as a taxable remuneration for the lending of money to LBHI and other Lehman Brothers group companies. By letter of 2 March 1995, LBT applied for a tax ruling with the Dutch tax authorities with regard to the amount of the Taxable Margin. The ruling that came into effect (the "**1995 Tax Ruling**") was based on the applicable ruling policy at the time, which implied that the Dutch tax authorities required LBT to report fixed net percentages (spreads) of the company's average borrowings.

The relevant fixed remuneration (i.e. the Taxable Margin) for LBT to be taken into account depended on certain conditions; generally, for genuine non-risk bearing intra-group financing activities, LBT was required to report a Taxable Margin of at least 0.125% of the total amount of average borrowings by LBT to other Lehman Brothers group companies.[11] For third party borrowings bearing a (certain) credit risk, a Taxable Margin of at least 0.250% of the total amount of average borrowings was required. [12] Under the 1995 Tax Ruling, signed by the Dutch tax authorities on 17 March 1995, LBT was required to take into account a Taxable Margin of at least 0.250% with respect to its financing activities with regard to the Notes.

In October 1995, LBT started consultations with the Dutch tax authorities with regard to the amount of the Taxable Margin to be reported as to the Notes. LBT proposed to reduce the Taxable Margin in relation to its financing activities from 0.250% to 0.125%. Even though LBT's financing activities included borrowing monies from third parties (i.e. Noteholders), LBT argued that all its obligations under the EMTN Program were guaranteed by LBHI[13] and that therefore LBHI had assumed the risks related these obligations. Nevertheless, the Dutch

[11] This net contribution of 1/8% was reduced in stages to 1/16% as the total amount of average borrowings increased.

[12] This net margin was also reduced in stages as the total amount of average borrowings increased, with a minimum margin of 1/32%.

[13] With regard to certain payments under the guarantee LBHI would not have the right of recourse.

tax authorities dismissed LBT's proposal on the merit that LBT technically still bore the debtor's risk (i.e. the legal obligation to repay Noteholders under the EMTN Program).

1.3.2. 1997 Tax Ruling

In 1997, the Dutch tax authorities slightly modified their ruling policy. Under this amended ruling policy the lower Taxable Margin of 0.125% could also be applied in relation to LBT's financing activities, but only if LBHI guaranteed that LBT would earn a yearly margin of at least 0.125% of the amount of outstanding Notes. LBT and LBHI concluded the Independent Guarantee in order to meet this new policy.[14] On 15 December 1997, the Dutch tax authorities approved the Taxable Margin of 0.125% (the "**1997 Tax Ruling**").

Both the 1995 Tax Ruling and the 1997 Tax Ruling would initially expire on 30 November 1998. However, on 31 May 2000, the Dutch tax authorities agreed to the renewal of both rulings with retroactive effect, thus extending the expiry date to 30 November 2002.

1.3.3. New tax ruling policy: transfer pricing

As of 31 March 2001, the relevant Dutch tax ruling policy was again revised. Under this new tax ruling policy, at arm's length fees for financing activities were no longer based on fixed net percentages, but on a transfer pricing study. The newly introduced tax ruling policy was reflected in the introduction of a so-called Advance Pricing Agreement ("**APA**"). Under transitory law however, LBT was allowed to apply the old ruling policy (and take into account a net margin of 0.125% in relation to the financing activities) until 31 December 2005. For the fiscal year 2005/2006 this resulted in an annual amount of corporate income tax payable in excess of € 4,000,000.

As from 2006, LBT had to determine a Taxable Margin by way of a transfer pricing study. To comply with this requirement, a firm called Transfer Pricing Associates B.V. ("**TPA**") carried out a Transfer Pricing Study (the "**TP Study**") dated 13 June 2006. In this TP Study, TPA concluded that the gross margin (the "**Gross Margin**") to be taken into account was 0.03128%. The Gross Margin was therefore lower than the Taxable Margin that LBT had taken into account under the old ruling policy in previous years, including the accounting year 2005/2006. For example, the Taxable Margin based on the Gross Margin in the TP Study would have resulted in a corporate income tax payable for the fiscal year 2005/2006 of (only) roughly € 1,250,000.

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[14] See supra § 1.2 and Annex 4.

As LBT wanted upfront certainty with respect to the at arm's length character of the Gross Margin, it entered into discussions with the Dutch tax authorities to negotiate an APA. This resulted in a written request from LBT for an APA on 4 September 2008. An updated version of the TP Study as well as a new and final draft of an independent guarantee were attached to the APA. This new version of the independent guarantee contained an unconditional and irrevocable guarantee by LBHI to LBT for the proper payment of all amounts owed to LBT under the loan agreement between LBT and LBHI, minus an amount of € 2,000,000. By letter of 8 September 2008 the Dutch tax authorities informed LBT they were processing the request. When the provisional suspension of payments was granted to LBT on 19 September 2008, the Dutch tax authorities had not yet taken a final decision on the APA-request.

2. Notes issued by LBT

2.1 Note structure

The main creditors in the bankruptcy of LBT are the Noteholders and several swap counterparties. As described in paragraph § 1.2.2, LBT issued Notes under four programs, (i) the *EMTN Program,* (ii) the *German Note Program*, (iii) the Swiss *Certificates Program* and (iv) the Italian *Inflation Linked Note Program*.

At the date of bankruptcy, the majority of outstanding Notes (94.32%) had been issued under the EMTN Program, for a total nominal amount of EUR 22,994,826,519. The characteristics of the Notes under the EMTN Program varied from relatively straightforward to very complex. A relative small number of Notes had been issued under the other Note Programs. The German Note Program accounted for 4.44% of the outstanding Notes, representing a nominal amount of EUR 1.081,869,248. The Swiss Certificate Program and the Italian Inflation Linked Note Program accounted for 1.19% (nominal value EUR 288,889,061) and 0.05% (nominal value EUR 12,738,000) of the outstanding Notes respectively .

The EMTN Program was established on 31 March 1995 by LBHI, LBT and LBB (each defined as respective Issuer ("**Issuer**") under the Program documentation). The purpose of the EMTN Program was to attract funding from investors that could be used to finance other Lehman Brothers operations. After issuance of each Note, the relevant Noteholder was obligated to pay the Issuer the issue price of the Note as specified by the terms and conditions applicable to that Note. Ultimately, each Note would be redeemed at an amount that was calculated based on methods defined in the Terms and Conditions applicable to that Note.

The EMTN Program documentation was amended and updated each year, one of the reasons being to bring it in accordance with applicable regulatory and stock exchange requirements. The terms and conditions ("**Terms and Conditions**") applicable to each series of Notes are in principle contained in the Base Prospectus.[15] A Base Prospectus contains a summary of its contents, a description of the issuer and the guarantor, risk factors relating to the issuer and guarantor of the Notes, a section describing the variety of the Notes that can be issued under the EMTN Program, a comprehensive section describing the legal technical wording of the conditions for each of the various types of Notes that can be issued under the respective programs and, the 'Pro Forma Final Terms' ("**Pro Forma Final Terms**"). Each item included in these Pro Forma Final Terms corresponds to a legal or economic feature provided for in the EMTN Program conditions. Under the program documentation, the Terms

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[15] The Base Prospectuses are available via http://www.lehmanbrotherstreasury.com.

and Conditions could be amended for each issue of a series of Notes. They were then finalised in a separate document: the Final Terms.

The Base Prospectus, in combination with the Final Terms, specified (i) the issue price of the Note, (ii) the interest a Noteholder was entitled to, as well as (iii) the redemption date of the Note. Depending on the applicable Terms and Conditions, a Note was sold either at its principal amount or at a premium or at a discount to its principal amount.

There were several different kinds of Notes. Some Notes accrued interest on a fixed or floating rate basis. The majority of the Notes, however, provided for the amount of principal and/or interest to be repaid/paid on maturity to be linked to underlying market movements (related to *inter alia* commodities, equities or credit ratings of other parties). Also, certain Notes were issued on a fully discounted basis and did not bear interest.

As mentioned before, payment by LBT of all amounts of principal and interest due and payable under each Note was - under the conditions of each series of Notes - guaranteed by LBHI. This meant that Noteholders did in principle did not only have recourse against LBT as issuer and primary obligor, but also against LBHI. The Independent Guarantee provided by LBHI confirmed this obligation.

2.2 Note issuances

Figure 1 shows the historic development of the issuance activities of LBT.[16]

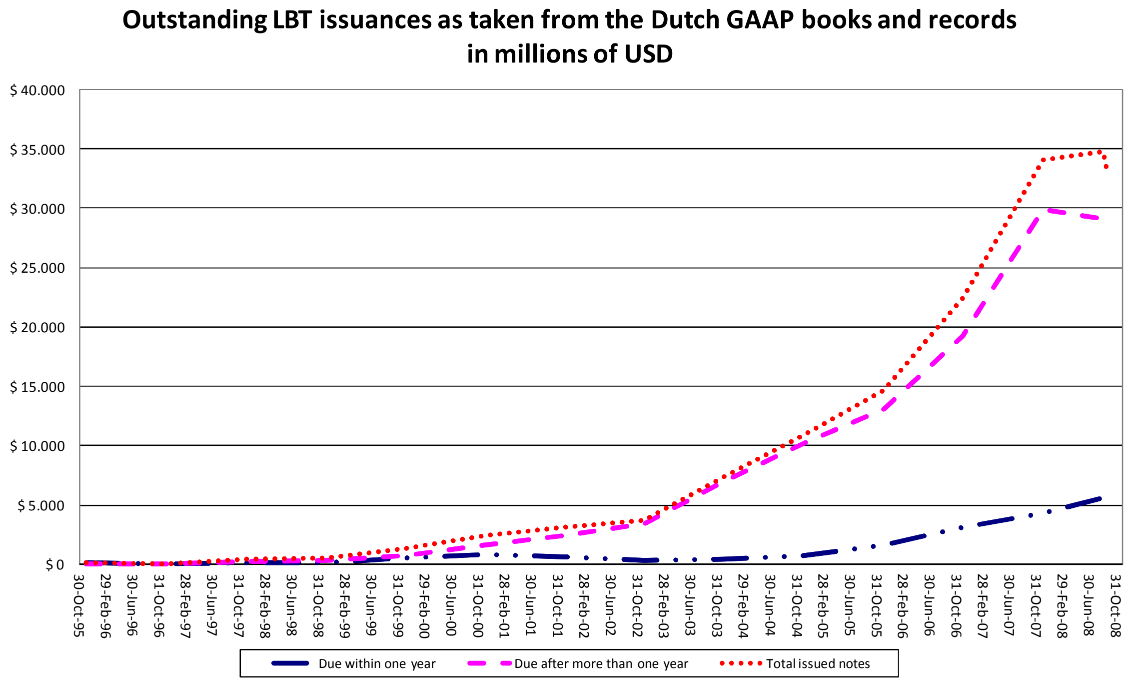

Figure 1

Source: LBT's books and records

The Board of Directors of LBT annually held a meeting with regard to the Notes Programs. The Board of Directors, however, had no part in the commercial aspects of decision making related to the issuance and structuring of Notes. LBIE was the main driving force behind the marketing and (commercial and legal) structuring of the Notes. LBIE also acted as market maker in this respect. Within Lehman Brothers, the 'New Products Committee Europe' had to approve each issuance of notes that constituted new business.[17] LBIE did not provide the Board of Directors with reports or other documents reflecting any discussion with regard to

[16] This figure only shows the Notes outstanding at the moment of the bankruptcy of LBT. All numbers are based on Dutch General Accepted Accounting Principles (GAAP) and have been derived from the annual accounts of LBT. The data as of 31 August 2008 and 15 September 2008 have been derived from the General Ledger data. Dutch GAAP reportings are based on paid-in issue prices and interest accruals and do not require marking-to-market.

[17] Approval was not required for the annual update of the Note Programs. With regard to smaller changes the Transaction Review Group was the relevant body.

market feasibility of Notes. However, Fischer has declared that LBIE investigated the marketability of the Notes.[18]

Activities associated with the settlement, booking, issuance and redemption of Notes were outsourced to LBL based on the service level agreement with LBL.[19] Pursuant to the Amended and Restated Distribution Agreement, the Base Prospectus and the Final Terms, LBIE performed the activities associated with the sale of the Notes, the structuring of the Note Programs and the calculation of the value of Notes (i.e. upon redemption or when coupon payments were due).

The Board of Directors did not seek independent legal advice with respect to the (issuance of) Notes.[20] Based on LBT's intercompany agreement with LBL, all legal aspects of Note issuances were dealt with by LBL's legal department in London. LBL's Legal Compliance and Advisory department would provide the Board of Directors with explanations on proposed amendments to the existing Note Programs prior to each board meeting. If questions arose, LBT could contact LBL.[21]

2.3 Regulatory aspects

As one of the issuers of the Notes and as an intra-group financing company established in the Netherlands, LBT was potentially subject to a number of regulatory provisions laid down in the Act on Financial Supervision (*Wet op het Financieel Toezicht)*.[22] Predominant were the regulations pursuant to Directive 2003/71/EC (the "**Prospectus Directive**")and an *exemption* on the requirement to obtain a banking license by the Dutch central bank, De Nederlandsche Bank N.V. ("**DNB**").

2.3.1. Obligation to issue a prospectus

Framework

The Prospectus Directive is a framework directive made under the European Commission's "Financial Services Action Plan", a program of legislation aimed to achieve an integrated

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18 Interview with Fischer.

19 Interview with Fischer.

20 Interview with Kamphuijs.

21 Interview with Fischer.

22 The AFS entered into in force on 1 January 2007 and was *inter alia* preceded by the Credit System (Supervision) Act 1992 (*Wet Toezicht Kredietwezen 1992)* and the Securities Transaction (Supervision) Act 1995 (*Wet Toezicht Effectenverkeer 1995*). In this report only the regulatory regime according to the AFS will be discussed.

European financial sector and a securities and risk capital market. The Prospectus Directive sets out the initial disclosure obligations for issuers of securities that are offered to the public or admitted to trading on a regulated market in the European Economic Area ("**EEA**"). The member states of the EEA have implemented the Prospectus Directive into national law, so within the EEA the same rules in relation to issuing a prospectus apply. In the Netherlands, the Directive has been implemented with effect from 1 July 2005 in the Securities Transaction (Supervision) Act. From 1 January 2007 the applicable rules were included in Chapter 5.1 of the Dutch Act on Financial Supervision ("**AFS**"). The Prospectus Directive in most cases requires the issue of a prospectus - unless an exemption applies - whenever there is either an offer of transferable securities to the public in the Netherlands or a request for the admission to trading of transferable securities on a regulated market in the Netherlands. The Prospectus Directive further sets out the form, content and approval requirements for prospectuses. Other countries within the EEA have also implemented the Prospectus Directive into national law. So within the EEA the same rules in relation to issuing a prospectus apply.

The key purpose of the Prospectus Directive is to protect investors by ensuring that the issuers publish reliable information concerning the securities through the use of the prospectuses. Article 5(1) of the Prospectus Directive provides that a prospectus should contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attached to such securities. The Prospectus Directive states that prospectuses must detail the *"(…) risks associated with the issuer, any guarantor and the securities (…)"* (Article 5(2)) and issuers must ensure that *"(…) the prospectus makes no omission likely to affect its import."* (Article 6(1)).

The Prospectus Directive sets out a regime for determining which member state is competent to have the prospectus approved. In the case of the EMTN Program of LBT, the Irish Financial Services Regulatory Authority (the "**IFRSA**") was competent because of the listing on the official list of the Irish Stock Exchange (the "**ISE**") and because Ireland was selected by LBT as its 'Home Member State'. The IFSRA therefore was the competent authority to approve the prospectus. After approval, the prospectus could be passported to other member states of the EEA, without it being necessary to have such prospectus approved again.

An issuer whose securities are admitted to trading on a regulated market is subject to certain disclosure obligations, including the obligation to disclose price sensitive information. Once a year, after the publication of the annual accounts, all relevant information published or made available to the public over the preceding 12 months, including information provided in line with the various reporting requirements set out in other EU legislation, must be made public in an annual document. This ensures the publication of consistent and easily understandable information for investors on a regular basis.

As said, unless an exemption is applicable, the Prospectus Directive requires a prospectus to be approved by the relevant competent authority when securities are offered to the public in a member state of the EEA or a request for the admission to the trading of securities on a regulated market in the EEA has been made.

Exemptions

At the time of LBT's bankruptcy, an issuer was exempted from the obligation to issue a prospectus which was approved by the relevant competent authority if one or more of the following criteria were met:

- the securities are issued only to qualified investors (*gekwalificeerde beleggers*) as defined in the Prospectus Directive;
- the securities are issued to less than 100 persons, not being qualified investors;
- the securities are issued with a denomination per security of at least € 50,000;
- the securities can only be acquired for an equivalent value of at least € 50,000 per investor; and/or
- the total equivalent value of the offer of the security to the public was less than € 100,000 (which limit is calculated over a period of 12 months).

If the securities, however, are listed on a regulated market in a member state of the EEA, an approved prospectus was still required. Certain series of Notes were admitted to listing and trading on a regulated market in an EEA member state. This meant that LBT would still have needed to procure approval of the prospectus.

*Regulator: Autoriteit Financiële Markten ("**AFM**")*

The relevant Dutch regulator in relation to prospectus supervision is the AFM. Based on the AFS, the AFM has several administrative measures at its disposal if, in its opinion, an issuer does not comply with the AFS when performing activities in the Netherlands.

The most important of these measures are:

- obliging the issuer to adhere to a particular line of conduct (*aanwijzing; 1:75 AFS*);
- imposing an order subject to a penalty (*last onder dwangsom; 1:79 AFS*); and

- imposing an administrative fine (*bestuurlijke boete; 1:80 AFS*).

To establish whether the AFS in relation to a prospectus requirement in the Netherlands is breached, the AFM has the authority to request information from any party at any time for the purpose of the supervision of compliance with the AFS. Competent regulators in other EEA member states would have had similar administrative measures at their disposal, if LBT would have engaged in activities in those states in breach of local laws.

Prospectus Directive and LBT

Both the EMTN Program and the German Note Program were - from the moment the Prospectus Directive was implemented - set up by using a Base Prospectus. The Base Prospectuses were drawn up to meet the requirements of the Prospectus Directive and the relevant Irish (in the case of the EMTN Program) or German (in the case of the German Note Program) laws. In relation to the German Note Program, Final Terms were drafted for the issuance of the Notes. Notes issued under the EMTN Program, were issued either (i) pursuant to the Base Prospectus and separate Final Terms containing the legal and commercial terms of a particular series of Notes or (ii) pursuant to a separate drawdown prospectus specific to the particular tranche or series of Notes containing all information relevant to such tranche. In both cases LBT would have used an approved prospectus or would have relied on an exemption on the obligation to issue a prospectus. When LBT made reference to a Base Prospectus to issue Notes, the Final Terms did not have to be approved separately by the IFRS. If LBT used a drawdown prospectus, such prospectus would have needed to be approved by the IFRS if no exemption to the prospectus requirement was available or when the particular tranche of Notes dealt with in the drawdown prospectus, was admitted to listing on the ISE. A drawdown prospectus was not necessarily one document, but could consist of a separate registration document, a securities note and a summary. The registration document which has a validity of 12 months, would *inter alia* include information in relation to LBT as disclosed in the Base Prospectus by referencing to this document.

The Swiss Certificates Program made use of a program prospectus. Although the form of this prospectus was more or less the same as the Base Prospectus of the EMTN Program and the German Note Program, the program prospectus was drawn up to meet the requirements of the Directive of the SWX Swiss Exchange on the Listing of Derivative Instruments (and not the Prospectus Directive).

For the Italian Note Program, a prospectus was approved by the Commissione Nazionale per le Società e la Borsa (the "**CONSOB**"). Pursuant to this prospectus inflation linked notes were offered and listed on the Italian Stock Exchange.

As described above, LBT made a Base Prospectus available to the public in relation to the EMTN Programme. LBT also used drawdown prospectuses. The Base Prospectus was *inter alia* published on the websites of the IFRSA. The drawdown prospectuses were usually also published on the website of the IFRSA and the ISE and could also be obtained from the registered office of the Issuers and the Irish paying agent.

The Base Prospectus provided information with regard to the issue of Notes under the EMTN Program, which was updated annually. The Prospectus Directive states that, in the case of an offering program, such as the EMTN Program, a previously filed base prospectus is valid for a period of up to 12 months. In addition, given that a competent authority will not allow any offer of securities to be made to the public without prior publication of a valid prospectus (unless an exemption to the prospectus requirement applied), failure to annually update a base prospectus could mean that no further securities would be allowed to be issued for the subsequent year. Also, as long as LBT used a Base Prospectus, it needed to make a supplement to this prospectus available for each significant new fact, material mistake or inaccuracy relating to the information in the Base Prospectus, which could affect the potential investor's assessment of the (terms of the) Notes. Such supplement could, according to the Base Prospectus, be obtained from the IFRSA or the ISE. The same also applies in relation to a drawdown prospectus.

Application was made annually for Notes issued under the EMTN Program to be admitted to the Official List of the ISE; to trade on its regulated market and to trade on the Alternative Securities Market of the ISE.

The IFRSA approved the Base Prospectuses and drawdown prospectuses issued by LBT in relation to the EMTN Program, pursuant to which Notes could be listed on the ISE. The Base Prospectus was then notified to certain other competent regulatory authorities in the EEA.

2.3.2. Banking Activities

Requirement of a banking license and exemptions

Under Dutch law, an entity which business it is to receive funds (*opvorderbare gelden)*, outside a restricted circle (*besloten kring*) from parties other than professional market parties (*professionele marktpartijen*), and which entity grants credits for its own account, qualifies as

a bank.[23] Repayable funds are defined as funds that are repayable at some point in time and of which it is certain which nominal amount has to be repaid.[24] The activity of receiving repayable funds and granting credit is an activity which is regulated in the Netherlands and may only be performed by entities with a banking license, unless an exemption applies.[25]
Under the AFS, no banking license is required for an intra-group financing company (whether or not as part of a group which mainly has financial activities, such as the Lehman Brothers Group) and fulfils certain conditions. The reason for this exemption is that, because of the special character of intra-group finance companies and the limited objects of those companies (mainly financing of group activities) no prudential supervision by DNB is deemed necessary, if there is no risk for the issuer's creditors and the financial system.[26] In order to qualify for the exemption (at the time of the activities of LBT), pursuant to section 3:2 of the AFS the following conditions must be met:

- Securities must be issued in accordance with the provisions arising from Chapter 5.1 of the AFS. This chapter implements the Prospectus Directive into Dutch law;
- The qualifying entity needs to extend at least 95% of its balance sheet total within the corporate group as a loan;
- The qualifying entity has to arrange for an unconditional guarantee regarding all liabilities arising from issued securities. The unconditional guarantee has to be provided by a corporate entity, of which the qualifying entity is a subsidiary, and which parent as a consolidated equity capital that was positive throughout the term of the guarantee.[27]

Regulator: DNB

DNB is the relevant Dutch regulator for banking supervision. In case of non-compliance with the obligation to have a license in order to be allowed to perform banking activities, DNB has the same administrative measures at its disposal as the AFM.[28] DNB also has the authority to request information from any party at any time for the purpose of the supervision of compliance with the AFS. Furthermore, if a qualifying entity is at any moment not compliant

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23 Section 1:1 AFS.
24 Section 1:1 AFS.
25 Section 3:5 AFS.
26 The AFM is still charged with performing behavioral supervision.
27 The guarantee by the parent company could also be replaced by a guarantee by a bank licensed by the Dutch Central Bank or another competent regulator in the EEA or country designated by the Dutch Ministry of Finance. Furthermore, the guarantee could be replaced by a keep well agreement issued by a parent company.
28 These measures are described in § 2.3.1. Being: i) obliging the issuer to adhere to a particular line of conduct (*aanwijzing); ii)* imposing an order subject to a penalty (*last onder dwangsom*); and iii) imposing an administrative fine (*bestuurlijke boete*).

with the relevant provisions of the AFS, DNB has the possibility to request the District Court of Amsterdam to apply an emergency regulation (*noodregeling)*. An emergency regulation can only be applied if the solvency or liquidity of the qualifying entity is such, that it can reasonably be foreseen that the institution will not be able to meet its requirements.

Unless DNB receives specific information that a financing company does not meet the requirements of section 3:2 AFS, it does not actively supervise intra-group financing companies. The entity itself has to state that it falls under an exemption with regard to section 3:2 AFS. In order to establish whether it falls under an exemption an entity can request DNB for a judgment of scope (*reikwijdteoordeel*).

Section 3:2 AFS and LBT

LBT qualifies as an entity that in principle required a banking license to perform its activities. Firstly, the Notes were issued to the public and therefore not within a restricted circle. Furthermore, the Notes were not necessarily issued only to professional market parties. Finally, LBT used the proceeds of the issuance of the Notes to lend funds to other parties for the purpose of benefit and of which LBT bore the financial risk of granting those funds. Following the activities of LBT and the definition of a bank in the AFS, this meant that LBT qualified as a bank in the Netherlands.

LBT, however, had no license to operate as a bank. According to a letter from LBT addressed to DNB dated 3 October 2002, LBT was of the opinion that its activities in the Netherlands were performed under an exemption as set out by the law.[29] It did not ask for a judgment of scope before sending this letter.

LBHI - as guarantor - provided an unconditional guarantee regarding all liabilities incurred by LBT by obtaining the repayable funds. Furthermore, it follows from the minutes of the Board of Directors of LBT dated 26 August 2008, that the Board of Directors confirmed that the proceeds of Notes to be issued would be used in accordance with section 3:2 AFS, that the consolidated equity of LBHI needed to be positive and that at least 95% of the balance sheet total would be lent within the Lehman Brothers Group. The Bankruptcy Trustees have not been made aware of any information to the contrary. DNB is also of the view that no banking license was required. This also follows from a recent study of DNB in relation to shadow banking in the Netherlands. In this study DNB states that LBT was not subject to supervision under the AFS.[30]

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[29] The statement was made in relation to the requirements set by the Credit System (Supervision) Act 1992.

[30] DNB Occasional Studies Vol. 10/No. 5 (2012) *Het schaduwbankwezen: een verkenning voor Nederland,* p. 18.

Given the above LBT made use of the exemption of section 3:2 AFS, which meant that it was not required to have a banking license under Dutch law.

Special Financial Institution

Whilst not a bank that needed a banking license, LBT did qualify as a Special Financial Institution (*Bijzondere Financiële Instelling*) under the External Financial Relations Act 1994 (*Wet financiële betrekkingen buitenland).*

A Special Financial Institution is a resident enterprise or institution, irrespective of its legal form, in which non-residents hold a direct or indirect participating interest through a shareholding or otherwise and whose objective is, or whose business consists to a major extent of, receiving funds from non-residents and channeling them to non-residents.[31]

As a Special Financial Institution, LBT was not subject to regulatory supervision by DNB, but did have the obligation to provide the Statistics and Information Division of DNB periodically with certain specific financial information relevant in relation to the Dutch balance of payments. The Statistics and Information Division of DNB used this information to prepare the Dutch balance of payments.

[31] With regard to residents and non-residents DNB follows the definitions of the International Monetary Fund (IMF). Residents of a certain country are *taken* to be the group of natural persons and legal entities whose centre of economic interest lies in the country concerned and include legal entities, partnerships and limited partnerships which are established or have their offices in the Netherlands.

3. Lehman Brothers in figures

Before turning to the figures of LBT in § 3.2, first certain key figures of LBHI will be discussed in § 3.1. These figures are restricted to the development of profits and solvability respectively.

3.1 LBHI in figures

3.1.1. Profit and loss

Figure 2 shows the development of the consolidated reported net income of LBHI from 2001 onwards.[32]

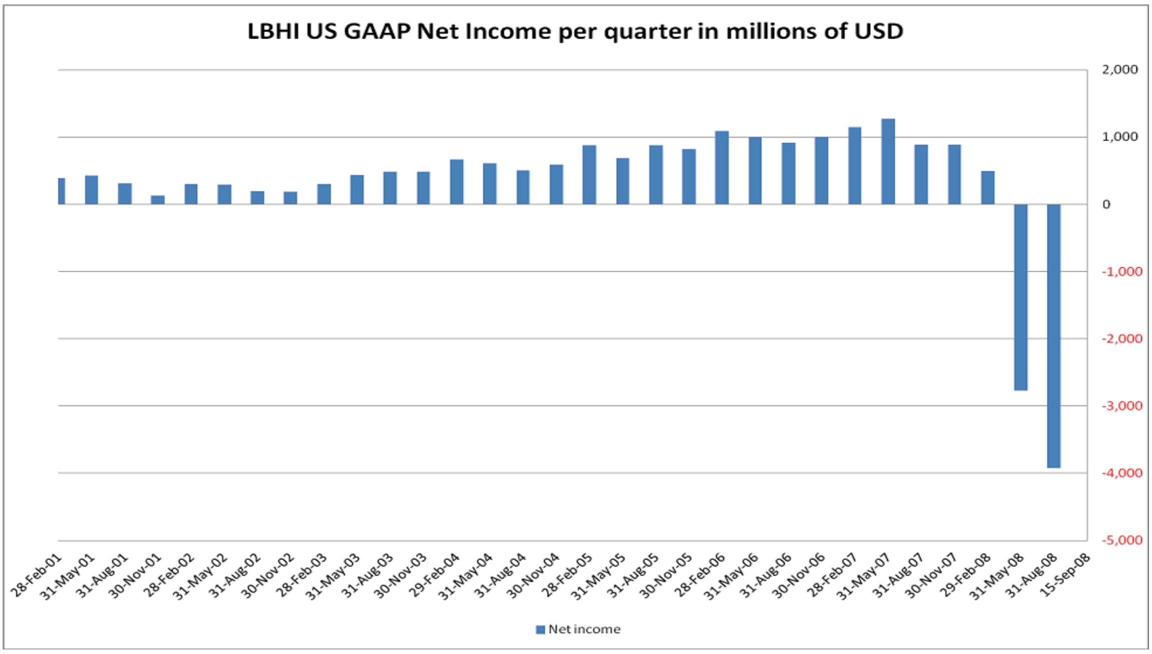

Figure 2

Source: LBHI consolidated statements of financial information (SEC 10K forms)

3.1.2. Solvency ratios

Figure 3 shows the historic reported consolidated balance sheet totals and solvency development of LBHI.

[32] All data are based on the consolidated filings to the SEC. All numbers are based on the net income per quarter.

The large graph shows the assets, liability and equity in absolute numbers. The inserted graph shows the resulting solvency development of LBHI, measured as equity versus total assets.[33]

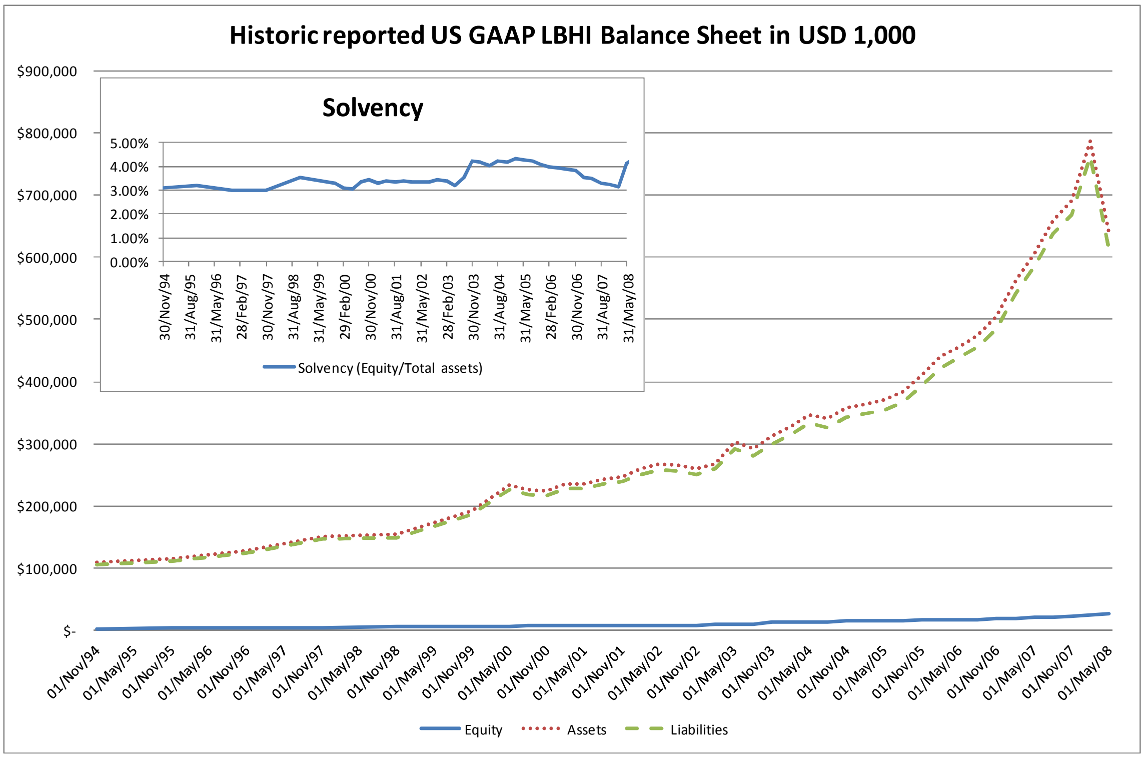

Figure 3

Source: LBHI consolidated statements of financial information (SEC 10K forms)

Mr. Anton R. Valukas, the examiner appointed in the Chapter 11 proceedings with respect to LBHI (the "**Examiner**") is critical with regard to the figures reported by LBHI in his report investigating the cause of the bankruptcy of LBHI and its key affiliates.

The report drafted by Mr. Valukas (The "**Valukas Report**") concludes that the financial data reported by LBHI were too infrequent and too subjective to be relied upon. Therefore, the Examiner had independent calculations performed, in order to analyze the first point in time at which LBHI could be deemed insolvent. The Valukas Report indicates that, in determining solvency, an approach using market value data is preferable. Such approach is referred to as the Implied Market Value Test (the "**Implied Market Value Test**").[34]

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[33] For 15 September 2008 the total assets value of 31 August 2008 was used as no comparable reportings were made at 15 September 2008.

[34] See Annex 21 Valukas Report.

Figure 4 shows the development of LBHI's (consolidated) solvency measured as the market value of LBHI's equity as a percentage of the market value of total assets.

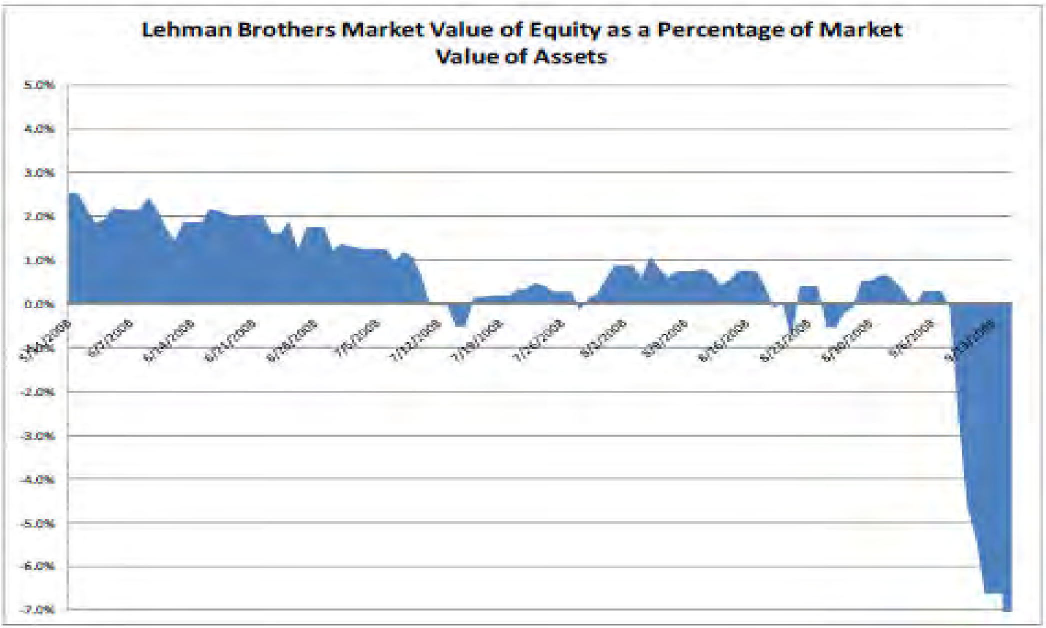

Figure 4

Source: Valukas Report, p. 1581

This graph shows different dates prior to the bankruptcy of LBHI on which, according to the Valukas Report and using the Implied Market Value Test, LBHI could be considered insolvent. The first points in time on which insolvency - based on this test - occurred were dates between 11 and 15 July 2008.

In its calculation the Valukas Report makes no adjustments for the accounting practices with respect to the Repo 105 Program or with respect to LBHI's Liquidity Pool, as the fact that these practices were performed by Lehman Brothers was unknown to the market. These practices are addressed in more detail in § 4.9 ('accounting practices'). Had these accounting practices been known to the public, market values might likely have differed, probably resulting in a lower solvency on the dates impacted by the practices.

3.1.3. Stock price LBHI

By the close of trading on 12 September 2008, LBHI's stock price had declined to USD 3.65 per share, a 94% drop from the price on 2 January 2008 of USD 62.19.[35]

Figure 5 shows the historic development of the LBHI stock price at the New York Stock Exchange. This graph is corrected for corporate actions, such as mergers and take-overs, in Lehman's history.

Figure 5

Source: http://finance.yahoo.com

Figure 6 shows the price to book ratio for LBHI in relation to that of comparable investment banks. This ratio compares the stock/share price of a company with the book or accounting value of shareholders' equity per share. A ratio above 1 indicates that the market is willing to pay a premium for expected future gains. As Figure 6 demonstrates, LBHI was the worst performer of the investment banks compared in this graph. LBHI was the only bank within this graph that performed below the value of its equity.

35 Valukas Report, p. 11, quote.

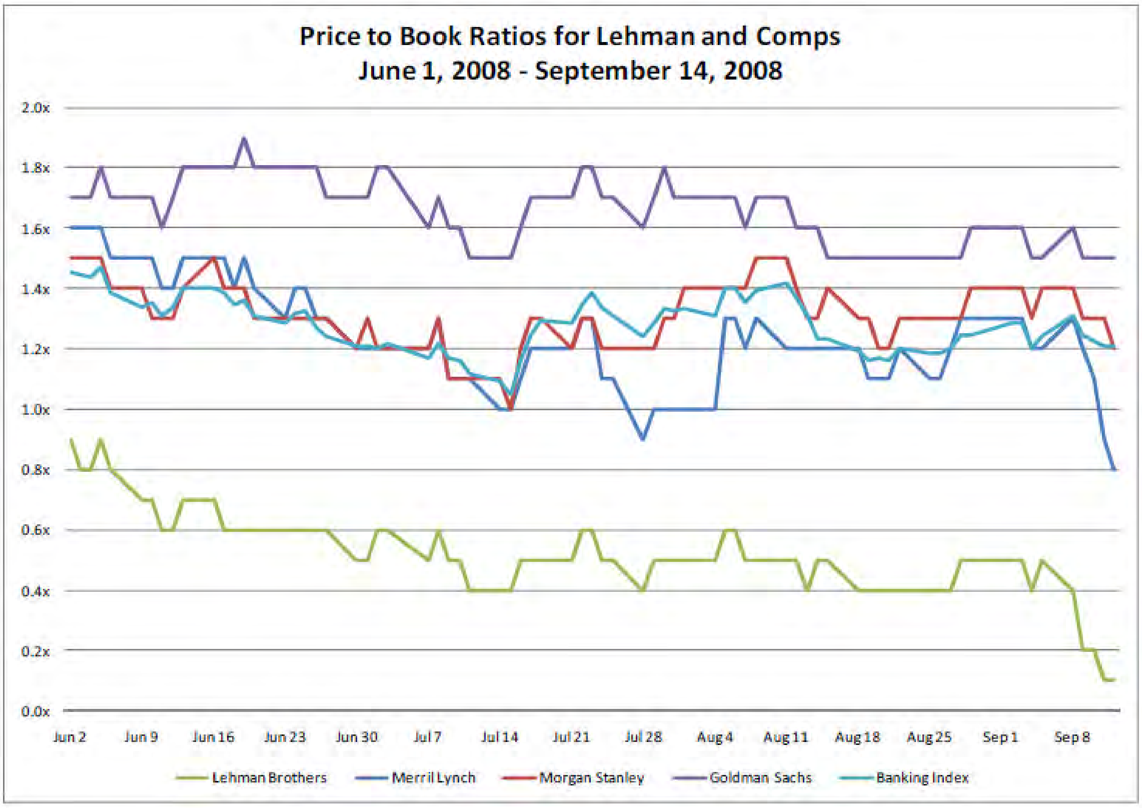

Figure 6

Source: Valukas Report, p. 1575

3.2 LBT in figures

LBT's figures need to be seen against the background of the Tax Ruling discussed in § 1.3. Pursuant to this Tax Ruling, LBT was required to earn at least a certain spread on the amounts that it had borrowed and subsequently lent onwards.

3.2.1. Profit and loss

Figure 7 shows the changes to LBT's equity - which were caused by the realization of net profits by LBT - on a year-by-year basis from 2001 onwards.[36]

[36] All numbers are based on the change in total equity on a month by month basis.

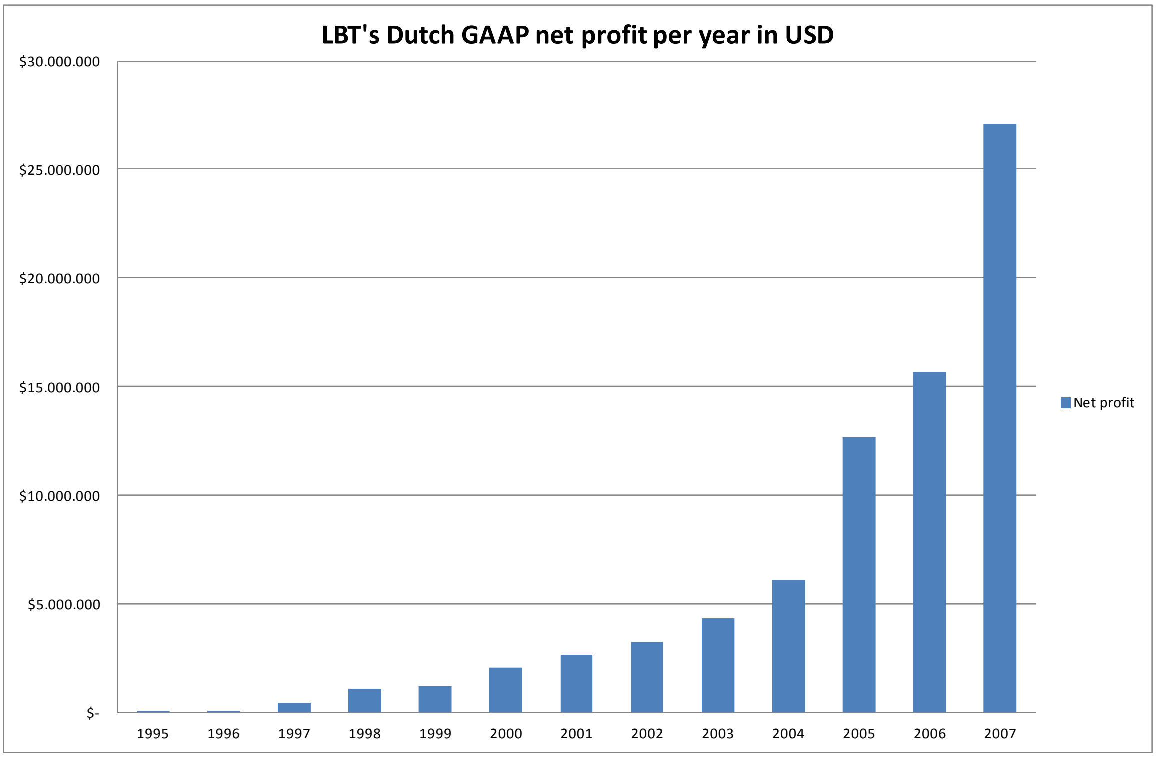

Figure 7

Source: Published annual accounts of LBT

3.2.2. Solvency ratios

Figure 8 shows the historic balance sheet and solvency development of LBT as based on its internally US GAAP accounting figures. The large graph shows the balance sheet total in absolute numbers. The smaller inserted graph shows the resulting solvency development of LBT, measured as equity versus total assets.

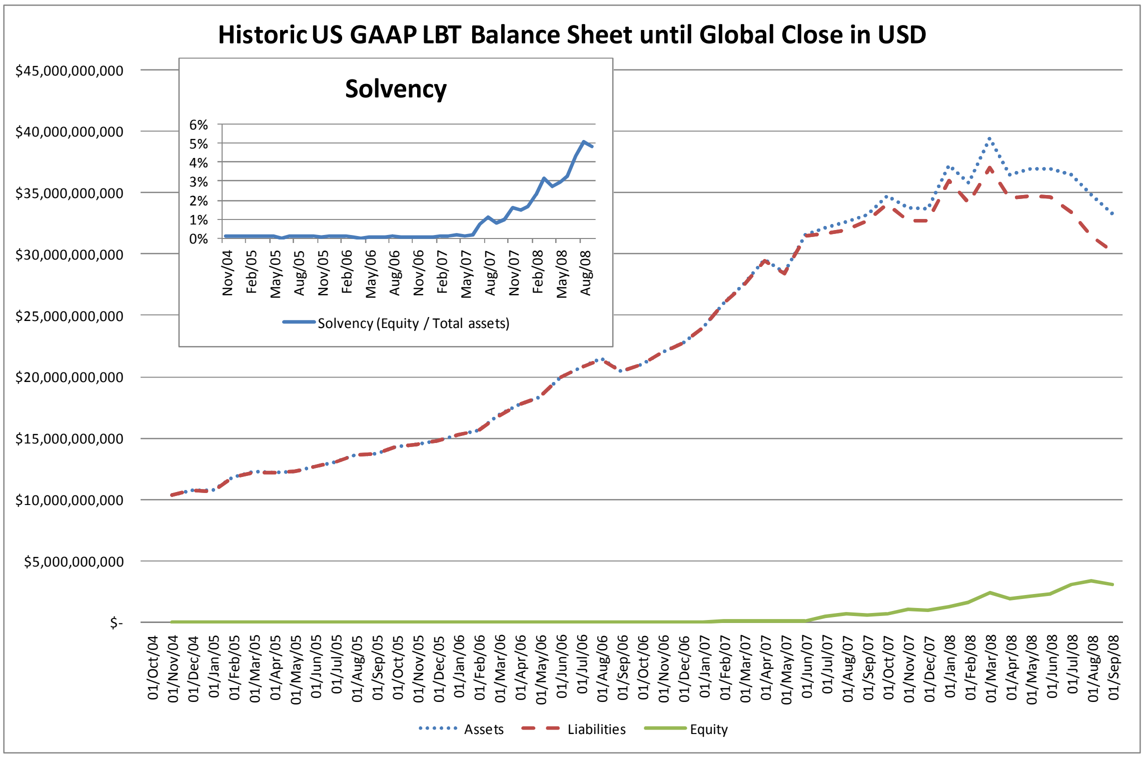

Figure 8

Source: General Ledger and records of LBT

According to the audited and approved annual accounts for the financial year 2007 (Dutch GAAP), the profits of LBT after taxation amounted to USD 27,116,000 and the total assets of LBT as of 30 November 2007 amounted to USD 34,438,150,000.

Figure 9 shows the historic balance sheet and solvency development of LBT as publicly reported by LBT in its annual accounts. That is to say: based on Dutch GAAP. As of 2007, Figure 8 and Figure 9 show a difference between the solvency according to the internal accounting figures (Figure 8) and the solvency according to the publicly reported figures (Figure 9).

The difference can - mainly - be explained by the fact that assets were valued mark-to-market under US GAAP and at accrual value under Dutch GAAP.

Another reason for the difference between Figure 8 and Figure 9 is that it was not uncommon for LBT to adjust its internal accounting figures (Figure 8) only when the auditor started auditing the books for the subsequent financial year. Since an audit of the financial year 2008 did not take place, the adjustments for the financial year 2007 have not been booked as of the date of the Global Close and are, thus, not reflected in Figure 8.[37] In addition, no adjustments have been made by the auditor to the balance sheet with respect to financial year 2008. With regard to the external accounting figures (Figure 9) these adjustments were already made by the auditor of LBT and as such are reflected in Figure 9.

Since the adjustments implemented by the auditor better reflect the state of LBT's balance sheet in accordance with the applicable fiscal and regulatory requirements as set out in § 1.3, respectively § 2.3 above, Figure 9 should be considered leading. As this figure shows, LBT maintained an equity/debt ratio of approximately 0.2%.

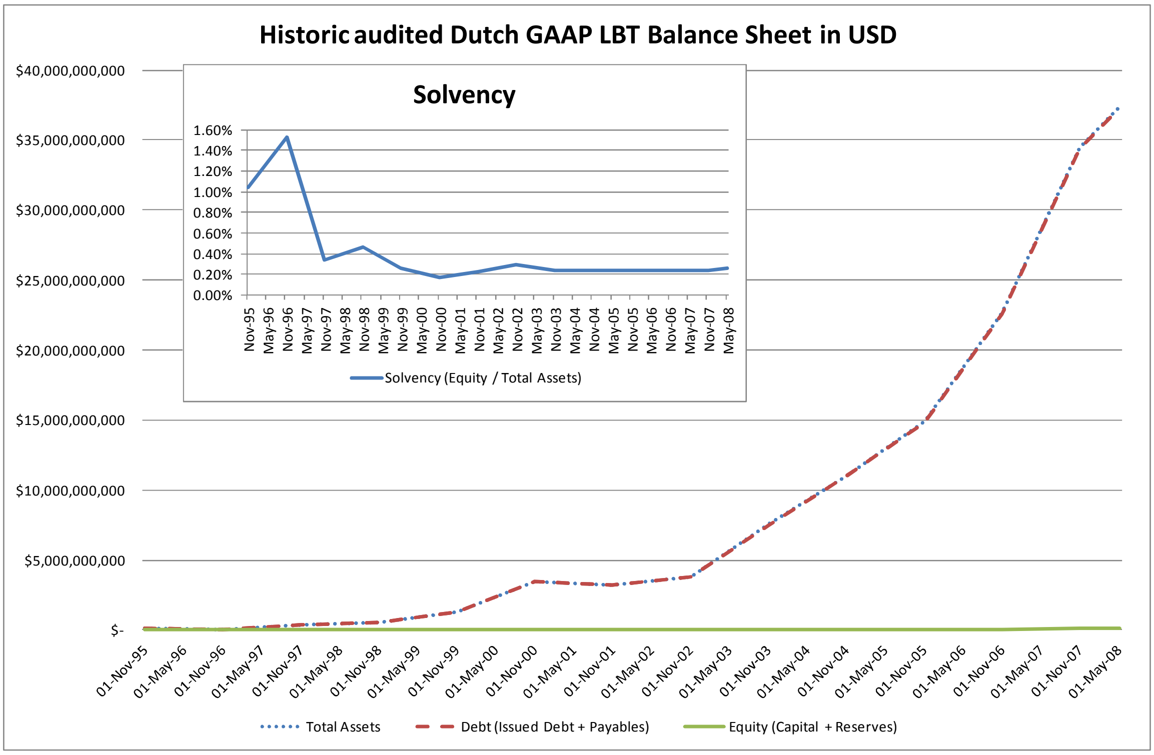

Figure 9

Source: Balance sheet as reported in LBT's annual accounts and 2008 Review Report

37 The Global Close was performed as of 14 September 2008.

4. LBHI and the credit crunch

This investigation report contains the results of the investigation by the Bankruptcy Trustees into the main causes of the bankruptcy of LBT. Given the role of LBT as a financing company of the Lehman Brothers Group, and since virtually all proceeds from the Notes issued by LBT were lent on to LBHI, the fate of LBT was closely linked to that of LBHI and – in that respect – to that of the Lehman Brothers Group as a whole.

To give a clear overview of the position of LBT in relation to LBHI it is necessary to elaborate on the events leading up to the bankruptcy of LBHI. These events were investigated by the Examiner appointed in the American Chapter 11 procedure of LBHI and laid down in the Valukas Report. The findings of this report, to the extent that they are relevant to the investigation at hand, are discussed and explained in this paragraph.

According to the Valukas Report, the most important facts and decisions preceding the opening of the Chapter 11 procedure as to LBHI are as follows. LBHI adapted an aggressive growth strategy in 2006 (§ 4.1). This growth strategy was risk prone in three aspects. First of all, LBHI had a very thin capital base. It did not expand this base following the decision to take on more risk (§ 4.2). Secondly, the growth decision was counter-cyclical (§ 4.3) and thirdly, LBHI accumulated more and more illiquid assets (§ 4.4).

By implementing this growth strategy, LBHI repeatedly exceeded different internal risk limits and thereby significantly changed its own risk profile (§ 4.5). It was not until late 2007, after other parties had exited the subprime mortgage – i.e. mortgages that are normally made out to borrowers that have low credit ratings – market, that LBHI terminated its subprime lending business and started to slowly exit the illiquid real estate market (§ 4.6). Then, in the beginning of 2008, LBHI started to incur losses (§ 4.7). The thin capital base could not absorb these losses, while at the same time LBHI did not raise new capital until June 2008 (§ 4.8). Furthermore, by adopting certain disputable accounting practices, LBHI's financial difficulties were not apparent for some time (§ 4.9). In 2008 American regulators took action (§ 4.10).

The endgame followed in September 2008 when LBHI reported a second consecutive quarter of losses. At this point in time, no party provided additional capital nor was willing to acquire the business of LBHI. As a result, LBHI could not fulfill its obligations and was forced to file for Chapter 11 bankruptcy protection on 15 September 2008 (§ 4.11).

The Valukas Report concludes that the preceding facts do not warrant a cause of action against LBHI's management relating to the growth strategy it adopted, the exceeding of internal risk limits or the accounting practices with respect to the reporting of LBHI's liquidity pool (“**Liquidity Pool**”). With respect to repo 105 transactions (the “**Repo 105 Program**”), the Valukas Report concludes that there are colorable claims of breach of fiduciary duty against certain Lehman officers and a colorable claim of professional malpractice against the LBHI’s external auditor E&Y US (§ 4.12).[38]

4.1 Aggressive growth strategy

According to the Valukas Report “*Lehman made the deliberate decision* [in 2006] *to embark upon an aggressive growth strategy, to take on significantly greater risk and to substantially increase leverage of its capital*”.[39] This new growth strategy resulted in an increase of the net assets of the Lehman Brothers Group by almost USD 128 billion (or 48%) in a little over a year – from the fourth quarter of 2006 through the first quarter of 2008.

All figures in ($ Billions)	**Q4 06**	**Q1 07**	**Q2 07**	**Q3 07**	**Q4 07**	**Q1 08**	**Q2 08**
Reported Net Assets	268.936	300.797	337.667	357.102	372.959	396.673	327.774

Source: Valukas Report p. 57

LBHI decided to change its business strategy, shifting from a relatively low risk brokerage model to a higher risk and capital-intensive model.[40] Historically, Lehman had focused on the 'moving business', which did not entail acquiring assets for its own investment. Instead, LBHI acquired assets, such as commercial and residential real estate mortgages, to subsequently shift them off its balance sheet by means of securitization and syndication transactions[41] LBHI’s main profits resulted from these transactions. Profits and losses related to the assets – the commercial and residential real estate mortgages – were made, respectively incurred, by the third parties acquiring them.

During 2006, LBHI's management decided to shift LBHI’s focus to the ‘storage business’, which entailed that Lehman started acquiring assets for its own (longer-term) investment instead of moving the assets to third parties.[42] Primary focus areas in this respect were commercial real estate, leveraged loans and private equity.[43] The Chief Executive Officer of

[38] A colorable claim is - according to the Valukas Report - a claim for which the Examiner has found that there is sufficient credible evidence to support a finding by a trier of fact. See: Valukas Report, p. 17.

[39] Valukas Report, p. 4.

[40] Valukas Report, p. 59.

[41] Valukas Report, p. 59.

[42] Valukas Report, p. 59.

[43] Valukas Report, p. 60.

LBHI, Fuld, believed that other banks were also ‘using’ their balance sheets to make more proprietary investments. He also believed that these investments were highly profitable relative to their risk in the then buoyant economic environment and that LBHI was missing out on significant opportunities to do the same.

4.2 Continuous low equity, despite aggressive growth strategy

LBHI’s equity and solvency ratio have been discussed in § 3 above. LBHI constantly had a solvency ratio of around 3% on average over the years. Although LBHI embarked on an aggressive growth strategy, it did not strenghten its capital base by raising new equity.

4.3 LBHI 'doubles down': residential mortgage business & explosion of LBHI's leveraged loan business

In 2003 to 2005 house prices surged. During this boom, subprime mortgages became increasingly available. In the hope of higher returns, lenders extended credit to borrowers previously unable to qualify for loans. As the economy weakened and mortgage interest rates rose, the number of homeowners in default on their payment obligations began to climb. The swift deterioration in subprime loan performance meant that many mortgage investors were faced with losses. The size of mortgage debt outstanding and the fear that the crisis would soon spread to consumer credit led to a freeze in credit markets and runs on certain investment banks and funds.[44]

In late 2006, the subprime crisis started to manifest itself. LBHI continued its aggressive growth strategy. Even in the face of the emerging crisis.[45] This decision, to expand and move forward, instead of making a retreat, is referred to in the Valukas Report as 'doubling down'.[46] LBHI did so in two markets: the residential mortgage business and the leveraged loan business.

LBHI's management made the decision to continue its aggressive growth strategy on the basis of two main decisions. First, like some other market participants, “*Lehman's management believed that the subprime crisis would not spread to other markets and the economy generally*”.[47] Second, LBHI's management believed that “*while other financial institutions were retrenching and reducing their risk profile, Lehman had the opportunity to*

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[44] Source: Joint Center for Housing Studies of Harvard University, *The state of the Nation's Housing 2008* <www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2008.pdf>

[45] Valukas Report, p. 43.

[46] This is a gambling term which amounts to raising the stakes. Valukas Report, p. 4.

[47] Valukas Report, p. 44-45.

pick up ground and improve its competitive position. Lehman had benefitted from a similar "countercyclical growth strategy" during prior market dislocations and its management believed it could similarly benefit from the subprime lending crisis".[48] In short, where competitors identified risks and retreated, LBHI saw this as an opportunity to enlarge its market share.

4.4 LBHI accumulates illiquid assets

In continuing its aggressive and countercyclical growth strategy, LBHI accumulated more and more illiquid assets. These assets appeared to be illiquid, because LBHI would be unable to sell the assets (mainly commercial and residential real estate and also, though to a lesser extent, leveraged loan positions) to third parties easily or only at a sharp discount.[49] LBHI started to suffer losses related to the assets, most notably since real estate owners and the leveraged loan debtors defaulted on their payments. Therefore, LBHI's liquidity was compromised and it became more and more vulnerable to losses on these assets.

4.5 LBHI senior officers go outside risk management policies and procedures

While LBHI acquired a taste for higher-risk investment, it also exceeded its own risk limits. These risk limits were designed and implemented to ensure that LBHI's investments were properly limited and diversified by - inter alia - business type and counterparty. Most notable are the following deviations:

- LBHI's management decided to exceed risk limits with respect to its principal investments, most notably on its leveraged loan and commercial real estate businesses. LBHI took highly concentrated risks in these two business lines and, partly as a result of market conditions, ultimately exceeded its risk limits by margins of 70% as to commercial real estate and by 100% as to leveraged loans[50];

- LBHI's management excluded certain risky principal investments from stress tests[51]; and

- LBHI did not strictly apply its balance sheet limits, designed to monitor the overall risk of the bank and maintain it's leverage ratio within the range required by the credit rating agencies. Instead it decided to exceed those limits.[52]

[48] Valukas Report, p. 45
[49] Valukas Report, p. 45-46.
[50] Valukas Report, p. 50.
[51] Valukas Report, abbreviated quote, p. 50.

In relation to this, LBHI removed Mr. Antoncic, LBHI's Chief Risk Officer and Mr. Gelband, head of its Fixed Income Division in 2007, because of their opposition to LBHI's growing accumulation of risky and illiquid investments.[53]

4.6 LBHI's exit from troubled markets

4.6.1. Termination of residential mortgage originations

When the subprime crisis started to manifest itself in late 2006, the initial reaction of LBHI was a continuation of its aggressive growth strategy.[54] It did so because it anticipated a benefit from a countercyclical investment strategy. It was not until August 2007, when the anticipated turn in the residential mortgage market had not arrived, that LBHI started withdrawing from the residential mortgage market. [55]

In September 2007, LBHI announced the completion of the first restructuring plan for its residential mortgage business, rescaling its operations in the US and UK and closing its Korean mortgage business.[56] In January 2008 LBHI announced it would suspend its wholesale and correspondent US residential mortgage origination activities at its Aurora subsidiary.[57]

4.6.2. LBHI exits its real estate investments

From 1 June 2007, LBHI had surpassed its balance sheet risk limits.[58] One way LBHI might have improved its balance sheet was the sale of assets. However, LBHI's overall balance sheet had grown by 37% during 2007 and much of that growth was concentrated in illiquid holdings, that LBHI was unable to sell without incurring significant losses.[59]

LBHI’s failure to sell assets at this stage lies partly with its previous decision to pursue a countercyclical growth strategy, which continued to be reflected in its strategy in the first quarter of 2008. Fuld told the Examiner, Valukas, that he decided to instruct his senior

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52 Valukas Report, p. 50.
53 Valukas Report, p. 46.
54 Valukas Report, p. 43.
55 Valukas Report, p. 138.
56 Lehman Brothers Press Release, 6 September 2007: Lehman Brothers completes restructuring of its global mortgage origination business.
57 Lehman Brothers Press Release, 17 January 2008: Lehman Brothers suspends wholesale and correspondent u.s. residential mortgage origination activities.
58 Valukas Report, p. 157.
59 Valukas Report, p. 150.

managers to reduce the firm's balance sheet after the December 2007 holiday season. LBHI, however, did not begin to sell assets aggressively until the second quarter of 2008.[60] Between the fourth quarter of 2007 and the first quarter of 2008, LBHI's gross and net assets actually increased from USD 691 billion to USD 786 billion, and from USD 373 billion to USD 397 billion, respectively. During the same period LBHI continued to exceed balance sheet risk limits, with overages concentrated in securitized products and real estate.[61]

4.7 LBHI starts to incur losses

On 9 June 2008, LBHI announced its second quarter results and reported a loss of USD 2.8 billion. Its first loss ever reported since going public in 1994.[62] These losses were mainly ascribed to a combination of write-downs on assets, sales of assets at losses, decreasing revenues and negative results on hedges.[63]

On 10 September 2008, LBHI announced that it was projecting a USD 3.9 billion loss for the third quarter of 2008. These projected losses were mainly ascribed to a combination of write-downs on commercial and residential mortgage, real estate assets and losses on principal investments.[64]

4.8 Share issuance LBHI in June 2008

During the first quarter of 2008, Fuld decided that LBHI would not raise equity unless it could do so at a premium.[65] LBHI did not want to signal weakness by raising equity at a discount and management delayed any action in this respect until mid 2008. At the same time, it also rejected capital investment inquiries from third parties.[66]
On 9 June 2008, LBHI announced its preliminary second quarter results and reported a loss of USD 2.8 billion. Faced with increasing financial problems, LBHI sought to raise new money. LBHI raised USD 6 billion by means of a public offering on 12 June 2008.[67]

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[60] Valukas Report, p. 151.
[61] Valukas Report, p. 158-159.
[62] Valukas Report, p. 10.
[63] Final Transcript of Lehman Brothers Holdings Inc. Second Quarter Preliminary Earnings Call (9 June 2008).
[64] Lehman Brothers Press Release, 10 September 2008: Lehman Brothers announces preliminary third quarter results and strategic restructuring, p. 5.
[65] Valukas Report, p. 152.
[66] Valukas Report, p. 623-629.
[67] Valukas Report, p. 10.

4.9 Accounting practices

The aggressive growth strategy that LBHI had adopted in 2006 in combination with a reclining market, had led LBHI to incur financial problems. Such financial problems and its ability to overcome them can be measured by the solvency and liquidity ratios of a company. However, in the case of LBHI, accounting methods presented a more positive image of its financial situation than the underlying figures warranted.

Solvency ratios

The solvency ratio expresses the extent to which a company is able to meet long term financial obligations. A higher ratio indicates a company that is financially more robust and better able to absorb financial setbacks and losses. A measure related to the solvency ratio is a leverage ratio named 'capital adequacy'. This ratio is used by large investments banks to determine the risk profile and relative solvency. For this ratio the bank's equity is divided by its assets, in order to determine its risk profile and relative solvency.[68] A lower leverage ratio indicates a financially more resilient company.

Starting mid-2007, market participants became increasingly focused on leverage, e.g. the capital adequacy ratio, of investments banks such as LBHI.[69] Therefore, LBHI had an interest in reducing its leverage ratio in order to meet market expectations and prevent a ratings downgrade.[70] It could do so either by decreasing total assets and balance sheet total or by raising equity. Since Fuld had initially decided that LBHI would not issue new capital unless at a premium,[71] LBHI did not raise capital until June 2008.[72] In order to reduce its leverage ratio, LBHI therefore turned to balance sheet management by conducting repo 105 transactions, thereby reducing its assets and balance sheet total (see § 4.9.1.).

Liquidity ratios

The liquidity ratio indicates the extent to which the company is able to meet short term financial obligations, such as the repayment of outstanding debt. In regulatory filings and disclosures to the public, LBHI represented that it maintained a Liquidity Pool intended to cover expected cash outflows for twelve months in a stressed liquidity environment. The Liquidity Pool was designed on the assumption that LBHI could not increase liquidity by

68 Valukas Report, p. 822.
69 Valukas Report, p. 800.
70 Valukas Report, p. 800.
71 See supra § 4.8.
72 See supra § 4.8.

issuing new unsecured debt or otherwise generate liquidity.[73]

This Liquidity Pool was reported to be comprised of assets that could be monetized at short notice in all market environments.[74] However, as pressures mounted during the summer of 2008, LBHI began to include encumbered assets in its Liquidity Pool and started making deposits to other parties out of its liquidity pool.[75] The effect of such encumberments and deposits was that the amounts involved were no longer readily available to cover expenses. At the same time, LBHI never reported these actions to the rating agencies or the public.[76] LBHI's reporting of its Liquidity Pool is discussed in more detail in § 4.9.2.

4.9.1. Accounting practices: Repo 105 Program

Sale and repurchase agreements ("**Repos**") are agreements in which one party transfers assets to another party as collateral for a short-term borrowing of cash, while simultaneously agreeing to repay the cash and take back the collateral at a specific point in time. When the repo transaction matures, the borrower repays the funds plus an agreed upon interest rate and takes back its collateral. Repo transactions are widely used by financial institutions and are considered to be a legitimate tool for short-term funding.[77]

LBHI first introduced its Repo 105 Program around 2001. Not having found a United States law firm that would provide it with an opinion letter permitting its proposed accounting treatment under United States law, LBHI conducted its Repo 105 Program under the aegis of an opinion letter the U.K. law firm Linklaters LLP (“**Linklaters**”) issued to LBIE under English law. Accordingly, if United States-based Lehman Brothers entities such as LBHI wished to engage in a repo 105 transaction, they transferred their securities inventory to LBIE in order for LBIE to conduct the transaction on their behalf.[78]

The label "Repo 105" refers to LBHI's haircut on the transaction. A haircut in a repo transaction is the difference between the value of the collateral used and the amount of cash that is borrowed. Repo 105 transactions required a haircut of five percent minimum. In an ordinary repo transaction, LBHI typically faced a haircut of approximately two percent.[79] Because of the higher haircut, LBHI could attract a lower amount of short-term financing with the same collateral in a Repo 105 transaction as compared to an ordinary repo transaction.[80]

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73 Valukas Report, p. 1408.
74 Valukas Report, quote, p. 1082-1083.
75 Valukas Report, p. 1403.
76 Valukas Report, p. 1403-1405.
77 Valukas Report, quote, p. 750-751.
78 Valukas Report, quote, p. 740.
79 Valukas Report, p. 777.
80 Valukas Report, p. 746.

According to the Valukas Report "*Lehman used the borrowed funds from the Repo 105 Program to pay down short-term liabilities*".[81] By doing so, LBHI reduced its total assets, thereby reducing its leverage ratios.[82] A more detailed overview of the workings of an ordinary repo transaction and a Repo 105 transaction as well as the effects on Lehman's leverage ratio is given in **Annex 6**.

In mid-to-late 2007, top Lehman executives felt pressure to reduce the firm's leverage for quarterly and annual reports.[83] By January 2008, Fuld ordered a firm-wide deleveraging strategy. Its primary motive for doing so, was to temporarily remove the securities inventory involved from Lehman's balance sheets in order to report lower leverage and lower net leverage ratios than it actually had.[84] Selling inventory proved difficult in late 2007 and into 2008 because, starting in mid-2007, many of Lehman's inventory positions had grown increasingly "sticky" – i.e., difficult to sell without incurring substantial losses.[85] Moreover, selling assets at reduced prices could have led to a loss of market confidence in LBHI's valuations for inventory remaining on the firm's balance sheet since fire-sale pricing would reveal that LBHI "had a lot of air in [its] marks".[86] In light of these factors, LBHI relied at an increasing pace on Repo 105 transactions at each quarter-end in late 2007 and early 2008.[87]

Through its Repo 105 Program, LBHI temporarily reduced – typically for a period of seven to ten days[88] – its net balance sheet at quarter-end. Approximately USD 38.6 billion in the fourth quarter of 2007, USD 49.1 billion in the first of quarter 2008, and USD 50.38 billion in the second quarter of 2008.[89] LBHI's periodic reports did not disclose the cash borrowing from the Repo 105 Program. And although LBHI had in effect borrowed tens of billions of dollars in these transactions, it did not disclose the obligation to repay the debt.[90] As a consequence, net leverage was moved by the Repo 105 Program by whole points, as is illustrated by the table below.[91]

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[81] Valukas Report, p. 759.
[82] Valukas Report, p. 759.
[83] Valukas Report, p. 736.
[84] Valukas Report, p. 736-737 and 761.
[85] Valukas Report, p. 737.
[86] Valukas Report, p. 737. Quote from Geithner.
[87] Valukas Report, p. 737.
[88] Valukas Report, p. 756.
[89] Valukas Report, p. 739.
[90] Valukas Report, p. 733.
[91] Valukas Report, p. 747.

Date	Repo 105	Reported Net Leverage	Leverage Without Repo 105	Difference
Q4 2007	USD 38.6 billion	16.1	17.8	1.7
Q1 2008	USD 49.1 billion	15.4	17.3	1.9
Q2 2008	USD50.38 billion	12.1	13.9	1.8

Source: Valukas Report, p.748.

4.9.2. Accounting practices: Liquidity Pool

Just after the near collapse of Bear Stearns & Co Inc. ("**Bear Sterns**") in March 2008, LBHI asserted that it had 'the strongest liquidity position of the brokers.[92] LBHI elaborated on its liquidity position in a presentation of 28 May 2008 to the Federal Reserve (**Annex 7**). Furthermore, LBHI believed to have a significantly different funding structure than Bear Stearns.[93] In April 2008 LBHI reported a near-record level of liquidity.[94] However, the Bear Stearns crisis had made it apparent that a disruption in liquidity could be catastrophic. Therefore, LBHI set up the Liquidity Pool to indicate to regulators and the market the amount of liquid assets it retained.

LBHI made it appear as if its Liquidity Pool was unencumbered and emphasized the liquid nature of the assets in the pool to the market.[95] On the basis of LBHI's reported Liquidity Pool, specifically its reported size and composition of easy-to-monetize assets, market participants, and in particular rating agencies, formed positive opinions of LBHI's liquidity profile.[96]

From June 2008 onwards, LBHI began to include encumbered assets in its Liquidity Pool and made collateral deposits from its Liquidity Pool.[97] Most notably, LBHI agreed to deposit USD 2 billion with Citigroup Inc. ("**Citigroup**") following a request by Citigroup for collateral, and LBHI pledged more than USD 5 billion in securities to JPMorgan, LBHI's primary US

[92] Valukas Report, p. 633.
[93] Valukas Report, p. 633. After experiencing serious liquidity problems Bear Sterns was acquired by JP Morgan on 16 March 2008. In addition, the Federal Reserve issued a non-recourse loan of nearly USD 30 billion, which meant that the Federal Reserve assumed the risk of a part of Bear Stern's assets.
[94] Valukas Report, p. 633-634.
[95] Valukas Report, p. 1410.
[96] Valukas Report, p. 1408-1415.
[97] Valukas Report, p. 1403.

based clearing bank, to fulfill margin requirements. However, LBHI continued to include most of this collateral in its Liquidity Pool.[98]
August 2008 brought additional demands for collateral, such as a USD 500 million demand from Bank of America N.A. ("**Bank of America**") and a USD 800 million demand from HSBC Bank plc ("**HSBC**"). From 9 September through 12 September 2008, JPMorgan requested more than USD 8 billion in cash. LBHI met these demands, while at the same time continuing to include this collateral in its Liquidity Pool.[99]

LBHI held the view that the collateral deposits could be called back and therefore continued to include the amounts deposited in its Liquidity Pool.[100] The Securities Exchange Commission ("**SEC**") and the rating agencies later stated, that in their opinion, LBHI should have refrained from counting deposited collateral as part of the Liquidity Pool. LBHI never advised the rating agencies or the investing public of the deposits and pledges affecting its Liquidity Pool.[101]

Based on LBHI's reported Liquidity Pool, rating agencies concluded that LBHI's liquidity position was sound.[102] Even as late as 11 September 2008 – less than two business days before LBHI filed for Chapter 11 – market analysts cited Lehman's Liquidity Pool as support for the conclusion that the firm's "liquidity risk appears low".[103]

LBHI got further entangled in collateral calls until finally it was unable to deliver the liquidity requested by counterparties. This was the direct reason for the Chapter 11 filing of LBHI on 15 September 2008.[104]

4.10 US regulators' responses

In Mid-March 2008, after the Bear Stearns near collapse, teams of Government monitors from the SEC and the Federal Reserve Bank of New York ("**FRBNY**") were dispatched to and took up residence at Lehman, to monitor Lehman's financial condition with particular focus on liquidity.[105]

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98 Valukas Report, p. 1403.
99 Valukas Report, p. 1404.
100 Valukas Report, p. 1403.
101 Valukas Report, p. 1404-1405.
102 Valukas Report, p. 1415.
103 Valukas Report, p. 1416.
104 Valukas Report, p. 1401.
105 Valukas Report, p. 8.

4.11 Opening of bankruptcy procedure: Chapter 11

On 10 September 2008, LBHI announced that it was projecting a USD 3.9 billion loss for the third quarter of 2008. And although LBHI had explored options over the summer, there was no buyer lined up to buy (the activities of) LBHI.[106]

Over the weekend of 12 to 14 September 2008 a series of meetings among US Secretary of the Treasury Paulson, Federal Reserve Bank of New York President Geithner, SEC Chairman Cox and the chief executives of leading financial institutions took place.[107] The Valukas Report states that "*The Government's analysis was that it did not have the legal authority to make a direct capital investment in LBHI and that LBHI's assets were insufficient to support a loan large enough to avoid Lehman's collapse*".[108]

By early 14 September 2008, it appeared that a deal had been reached with Barclays Plc. ("**Barclays**"). This deal could save the Lehman Brothers Group from collapse. However, the Financial Services Authority ("**FSA**") refused to waive UK shareholder-approval requirements.[109]

At this point in time, it was clear that LBHI no longer had sufficient liquidity to fund its daily operations. On the evening of 14 September SEC Chairman Cox phoned the board of LBHI and conveyed the U.S. Government's strong suggestion that LBHI act before the markets opened in Asia. On 15 September 2008, at 1:45 am EST, LBHI filed for Chapter 11.[110]

4.12 Valukas Report's conclusions as to causes of action in the U.S.

The most important conclusions of the US Examiner, Valukas, are as to whether there are causes of action related to the growth strategy against LBHI's management, exceeding the internal risk limits and the 'window dressing', (i.e. the presentation of the Liquidity Pool).

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[106] Valukas Report, p. 10.

[107] Valukas Report, p. 11-12.

[108] Valukas Report, p. 11-12

[109] Valukas Report, p. 12. The report adds the following remark: "*In a written statement to the Examiner, the FSA said that it never received a formal request to waive the shareholder-approval requirement. According to FSA's statement, the FSA had serious concerns about the lack of precedent for such waivers. The FSA was also concerned about Lehman's liquidity and funding.*" The FSA is the British regulator of financial services.

[110] Valukas Report, p. 12-13.

With respect to the countercyclical growth strategy itself, the Examiner concludes that the business decision to adopt this strategy was not irrational or reckless and that LBHI's management undertook significant steps to mitigate the negative effects of the growth strategy:

> *"Lehman's management took significant steps to curtail and control its origination of subprime mortgages, including discounting certain mortgage programs, installing improved risk management systems, and replacing management of its subprime originator. Lehman's management also successfully hedged its subprime mortgage risk, at least until early 2008, and avoided some of the catastrophic investments that other financial institutions made in the mortgage market, for example in CDO's."*[111]

Therefore, the Examiner concludes that the decision to adopt this strategy by LBHI's management was allowed under U.S. law.[112]

With respect to exceeding the internal risk limits, the Examiner considers that LBHI's management did not treat these limits as meaningful constraints.[113] Nevertheless, the Examiner does not find that the decision to exceed or disregard these limits gives rise to actions against Lehman's management, because the limits were not legal limits:

> *"These internal limits were intended only for the guidance of Lehman's own management; they did not put any legal constraints on the scope of management's authority. [...] Moreover, Lehman's risk appetite limit overages were reported to the SEC."*[114]

Additionally, the Examiner considers that United States law allows management to rely on the reports of its subordinates. Since it was assured in these reports that the overages were being addressed, the Examiner concludes that LBHI's management is immunized from personal liability.[115]

With respect to the Repo 105 transactions, the Examiner concludes that there are colorable claims of breach of fiduciary duty against certain Lehman officers and a colorable claim of professional malpractice against the firm's outside auditor E&Y US:

[111] Valukas Report, p. 171-172.
[112] Valukas Report, p. 171.
[113] Valukas Report, p. 179.
[114] Valukas Report, p. 180-181.
[115] Valukas Report, p. 56.

> "*[...] there is sufficient evidence to support a determination that disclosure of the obligation to repurchase the securities and repay the cash borrowing was required [...] because the repurchase was a known event that was reasonably likely to occur and would have had a material effect on the company's financial condition or results of operations. (...) In addition, Lehman's description of its net leverage was misleading, because it omitted disclosing that the ratio was reduced by means of temporary, accounting-motivated transactions.*"[116]

With respect to the reporting of Lehman's Liquidity Pool, the Examiner considers – among other factors – that there are no standard requirements for reporting a liquidity pool or as to what should be included in a liquidity pool. The Examiner concludes as follows:

> *"[...] the Examiner finds insufficient evidence to support a determination that any officer or director breached a fiduciary duty in connection with the reporting of Lehman's liquidity pool."*[117]

[116] Valukas Report, p. 749-750.
[117] Valukas Report, p. 1480.

5. LBT's position in light of the problems of LBHI

5.1 Board of Directors

5.1.1. Meetings of the Board of Directors on LBHI's problems

Meetings of the Board of Directors

The books and records of LBT that have been made available to the Bankruptcy Trustees include minutes of sixteen meetings of the Board of Directors. These minutes relate to meetings that took place between 24 March 1995 - which was the first meeting to be held by the Board of Directors - and 26 August 2008 - which appears to be the last (formal) meeting to have taken place before LBT filed for a provisional suspension of payments on 19 September 2008.[118] In addition, the books and records include 23 written resolutions adopted by the Board of Directors.[119]

According to the information available to the Bankruptcy Trustees, seven meetings of the Board of Directors took place from June 2007 until LBT's request for suspension of payments. During these meetings the primary subject was the update and expansion of Note Programs.

The following provides a general overview of the matters discussed during these meetings.

- During the meeting of 2 June 2007, it was discussed that reasonable care had been taken with regard to the information included in the Directors' Annual Report for the fiscal year ending 30 November 2006, which was subsequently adopted. The Board of Directors discussed the fact that the reporting currency in LBT's annual accounts would from then on be US Dollars instead of Euros, to minimise the impact of foreign exchange rate fluctuations on LBT's financial results. It was further reported that LBT and LBB agreed on a USD 2,500,000,000 syndicated revolving credit facility guaranteed by LBHI.[120] An annual update of the Equity Linked Investment Program was also discussed;

[118] According to at least one Directors the Board of Directors had daily contact via calls every day – except on the 17th – from 15 until 19 September 2008. The Bankruptcy Trustees have not found any minutes in relation to these meetings.

[119] The Bankruptcy Trustees have been unable to verify if they have all minutes and written resolutions at their disposal.

[120] Research by the Bankruptcy Trustees has not shown that LBT has drawn any credit under this facility.

- During the meeting of 23 July 2007, an update of the USD 60,000,000,000 EMTN Program was discussed. This update was unanimously agreed upon and the maximum principal amount outstanding was increased to USD 100,000,000,000;

- In the meeting of 22 August 2007, it was discussed and decided that the German Note Program was to be updated and the maximum principal amount that could be issued under this program was to be increased from USD 3,000,000,000 to USD 4,000,0000;

- During the meeting of 23 October 2007, an update of LBT's USD 3,000,000,000 Euro commercial paper program was agreed upon by the Directors. As a result, the maximum principal amount that could be issued under this program was increased to USD 5,000,000,000. The minutes do not reflect if other matters were discussed during this meeting;

- During the meeting of 21 November 2007, an update of LBT's Certificates Program was considered. Pursuant to this update, certain certificates issued under the Certificates Program would be listed on the SWX Swiss Exchange. The update was unanimously agreed upon by the Directors present at the meeting. The minutes do not reflect that any other matters were discussed during the meeting;

- During the meeting of 15 April 2008, the expansion of LBT's structured products issuances in the Asia market was unanimously agreed upon by all board members present. The minutes do not reflect that any other matters were discussed during the meeting;

- In the meeting of 4 July 2008, it was decided to issue and offer financial instruments in Italy, which instruments could also be issued to institutional investors subscribing for them outside Italy. The minutes do not reflect that any other matters were discussed during the meeting;

- During the meeting of 22 July 2008, an update of the (then) US$ 100,000,000,000 EMTN Program was considered and unanimously agreed upon. The minutes do not reflect that any other matters were discussed during the meeting; and

- At the meeting of 26 August 2008, which appears to have been the last (regular) meeting preceding LBT's bankruptcy, it was proposed that the aggregate notional amount under LBT's existing German Note Program pursuant to which it may issue financial instruments denominated in any currency would not exceed USD 4,000,000,000. The proposal was agreed upon and the minutes do not reflect that any other matters were discussed during this meeting.

The minutes of the meetings available to the Bankruptcy Trustees do not show that the annual accounts for 2007 have been discussed. The annual accounts of 2007 were, however, adopted during the shareholder meeting of LBT held on 30 May 2008.

The minutes of the meetings of 23 October 2007, 21 November 2007 and 22 July 2008 state that the chairman of the meeting, W.H. Kamphuijs, confirms that - as far as the Board of Directors was concerned - LBHI had, and would have, a positive consolidated equity capital.[121] This confirmation, however, was not further elaborated on. The minutes of the board meeting of 26 August 2008 merely state that LBHI must have positive consolidated equity capital in order for LBT to comply with the AFS.

Assessment of credit risk by Board of Directors

LBT's claim on LBHI was by far its largest asset. Almost all of the funds LBT received by issuing Notes, were lent onwards to LBHI. The Board of Directors that was in place at the time of the bankruptcy, have confirmed that the credit risk on LBHI was not discussed during board meetings prior to 15 September 2008.[122] This is in accordance with the minutes of the meetings of the Board of Directors and the written resolutions adopted by the Board of Directors.[123] At least until the end of August 2008, the focus of the Board of Directors appears to have been solely updating existing programs and establishing new programs.

The fact that the Board of Directors had no concerns about the credit risk with regard to LBT's claim on LBHI is also confirmed by the managing directors' report dated 13 August 2008 (the "**Managing Directors Report**"). This Report was written by the Board of Directors and was issued as a part of the 2008 Review Report. In the Managing Directors' Report the directors *inter alia* state the following:

[121] This was relevant in order to fall under an exemption of the AFS. See § 2.3.2.
[122] Interviews with the Directors.
[123] It is noted that Van Burg did not become a director of LBT until 2 September 2008 and that he only became actively involved in LBT after LBHI filed for bankruptcy.

"The company is not exposed to any material risk as these are fully hedged by offsetting derivatives instruments with group companies. The derivative element of any structured notes is consistently valued with the related hedging instrument."

With respect to expected future developments, the Managing Directors' Report states:

"The economic prospects for the entity are positive. The markets are giving support to the entity by subscribing to new issuances. (...) The company will continue with its activities as a finance company and it is expected the financial fixed assets will continue to increase in line with the level of issued debt."

Kamphuijs has declared, however, that he did monitor LBHI because the claim of LBT against LBHI was the only significant asset of LBT.[124] Furthermore, he and Fuller declared that their knowledge of LBHI's financial situation was limited to information that was publicly available.[125]

In his interview with the Bankruptcy Trustees, Fischer stated that the financial situation of the Lehman Brothers Group was tight prior to 15 September 2008, but that the Lehman Brothers Group had experienced similar periods in the past and that the Lehman Brothers Group had always survived.[126] His beliefs were confirmed by a presentation of 28 May 2008 (**Annex 7**) and a presentation given in June 2008 (**Annex 8**). In its presentation to the Federal Reserve of 28 May 2008, LBHI had indicated that Lehman Brothers raised USD 9,500,000,000 of capital in the first quarter.[127] It was Fischer's belief at that time that with these funds, the firm would be able to cover losses suffered during the first quarters of 2008. In the presentation of June 2008, LBHI's management informed Lehman employees that Lehman Brothers could survive for over a year without the influx of any new capital. According to Lehman Brothers, this set the firm apart from Bear Sterns, which had experienced serious liquidity problems earlier in 2008 which had led to its collapse. In the interview with the Bankruptcy Trustees, Fischer also stated that in his position of head of operations of LBB, he had access to information about the liquidity of LBHI which had convinced him the Lehman Brothers Group would survive.[128]

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[124] Interview with Kamphuijs.

[125] Interview with Kamphuijs and interview with Fuller. Kamphuijs stated that he received a report on the commercial aspect of the Notes with every new issuance. The financial part of these reports was always positive. Kamphuijs also stated that he did not receive specific reports on LBHI.

[126] Fuller expressed the same opinion in his interview with the Bankruptcy Trustees.

[127] Capital was presented not only as equity, but also as subordinated and senior debt.

[128] Interview Fischer.

Knowledge of Repo 105 Program and Liquidity Pool

According to the Board of Directors, none of them had been under the impression that LBHI or the Lehman Brothers Group as a whole was in insurmountable financial difficulties prior to 15 September 2008. Fischer, Fuller and Kamphuijs have all declared that they did not have any knowledge of the Repo 105 Program of LBHI or the way in which LBHI accounted for its Liquidity Pool.[129]

The Bankruptcy Trustees are familiar with several presentations prior to the Lehman collapse, in which Lehman's overall funding and liquidity position were addressed. In the presentation to the Federal Reserve of 28 May 2008 (**Annex 7**), it was indicated that at the end of the first quarter of 2008:

- Lehman Brothers' Liquidity Pool amounted to USD 34 billion;
- It was projected that the Liquidity Pool would exceed USD 40 billion at the end of the second quarter of 2008;
- The ratio short-term debt/Liquidity Pool was 1.0; and
- The Lehman Brothers Group had USD 161 billion in unencumbered assets at its disposal.

In an internal presentation of June 2008 (**Annex 8**) - the month LBHI started to include encumbered assets in its Liquidity Pool - it was presented that:

- The Lehman Brothers Group had no need to access unsecured additional financing for the next year;
- The Liquidity Pool consisted of USD 45 billion worth of assets and USD 15 billion of excess cash capital at the end of the second quarter of 2008.

In July 2008 another internal presentation was given that was titled 'Liquidity Management at Lehman Brothers' (**Annex 9**). In this presentation it was stated that:

- The Liquidity Pool would cover cash outflows (at the level of LBHI) for a period of 12 months;
- It was a core principle of capital and liquidity management that the Lehman Brothers Group should not rely on asset sales in a liquidity crisis;
- The second quarter of 2008 ended with a record Liquidity Pool of USD 45 billion and a USD 15 billion cash capital surplus;

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[129] Interviews with Fischer, Fuller and Kamphuijs. The Bankruptcy Trustees also have no indication that Van Burg had any knowledge about the Repo 105 Program or the composition of the Liquidity Pool.

- There was USD 60.6 billion of unencumbered assets present in unregulated subsidiaries and USD 87.3 billion in regulated subsidiaries as of 31 May 2008 and in liquidity pools held at bank entities and broker dealers (in addition to the Liquidity Pool);
- The Liquidity Pool was managed by the Treasury of Lehman Brothers Group for LBHI;
- The Liquidity Pool consisted of cash, cash equivalents (such as money market funds) and ‘good quality collateral for which there is ample unused funding capacity with external counterparts’.

In the course of this investigation the Board of Directors have all stated that they do not recall that they were aware of the existence of the three presentations described above prior to 15 September 2008, the date LBHI filed for Chapter 11 bankruptcy protection.

Response of the Board of Directors to LBHI’s Chapter 11

On 15 September 2008, the Board of Directors learned that LBHI had filed for Chapter 11. Upon the filing for bankruptcy, the Lehman Brothers Group payment systems had been blocked. As a result, all outgoing payments and transactions were blocked. LBT subsequently ceased all operations and no new Notes were issued after 15 September 2008.

In the period between 15 and 19 September 2008, the Board of Directors tried to ascertain LBT's position in relation to LBHI. According to the Board of Directors communication from LBHI was lacking in this period which fuelled uncertainty over the course that company would take. Therefore the Board of Directors, as a preliminary matter, decided to file for suspension of payments.[130]

In order to properly establish the LBT's position in relation to LBHI, the Board of Directors of LBT sought legal advice (§ 5.1.2) and also contacted DNB with regard to the possible application of emergency regulations (§ 5.3).

When the Board of Directors established that (i) it was likely that LBHI would not be able to fulfil its obligations and (ii) DNB would not request the application of emergency regulations, they decided to request the opening of a suspension of payments procedure on 19 September 2008.

5.1.2. Board of Directors consulting third parties

[130] Interview with Fulller.

The Board of Directors sought legal advice after learning of LBHI’s petition for Chapter 11. LBT was initially assisted by the Dutch branch of the law firm Linklaters, but Linklaters could not represent LBT after it became apparent that there would be a conflict of interest with regard to LBT.

The Board of Directors subsequently sought the advice of the Dutch branch of law firm Simmons & Simmons to assist in petitioning for provisional suspension of payments. Before this petition was filed, Simmons & Simmons tried to establish LBT's position in relation to LBHI and it also assisted the Board of Directors in its communications with DNB. As of 21 September 2008 the individual Directors were represented by the law firm Stibbe.

5.2 LBT auditor

As from LBT’s incorporation in 1995 E&Y Netherlands acted as LBT's auditor. The annual accounts of the financial years ending on 30 November 1995 up to and including 30 November 2007 were all supplied with an unqualified audit opinion by E&Y Netherlands.

On 15 August 2008 E&Y Netherlands issued the 2008 Review Report' on LBT's interim accounts concerning the financial period from 1 December 2007 up to and including 31 May 2008. According to this report, the scope of the review was limited compared to an audit and, accordingly, no audit opinion was expressed. The conclusion of the 2008 Review Report states the following:

> *"Based on our review, nothing has come to our attention that causes us to believe that the accompanying interim financial information as at 31 May 2008 is not prepared, in all material respects, in accordance with the Dutch Guideline for Annual Reporting 394, Interim Reports."*

Underlying the review report is a Managing Directors’ Report dated 13 August 2008. This Report was issued as a part of the interim financial review of LBT as at 31 May 2008. In this Report the Directors state:

> *"The company is not exposed to any material risk as these are fully hedged by offsetting derivatives instruments with group companies. The derivative element of any structured notes is consistently valued with the related hedging instrument."*

In the course of this investigation, E&Y Netherlands has declared that it was familiar with LBHI's credit ratings and, as these credit ratings were positive, that it did not have any reason to assume that LBHI was not able to repay the amounts borrowed by LBHI from LBT. Also, E&Y Netherlands has declared that the accountants responsible for the audit of LBT did not have any knowledge of the Repo 105 Program or the way the Liquidity Pool was composed.[131]

5.3 Dutch regulators

As described in § 2.3.2, LBT management held the opinion that LBT qualified for the exemption of section 3:2 AFS and therefore did not require a banking license to operate. After LBHI's filing for Chapter 11 bankruptcy protection however, it was unclear whether the formal requirements for exemption of section 3:2 AFS were still met. One of the requirements was that LBHI, as issuer of the unconditional guarantee regarding all liabilities arising from the Notes, was required to operate with a positive consolidated equity capital throughout the term of the guarantee. DNB had no procedure in place to establish whether LBT still met the requirements under the exemption of section 3:2 AFS after LBHI's filing for Chapter 11 bankruptcy protection.Furthermore, DNB has declared that it did not have access to the information required to establish whether LBT still met the requirements under the exemption of section 3:2 AFS after LBHI’s filing for Chapter 11.[132]

If LBHI had a negative consolidated equity capital, DNB could request for emergency regulations (*noodregeling*) to apply to LBT if the solvency or the liquidity of LBT was such that it could be expected within reason that LBT would be unable to honor all or part of its obligations in respect of the funds it obtained. DNB could also impose other regulatory measures on LBT if LBT did not longer meet the criteria of section 3:2 of the AFS. In light of this, Van Burg met with DNB shortly after LBHI filed for Chapter 11.

During this meeting, DNB requested information to establish whether LBHI still had a positive consolidated equity capital.[133] DNB repeated this request several times during the period between 15 and 19 September 2008. However, it did not receive such information since neither LBT’s Board of Directors nor LBT’s attorney Simmons & Simmons, was able to obtain the relevant information from LBHI.

As DNB (i) was unable to establish whether LBT no longer fell under the exemption of section 3:2 AFS and (ii) had no information based on which it could conclude that LBT could no longer fulfill its requirements as required pursuant to section 3:160 (2) AFS, DNB informed

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[131] Letter from E&Y Netherlands dated 5 February 2013.
[132] Letter from DNB dated 5 February 2013.
[133] Letter from DNB dated 21 August 2012.

LBT on 19 September 2008 that it would not request emergency regulations to be applied to LBT.

5.4 (Pre) insolvency transactions

An analysis of the books and records of LBT leads to the identification of the following three categories of transactions which could possibly have been detrimental to creditors and could therefore possibly be subject to transaction avoidance, either as a preference or as a legal act at an undervalue:[134]

- Intercompany bookings;
- Payment from bank accounts; and
- Buy-backs (Note redemptions).

These three categories of transactions will be discussed further in the following paragraphs. The findings can be summarized as follows.

- After investigation of the intercompany booking procedures for LBT, the Bankruptcy Trustees have entered into the Settlement Agreement by which LBT and LBHI acknowledge that there may be uncertainties with regards to LBT's claim;
- There is no indication of any irregular payments from LBT's bank accounts; and
- There is no indication that LBT repurchased issued Notes because of impeding insolvency or because of any wish to give preferential treatment to an existing Noteholder above other creditors or knowledge thereof.

5.4.1. Intercompany bookings

On 27 November 2008 two bookings – USD 177,000,000 and USD 177,000,000 – were made against LBT for the benefit of the UK branch of LBHI. These bookings would have had the effect that LBT's outstanding claim on LBHI became lower. As the effective date of the bookings 12 September 2008 was recorded into the books. This was the last business day before LBHI filed for bankruptcy. The bookings were made by an employee of LBIE[135].

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[134] The Bankruptcy Trustees have safeguarded any rights the LBT estate might have against possible relevant counterparties by sending a tolling letter, preventing any period of prescription being completed. More in particular, the Bankruptcy Trustees have sent such letters to the Bank of New York Mellon and LBIE. The Bankruptcy Trustees also reached a tolling agreement with LBHI to deal with the situation that the - hereafter defined - Settlement Agreement would not be enforceable.

[135] The Bankruptcy Trustees have no indication that any of the Directors were involved or had knowledge of the intercompany bookings.

These bookings have the following description:

> "USD 170.000.000: Rec – trf BV vs UK Fx Hedging entry"
> "USD 177.000.000: Rec – trf BV vs UK BP&L Profit sepytd"

These descriptions have the following meaning:

> "Receivable transfer BV (=LBT) to UK (=LBHI (UK)) from exchange hedges"
> "Receivable transfer BV (=LBT) to UK (=LBHI (UK)) Balance Profit & Loss September"

Based on the descriptions entered the booking under 1 should be regarded as a currency hedge. The booking under 2 should relates to a transfer of profit.

The Bankruptcy Trustees have not been able to find plausible explanations for the bookings described above.

The bookings that were made on 27 November 2008 are not consistent with any existing practice, nor could the Bankruptcy Trustees find any legal basis for them. In practice adjustment payments were made with respect to exchange hedges, but such adjustment-payments were insignificant.

The Bankruptcy Trustees have found no plausible explanation with regard to the intercompany bookings. However, this does not imply that the LBT creditors have been prejudiced by these transactions.

On 30 August 2011, the Bankruptcy Trustees and LBHI reached a settlement about the acknowledgment of a claim by LBT against LBHI. This settlement has been laid down in a settlement agreement ("**Settlement Agreement**").

Section 2.1 (a) of the Settlement Agreement states:

> *"LBT will have an allowed, senior, non-priority, non-subordinated general unsecured claim against LBHI in an amount equal to $ 34,548,000,000 in respect of proof of claim 58612 (the "**Allowed LBT Claim**")."*

According to the Global Close, LBT had a receivable against LBHI of USD 33,249,000,000.[136] The Allowed LBT Claim is therefore USD 1,299,000,000 higher than the value of the claim of LBT against LBHI as at the date of the Global Close. So, even if the intercompany bookings were made without justification, the Allowed LBT Claim would still be USD 952,000,000

[136] The claim consists of multi-currency positions and is shown here in its USD equivalent.

higher than the claim based on the Global Close. In this respect the creditors of LBT are not prejudiced by the intercompany bookings.

5.4.2. Payment from bank accounts

The Bankruptcy Trustees analyzed movements on LBT's bank accounts - 49 in total - to determine whether unusual transactions took place. LBT held accounts with ABN AMRO, Bank of New York Mellon and JP Morgan.[137]

The ABN AMRO bank account was analyzed from January 1, 2007 until six months after bankruptcy. No unusual transactions were found.

The analysis of the bank accounts at Bank of New York Mellon and JP Morgan during the year preceding the bankruptcy of LBT, proved more difficult. The statements of account show the intercompany payments, which were often netted. The specifications of the payments mostly do not clarify which amounts were netted and often do also not disclose the basis for the payments. LBT used internal codes, which made an in-depth analysis more difficult. The day-to-day practice had to be derived from the statements of account. There are, however, no indications of irregular transactions.

In sum, the Bankruptcy Trustees have not found indications that irregular payments have been made from bank accounts held by LBT.

5.4.3. Buy backs (Note repurchases)

In the two weeks preceding 12 September 2008, LBT bought back twelve Notes from investors and paid an amount that was close to, or sometimes even more than, 100% of the nominal value. **Annex 10** shows these buy-backs. In total an amount of USD 26,067,341.69 was paid to Noteholders in relation to these transactions. The transactions themselves could be considered to have been detrimental from a strict insolvency law perspective. These Noteholders would have been creditors in the bankruptcy of LBT. Regardless of whether these Noteholders have been redeemed above or possibly below market value, one can assume that their position following the buy-backs is probably better than it would have been without the buy backs.

After having conducted further investigations into the matter, the Bankruptcy Trustees have found no indications that LBT repurchased Notes because of (knowledge of) impeding insolvency or because of any wish to give preferential treatment to an existing Noteholder

[137] Interview with Fuller.

above other creditors or knowledge thereof. Fischer has stated that the buy-backs may have taken place to protect Lehman Brother's relationship with a client.[138] Furthermore, he and Fuller have declared that LBIE was obliged to repurchase Notes as part of its role as market maker.

5.5 The opening of formal insolvency proceedings as to LBT

When it became clear on 19 September 2008 that DNB would not request emergency regulations to be applied to LBT, the Board of Directors petitioned for a provisional suspension of payments procedure the same day. The request was granted the same day by the District Court of Amsterdam, with the appointment of Ms. W.A.H. Melissen as Supervisory Judge (*rechter-commissaris*) and Mr. R.J. Schimmelpenninck as Administrator (*bewindvoerder*).

Immediately after his appointment, the Administrator consulted with the Board of Directors in order to investigate the (financial) position and the possibility that LBT would eventually be able pay its creditors in whole or in part. The Administrator concluded, after consultation of the Board of Directors and representatives of LBIE and the administrators of LBIE, and on the basis of administrative documents made available to him, that no prospect existed of LBT being able to satisfy its creditors in the foreseeable future. An important element for these findings was the lack of clarity about the major asset of the company (the receivable from LBHI) and the extent to which this asset - considering the Chapter 11 proceeding of LBHI - might be realized. In view of article 242 (1)(5) DBA, the Administrator requested the Amsterdam District Court on 1 October 2008 to withdraw the provisionally granted moratorium and to simultaneously order the bankruptcy.

At the hearing the Board of Directors opposed this request for withdrawal. After granting an initial week's suspension in order for the Administrator and the Board of Directors to provide some additional information, the Amsterdam District Court granted the request of the Administrator to withdraw the provisional suspension of payments while declaring LBT bankrupt on 8 October 2008.

[138] Interview with Fischer.

Part B: Main causes of the bankruptcy of LBT and possible claims against third parties by the Bankruptcy Trustees

6. Main causes of the bankruptcy of LBT

The bankruptcy of LBT and its causes are closely related to the fate of LBHI and the larger Lehman Brothers Group. Therefore, before addressing LBT's dependency on LBHI and the Lehman Group and the causes of LBT's bankruptcy (§ 6.2), the causes of LBHI's bankruptcy will be summarized (§ 6.1).

6.1 The bankruptcy of LBHI

In Chapter 4 the rise and fall of the Lehman Brothers Group - and in particular LBHI - were described.[139]

LBHI adopted an aggressive strategy in 2006.[140] This strategy was risk prone in three aspects. First of all, LBHI had a very thin capital base. It did not expand this base following the decision to take on more risk.[141] Secondly, the growth decision was counter-cyclical and thirdly, LBHI accumulated more illiquid assets.[142] In implementing the growth strategy, LBHI repeatedly exceeded different internal risk limits and thereby significantly changed its risk profile.[143]

It was not until late 2007, long after other parties had exited the market, that LBHI terminated its subprime lending business and started to slowly exit the illiquid real estate market.[144] Then, in the beginning of 2008, LBHI started to incur losses.[145] The thin capital base could not absorb these losses, while at the same time LBHI did not raise new capital until June 2008.[146]

When LBHI started to incur losses in 2008, the combination of both a thin capital base and the accumulation of illiquid assets became a problem, as its liquidity position became strained. LBHI managed to mask its liquidity problem for a while by means of the Repo 105

[139] Part A, § 4.
[140] Part A, § 4.1.
[141] Part A, § 4.2. and 4.3.
[142] Part A, § 4.3.
[143] Part A, § 4.5.
[144] Part A, § 4.6.
[145] Part A, § 4.7.
[146] Part A, § 4.8

Program and the inclusion of encumbered assets in its Liquidity Pool.[147] However, in the end, the lack of confidence from investors made it impossible for LBHI to stay liquid. As a result, LBHI found itself forced to file for bankruptcy on 15 September 2008.[148]

6.2 LBT's double dependency on LBHI and the Lehman Group

With respect to LBT it is clear that it depended on LBHI and the Lehman Brothers Group for its existence. This dependency existed both in a business and in a financial sense.

6.2.1. LBT's dependency in a business sense

The financing of companies belonging to the Lehman Brothers Group was LBT's sole objective. LBT therefore derived its *raison d'être* from the other entities belonging to the Lehman Brothers Group. In addition to LBT not having a possible existence as a business apart from the rest of the Lehman Brothers Group, LBT also conducted its business in a way which was narrowly intertwined with the activities of other Lehman entities. For the performance of its day-to-day activities LBT was dependent on LBL, which entity conducted all such activities for LBT based on a service agreement between LBT and LBL.[149] In addition, LBT issued its Notes through LBIE as Dealer, Arranger and Calculation Agent.[150] With the demise of LBHI and the Lehman Brothers Group, LBT lost both the reasons and the possibilities for its existence.

6.2.2. LBT's dependency in a financial sense

LBT on-lent the proceeds it collected from the issuance of Notes to LBHI. As a result LBT ended up with a claim on LBHI of USD 33,249,000,000 as at the date of the Global Close.[151] This claim was LBT's main asset, making LBT's financial health and existence entirely dependent on whether or not LBHI would be able to repay its debt to LBT.

6.2.3. Insolvency procedure LBT inevitable after bankruptcy of LBHI

The above shows that LBT could not exist as a stand-alone entity without the larger Lehman Brothers Group. Therefore, when LBHI filed a request under Chapter 11 of the U.S. Bankruptcy Code and it became clear that it would no longer be able to timely fulfill its

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[147] Part A, § 4.9.1 and 4.92.
[148] Part A, § 4.11.
[149] Part A, § 1.2.1.
[150] Part A, § 1.2.2.
[151] Part A, § 5.4.1. The claim consists of multi-currency positions and is shown here in its USD equivalent.

obligations under the loan agreement with LBT, it became evident that LBT would not be able to fulfill its obligations towards Noteholders and other creditors as they became due.

In addition, as the activities of the entire Lehman Brothers Group came to a halt, LBT was no longer able to perform its day-to-day activities and the activities required from it under the different Note Programs. For example, upon the filing for bankruptcy by LBHI the (globally operated) Lehman Brothers Group payment system was blocked, which meant that no payments could be made. As a result LBT had to cease all operations.[152]

So, with the demise of LBHI and the Lehman Brothers Group, LBT's bankruptcy became inevitable as well.

[152] Part A, § 5.1.1.

7. Assessment of liability

7.1 Introduction

Now that the main causes of the bankruptcy of LBT have been established, as part of this investigation it needs to be assessed whether grounds exist that could lead to liability of certain parties. In this Chapter that assessment will be made for: i) the Directors and other persons and entities closely involved with the management of LBT, including LBIE, ii) E&Y Netherlands; and iii) DNB, the relevant supervisory authority to the Dutch banking system.

> The key finding is that there are no grounds for the Bankruptcy Trustees to hold any of the parties mentioned liable for damage suffered by the estate (*boedel*) of LBT or the joint creditors (*gezamenlijke schuldeisers*) in relation to the bankruptcy of LBT.

Prior to the assessment for each of the parties mentioned above, three general remarks are made in § 7.1.1 - § 7.1.3.

7.1.1. Scope of assessment

The Bankruptcy Trustees only assess whether a party can be held liable in relation to the bankruptcy of LBT for damages suffered by the estate or LBT's joint creditors. The Bankruptcy Trustees do not express their views on the possibility of a claim by an individual creditor on the grounds of section 6:162 DCC (*onrechtmatige daad*) in relation to any party mentioned in this investigation.

7.1.2. The position of LBT as financing vehicle

In analyzing the responsibilities of parties involved, the economic and legal landscape and the position of LBT within the Lehman Brothers Group at the time of LBT's existence have to be taken into account.

A key reason to incorporate a financing vehicle such as LBT in the Netherlands is - next to internationally competitive corporate laws and a financial services sector that is often perceived as well developed - the favorable Dutch tax climate.[153]

The threshold for reaping the benefits of this tax climate are quite low. No substantive activities have to be executed in the Netherlands. For this reason, many internationally

[153] Parliamentary Papers 2003-2004, 29 041, Trust Offices Supervision Act (*Wet Toezicht Trustkantoren*), no. 3, p. 1.

operating companies conduct the financing of their operations through the Netherlands, without actually running a full business here.

Financing vehicles are subject to relatively light regulatory supervision.[154] Although large amounts were borrowed from the market and on-lent to LBHI and other entities within the Lehman Brothers Group, LBT was not supervised by DNB, since it operated under an exemption on the requirement to have a banking license.[155] This also meant that there was no supervision by an independent supervisory body on the solvency of LBT, nor were there specific rules in place which LBT and the Directors had to comply with. With regard to the issuance of Notes, LBT drew up Base Prospectuses to meet the requirements of the Prospectus Directive.[156] The supervision in respect of these prospectuses meant that the relevant authority verified whether the formalities following from the Prospectus Directive were fulfilled. In the case of the EMTN Program this was done by the Irish regulator, IFRSA.[157]

LBT issued Notes to investors under a guarantee from the holding company, LBHI.[158] Given the guarantee directly provided by LBHI to Noteholders, the value of the different Notes was primarily driven by LBHI's performance and credit worthiness. It followed from the relevant program documentation that the funds attracted by LBT would not remain with LBT, but would be lent on.[159] The Directors were not at liberty to allocate the monies differently. As such, the primary obligor from the Noteholders' perspective in economic terms was LBHI and not so much LBT.[160]

The assessment below is not a qualification of the desirability of the existing tax climate in the Netherlands, nor of the legislative rules in place which provide for relatively limited supervision. The assessment below is an assessment of the potential liability of actors surrounding LBT, given the existing tax climate and legal and regulatory environment.

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[154] Part A, § 2.3.1 and § 2.3.2.
[155] Part A, § 2.3.2.
[156] Part A, § 2.3.1.
[157] Part A, § 2.3.1
[158] Part A, § 1.2.
[159] E.g., the Base Prospectus of the EMTN Program dated 24 July 2008 states on page 228: "The net proceeds from each issue of Notes will be used for the general corporate purposes of the [Lehman Brothers] Group."
[160] The risks relating to LBHI as guarantor of the Notes were explicitly mentioned in the relevant program documentation. E.g, in the Base Prospectus of the EMTN Program dated 24 July 2008 pages 34 to 37 solely contain a description of these risks.

7.1.3. Role of the Valukas Report

LBT served as a financing vehicle for the entire Lehman Brothers Group. The actions of the management of LBHI, as ultimate parent of the entities within the Lehman Brothers Group, have been reviewed in the Valukas Report. The conclusion of Mr. Valukas, as independent investigator, is that no colorable claims exist with regard to exceeding internal risk limits by the management of LBHI.[161] The Bankruptcy Trustees do not have an opinion about this conclusion. The thresholds for director's liability differ between the United States and the Netherlands. The threshold for director liability is, generally speaking, lower in the Netherlands than in the United States.[162]

7.2 Directors and other persons involved in the management of LBT

In this paragraph, the liability of the Directors towards the estate of LBT and its joint creditors is assessed.

The Bankruptcy Trustees have found no facts, suggestions or any evidence or indication of dealings by the Directors trying to improve their personal positions or that of related parties.[163, 164]

The main causes of the bankruptcy of LBT are the double dependency of LBT on LBHI and the Lehman Brothers Group, namely in a business and a financial sense (see § 6 above). Below, the Bankruptcy Trustees assess whether the Directors have improperly fulfilled their duties in relation to this double dependency and whether damage has resulted from that, either on the part of LBT or its creditors.[165]

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161 Part A, § 4.12. In that paragraph the conclusions of the Examiner are summarized.

162 See about the distinction between the Dutch and the American threshold: B.F. Assink, *Rechterlijke toetsing van bestuurlijk gedrag*, Deventer: Kluwer 2007, p. 243. See for a case where director liability was assumed under Dutch law because the policy was changed so risk limits were no longer exceeded: District Court of Utrecht, 12 December 2007, *JOR* 2008, 10 (*Ceteco*), § 5.91 and 5.172.

163 See part A § 5.4.There it is concluded that the Bankruptcy Trustees have no indication of irregular payment from LBT bank accounts and that there is no indication that Notes have been repurchased because of impeding insolvency or any wish to give preferential treatment to an existing Noteholder over other creditors.

164 In this context it is relevant to note that one Director has declared that he has not sold any shares or options he personally held prior to the bankruptcy of LBHI. As a result, this Director incurred substantial monetary losses on Lehman securities he held and with regard to his pension, which losses he could have prevented if he had timely realized that LBHI and its affiliates might go bankrupt and would have acted upon such knowledge.

165 The Bankruptcy Trustees assess the acts of the Directors in light of the standards set by section 2:9 DCC, section 6:162 DCC (*Peeters/Gatzen-claim*) and section 2:248 DCC.

The burden of proof in director liability cases lies in principle with the bankruptcy trustee, who needs to prove mismanagement. Under specific circumstances, the burden of proof shifts from the bankruptcy trustee to the director.[166] For example, when the annual accounts have not been filed in time or the directors have not met their duty to administer the financial condition of the legal entity. The Bankruptcy Trustees note that the annual accounts over the years 2005, 2006 and 2007 have all been timely filed with the Chamber of Commerce.[167] In addition, the Bankruptcy Trustees also conclude that the Directors have fulfilled their duties to administer the financial condition of LBT.[168] After reviewing the books and records of LBT available to the Bankruptcy Trustees, the Bankruptcy Trustees conclude that it can be assumed that the books and records of LBT were sufficiently maintained to gain insight into its asset and liability positions and that this insight and the available liquidities made it possible to establish LBT's capital position.[169]

7.2.1. LBT's double dependency on LBHI and the Lehman Brothers Group

In this paragraph it is first assessed whether the dependency of LBT in a business sense would possibly constitute a ground for liability of the Directors. In this respect, the Bankruptcy Trustees find that the Directors have properly fulfilled their duties.

LBT was incorporated solely for serving the financing needs of LBHI and other entities of the Lehman Brothers Group. This also follows from LBT's articles of association and the fact that all proceeds of Notes issuances were on-lent to LBHI according to the conditions of the Notes.[170] So, its dependency was a characteristic of LBT. It was not meant to be a autonomous business entity. As a result, the Bankruptcy Trustees find that this dependency of LBT in a business sense does not constitute improper conduct or any breach of any duty of care by the Directors.[171]

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166 Section 2:248 DCC.

167 The financial year of LBT ran from 1 December until 30 November.

168 The accounts of LBT were - pursuant to a service agreement with LBL - kept on central servers, to which the Directors did not have unlimited access. However, the mere fact that the accounts of LBT were kept on central servers, which were not located in the Netherlands, does not lead to a breach of the duty to maintain proper accounts. The fact that the Directors did not have unlimited access to the accounts of LBT may not be customary, but this does not lead to the conclusion that the Directors have not fulfilled their accounting obligations. See: District Court of Amsterdam 5 December 2001, *JOR* 2002, 53 (*Commodore I*).

169 See: Supreme Court 11 June 1993, *NJ* 1993/713 (*Brens/Sarper*).

170 See: § 2.

171 This conclusion is supported by lower case law, namely a decision of the Amsterdam District Court. See: Amsterdam District Court 28 December 2005, *JOR* 2006, 259 (*Commodore II*). In this decision the District Court ruled that the dependency of certain legal entities of the Commodore group on the group as a whole was inherent to the position of the relevant legal entities. The District Court dismissed a claim made solely on the basis of too strong a dependency on the rest of the group.

LBT was also dependent on LBHI in a financial sense. The claim of LBT on LBHI resulting from lending money directly, and the guaranteed repayment of this claim under the Independent Guarantee, was by far LBT's most important asset.[172]

The Bankruptcy Trustees hold the view that the mere fact that LBT had concentrated almost all of its assets in a single claim on a single entity, does not constitute improper management.[173] The fact that a company keeps all its eggs in one basket and does not to diversify its risks, can under circumstances qualify as acting in a way that breaches the standards set for director liability.[174] In this respect, the nature of the company and its activities, the goal of the company and its risk appetite are important factors.[175] As set out above in § 7.1.2, the position of LBT as an intercompany financing vehicle logically brings about that its sole purpose is to raise money and lend it on intra-group. It would have been contrary to the business model and the reason of LBT's existence to diversify its credit risk by lending directly to third parties outside the Lehman Brothers Group. This would also largely defeat the purpose of LBT as a financing vehicle, since it is a requirement to lend at least 95% of its balance total within the corporate group.[176]

One can subsequently raise the question whether the Directors of LBT sufficiently monitored the credit risk LBT ran on LBHI.[177] LBT was a separate legal entity and its Directors were

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[172] See with respect to the Independent Guarantee: Part A, § 1.2.

[173] District Court of Amsterdam 14 February 2012, *JOR* 2012/209 (*Pieper*) and District Court of Rotterdam, 12 September 2007, *NJF* 2007, 543 (*Moonlight Administratiekantoor B.V.*).

[174] A director has a broad discretion in his management decisions, if he is well informed, aware of the risks following from his decisions and is convinced that the risk is non-material. See: Supreme Court, 14 November 1997, *JOR* 1998, 6 (*Henkel/JMG*). However, in certain cases a director can be liable for certain management decisions regarding the risk strategy of a company. See: B.F. Assink en D.A.M.H.W. Strik, *Ondernemingsbestuur en risicobeheersing op de drempel van een nieuw decennium: een ondernemingsrechtelijke analyse*, Deventer: Kluwer 2009, p. 282-283.

[175] See: B.F. Assink en D.A.M.H.W. Strik, *Ondernemingsbestuur en risicobeheersing op de drempel van een nieuw decennium: een ondernemingsrechtelijke analyse*, Deventer: Kluwer 2009, p. 282-283.

[176] Part A, § 2.3.2. This requirement needs to be met in order to qualify for an exemption on the requirement to have a banking license.

[177] See explicitly with regard to the duty to monitor credit risk: Parliamentary Papers 1985-1986 (29 August 1985), 16 631, Third Anti-Abuse Act (*Derde Anti-Misbruikwet*), p. 6337. See about the duty to acknowledge and monitor risks in general: B.F. Assink en D.A.M.H.W. Strik, *Ondernemingsbestuur en risicobeheersing op de drempel van een nieuw decennium: een ondernemingsrechtelijke analyse*, Deventer: Kluwer 2009, p. 285-287 with reference to District Court of Utrecht, 12 December 2007, *JOR* 2008, 10 (*Ceteco*), § 105 and B.F. Assink, *Rechterlijke toetsing van bestuurlijk gedrag*, Deventer: Kluwer 2007, p. 519 with reference to District Court of Zwolle, 11 December 2002, *LJN* AF4895 (*AMS/X*) and District Court of Utrecht, 9 June 2004, *JOR* 2004, 227 (*Ten Doesschate q.q./Van Riet e.a.*).

therefore under the obligation to take into account the separate corporate interests of LBT and its creditors, even if LBT was part of the larger corporate Lehman Brothers Group.[178]

However, although the Directors of LBT did not take specific action to actively monitor the credit risk LBT ran on LBHI, the Bankruptcy Trustees do not find that the Directors have improperly fulfilled their duties in this respect. Starting at the end of 2007 and the beginning of 2008, there were public signals that the situation of LBHI and that of other investment banks was deteriorating. The stock price of LBHI went from approximately USD 80 in the summer of 2007 to approximately USD 20 in the summer of 2008.[179] Furthermore, the deteriorating situation of LBHI became apparent on 9 June 2008, when it announced its first ever loss since going public in 1994.[180] It should be borne in mind that LBT's sole purpose was to attract funds for the Lehman Brothers Group and that investors acquiring Notes took a risk on the Lehman Brothers Group and LBHI rather than on LBT specifically. Noteholders could also have informed themselves about the publicly known deteriorating financial situation of LBHI. The Directors have stated that they were not aware of any alarming liquidity or solvency problems of the Lehman Brothers Group prior to 15 September 2008.[181] They put forward that representatives of the Lehman Brothers Group stated, both internally and externally, that it was able to withstand the credit crunch. In its presentations - for example those of 28 May 2008[182] and July 2008[183] - Lehman Brothers presented itself as being in a better financial condition than the failed Bear Stearns.[184] In the presentation of July 2008 (**Annex 9**), Lehman Brothers stated that the Lehman Brothers Group could survive for twelve months without attracting additional financing. In this light, the Bankruptcy Trustees do not find that the Directors fulfilled their duties improperly.

Furthermore, the Bankruptcy Trustees do not believe that any possible action taken by the Directors taken in the period of 3 to 5 months prior to September 2008, would have significantly altered the course of events for LBHI or LBT.

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178 See: Supreme Court, 26 October 2001, *NJ* 2002, 94 (*Juno*). See also: Asser/Maeijer, Van Solinge & Nieuwe Weme 2-II* 2009, § 394 and 827. Directors of subsidiaries in a group structure in general cannot excuse themselves by arguing that they merely acted in accordance with the instructions they were given from a higher group level. Parliamentary Papers 2006-2007, 31 058, Private Company Law (Simplification and Flexibilization) Act (*Wet vereenvoudiging en flexibilisering bv-recht*), no. 3, p. 90.

179 Part A, § 3.1.3**.**

180 Part A, § 4.7.

181 Compare: Parliamentary Papers 1980-1981, 16631, Third Anit-Abuse Act (*Derde Anti-Misbruikwet*), no. 6, p. 41, where the lack of payment by an important debtor is mentioned as a circumstance on which a creditor does not have influence.

182 Annex 7.

183 Annex 9.

184 Part A, § 5.1.1.

7.2.2. No grounds for liability of other persons or entities involved in the management of LBT, including LBIE

Dutch law explicitly extends the rules on director liability provided for in section 2:248 DCC for statutory directors to *de facto* directors.[185]

In the case of LBT, LBIE was heavily involved in the daily management of LBT.[186] The question could be raised whether LBIE could qualify as a *de facto* director of LBT. However, since the Bankruptcy Trustees have concluded in § 7.2.1 that there are no grounds to assume liability of the Directors in relation to LBT or its joint creditors, they also see no grounds to hold other parties liable in this respect.

7.3 LBT's auditor: E&Y Netherlands

The fact that the Bankruptcy Trustees have concluded that no grounds exists for liability of the Directors or other persons or entities involved in the management of LBT, does not in itself preclude the need to address the role of LBT's auditor, E&Y Netherlands. As stated in § 7.1.1, the Bankruptcy Trustees only assess whether grounds exist that would lead to the conclusion that E&Y Netherlands might be held liable in relation to the estate of LBT or its joint creditors. The test to be applied is whether or not E&Y Netherlands acted as a reasonably acting and reasonably skilled (*redelijk handelend en redelijk bekwaam*) auditor.[187]

The Bankruptcy Trustees conclude that there are no grounds for liability of E&Y Netherlands in respect of the bankruptcy of LBT. The Bankruptcy Trustees have not found any irregularities with regard to the auditing of the annual accounts of LBT or material shortcomings in the process of issuing the 2008 Review Report.

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[185] According to paragraph 7 of section 2:248 DCC a person or legal entity that has determined - whether in conjunction with the statutory directors or not – the management of the company, is liable under section 2:248 DCC, as if he was a statutory director. It is generally accepted that, in order for a third party to qualify as *de facto* director, it is sufficient that this party has assumed executive powers and has enforced its will upon the statutory directors. See Conclusion Advocate-General before Supreme Court 2 September 2011, RI 2012/1 (*Atlanco/Van Schuppen q.q.*). It is not necessary that a third party completely sets aside the statutory directors. Furthermore, a third party can be liable on the grounds of section 6:162 DCC.

[186] Part A, § 1.2.1, 1.2.2 and 2.2.

[187] See Supreme Court 13 October 2006, *NJ* 2008, 529 (*Vie d'Or*). *'wat van hen als redelijk handelende en redelijk bekwame externe controlerende registeraccountants moest worden gevergd in het kader van zorgvuldige uitoefening van hun taak (…).'* The Dutch Supreme Court has given several circumstances that should be taken into account when making this assessment.

7.3.1. No irregularities with regard to audit of annual accounts

From the incorporation of LBT in 1995 until 2007, E&Y Netherlands has audited the accounts of LBT. All the accounts for these years were supplied with an unqualified audit opinion.[188] Furthermore, all annual accounts were timely filed with the Dutch Chamber of Commerce. The Bankruptcy Trustees did not find any irregularities with regard to the audit of the annual accounts of LBT by E&Y Netherlands.

7.3.2. The 2008 Review Report on interim financial information

On 15 August 2008 E&Y Netherlands issued the 2008 Review Report. This was a review report regarding the financial period from 1 December 2007 up to and including 31 May 2008 for LBT.[189]

In the 2008 Review Report E&Y Netherlands concludes:

> *"Based on our review, nothing has come to our attention that causes us to believe that the accompanying interim financial information as at 31 May 2008, is not prepared, in all material respects, in accordance with the Dutch Guideline for Annual Reporting 394, Interim Reports."*

The 2008 Review Report relates to the financial situation of LBT for the six month period ending 31 May 2008. The 2008 Review Report itself is dated 15 August 2008, just over a month before LBT filed for provisional suspension of payments on 19 September 2008. E&Y Netherlands made no qualifications as to whether LBT would be able to continue as a going concern. The Bankruptcy Trustees, however, find that there are no grounds to conclude that E&Y Netherlands did not act as a reasonably acting and reasonably skilled auditor when issuing the 2008 Review Report.

Neither on 31 May nor on 15 August 2008, the situation of the LBHI was such, that its bankruptcy was foreseen as a realistic scenario. In this respect, the Bankruptcy Trustees point at the stock price of LBHI, as this key indicator does not suffer from hindsight bias. On 31 May 2008 and 15 August 2008 LBHI's stock was still trading at USD 36.81 and USD 16.17 respectively. For the world at large, the filing for Chapter 11 by LBHI on 15 September 2008 came as a shock. Furthermore, the Bankruptcy Trustees believe that even if E&Y Netherlands had had the foresight to issue a warning in August 2008, be it in the 2008

[188] Part A, § 5.2.

[189] Part A, § 5.2. The reason for this 2008 Review Report was that Japanese law required the issuance of semi-annual interim reports.

Review Report or directly to the Directors, this would also not have significantly altered the course of events for LBHI or LBT.

The Bankruptcy Trustees conclude that there are no other reasons why E&Y Netherlands should have issued its 2008 Review Report with a qualification. The issues discussed in part A as to the Repo 105 Program and the Liquidity Pool did not concern LBT directly.[190] Furthermore, E&Y Netherlands has declared that the accountants responsible for the 2008 Review Report had no knowledge about the accounting practices of LBHI.[191] In this respect, weight should also be given to the fact that the Accountancy and Actuarial Discipline Board ("**AADB**") has found that there is no realistic prospect that the disciplinary tribunal of the AADB would make an adverse finding against E&Y UK in respect of the Repo 105 Program and the audit of LBIE.[192]

7.4 Regulator: DNB

In this paragraph the role of DNB is assessed. The relevant standard is whether the supervision carried out by DNB meets the requirements that are set for adequate and prudent supervision.[193]

The legal system in the Netherlands is such that an entity like LBT is not subject to supervision as long as it meets the requirements mentioned in section 3:2 of the AFS. Since it can be assumed that LBT complied with these requirements, LBT was excluded from supervision. It is noted in this respect that it was LBT's own responsibility to determine whether or not it met the requirements of section 3:2 AFS.

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[190] See about the Repo 105 Program and the Liquidity Pool: Part A, § 4.9.1 and 4.9.2. It is noted that Mr. William Schlich, the Ernst & Young partner globally responsible for the audit of the Lehman Brothers Group has declared that E&Y US was aware of the Repo 105 Program for many years. See: Valukas Report, p. 948.

[191] Letter from E&Y Netherlands dated 5 February 2013.

[192] See: http://www.frc.org.uk/News-and-Events/FRC-Press/Press/2012/June/Lehman-Brothers-International-(Europe).aspx

[193] The Bankruptcy Trustees make this assessment in light of the standard set by section 6:162 DCC. See Supreme Court 13 October 2006, *NJ* 2008, 527 (*Vie d'Or*). The Supreme Court has ruled that, in order to make a valid assessment, all circumstances of the case are relevant. In relation to this assessment, it should be taken into account that a regulator merely supervises, and that it is the supervised institution that has to fulfil its statutory obligations. Furthermore, a regulator has a considerable margin of discretion and the parties involved should be aware of the risk of hindsight bias. The Supreme Court has also noted that there are no guarantees that a regulator can always prevent damage, but that it can be required to act in an adequate manner, which takes the principles of efficiency, proportionality and subsidiarity into account. As of 1 July 2012 liability of DNB and AFM is limited by section 1:25d AFS. This section excludes DNB and AFM from liability for acts in relation to the execution of statutory tasks and powers, except in cases where damage can be ascribed to intent or gross negligence. However, as section 1:25d AFS is only applicable for actions of regulators performed after 1 July 2012, itis irrelevant to the investigation in the case at hand.

Only if DNB had been explicitly aware of the situation that LBT did not meet the criteria for the exemption - among which was the requirement that LBHI had a positive consolidated equity capital - on the obligation to have a banking license, it would have been in the position to intervene. However, the Bankruptcy Trustees conclude that no indications exist that DNB was aware or should have been aware that LBT prior to LBHI's filing for Chapter 11 did not meet the conditions for an exemption on the need to have a banking license.

In the light of the above, the Bankruptcy Trustees see no reason or ground for liability of DNB.

Annex 1

ANNEX 1: List of key persons and abbreviations

1995 Tax Ruling	The tax ruling of the Dutch tax authorities dated 2 March 1995
1997 Tax Ruling	The tax ruling of the Dutch tax authorities dated 15 December 1997
2008 Review Report	Report issued by E&Y Netherlands on the interim financial situation of LBT as per the half year close (31 May 2008)
AADB	Accountancy and Actuarial Discipline Board
ABN AMRO	ABN AMRO Bank N.V.
Administrative Management Agreement	Management agreement between LBT and Equity Trust dated 24 March 1995
Administrator	R.J. Schimmelpenninck, the administrator (*bewindvoerder*) of LBT during the provisional suspension of payments (*voorlopige surseance van betaling*).
AFM	Authority Financial Markets (*Stichting Autoriteit Financiële Markten*)
AFS	Dutch Act on Financial Supervision (*Wet op het Financieel Toezicht)*
Amended and Restated Distribution Agreement	The amended and restated distribution agreements between LBHI, LBIE and Lehman Brothers Inc.
Antoncic	M. Antoncic, LBHI's Chief Risk Officer
APA	Advance Pricing Agreement
Bank of America	Bank of America, N.A.
Bank of New York Mellon	Bank of New York Mellon Co.
Bankruptcy Trustees	R.J. Schimmelpenninck and F. Verhoeven, the bankruptcy trustees (*curatoren*) of LBT
Barclays	Barclays Plc.
Base Prospectus	Base prospectus issued by LBT
Bear Stearns	Bear Stearns & Co. Inc.
Board of Directors	The board of directors of LBT
Chapter 11	Chapter 11 of the U.S. Bankruptcy Code

Citigroup	Citigroup Inc.
CONSOB	Commissione Nazionale per le Società e la Borsa
De Schutter	R.G.A. de Schutter, director of LBT from 30 December 2005 until 2 September 2008
DBA	Dutch Bankruptcy Act
Directors	C. Fischer, L, Fuller, W.H. Kamphuijs and J.C.W. van Burg, the Directors of LBT at the time the provisional suspension of payments (*voorlopige surseance van betaling*) was requested
DNB	Dutch Central Bank (*De Nederlandsche Bank N.V.*)
Dutch GAAP	Dutch General Accepted Accounting Principles
E&Y Netherlands	Ernst & Young Accountants LLP, the auditor of LBT
E&Y UK	Ernst & Young United Kingdom
E&Y US	Ernst & Young LLP
EEA	European Economic Area
EMTN Program	Euro Medium Term Note Program. Note program set up by LBT
Equity Trust	Equity Trust Co. N.V.
EUR	Euro
Examiner	The examiner appointed in the bankruptcy of LBHI, mr. Anton R. Valukas.
Final Terms	Document containing the amendment and finalisation of the Terms and Conditions for each issue of a series of Notes
Fischer	C. Fischer, director of LBT from 26 November 2007.
Fuld	R.S. Fuld, chairman and CEO of LBHI.
Fuller	L.M. Fuller, director of LBT from 11 September 1996.
FRBNY	Federal Reserve Bank of New York
FSA	Financial Services Authority
Gelband	M. Gelband, head of Fixed Income Division of LBHI

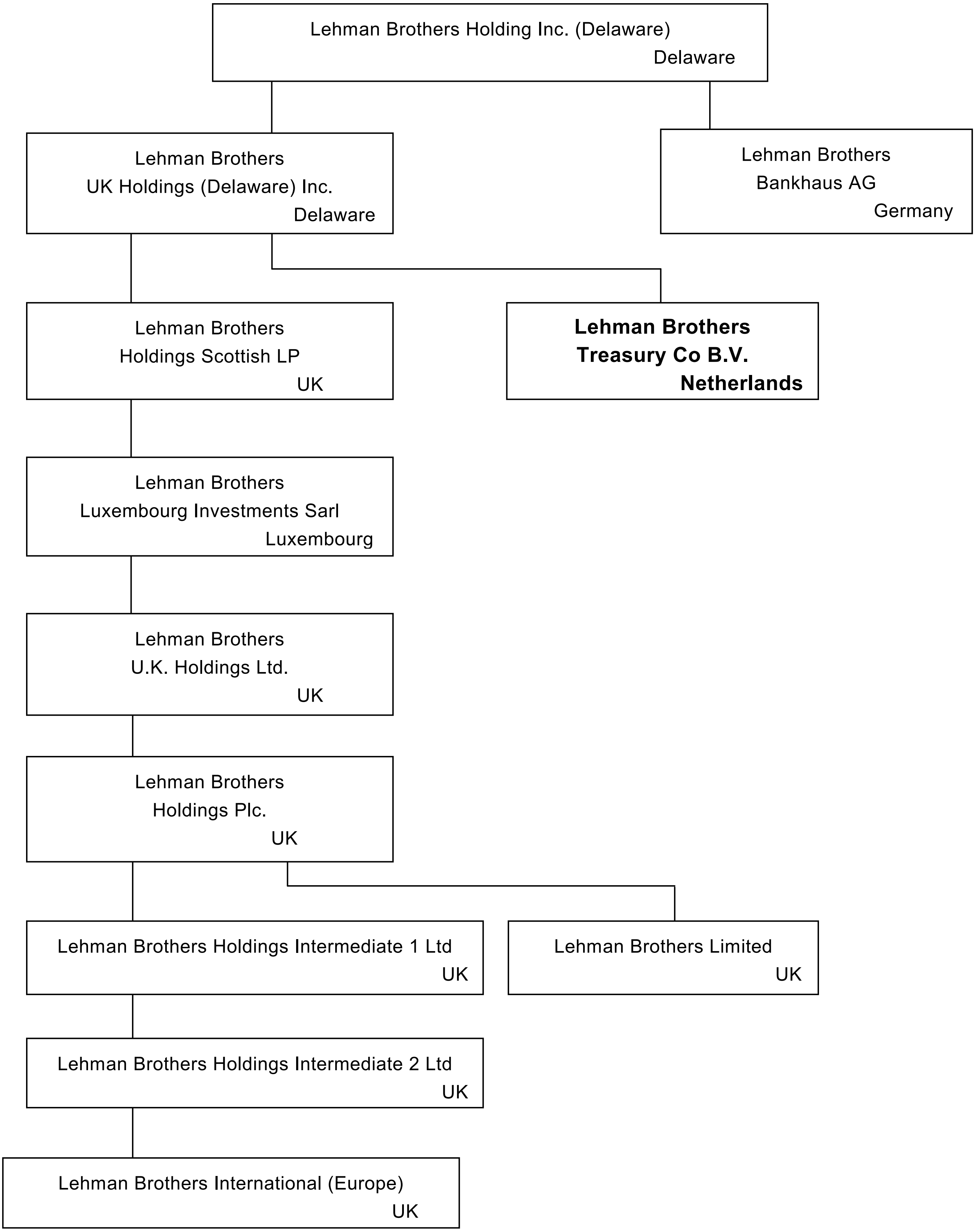
General Ledger	Accounting records of the Lehman Brothers Group
German Note Program	Note program set up by LBT
Gross Margin	The taxable remuneration of LBT as calculated in the TP Study
HSBC	HSBC Holdings plc
IFRSA	Irish Financial Services Regulatory Authority
Implied Market Value Test	A method to determine the solvency of a corporation
Independent Guarantee	Guarantee given by LBHI dated 16 September 1997
ISE	Irish Stock Exchange
Issuer	Issuer of notes under the EMTN program
Italian Inflation Linked Note Program	Note program set up by LBT
JP Morgan	JP Morgan Chase Bank, N.A.
Kamphuijs	W.H. Kamphuijs, director of LBT from 30 December 2005.
LB (Sweden)	Lehman Brothers AB (Sweden)
LB UK Holdings	Lehman Brothers U.K. Holdings (Delaware) Inc.
LBB	Lehman Brothers Bankhaus AG
LBF (Luxembourg)	Lehman Brothers Equity Finance SA (Luxembourg)
LBF (Switzerland)	Lehman Brothers Finance SA (Switzerland)
LBH (UK)	Lehman Brothers Holding plc
LBHI	Lehman Brothers Holdings Inc.
LBIE	Lehman Brothers International Europe
LBL	Lehman Brothers Limited
LBT	Lehman Brothers Treasury Co B.V.
Lehman Brothers Group	The worldwide operating Lehman Brothers group
Linklaters	Linklaters LLP
Liquidity Pool	Pool of assets held by LBHI

Loan Agreement	The loan agreement between LBT and LBHI dated 26 May 2000
Managing Directors Report	The managing directors' report dated 13 August 2008
Melissen	Ms. W.A.H. Melissen, the supervisory-judge (*rechter-commissaris*) appointed in the provisional suspension of payments (*voorlopige surseance van betaling*) and bankruptcy (faillissement) of LBT
New York Stock Exchange	Stock exchange located in New York, United States
Notes	Notes and certificates issued by LBT under the Note Programs
Noteholders	Holders of the Notes issued by LBT
Note Programs	Programs under which Notes were issued by LBT
Pro Forma Final Terms	Template for the Final Terms. The Pro Forma Final Terms were a part of the Base Prospectus
Prospectus Directive	Directive 2003/71/EC
Repo	Repurchase agreements
Repo 105 Program	A program under which LBHI performed repo 105 transactions
Schimmelpenninck	R.J. Schimmelpenninck, administrator (*bewindvoerder*) of LBT during the provisionally granted suspension of payments procedure *(voorlopige surseance van betaling*) and one of the Bankruptcy Trustees
SEC	Securities and Exchange Commission
Settlement Agreement	Agreement reached between the Bankruptcy Trustees of LBT and LBHI with regard to - among other things - the acknowledgment of a claim of LBT against LBHI in the amount of USD 34,548,000,000
Supervisory Judge	Ms. W.A.H. Melissen. The supervisory-judge (*rechter-commissaris*) appointed in the provisional suspension of payments and bankruptcy (*faillissement*) of LBT
Swiss Certificates Program	Note program set up by LBT
SWX Swiss Exchange	SWX Swiss Exchange AG. Stock exchange located in Switzerland
Taxable Margin	An at arm's length net fee that served as a taxable remuneration for the financing activities of LBT

Terms and Conditions	The terms and conditions applicable to each Note
TP Study	The transfer pricing study conducted by TPA
TPA	Transfer Pricing Associates B.V.
USD	United States Dollar
US GAAP	United States General Accepted Accounting Principles
Valukas Report	Report written by the examiner appointed in the bankruptcy of LBHI
Van Burg	J.C.W. van Burg, director of LBT from 2 September 2008.

Annex 2

ANNEX 2: Summarized overview of the corporate structure of the Lehman Brothers Group



Annex 3

LEHMAN BROTHERS

To: Lehman Brothers Holdings Inc. (the "Borrower")

Attention: Paolo Tonucci
Director
Head of European Asset & Liability Management

26th May, 2000

Dear Sirs

Lehman Brothers Treasury Co. B.V. (the "**Lender**"), is pleased to confirm its agreement with the Borrower to make available to the Borrower a loan (the "Loan") on an uncommitted basis on the following terms and conditions:

1. **Definitions and Interpretation**

"**Business Day**" means a day on which the relevant Amsterdam and London financial markets are open for the transaction of business contemplated hereby and, in relation to a day on which a payment is required hereunder, a day on which banks are open for business in the place of payment;

"**Facility Documents**" means this letter and any other deed, document or agreement from time to time entered into pursuant hereto or thereto;

"**Indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

"**Loan**" means the aggregate principal amount outstanding in respect of the Advances and otherwise hereunder; and

"**Maturity**" in relation to an Advance means the last day of the agreed term of such Advance.

Headings when used herein shall be ignored for the purposes of construction.

2. **The Loan**

(i) This facility is intended for general corporate purposes for the trade of the Borrower(including the funding, whether directly or indirectly, of the businesses of the affiliates of the Borrower)

(ii) The Loan may be drawn down in any number of advances (each an **"Advance"**) in an agreed amount denominated in an agreed currency for an agreed term.

3. **Availability**

(i) Not later than 10.00 a.m. (London time) on the day one Business Day before the proposed day of such borrowing a request may be made for an Advance by the Borrower in the form of the Request to Borrow (the **"Request"**) attached hereto or an offer to make an Advance may be made by the Lender in the form of the Offer to Lend (the **"Offer"**) attached hereto.

The Request or the Offer, whichever applicable, will state the proposed borrowing date (being a Business Day) and the proposed amount, currency, interest period, term and interest rate to apply to the proposed Advance The Lender may agree to the terms of the Request (or, as the case may be, the Borrower may agree to the terms of the Offer) by returning a signed copy of the relevant document indicating its agreement.

(ii) Each Advance may be made on the agreed borrowing date referred to in the Request or the Offer if no event has occurred which is or may become an Event of Default (as referred to in Clause 11 below) and representations set out in Clause 9 are true on and as of the proposed date for the making of such Advance.

4. **Interest**

(i) Interest is payable on each Advance at the agreed intervals and at the agreed rateper annum for such Advance.

(ii) If the Borrower fails to pay any amount payable hereunder on the due date therefor (whether at stated maturity, by acceleration or otherwise), the Borrower shall on demand from time to time pay interest on such overdue amount from the due date up to the date of actual payment (as well after as before judgment) at a rate determined by the Lender from time to time to be equal to the higher of 1 % per cent. above:

(a) the interest rate for the Advance to which the failure to pay relates as provided in Clause 4(i); and

(b) the cost to the Lender of funding such principal or other amount.

Such interest shall be compounded every three months.

(iii) Interest shall be calculated on the basis of a 360 or 365 day year, as specified in the Request or Offer, whichever appropriate, and for the actual number of days elapsed in the period in question.

5, **Repayment**

Each Advance shall be repaid in full on its maturity and in the currency in which it is denominated together with accrued interest.

6 **Payments**

(i) All payments to be made hereunder shall be made to the Lender on the due date to the Lenders account as specified in the relevant Request or Offer without set-off or counter-claim.

(ii) In the event that the Borrower makes any payment of the principal of an Advance other than on the due date therefor or fails to borrow in accordance with a Request given pursuant to Clause 3(i) above, the Borrower shall forthwith on demand from the Lender pay to the Lender such additional amounts as the Lender may certify, as necessary to compensate it for any loss or expense sustained or incurred as a result of such payment or such failure to borrow, as the case may be.

7. **Taxes**

(i) All payments to be made by the Borrower hereunder shall be made free and clear of and without deduction for or on account of tax unless the Borrower is required to make such a payment subject to the deduction or withholding of tax, in which case the sum payable by the Borrower in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lender receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

(ii) Without prejudice to the provisions of Clause 7(i), if the Lender is required to make any payment on account of tax or otherwise (not being tax imposed on its net income by the jurisdiction in which it is incorporated on or in relation to any sum received or receivable by the Lender hereunder (including, without limitation, any sum received or receivable under this sub-clause) or any liability in respect of any such payment is asserted, imposed, levied or assessed against the Lender, theBorrower will upon demand of the Lender promptly indemnify the Lender against such payment or liability, together with any interest, penalties and expenses payable or incurred in connection therewith.

8. **Additional Costs**

If the result of any present or future law, regulation, treaty or official directive (whether or not having the force of law) or any change therein or in the interpretation or application thereof or compliance by the Lender with any request of any relevant authority is directly or indirectly to increase the cost to the Lender of the transactions contemplated hereby, or is to reduce any amount receivable by the Lender or the effective return to the Lender hereunder whether by way of change in the manner in which the Lender allocates capital to its obligations hereunder or otherwise, the Borrower will, forthwith on demand, pay to the Lender such amounts as it shall certify as necessary to compensate it for such additional cost or reduction.

9 **Representations**

The Borrower represents that:

(i) it has power to enter into the Facility Documents and to exercise its rights and perform its obligations thereunder and all action required to authorise its execution of the Facility Documents and its performance of its obligations thereunder has been duly taken;

(ii) in any proceedings taken in England in relation to any of the Facility Documents, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process;

(iii) in any proceedings taken in relation to any of the Facility Documents, the choice of English law as the governing law of the Facility Documents and any judgment obtained in England will be recognised and enforced;

(iv) all acts, conditions and things required to be done, fulfilled and performed in order (a) to enable the Borrower lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by the Borrower in the Facility Documents (b) to ensure that the obligations expressed to be assumed by the Borrower in the Facility Documents are legal, valid and binding and (c) to make the Facility Documents admissible in evidence in England have been done, fulfilled and performed and the obligations referred to above are so legal, valid and binding; and

(v) the execution of the Facility Documents and the exercise of the Borrower's rights and performance of its obligations thereunder do not and will not:

(a) conflict with any agreement, mortgage, bond or other instrument or treaty to which the Borrower is a party or which is binding upon the Borrower or any of the Borrower's assets; or

(b) conflict with any applicable law, regulation or official or judicial order.

10 **Covenants**

The Borrower shall:

(i) obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required in or by the laws and regulations of England to enable the Borrower lawfully to enter into and perform its obligations under the Facility Documents or to ensure the legality, validity, enforceability or admissibility in evidence in the place of payment of the Facility Documents;

(ii) after the delivery of the request for an Advance to be made hereunder and before the proposed making of the Advance, notify the Lender of the occurrence of any event which results in or may reasonably be expected to result in any of the representations contained in Clause 9 being untrue at or before the time of the proposed making of the Advance;

(iii) promptly inform the Lender of the occurrence of any Event of Default or any event which might become an Event of Default and, upon receipt of a written request to that effect from the Lender, confirm to the Lender that, save as previously notified to the Lender or as notified in such confirmation, no such event has occurred;

(iv) ensure that at all times the Lender's claims against you under the Facility Documents rank at least pari passu with the clams of all its unsecured creditors; and

(v) on request by the Lender, furnish the Lender with such information about itself as the Lender may reasonably require.

Events of Default

If:

(i) the Borrower fails to pay any sum due from the Borrower under any of the Facility Documents at the time, m the currency and m the manner specified herein and such failure in respect of any amount other than the principal amount of one or more of the Advances is continued for a period of thirty days; or

(ii) any representation or statement made by the Borrower in any of the Facility Documents or m any notice or other document, certificate or statement delivered by the Borrower pursuant thereto or in connection therewith is or proves to have been incorrect or misleading when made; or

(iii) the Borrower fails duly to perform or comply with any of the obligations expressed to be assumed by it in any of the Facility Documents and such failure (other than a failure in respect of an obligation which is specifically dealt with elsewhere in this Clause 11) is continued for a period of ninety days after there has been given to the Borrower by the Lender a written notice specifying such failure and requiring it to be remedied and stating that such notice is a notice of default; or

(iv) any of the Borrower's indebtedness is not paid when due, any of the Borrower's indebtedness is declared to be or otherwise becomes due and payable prior to its specified maturity or any of the Borrower's creditors become entitled to declare any of the Borrower's indebtedness due and payable prior to its specified maturity; or

(v) the Borrower, voluntarily or otherwise, takes any corporate action or other steps are taken or legal proceedings are started for its winding-up, dissolution, administration or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Borrower or of any or all of its assets; or

(vi) at any time it is or becomes unlawful for the Borrower to perform or comply with any or all of its obligations under any of the Facility Documents or any of the Borrower's obligations thereunder are not or cease to be legal, valid and binding; or

(vii) the Borrower is unable to pay any of its debts within the meaning of Section 123(1)(e) of the Insolvency Act 1986 or makes a general assignment for the benefit of its creditors, then the Lender shall be under no obligation to advance monies pursuant to this letter and may by notice to the Borrower require repayment (forthwith or otherwise as the Lender may require) of the Loan with accrued interest thereon together with any other sums then owed by the Borrower under the Facility Documents.

The Borrower also undertakes to indemnify the Lender m demand against any loss or expense, including legal fees, sustained or incurred as a consequence of the occurrence of any Event of Default referred to above.

12. **Conditions Precedent**

The Lender's agreement to make the Loan available is subject to its having received the following in form and substance satisfactory to it:

(i) a copy certified by a duly authorised officer of the Borrower of the constitutive documents of the Borrower;

(ii) a copy, certified by a duly authorised officer of the Borrower of a Board Resolution of the Borrower approving the execution, delivery and performance of each of the Facility Documents and the terms and conditions of this letter and authorising a -named person or persons to sign this letter and any documents to be delivered by the Borrower pursuant hereto;

(iii) a certificate of a duly authorised officer of the Borrower setting out the names and signatures of the persons authorised to sign on behalf of the Borrower, this letter and the other Facility Documents and any documents to be delivered hereto or thereto.

13. **Assignment**

This letter shall bind and ensure to the benefit of both parties hereto and their respective successors and assigns. Neither party shall be capable of assigning all or any of its rights or obligations under the Facility Documents without the prior written consent of the other party.

14 **Miscellaneous**

(i) The Borrower shall pay all costs and expenses (including all legal fees) incurred by the Lender in connection with the negotiation, preparation and execution of the Facility Documents, the enforcement of the Facility Documents and the preservation of the Lender's rights thereunder and will also pay or indemnify the Lender against all present and future stamp duties or other similar taxes payable (including any interest and penalties) in respect thereof.

(ii) No failure by the Lender in exercising any right, power or privilege under any of the Facility Documents shall operate as a waiver thereof or prejudice any other or further exercise by the Lender of any of our rights or remedies thereunder. The rights and remedies therein are cumulative and not

(iii) Notice to either party may [illegible] provided by law, [illegible]
receipt but, if not in writing then, without prejudice to such effectiveness, confirmed forthwith thereafter in writing) to it at its address first stated above, marked for the attention of the person first stated above, or to such other address as it may specify to the other

15. **Governing Law**

This Letter shall be governed by and construed in accordance with the laws of England and the parties hereto submit to the jurisdiction of the English courts in respect of any dispute hereunder

Yours faithfully,

For and on behalf of
LEHMAN BROTHERS TREASURY CO. B.V.

We agree to the above

Dated 26th May 2000

For and on behalf of
LEHMAN BROTHERS HOLDINGS Inc.

Schedule 1

Form of [Request to Borrow/Offer to Lend) 1

To: [Lehman Brothers Treasury Co. BN.)/Lehman Brothers Holdings Inc.

Pursuant to the terms of the Facility Letter made between us dated [ ] 1we hereby deliver to you a [Request To Borrow/Offer To Lend] 1 on the following terms:

Proposed borrowing date:

Amount:

Currency:

Term:

Interest rate:

Interest period:

Interest is to be calculated on the basis of a 36013651 day year and the actual number of days elapsed in the period in question

Account Details of Borrower:

Account Details of Lender:

e indicate your agreement to lend/borrowed on these terms by returning a signed copy of this letter within days of the date hereof.

To: Lehman Brothers Holdings Inc./[Lehman Brothers Treasury Co. B.V 1

We agree to lend/borrowed on the terms set out in the Request To Borrow/Offer To Lend 1 issued by [ ] on [ ], of which this is a copy.

Delete as appropriate.

Annex 4

INDEPENDENT GUARANTEE

This Agreement is made the 16th day of September, 1997.

Between:

(1) **Lehman Brothers Holdings Inc.** (the "Guarantor"); and

(2) **Lehman Brothers Treasury Co. B.V.**, a private company with limited liability incorporated under the laws of The Netherlands, having its registered office at Amsterdam, The Netherlands (the "Issuer")

Whereas:

(A) The Issuer has authorized the creation and issue of a series of Medium-Term Notes and Commercial Paper (the "Notes") under a Programme

(B) The Guarantor has authorized the giving of its guarantee in relation to the Notes and has entered into a deed of guarantee (the "Guarantee Deed") under which the Guarantor has unconditionally and irrevocably guaranteed the due and punctual payment of any amount owed by the Issuer to the noteholders (the "Noteholders"), in connection with the Notes issued by the Issuer.

(C) The Issuer is willing to onlend the proceeds of the issues mentioned under (A) to the Guarantor or any of its group companies by way of separate agreements, hereinafter referred to as the "Onlending Agreements" provided the Guarantor provides a guarantee on the terms and conditions set out herein.

IT IS AGREED as follows:

1 **Definitions**

"Margin" means the net spread of 0.125% to be reported as contribution to the profit of the Issuer with respect to the issue of the Notes and the Onlending Agreements under paragraph 1 of the tax ruling dated 2 March 1995 and signed for approval on 17 March 1995

2. **Guarantee to Noteholders**

The Guarantee Deed has been entered into by the Guarantor at the request of the Issuer and for the account and risk of the Issuer

3. **Guarantee**

The Guarantor hereby unconditionally and irrevocably guarantees, by way of an independent guarantee (onafhankelijke garantie) (the "Guarantee") to the Issuer the proper payment of all amounts owed to it under the Onlending Agreements.

4. **Payment on first demand**

The Guarantor shall pay to the Issuer on first demand all sums due under or in connection with the Guarantee and shall indemnify the Issuer and keep the Issuer indemnified on demand against all actions, charges, claims, costs, demands, liabilities, losses and proceedings which may be brought against the Issuer or which the Issuer may suffer or incur directly or indirectly arising out of or in connection with the Guarantee or in connection with the enforcement or the preservation of the Issuer's rights hereunder.

5. **Undertaking by the Guarantor**

The Guarantor hereby guarantees that the Issuer will annually earn an amount at least equal to the Margin

6. **Term**

This Guarantee shall be effective as of 1 December 1996 and shall terminate upon maturity of the Notes.

7 **Notice**

Any notice or demand to be given or made by the Guarantor may be given or made of the Issuer at its registered office or principal place of business for the time being. Any notice or demand to be given or made by the Issuer may be given to or made of the Guarantor at its registered office or principal place of business for the time being.

8. **Choice of Law**

This Guarantee shall be governed by and construed in accordance with the laws of The Netherlands. The Issuer and the Guarantor submit to the non-exclusive jurisdiction of the courts in Amsterdam, The Netherlands.

By:

For and on behalf of
Lehman Brothers Holdings Inc.

By:

For and on behalf of
Lehman Brothers Treasury Co. B.V.

Annex 5

dn/23-d1.03

ADMINISTRATIVE MANAGEMENT AGREEMENT

THIS AGREEMENT is made with effect from the 24th day of March 1995 and is entered into by and between:

(1) LEHMAN BROTHERS TREASURY CO. B.V., a private company with limited liability ("besloten vennootschap") organised under the laws of The Netherlands and having its corporate seat in Amsterdam, The Netherlands, and its place of business at Officia I, De Boelelaan 7, 1083 HJ Amsterdam, The Netherlands (the "Company").

(2) EQUITY TRUST CO. N.V., a company limited by shares ("naamloze vennootschap") organised under the laws of The Netherlands and having its corporate seat at Amsterdam, The Netherlands, and its place of business at Officia I, De Boelelaan 7, 1083 HJ Amsterdam, The Netherlands ("Equity Trust")

WHEREAS:

The Company desires to engage the services of Equity Trust as an Administrative Manager of the Company and Equity Trust is willing so to act on the following terms and conditions.

NOW IT IS HEREBY AGREED as follows:

1. DUTIES AND RESPONSIBILITIES

Equity Trust shall act as an Administrative Manager of the Company and shall more specifically be charged with handling the corporate secretarial and administrative matters of the Company which shall mean performing the services listed in the Schedule of Services attached hereto and such other services as specifically requested by the Company from time to time in writing and accepted by Equity Trust.

2. AUTHORITY

Equity Trust shall have authority to, individually, sign and file on behalf of the Company any and all tax returns, Commercial Register forms and other similar formal documentation.

3. REMUNERATION

3.1 The Company shall:

(a) pay to Equity Trust with respect to the services listed in the Schedule of Services, an annual fee (excluding VAT and disbursements) of NLG 6,000, payable in advance in January of each year, the first instalment, pro rated from the effective date hereof, will be payable as of such effective date.

(b) pay to Equity Trust for all and any other services it provides in accordance with its fee schedule, charged on an hourly basis; and

(c) reimburse Equity Trust for all and any reasonable expenses incurred in the performance of its duties.

3.2 In the event that any sum (including VAT) due to Equity Trust is not paid by or on behalf of the Company within 60 days from the relevant invoice date, Equity Trust shall have, irrespective of what has been stated in article 6, the right to forthwith cease performing any services hereunder.

4. <u>COVENANTS OF THE COMPANY</u>

The Company covenants that it shall:

(a) at all times pay its debts as and when they fall due;

(b) during the term of this Agreement or thereafter indemnify Equity Trust, its directors and its employees, and hold it and its directors and employees harmless, as an Administrative Manager or individually, as the case may be, from and against any and all claims (contractual or in tort), threatened claims, suits (whether instituted by the Company or any third party), taxes, penalties, liabilities, damages, costs and expenses suffered, incurred or expended, directly or indirectly, including, without limitation, fees, costs and expenses of attorneys, accountants and other experts engaged by Equity Trust and/or its directors and employees at any time by reason of its acting or having acted as an Administrative Manager of the Company;

(c) notify Equity Trust by facsimile or registered letter in the event of the transfer, sale, pledge, assignment or other disposing of any or all of the shares in the issued capital of the Company.

5. <u>LIABILITY</u>

Neither Equity Trust nor its directors and employees shall be liable or personally liable, as the case may be, for any damages, costs or expenses suffered or incurred by the Company as a result of or in connection with any act or omission to act by Equity Trust or any of its directors or employees, except in the case of gross negligence or wilful misconduct of Equity Trust or its directors.

6. TERMINATION

6.1 This Agreement shall have effect from the date mentioned in the heading hereof and shall continue unless and until terminated by either party giving the other one month's prior written notice to the address(es) as mentioned in the heading of this Agreement.

6.2 Equity Trust is entitled to terminate this Agreement with immediate effect if and when the course of affairs of the Company is such that Equity Trust cannot reasonably be expected to continue to act as an administrative manager of the Company, including but not limited to the following events:

(a) the filing of a petition in bankruptcy proceedings against or an application for a moratorium of the Company by its shareholder(s), the Company itself or by any other party;

(b) a resolution by the shareholder(s) of the Company to wind up the Company;

(c) any material change in the shares in the capital of the Company or in the composition of the board of managing directors of the Company, or any other change of control in respect of the Company.

6.3 Upon termination and subject to payment to Equity Trust of any and all outstanding debts, costs and/or fees owing to Equity Trust, any documents relating to the Company and its affairs, which are held by Equity Trust, shall be returned to the Company or any other person or company designated by the Company.

7. CLAUSE HEADINGS

The clause headings in this Agreement are inserted for reference purposes only and shall not affect the meaning, construction or interpretation of any of the provisions of this Agreement.

8. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of The Netherlands and any disputes arising hereunder shall be brought before the Amsterdam Court in The Netherlands, to the exclusive jurisdiction of which the parties hereby submit, notwithstanding the right of Equity Trust to elect to institute proceedings against the Company before the competent court of the country(ies) in which the Company is established or in which the Company may have any of its assets.

IN WITNESS WHEREOF this Agreement has been signed in two counterparts,

for and on behalf of
LEHMAN BROTHERS TREASURY CO. B.V.

By : B.D. ZWICKER
Title: MANAGING DIRECTOR
Date : 24 MARCH 95

P.M. ROBINSON
MANAGING DIRECTOR
24/3/95.

for and on behalf of
EQUITY TRUST CO. N.V.

By : F. van der Rhee
Title: Managing Director
Date : 25 April 1995

SCHEDULE OF SERVICES

- To act as the Administrative Manager for the Company;

- Providing the registered office of the Company;

- Maintaining the corporate records, including the Shareholders Register and the minutes of the Board and Shareholders Meetings;

- Filing and forwarding of copies of bank correspondence, statements and supporting documents;

- Filing and forwarding of copies of correspondence in connection with the Euro Medium-Term Note programm;

- Filing and forwarding of copies of other correspondence;

- Arranging for the filing of statutory and regulatory returns, annual accounts and all tax returns with the local authorities.

Annex 6

ANNEX 6: Explanation of LBHI's Repo 105 Program

REPO 105

Sale and repurchase agreements ("repos") are agreements where one party transfers an asset or security to another party as collateral for a short-term borrowing of cash, while simultaneously agreeing to repay the cash and take back the collateral at a specific point in time. When the repo transaction matures, the borrower repays the funds plus an agreed upon interest rate and takes back its collateral.[1] Repo transactions are widely used by financial institutions and are a legitimate tool for raising short-term funding.[2] This short-term funding was used by Lehman to pay down different liabilities.

Like other large investment banks, Lehman engaged, on a daily basis, in tens of billions of dollars of repo transactions in its normal course of business for financing purposed ("ordinary repo" or "traditional repo" transactions).[3] Lehman treated these ordinary repo transactions as short term borrowings or financing transactions for accounting and financial reporting purposes.[4]

An ordinary repo transaction consists of several elements:

- Since the transferring company is typically obligated to repurchase the transferred securities within seven to ten days, the securities remain on the company's balance sheet.
- The company transferring the securities receives cash. Accordingly, the company's total assets increase.
- On the other hand, the repo transaction creates the obligation for the transferring company to repay the cash borrowed. Accordingly, the company's total liabilities increase.[5]

While simplified and for illustrative purposes only, the following illustrations demonstrate the impact of an ordinary repo transaction and the subsequent paying down of liabilities, both on Lehman's balance sheet and on its leverage ratio. For illustrative purposes, a simplified definition of leverage is used.[6]

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[1] Valukas Report, quote, p. 732 (footnote 2848).
[2] Valukas Report,quote, p. 751.
[3] Valukas Report, quote, p. 751.
[4] Valukas Report, p. 768-769.
[5] Valukas Report, p. 756-757 and 767-769
[6] Leverage is calculated by dividing the total assets by the amount of equity.

Assume that Balance Sheet 1 below is the opening balance sheet for Lehman:

Assets		**Liabilities**	
Cash	0	Debt	50
Securities	20		
Other assets	80	Equity	50
Total	100		100
Leverage	2		

Balance Sheet 1

Balance Sheet 2 shows the impact of an ordinary repo transaction with $ 10 on Lehman's balance sheet. First, Lehman transfers securities with a value of $ 10, but these securities remain on its balance sheet. Second, Lehman receives $ 10 in cash, thereby increasing total assets by $ 10. Third, the transaction creates the obligation to repay the cash borrowed, thereby increasing total liabilities by $ 10.

Assets		**Liabilities**	
Cash	10	Debt	60
Securities	20		
Other assets	80	Equity	50
Total	110		110
Leverage	2,2		

Balance Sheet 2

Balance Sheet 3 below shows the impact of an ordinary repo followed by the use of the cash borrowing to pay down liabilities. With the repayment of liabilities, both cash and debt decrease by $ 10 compared to Balance Sheet 2 showing only the repo transaction. As the balance sheet demonstrates, the effect of the repo transaction followed by the use of the cash borrowing to pay down liabilities is neutral compared to Balance Sheet 1.

Assets		**Liabilities**	
Cash	0	Debt	50
Securities	20		
Other assets	80	Equity	50
Total	100		100
Leverage	2		

Balance Sheet 3

After conducting an ordinary repo transaction, Lehman would repay the cash plus interest to the lender typically within seven to ten days and the lender would return the securities inventory. The difference between the cash received from the lender and the value of the transferred securities is referred to as the "haircut" on the repo transaction. In an ordinary repo transaction, the haircut was typically approximately 2%, while the haircut in a Repo 105 transaction was required to be at least 5%.[7]

Repo 105 transactions were otherwise nearly identical to ordinary repo transaction in the sense that Lehman used the same documentation to execute both repo transactions, the same securities were used as collateral for the borrowings, and the counterparties in both repo transactions were the same. The critical difference between Repo 105 transaction and ordinary repo transactions was that Lehman accounted for the first as "sales" instead of financing transactions.[8] Lehman did so based on the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 140 ("SFAS 140"), *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities,* which allows the transferring party to account for a repo transaction as a "sale" under certain circumstances.[9] To this end, LBIE obtained an opinion letter from the Linklaters law firm in London, permitting it to treat Repo 105 transactions as a "sale" under SFAS 140. Since Lehman was unable to find a United States law firm that would provide it with a similar opinion letter, United States-based Lehman entities had to transfer their securities to LBIE if they wished to engage in a Repo 105 transaction. LBIE would then conduct the transaction on their behalf. [10]

The characterisation of Repo 105 transactions as "sales" opposed to financing transactions leads to several consequences:

- Since the transactions are considered sales, the securities concerned are removed from the balance sheet of the transferring company, although that company is obligated to repurchase these securities within typically seven to ten days. Accordingly, total assets decrease.
- However, the decrease in assets is offset as a result of the incoming cash borrowings from a Repo 105 transaction. Therefore, unlike in an ordinary repo transaction, total assets remain the same.

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[7] Valukas Report, p. 767.
[8] Valukas Report, p. 732, 770-771.
[9] Valukas Report, p. 754-755.
[10] Valukas Report, p. 740.

- The obligation to repay the cash borrowing is not reflected on the balance sheet, even though the economic substance of the transaction is a borrowing. Therefore, total liabilities also remain the same.[11]

Assuming again that Balance Sheet 1 is the opening balance sheet for Lehman, Balance Sheet 4 below demonstrates the impact of a Repo 105 transaction with $ 10 on Lehman's balance sheet. First, Lehman transfers securities with a value of $ 10 to the lender, thereby reducing assets by $ 10. Second, this reduction is offset by the incoming cash borrowings of $ 10. Third, the obligation to repay the cash is not recorded.

Assets		**Liabilities**	
Cash	10	Debt	50
Securities	10		
Other assets	80	Equity	50
Total	100		100
Leverage	2		

Balance Sheet 4

Balance Sheet 5 below shows the impact of a Repo 105 transaction followed by the use of the cash borrowing to pay down liabilities. With the repayment of liabilities, both cash and debt decrease by $ 10 compared to Balance Sheet 4 showing only the repo transaction. As the balance sheet demonstrates, the effect of the repo transaction followed by the use of the cash borrowing to pay down liabilities is a reduction of both total assets and total liabilities and thereby a reduction of Lehman's leverage ratio.

Assets		**Liabilities**	
Cash	0	Debt	40
Securities	10		
Other assets	80	Equity	50
Total	90		90
Leverage	1,8		

Balance Sheet 5

Although it is undisputed that Lehman received cash as part of Repo 105 transactions, the documents and witness testimony reveal that the financing Lehman received under a Repo 105 transaction was not the real or primary purpose for entering into Repo 105 transactions. Lehman could have obtained the same financing at a lower cost by engaging in ordinary repo

[11] Valukas Report, p. 756-757 and 774-775.

transactions with substantially the same counterparties using the same assets involved in Repo 105 transactions.[12]

At the moment that a Repo 105 transaction was conducted, Lehman's leverage ratios remained unaffected because total assets and total liabilities did not change, even though Lehmand had borrowed in effect billions of dollars. However, while the Repo 105 transaction itself had no impact upon net leverage, Lehman subsequently used the cash borrowing to pay down different liabilities, thereby reducing the firm's reported leverage ratios.[13] Lehman's primary motive for undertaking tens of billions of dollars in Repo 105 transactions at or near each quarter-end in late 2007 and 2008 was to temporarily remove the securities from its balance sheet in order to report lower leverage ratios than it actually had.[14]

[12] Valukas Report, quote p. 760-761.
[13] Valukas Report, p. 774-775.
[14] Valukas Report, quote, p. 761.

Annex 7

LEHMAN BROTHERS

May 28, 2008

Presentation to the Federal Reserve
Update On Capital, Leverage & Liquidity

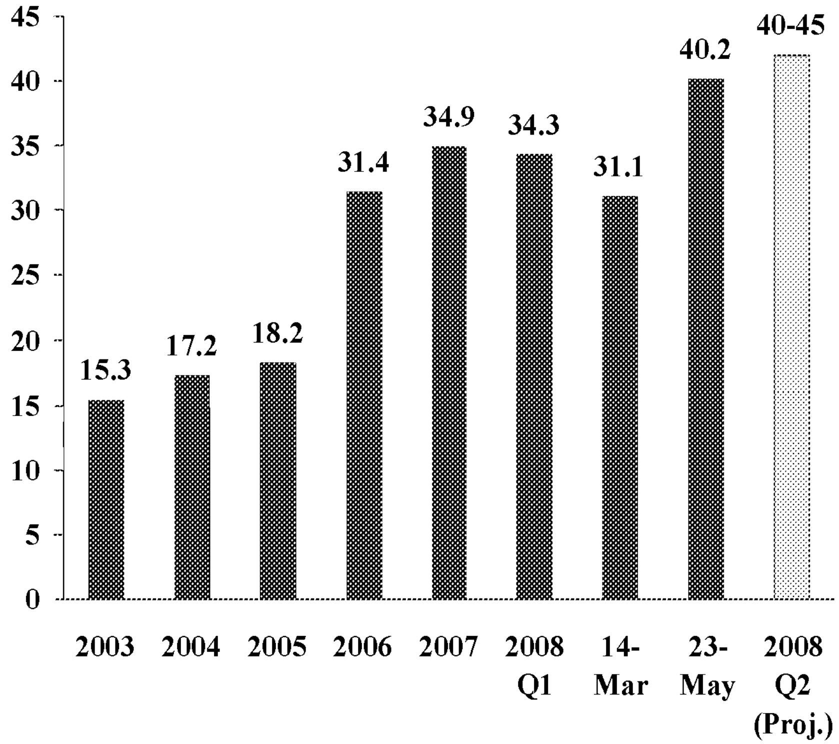
Confidential Presentation

Q2 2008 Capital, Leverage & Liquidity Update

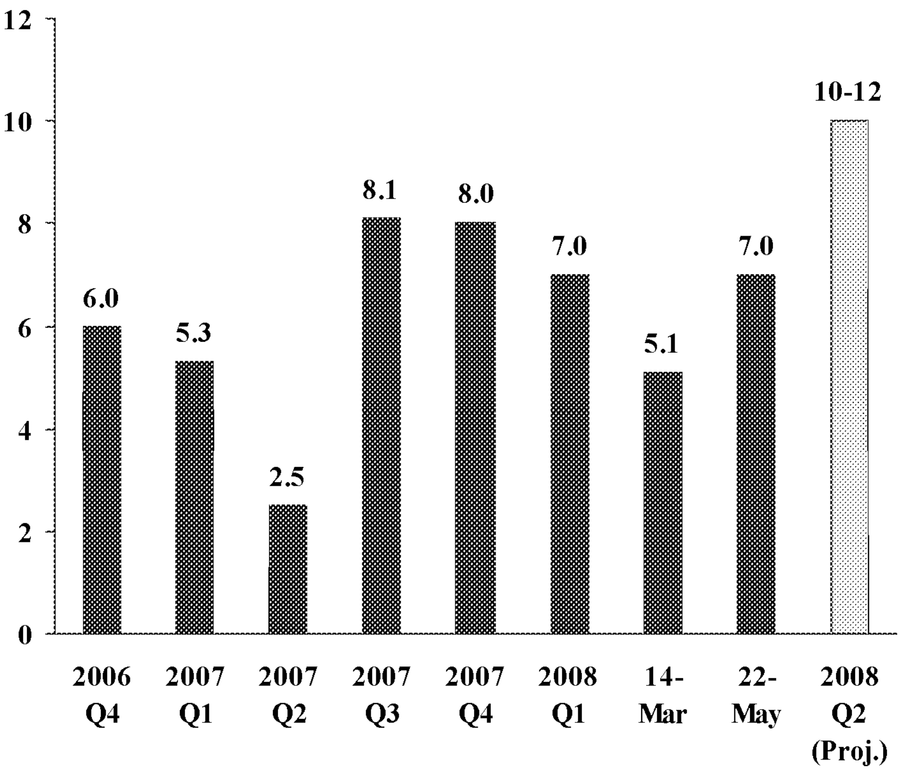
Building A "Liquidity Fortress"

◆ We project ending the quarter with a record liquidity pool of over $40 billion and a record cash capital surplus of over $10 billion

Liquidity Pool ($ Billions)



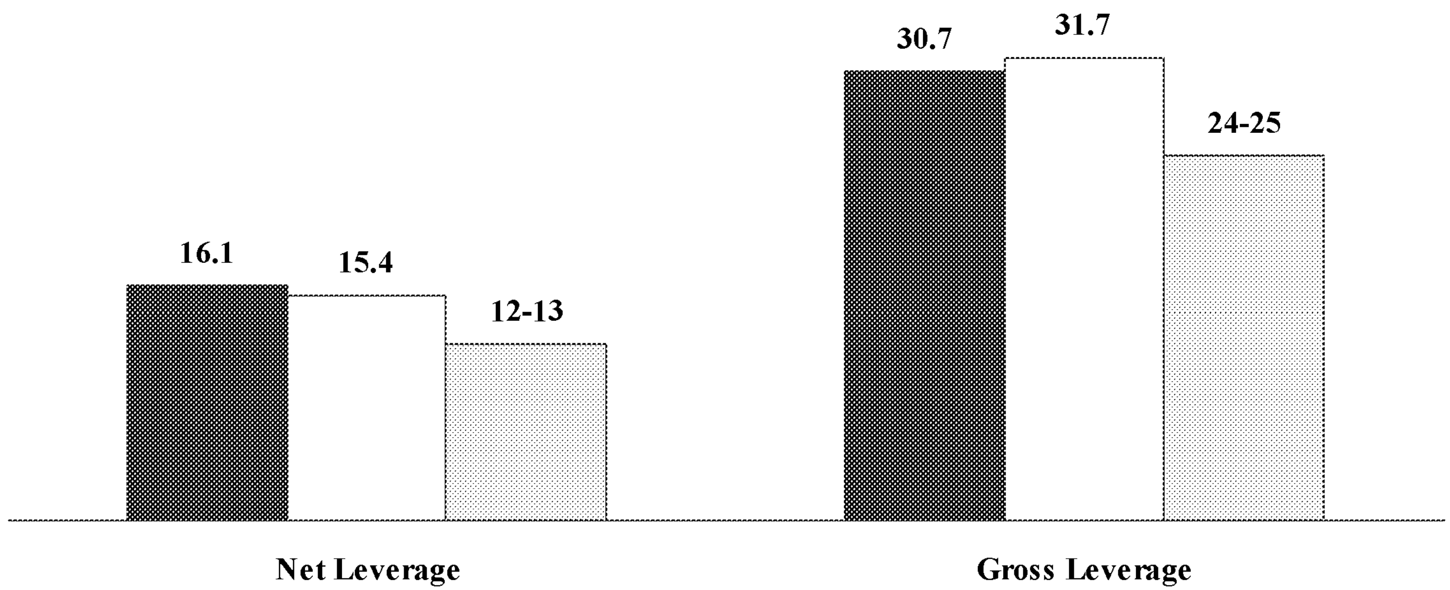
Cash Capital Surplus ($ Billions)



Delevering The Firm

- The Firm set aggressive targets to reduce net balance sheet by around $45 billion and gross balance sheet by over $100 billion relative to its 2008 Q1 levels. This should reduce net leverage to 12-13x and gross leverage to 24-25x
- We have also increased the cost of cash capital and equity charged to the businesses to ensure that they make economic decisions consistent with the Firm's increased cost of funding and equity

Net and Gross Leverage



Net / gross assets ($ B)	373	397	351 (E)	691	786	665 (E)
Leverageable equity ($ B)	23.1	25.7	27.5 (E)			

■ Q4 2007 □ Q1 2008 ▒ Q2 2008 Projection

Strengthening Capital Position

- During the quarter, we issued $9.5 billion in four benchmark issuances
  - $4.0 billion of non-cumulative perpetual convertible preferred stock
    - Dividend of 7.25% per annum
    - More than three times oversubscribed
  - $2.0 billion 30-year subordinated debt
    - Treasuries + 305 bps
    - $4.0 billion of orders within 1 hour
  - $2.5 billion of 10-year senior debt
    - Treasuries + 320 bps
    - $6.5 billion of orders within 1 hour
  - £0.5 billion ($1.0 billion) 10-year senior debt
    - Gilts + 315 bps
    - £0.8 billion of orders within 4 hours

- As a result, we have completed our debt issuance program for the rest of the year
  - We may issue further during the latter part of the year to "pre fund" 2009 debt issuance requirements

Reducing Liquidity Risk Of Secured Funding

- We have increased our overfunding from around $10-15 billion to $15-20 billion – more than half in non-Central Bank eligible collateral – primarily high yield corporates
  - Including excess collateral (i.e., collateral reversed to fill repo tickets), the excess repo capacity stood at close to $30 billion on May 22 – 30% of the Firm and customer collateral funded that day
- We also increased the average tenor of the repo book from 20-25 days to 25-35 days (35-40 days for collateral that cannot be pledged to the Federal Reserve or the ECB)

Non-Traditional [1] Repo Book Metrics

	29-Feb	4-Mar	14-Mar	2-Apr	22-May	3/14 - 5/22 Change
Repo Book ($ Billions)						
Excess collateral	Not available				12.8	
Firm and customer collateral					98.9	
Allocated Collateral	116.4	114.0	115.3	108.3	111.7	-3%
Overfunding	9.2	14.6	12.7	18.0	17.1	35%
Repo Capacity	**125.6**	**128.6**	**128.0**	**126.3**	**128.8**	1%
Excess Repo Capacity	**9.2**	**14.6**	**12.7**	**18.0**	**29.9**	N/A
Average tenor (days)						
Grand Total	25	22	24	25	33	38%
Central Bank Eligible Collateral					*26*	
Non Central Bank Eligible Collateral					*38*	
% Repo Book With Maturities <= 1 Week	58%	58%	57%	52%	46%	-11%

1. *Non-traditional repo book excludes Governments, Treasuries, Government/MBS Agencies and Sovereigns*

Lessons From Bear Stearns Liquidity Event

Key Liquidity Metrics At Lehman Brothers & Bear Stearns

- Lehman Brothers had stronger liquidity metrics at the end of Q1 2008 than Bear Stearns
  - 60% greater balance sheet but 130% greater equity
  - Bear Stearns' short-term debt stood at 1.5x its liquidity pool vs. 1.0x for Lehman Brothers
- Bear Stearns had very few unencumbered assets
  - Half of BSC STD was secured, which might have exacerbated the liquidity crisis in view of the exceptionally low amounts of unencumbered assets
- Bear Stearns was very reliant on customer free credit balances; if it lost these, it would need to quickly create substantial secured funding capacity for equities at a time when lenders would be likely to pull away
- Bear Stearns had almost no margin for error in terms of liquidity management. A reduction in short-term debt or in customer free credit balances would leave it in a precarious liquidity position

Q1 2008 Key Liquidity Metrics ($ Billions)

	Bear Stearns		Lehman Brothers	LEH / BSC
Net balance sheet	254		397	1.6x
Net Leverage	22.6x		15.4x	0.7x
Liquidity pool	17		34	2.0x
STD excluding current portion	16		16	1.0x
Current portion of LTD	10	(E)	19	1.9x
Total short-term debt	26		35	1.3x
Short-term debt / Liquidity pool	1.5x		1.0x	0.7x
Unencumbered assets	14		161	11.5x
Free credit balances	43		13	0.3x

Lehman Brothers Would Have Reacted Differently

Bear Stearns Liquidity Crisis	Lehman Brothers
◆ "At first, some counterparties began pulling back from providing unsecured lending."	◆ No reliance on short-term unsecured funding. Liquidity framework assumes that unsecured debt cannot be rolled in a liquidity event
◆ "Then the same reluctance to deal with Bear was extended to secured lending on less liquid and lower-quality securities."	◆ More conservative secured funding approach – Less liquid assets (e.g., mortgages) funded with cash capital – Overfunding in lower quality collateral (e.g., high yield corporates) to avoid having to rely on new funding – Very well coordinated and proactive program of communicating with our creditors during the liquidity event. All senior management, including Dick Fuld, involved in calling key contacts at counterparties
◆ "Some skittish prime brokerage clients began moving their cash balances elsewhere."	◆ Prime broker business overfunded by repoing long positions to avoid relying on customer free credit balances ◆ Lock ups adjusted on a daily basis during a liquidity event
◆ "As rumors swirled about Bear's financial position, these actions in turn influenced other counterparties."	◆ Treasury, Investor Relations and Corporate Communications are in constant communication with key stakeholders. Significant amount of senior management's time spent to address rumors and to reassure key stakeholders
◆ "Clients and lenders began also to reduce their exposure to Bear Stearns. This, in turn, created large volumes of novations of derivative contracts."	◆ No change in "business as usual" philosophy. Disputed calls in derivatives businesses are normal considering lack of transparent marks in the OTC derivatives markets

- SEC Chairman Cox, Address to the Security Traders 12th Annual Washington Conference, May 7, 2008

Recent Modifications In Funding Strategy

- Since last summer, when the funding and trading environment became more challenging, we have made a series of modifications in our funding strategy in order to strengthen our liquidity fortress
  - Increased our cash surplus targets from $2-5 billion to $4-7 billion
  - Front loaded our issuance program – completed our benchmark issuance plan by early May
  - Increased funding of illiquid assets in our bank entities – particularly Lehman Brother Bankhaus
  - "Overfund" repos for harder to fund asset classes, such as high yield corporates, to mitigate risk of loss of secured funding capacity
  - Increased our CP program to mitigate risk of operational friction in a very volatile environment
  - Started a program to securitize illiquid assets such as corporate loans and commercial whole loans. The resulting securities, which are rated, can then be pledged to counterparties or Central Banks
  - Discuss our liquidity management and position more proactively with creditors, trading counterparts, rating agencies and other stakeholders

- As a result, we were well prepared to face the extraordinarily difficult funding environment of the week of March 17
  - Started the week with a strong liquidity position
  - Entire Firm was fully engaged in defending the "Liquidity Fortress"
    - Active communication with clients with quick escalation to senior management if necessary
      - Lehman senior management proactively involved in calling their counterparts at key relationships to put pressure on traders who refused to trade with Lehman
    - Great coordination between Front Office, Finance and Operations to minimize any operational friction

Liquidity Event Of Week Of March 17 (I) – Broker Dealers

- During the week of March 17, Lehman Brothers was under significant funding pressure, which we were able to mitigate through a series of actions
  - Secured Funding
    - We started the week with $13 billion of repo overfunding in harder to fund asset classes
    - We also funded an additional $4.5 billion of collateral through Bankhaus where we have been building excess capacity since the summer of 2007
  - Prime Broker
    - We absorbed the loss in prime broker cash balances by relying on the LBIE "excess" liquidity pool (which, because it was "trapped," was not included in the LBHI liquidity pool) and by recalculating the lock up on a daily basis
    - LBI experienced a very modest ($75 million) loss of liquidity in prime broker cash balances that week.
- As a result, the loss of liquidity experienced by the broker dealers was absorbed within the broker dealers and did not require the use of the Holding Company liquidity pool

Key Liquidity Inflows/Outflows During Week Of March 17 ($ Billions)

	Secured Funding			Prime Broker (LBIE)		
	Decreases	Increases/ Upgrades	Balance	Decreases	Increases	Balance
17-Mar	(8.7)	3.2	(5.5)	(5.0)	0.8	(4.2)
18-Mar	(3.8)	-	(3.8)	(2.7)	2.8	0.1
19-Mar	(3.0)	5.1	2.1	(1.2)	1.5	0.3
20-Mar	-	-	-	(1.2)	1.1	(0.1)
21-Mar	Market Closed (Good Friday)					
Total	**(15.5)**	**8.3**	**(7.2)**	**(10.1)**	**6.2**	**(3.8)**

Mitigation strategy				
	Overfunding repo book	2.7	LBIE excess liquidity pool	3.8
	Bankhaus funding	4.5		
	Total	7.2		
"Dry powder" : Overfunding repo book		~10		

Liquidity Event Of Week Of March 17 (II) – Holdings

- Holdings also faced funding pressure – primarily due to the reduction of its commercial paper program and, to a lesser extent, the posting of derivative margins
- We mitigated this loss of liquidity by:
  - Increasing operational effectiveness: we executed on a plan developed over the weekend to reduce the amount of trapped cash in LBI and increase funding in Bankhaus. These actions generated approximately $3 billion on March 17
  - Launching the Freedom CLO and executing a previously planned European securitization
  - Drawing on our European committed facility. We draw on our committed facilities 33-50% of the time to avoid any signaling effect

Key Liquidity Inflows/Outflows During Week Of March 17 ($ Billions)

	Commercial Paper				Derivatives in/(out)flows	Operational efffectiveness	Other	LBHI Liquidity Pool			
	Maturities	Issued	Balance	O/S (EOD)	Balance	Balance	Balance	SOD	EOD	Change	Other Details
17-Mar	(6.2)	2.2	(4.0)	7.9	(0.0)	3.0	0.0	31.1	30.1	(1.0)	
18-Mar	(3.2)	3.7	0.5	8.4	(1.2)	(0.4)	(0.1)	30.1	28.9	(1.2)	
19-Mar	(3.5)	3.3	(0.2)	8.2	0.9	-	0.7	28.9	30.3	1.4	European mortgage securitization
20-Mar	(3.1)	3.4	0.3	8.5	(1.0)	-	3.1	30.3	32.7	2.4	Draw on committed facility, Freedom
21-Mar					Market Closed (Good Friday)						
Total	**(16.0)**	**12.6**	**(3.4)**		**(1.3)**	**2.6**	**3.7**	**31.1**	**32.7**	**1.6**	

Lessons From Bear Stearns Liquidity Event

- The Bear Stearns liquidity event highlighted the liquidity risk in the broker dealers, specifically secured funding risk and prime broker liquidity risk
  - Secured funding capacity disappeared for harder to fund assets such as mortgages or high yield securities, which we fund with cash capital (mortgages) or which we overfund (high yield securities)
  - As prime broker clients withdrew their free credit balances, the business started consuming cash and Bear Stearns was unable to find new secured funding capacity to replace the lost cash. This is the reason why we structured the business to be cash generative

- Although the mitigation of both of these risks was already included in our Funding Framework, the speed at which the crisis evolved ($17 billion liquidity loss at Bear Stearns in 48 hours) made us refine our liquidity stress scenario
  - Revised liquidity stress scenario is <u>significantly</u> more conservative than what we experienced during the week of March 17

Liquidity Stress Scenario Assumptions

Loss of Secured Funding

- Repos

	% Rolled	% Lost
Governments and Agencies	100%	0%
Corporates		
High grade	80%	20%
High yield	20%	80%
Asset-backed		
High grade	50%	50%
High yield	0%	100%
Commercial paper	80%	20%
Munis	50%	50%
Equities / Converts		
Major index (E1)	80%	20%
Other index (E2/C1)	20%	80%
Non index (E3/C2)	0%	100%
Collateral upgrade (E1)	90%	10%

- Munis TOB – 7 day put exercised on day 1
  - Customer collateral returned /liquidated over 1 week
  - Firm collateral liquidated
- Prime broker
  - Free credit balances withdrawn on day 1
- Dealer-based matched book
  - Unwound to release haircut
- Central banks
  - No PDCF
  - Able to use ECB tender facility through Bankhaus, consistent with normal practice

Loss of Unsecured Funding

- Unsecured debt
  - CP and LCs: 0% roll at maturity
  - Buybacks: $1 billion per month
  - Deposits at US banking affiliates: 80% roll at maturity
    - In practice, no impact on liquidity (operate with significant excess liquidity)
  - Ability to draw on committed facilities same day
- Loan funding
  - Per funding schedule for leveraged loans
  - $2.0 billion per week for unfunded revolvers
- Derivatives
  - Cash collateralization on derivative payables per CSA requested on day 1 (paid on day 2 per industry practice)
  - Margin disputes against us paid on day 3 and 4
  - 2 notch downgrade during second week
- Other
  - $0.5 billion a week to cover operational cash expenses (PE and NPE)
  - Sale of assets at pledge value with an additional 5% writedown

Stress Scenario Assumptions Vs. Week Of March 17

- The assumptions used in our liquidity stress scenario are 3-4 times more severe than what we experienced during the week of March 17.

	% Lost	
	Week of 3/17	Stress Scenario
Secured Funding		
Governments and Agencies	0%	0%
Corporates		
High grade	0%	20%
High yield	13%	80%
Asset-backed		
High grade	7%	50%
High yield [1]	0%	100%
Commercial paper	10%	20%
Munis	0%	50%
Munis TOB program	0%	100%
Equities / Converts		
Major index (E1)	14%	20%
Other index (E2/C1)		80%
Non index (E3/C2)		100%
Collateral upgrade (E1)	3%	10%
Total - Secured Funding	**6%**	**23%**
Prime Broker Free Credit Balances	**30%**	**100%**
Unsecured Funding		
LEH commercial paper	29%	100%
LTD Buybacks ($ Billions)	0.11	0.25
Derivatives		
Cash collateralization per CSA	~25%	100%
Loan funding		
Revolvers ($ Billions)	0.00	2.00

1. Lehman's book was 100% term funded with a weighted average maturity of 57 days.

Stress Liquidity Scenario: Overall Impact

	21-May	22-May	23-May	27-May	28-May	29-May	30-May	2-Jun	Week 3	Week 4	Total
Beginning Cash Position [1]	44.4	25.9	21.2	21.4	19.0	16.9	14.1	14.5	15.3	20.7	**20.7**
Net Loss Secured Funding [2]	(18.3)	(2.7)	0.8	(1.1)	(0.1)	(0.1)	0.9	0.8	8.3	5.1	**(6.5)** Details next slide
Unsecured Funding											
Unsecured Debt											
CP	(4.5)	(0.3)	(0.1)	(0.3)	(0.5)	(0.2)	(0.0)	(0.4)	(1.6)	(0.3)	**(8.3)**
STD excluding CP	(0.1)	(0.1)	(0.1)	(0.1)	(0.0)	(0.0)	(0.0)	(0.0)	(0.0)	(1.2)	**(1.6)**
LTD	(0.0)	-	(0.0)	(0.0)	0.0	(2.4)	(0.0)	(0.0)	(0.3)	(0.1)	**(2.8)**
Buybacks	-	-	-	(0.2)	-	-	(0.2)	-	(0.2)	(0.4)	**(1.0)**
Deposits of Banking Affiliates	-	-	-	-	-	-	-	-	-	-	**-**
Letters of Credit	-	-	-	(0.1)	-	(0.0)	(0.0)	(0.0)	(0.0)	-	**(0.1)**
Committed Facility Drawdown	4.5	-	-	-	-	-	-	-	-	-	**4.5**
Loan Activity											
Syndication	-	-	-	-	-	-	-	-	-	1.7	**1.7**
Draw on commitments	-	-	-	-	(2.0)	-	-	-	(2.0)	(2.0)	**(6.0)**
Funding	-	0.0	0.0	-	-	-	(0.3)	-	(0.2)	-	**(0.4)**
Bankhaus Funding	-	-	-	0.3	0.4	-	-	-	-	-	**0.7**
Derivative Activity											
Posting of Uncalled Collateral	-	(1.6)	-	-	-	-	-	-	-	-	**(1.6)**
Downgrade (2 Notches)	-	-	-	-	-	-	-	(0.3)	-	-	**(0.3)**
Margin Payments	-	-	(0.4)	(0.4)	-	-	-	-	-	-	**(0.7)**
Cash outflows to fund operations (PE, NPE, etc.)	-	-	-	(0.5)	-	-	-	-	(0.5)	(0.5)	**(1.4)**
Total Net Loss Unsecured Funding	(0.1)	(2.0)	(0.5)	(1.3)	(2.1)	(2.7)	(0.5)	(0.7)	(4.7)	(2.8)	**(17.4)**
Ending Cash Position	25.9	21.2	21.4	19.0	16.9	14.1	14.5	14.6	18.1	20.5	**20.5**

1. *$44.4 billion liquidity pool as of 5/21 SOD is comprised of $38.1 billion of Holdings liquidity, $3.6 billion of LBI liquidity (trapped) and $2.7 billion of Bankhaus liquidity. In this stress scenario, which involves significant funding losses at the broker dealers, cash positions become practically fungible across legal entities because LBI and LBIE require additional funding from Holdings and Bankhaus*
2. *Net loss of secured funding also includes the positive impact of the reduction in the funding of prime broker clients and of balance sheet reduction*

Stress Liquidity Scenario: Loss Of Secured Funding

	21-May	22-May	23-May	27-May	28-May	29-May	30-May	2-Jun	Week 3	Week 4	Total
Lost Capacity											
LBJ											
E3 - Non-Major Index Equities (<$5)	0.2	-	-	-	-	-	-	-	0.2	-	**0.4**
	0.2	-	-	-	-	-	-	-	0.2	-	**0.4**
LBIE											
Asset Backs - Investment Grade	0.1	0.0	-	-	0.0	-	0.4	0.0	0.2	0.0	**0.6**
C1 - Investment Grade Convertibles	0.1	-	0.3	-	0.0	0.0	0.0	0.0	0.0	0.0	**0.4**
C2 - Non-Investment Grade Convertibles	0.1	-	0.1	0.0	0.0	0.0	0.0	0.2	0.2	0.0	**0.7**
Corporates - Investment Grade	0.4	0.1	0.0	0.2	0.0	0.0	0.1	0.0	0.0	0.0	**0.9**
Corporates - Non-Investment Grade	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1	**1.0**
E1 - Major Index Equities	0.2	-	0.0	0.0	-	-	0.0	0.0	0.0	0.3	**0.7**
E2 - Non-Major Index Equities	0.1	-	0.1	0.1	0.0	0.0	0.0	0.0	0.5	0.2	**1.1**
E3 - Non-Major Index Equities (<$5)	0.2	0.4	0.1	0.0	0.2	0.0	0.0	0.1	0.2	0.1	**1.4**
EMG (including some Govies)	1.0	0.1	0.1	0.5	0.1	0.0	0.3	0.1	1.0	0.8	**4.1**
Equities Colleteral Exchange (Shorts covering)	2.0	-	-	-	-	-	-	-	-	-	**2.0**
Total LBIE	4.7	0.7	0.7	0.9	0.4	0.1	0.9	0.5	2.3	1.6	**12.8**
LBI											
Asset Backs - Investment Grade	1.4	0.0	-	0.0	-	-	-	-	0.4	0.1	**1.9**
Asset Backs - Non-Investment Grade	0.9	-	-	-	-	-	-	-	0.0	0.8	**1.8**
C1 - Investment Grade Convertibles	0.4	-	-	-	-	-	-	-	-	-	**0.4**
C2 - Non-Investment Grade Convertibles	0.7	-	-	0.2	-	-	-	-	-	-	**0.9**
Corporates - Investment Grade	1.2	-	-	-	-	-	-	-	0.0	0.0	**1.2**
Corporates - Non-Investment Grade	3.2	-	-	0.2	-	-	-	-	-	0.8	**4.2**
E1 - Major Index Equities	0.4	-	-	-	-	-	-	-	0.0	-	**0.4**
E2 - Non-Major Index Equities	1.4	-	-	0.3	-	-	-	0.7	0.4	-	**2.8**
Money Markets	1.8	-	-	0.1	-	-	-	-	-	0.1	**2.0**
Muni	1.6	-	-	-	-	-	-	-	-	-	**1.6**
Private Labels - High Yield	1.7	-	-	0.0	-	-	-	0.2	0.0	0.3	**2.2**
Private Labels - Investment Grade	1.4	-	0.2	0.4	-	-	-	-	0.1	0.0	**2.1**
Total LBI	16.2	0.0	0.2	1.2	-	-	-	0.9	1.0	2.2	**21.6**
Total Lost Capacity	21.1	0.7	0.9	2.1	0.4	0.1	0.9	1.4	3.4	3.8	**34.8**
Mitigants and other stress elements											
LBIE											
Prime Broker Customer Free Credits	(4.0)	-	-	-	-	-	-	-	-	-	**(4.0)**
Prime Broker Reduction	-	-	-	-	-	-	-	1.0	3.0	6.0	**10.0**
Term Overfunding	1.5	0.1	-	0.2	-	-	-	-	(0.8)	-	**1.1**
ECB	0.4	0.2	0.1	0.2	0.0	-	0.2	0.1	0.1	0.1	**1.4**
Bankhaus	0.8	0.4	0.6	0.1	0.2	-	-	0.2	0.4	-	**2.7**
Total LBIE	(1.3)	0.7	0.7	0.6	0.2	-	0.2	1.3	2.7	6.1	**11.2**
LBI											
Prime Broker Customer Free Credits	(4.0)	4.0	-	-	-	-	-	-	-	-	-
Unwinding of Muni TOB Prog. ($6 billlion gross)	-	-	-	-	-	-	(3.0)	-	3.0	-	-
Balance Sheet Reduction	-	-	-	-	-	-	5.0	1.0	7.0	3.0	**16.0**
Writedowns on balance sheet reduction	-	-	-	-	-	-	(0.4)	(0.1)	(0.5)	(0.2)	**(1.2)**
Dealer-based Matched Book Reduction	-	-	1.0	-	-	-	-	-	-	-	**1.0**
Term Overfunding excl. TSLF	7.2	(6.7)	-	-	-	-	-	-	(0.5)	-	-
TSLF Overfunding	0.8	-	0.0	0.4	-	-	-	-	-	0.0	**1.3**
Total LBI	4.0	(2.7)	1.0	0.4	-	-	1.6	0.9	9.0	2.9	**17.2**
Net Loss Secured Funding	(18.3)	(2.7)	0.8	(1.1)	(0.1)	(0.1)	0.9	0.8	8.3	5.1	**(6.5)**

Appendices

Primary Dealer Credit Facility Utilization

- We have limited our use of the Primary Dealer Credit Facility (PDCF) to test trades
  - 7 tests conducted using different types of collateral since its launch – six of which were in the first two weeks
- Last test conducted on April 16
- Average life-to-date utilization of 15% (7 days out of 48) as of May 23

PDCF Utilization ($ Billions)

			Asset Class					
Date	Term Date	$ Amount	CP	Corp	Muni	Pvt LBL	ABS
18-Mar	19-Mar	1.6	1.0	0.5	0.1		
19-Mar	20-Mar	2.3	0.8		1.3	0.3	
20-Mar	21-Mar	2.3	1.7	0.4			0.3
24-Mar	25-Mar	2.7	0.6				2.1
25-Mar	26-Mar	2.1					2.1
26-Mar	27-Mar	2.1					2.1
16-Apr	17-Apr	2.0	0.3		0.5		1.2

Converting Unencumbered Collateral Into Investment Grade Securities

- At a fairly short notice (1-2 weeks), Lehman Brothers can "transform" unencumbered assets such as high yield securities or loans into investment grade securities, which can be treated as any other investment grade securities from a secured funding perspective and a subordinated note/equity perspective, which would be funded with cash capital
- We created $16 billion of additional liquidity through these securitizations YTD

Unencumbered Assets
- High yield securities
- Corporate loans
- Whole loans

⇨

Structuring transaction
- CLO
- Securitization
- CDO

⇨

Output
- Investment grade securities (on a stand alone basis)
- Subordinated note/equity (funded with cash capital)

Selected CLO Transactions (Millions)

	Corporate Loan Value	Senior Investment Grade Notes	Mezz Non-Investment Grade Note	Sub Unrated Note
Freedom Initial *	$2,825	$2,260	$0	$565
Freedom Revised **	$1,926	$1,541	$250	$135
Spruce ***	$1,874	$1,462	$244	$169
Talia ****	€ 1,110	€ 796	€ 0	€ 314

* Senior note rated A
** Senior Note rated A, new Mezz Note rated B and created from decreasing Sub Note in original Freedom. Decrease in overall loan value due to sales/paydowns.
*** Senior Note rated A, Mezz Note rated B.
**** Senior Notes consist of 700mm AAA notes (ECB eligible), 50mm AA notes, and 46mm A notes.

Annex 8

LEHMAN BROTHERS

June 2008

Carlo Pellerani, International Treasurer

2Q 2008 Business and Financial Review

Cautionary Notes

Some of the statements contained in this presentation, including those relating to Lehman Brothers' strategy and other statements that are predictive in nature, that depend on or refer to future events or conditions or that include words such as "expects," "anticipates," "intends," "plans," "believes," "estimates" and similar expressions, are forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. These statements are not historical facts but instead represent only Lehman Brothers' expectations, estimates and projections regarding future events. These statements are not guarantees of future performance and involve uncertainties that are difficult to predict, which may include, but are not limited to, market fluctuations and volatility, industry competition and changes in the competitive environment, investor sentiment, liquidity risks, credit ratings changes, credit exposure, legal and regulatory proceedings and changes. For further discussion of these risks, see "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Lehman Brothers' most recent Annual Report on Form 10-K and Quarterly Report on Form 10-Q. As a global investment bank, the Firm's results of operations have varied significantly in response to global economic and market trends and geopolitical events. The nature of the Firm's business makes predicting the future trends of revenues difficult. Caution should be used when extrapolating historical results to future periods. The Firm's actual results and financial condition may differ, perhaps materially, from the anticipated results and financial condition in any such forward-looking statements and, accordingly, readers are cautioned not to place undue reliance on such statements. Lehman Brothers undertakes no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise. Lehman Brothers' U.S. brokerage business is conducted through its wholly-owned subsidiary, Lehman Brothers Inc.

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Contents

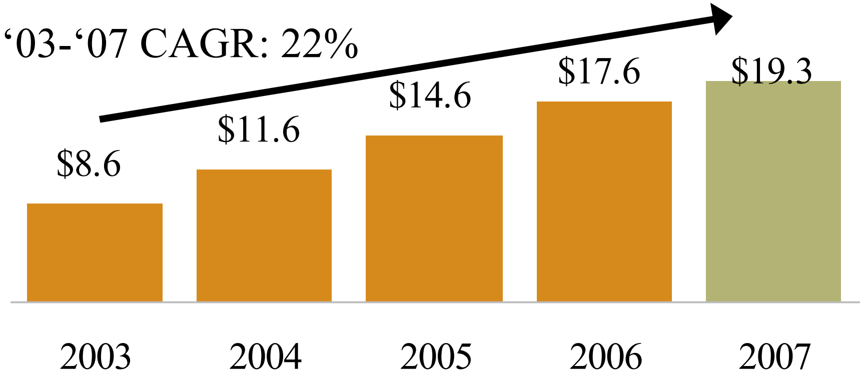
Financial Results

Financial Results

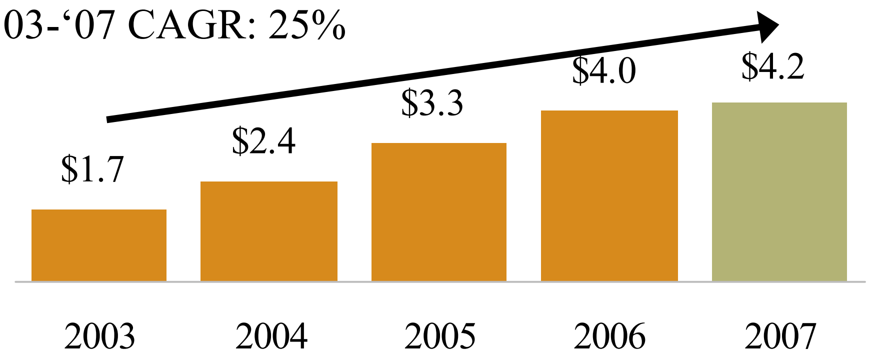
Despite difficult markets Lehman had a record 2007

2007

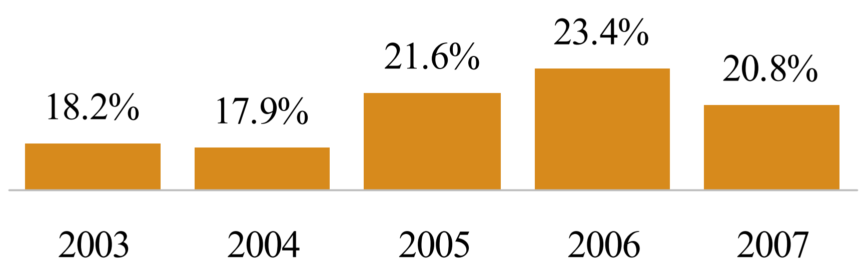
Net Revenues (In Billions)



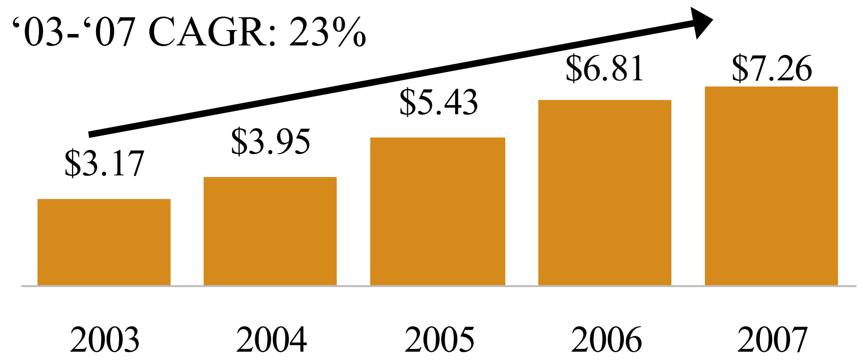
Net Income (In Billions)



Return on Common Equity[1]



Diluted EPS



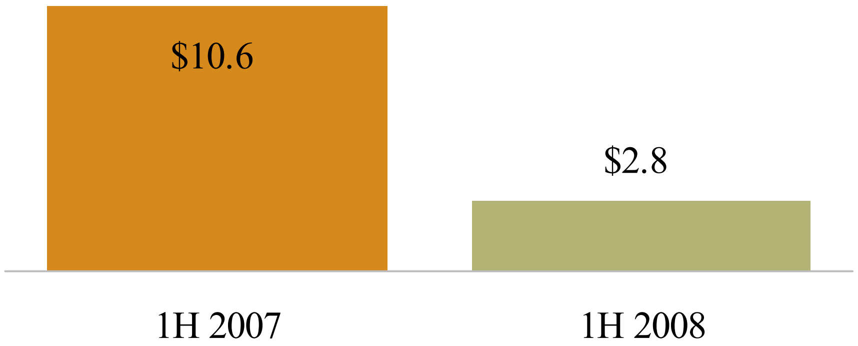
1. Return on average common stockholders' equity is computed by dividing annualized net income applicable to common stock for the period by average common stockholders' equity

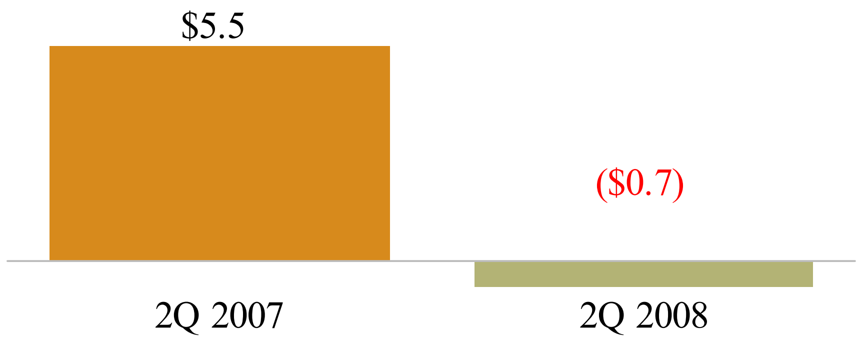
Financial Results

Disappointing 1H 2008

Net Revenues (In Billions)

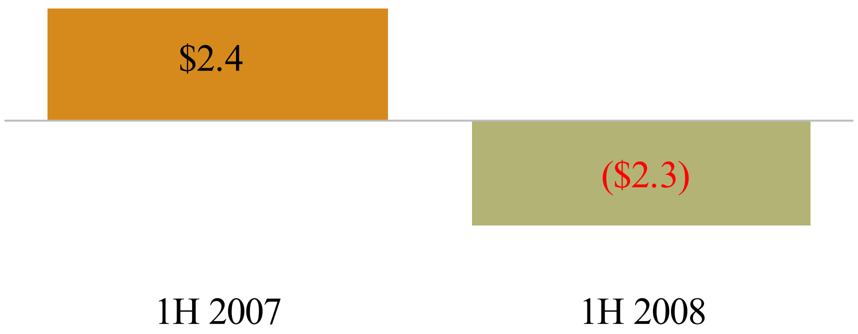
6 months ended 31 May	3 months ended 31 May

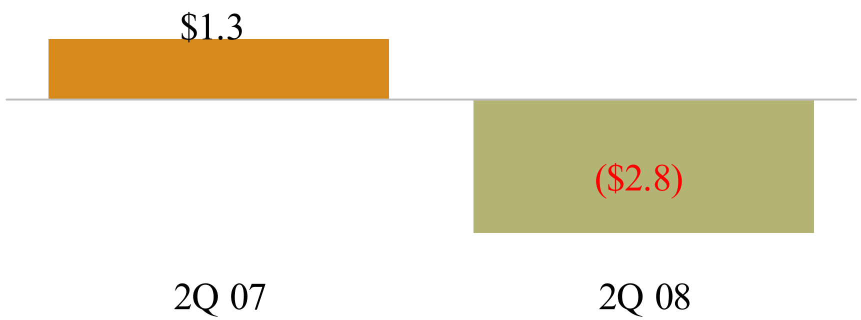




Net Income (In Billions)

6 months ended 31 May	3 months ended 31 May





Financial Results

2Q ’08 performance driven by a number of factors

2Q ’08 Net Revenues (In Billions)

	2Q 2008
Net Revenues	$ (0.7)
Losses :	
Net Writedowns	$ 3.7
Credit & Rate Positions	$ 0.7
Principal investments	$ 0.5
Remaining Revenues	$ 4.2

- Underperformance in 2Q due to hedge ineffectiveness and other losses
- Excluding these, revenues were $4.2B in a challenging environment

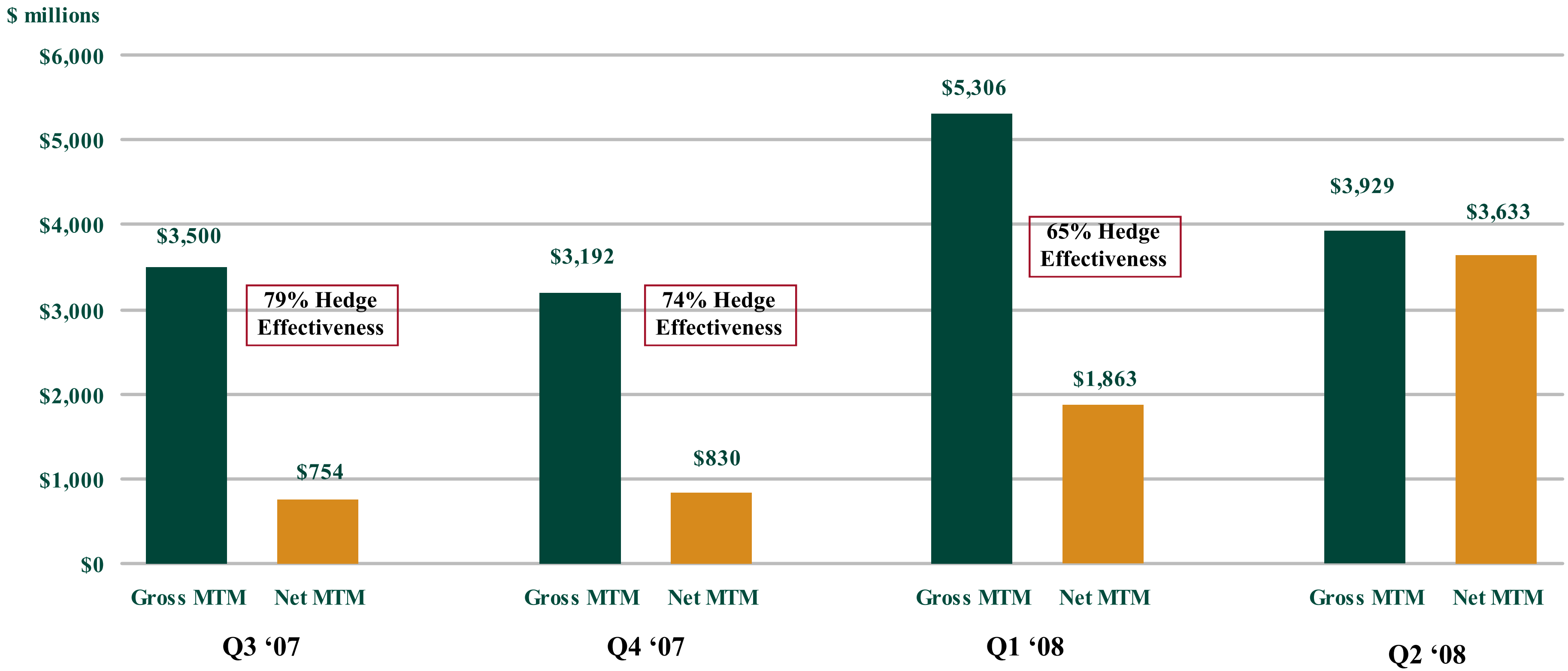
Write Downs (In Billions)

	May 31, 2008 Gross	May 31, 2008 Net	Feb 29, 2008 Gross	Feb 29, 2008 Net
Residential mortgage-related positions	$(2.4)	$(2.0)	$(3.0)	$(0.8)
Other asset-backed related (non-resi)	(0.4)	(0.4)	(0.2)	(0.1)
Commercial mortgage and RE-related positions	(0.9)	(1.3)	(1.4)	(1.0)
Acquisition finance (unfunded and funded)	(0.3)	(0.4)	(0.7)	(0.5)
	$(4.0)	$(4.1)	$(5.3)	$(2.4)
Debt liabilities measured at fair value	0.4	0.4	0.6	0.6
	$(3.6)	$(3.7)	$(4.7)	$(1.8)

Hedge Effectiveness Affected by Cash vs. Derivatives Dislocation

- Hedge Fund liquidations and March events (Peloton, Bear Stearns,Carlyle Capital Corporation)
- Hedge ineffectiveness
- Past hedges that had been 65%-80% effective, proved ineffective this quarter

Hedge Effectiveness [1] Q3 '07 – Q2 '08

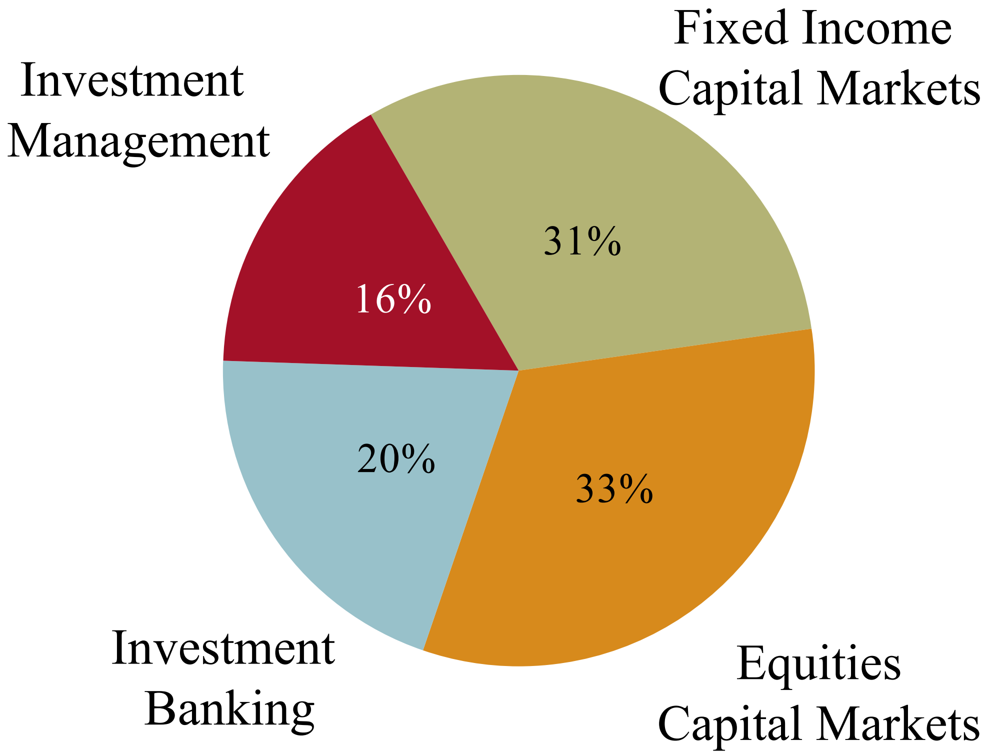


1. Gross MTM do not include the impact of credit spreads on the valuation of Lehman's structured debt

Overview of Lehman's Franchise

Lehman has Built a Well Diversified Franchise

2007 Revenues by Business



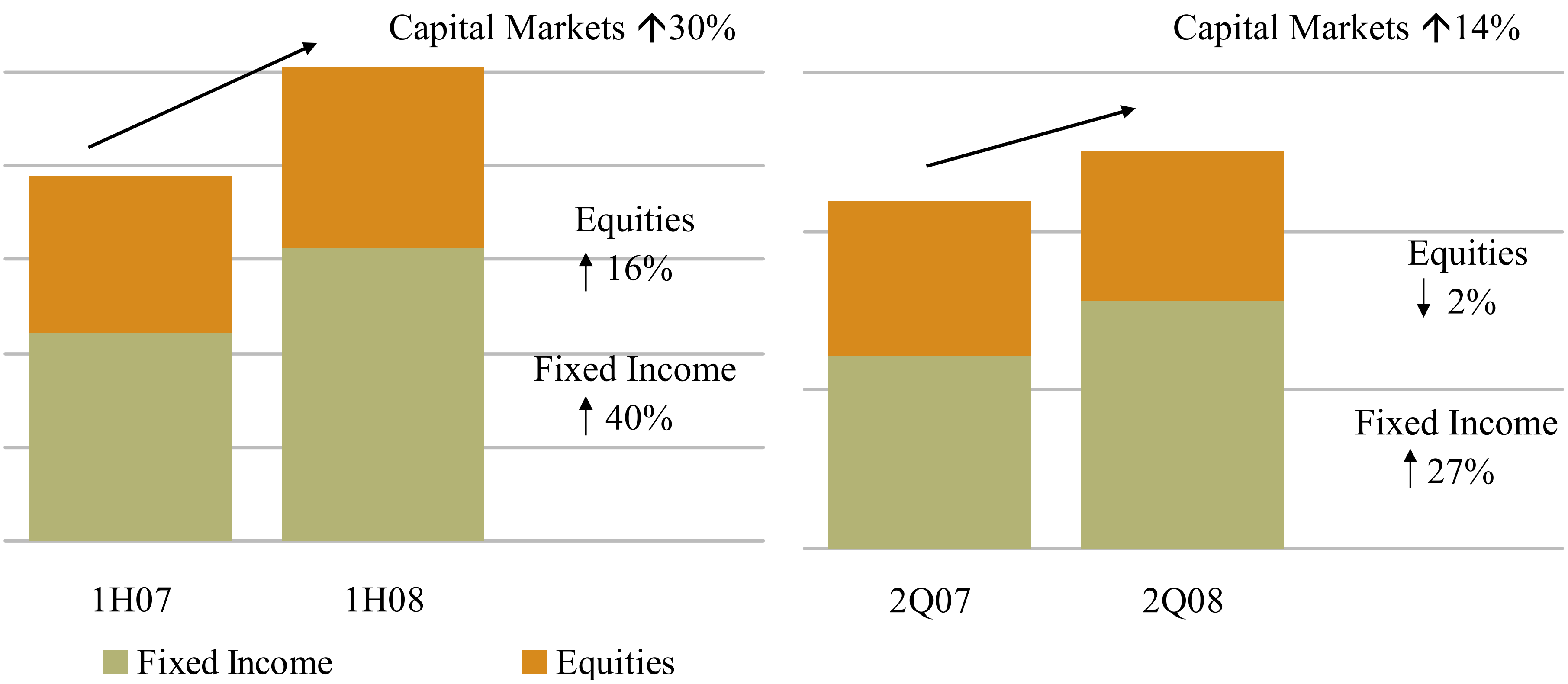
Highlights

- To build diversified growth has been one of our strategic pillars
- In 2007 only 31% of our revenues came from FID
- $13.3B revenues ex FID were produced in 2007. This is larger than the entire firm in 2004

Core Operating Franchise Continues to Deliver

Record Client Revenues in Capital Markets

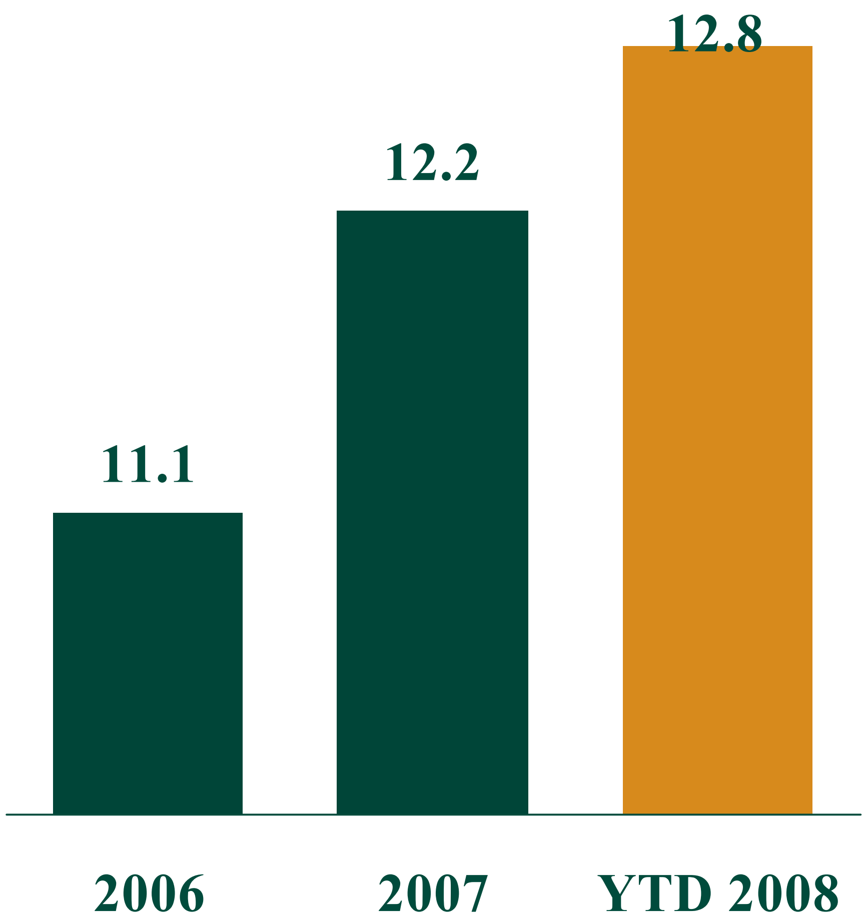
Capital Markets Client Net Revenues



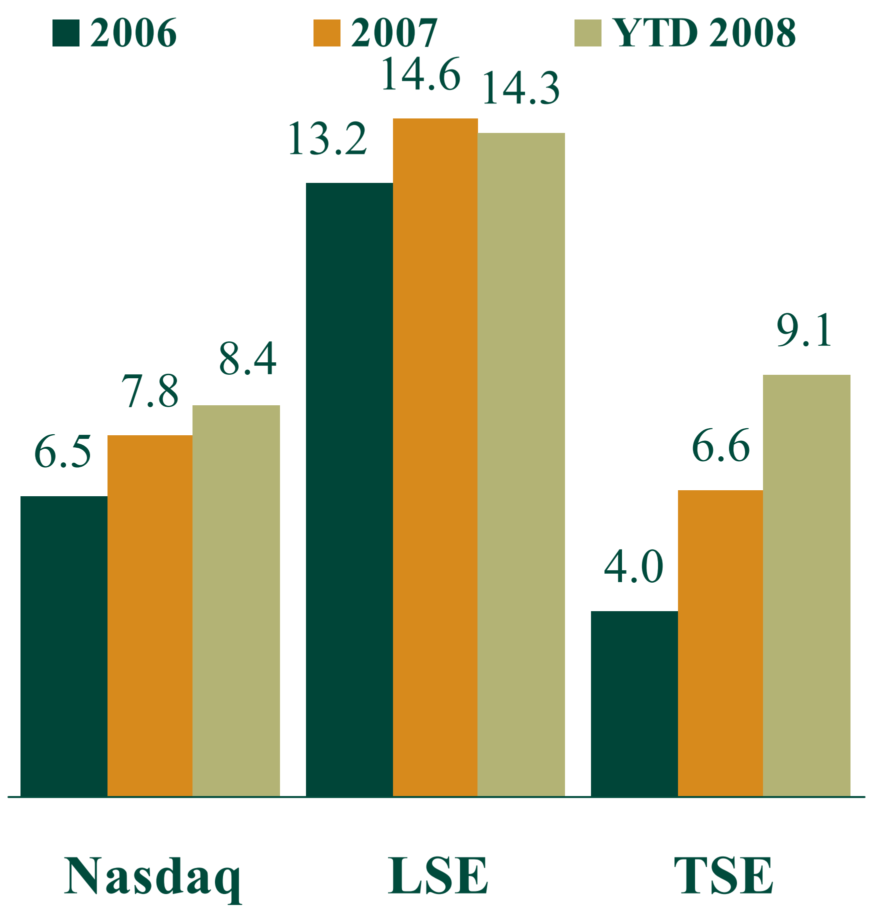
Core Operating Franchise Continues to Deliver (2)

We continue to gain overall market share in capital markets trading [1]

Fixed Income Trading Volume (%)



Equity Trading Volume (%)

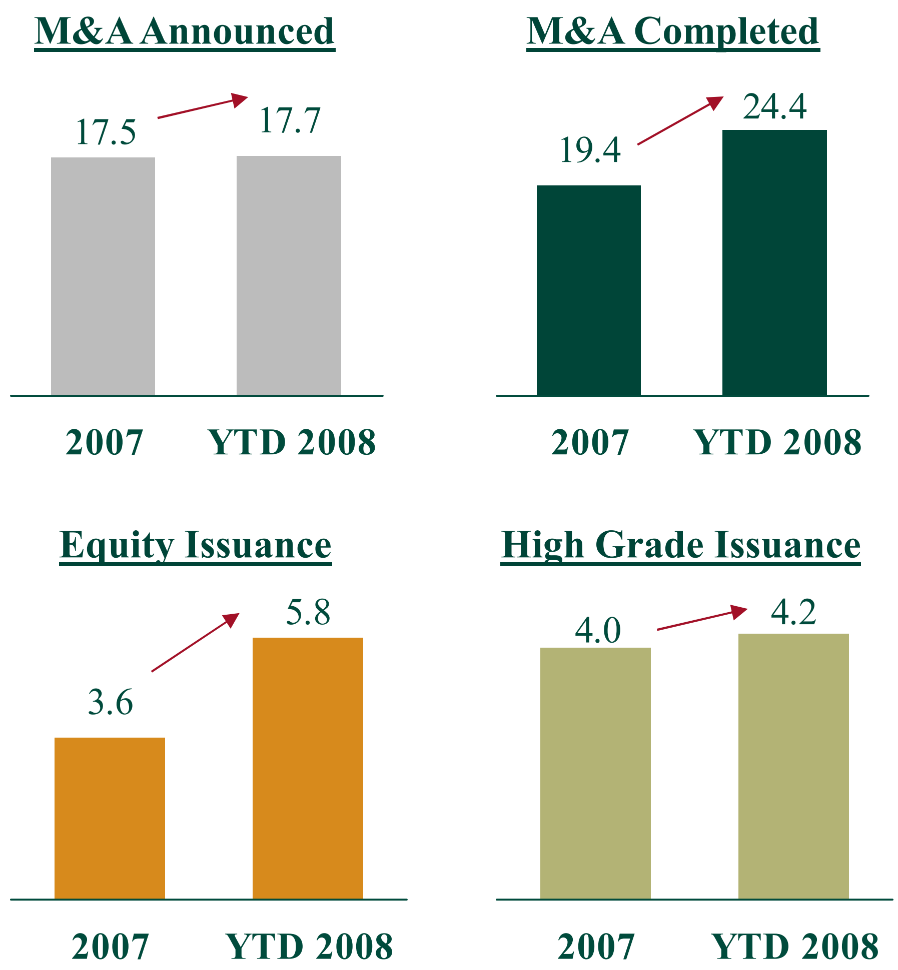


1. Fixed Income- Federal Reserve: all data is fiscal year, YTD is through to May 28; EQ: applicable exchanges & Lehman Brothers; all data is calendar year, YTD through to Mar 31,2008

Core Operating Franchise Continues to Deliver (3)

We are achieving continued market share gains in Investment Banking

Investment Banking Market Share(%) [1]



Franchise Momentum

- Leadership in financial sector recapitalizations and strategic M&A
  - Led-managed 37% of financial recaps in 2008 (through 5/30)
  - $7.0 billion equity and convertible issuance for Washington Mutual
  - $5.2 billion equity and convertible preferred issuance for FNMA
- Ranked #4 in U.S. and # 1 in Asia (ex-Japan) announced M&A
- Advised on 3 of the top 4 completed deals and 3 of the top 10 announced transactions
  - $113B Phillip Morris International spin-off
  - $42B hostile bid by Microsoft for Yahoo
  - $21B acquisition of Imperial Tobacco by Altadis
  - $19B acquisition of Scottish & Newcastle by Carlsberg

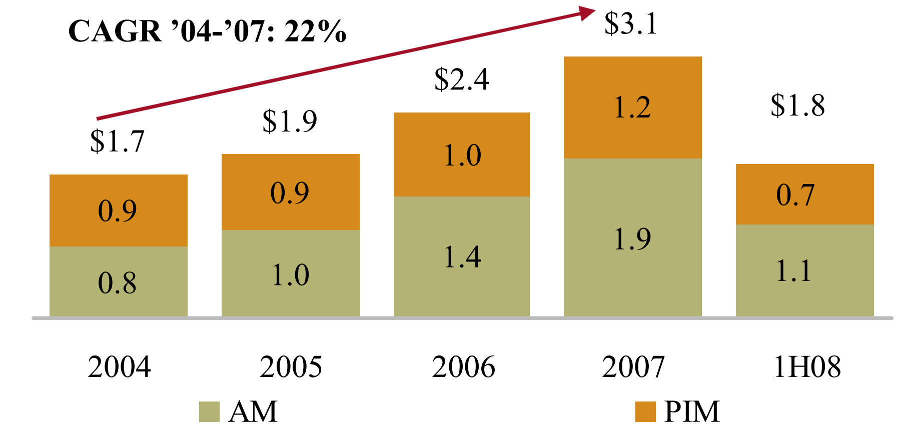
1. Source: Thomson Financial; all data is calendar year, YTD through May 30, 2008.

Core Operating Franchise Continues to Deliver (4)

Strong and consistent momentum in our Investment Management business

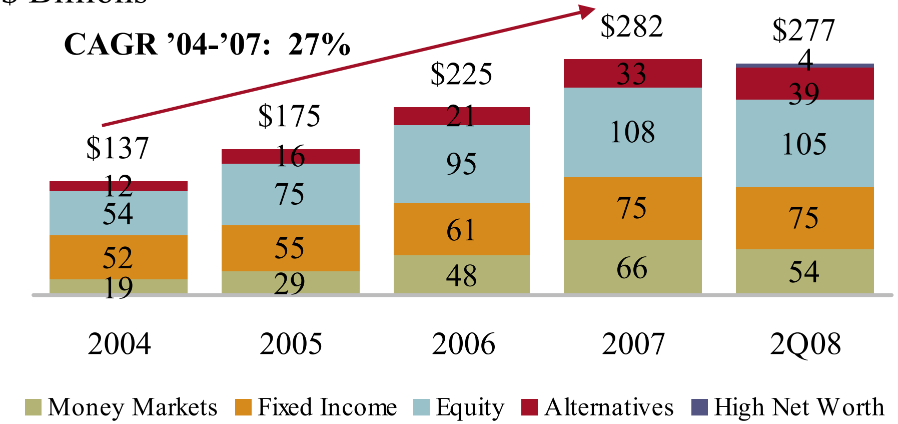
Investment Management Revenues

$ Billions



AUM Growth

$ Billions



Franchise Momentum

- Second highest revenue quarter ever for Investment Management, up 10% from 2Q07
- Record revenues of $352m for Private Investment Management
- Strong and consistent growth platform:
  - From 2004 through 2007, revenues and AUM grew at compounded annual growth rates of 22% and 27%, respectively
- AUM flat in 2Q at $277, including $4 billion of inflows to Alternatives AUM
- Important new mandates with sophisticated institutional investors:
  - Ford Motor Company
  - The Teachers Retirement System of Texas
- Furthermore, we are committed to expanding in Europe and Asia

Capital and Liquidity Management

$11.9 Billion of Capital Raised in 2008…

$1.9 B Preferred Stock	◆ Issued in February 2008 ◆ Non-Cumulative Dividends at 7.95%, Perpetual ◆ Includes Greenshoe of ~$250 million ◆ Deeply Subordinated and senior only to Common Equity ◆ Included as CSE Equivalent Tier 1 Capital
$4.0 B Convertible Preferred Stock	◆ Issued in April 2008 ◆ Non-Cumulative Dividends at 7.25%, Perpetual Initial Conversion Rate 20.0509 per share, equivalent to $49.87 strike per share ◆ Deeply Subordinated and senior only to Common Equity ◆ Included as CSE Equivalent Tier 1 Capital ◆ More than three times over subscribed
$4.0 B Common Equity	◆ Issued in June 2008 ◆ 143 million shares of common stock ◆ Public Offering price $28 per share ◆ Included as CSE Equivalent Tier 1 Capital
$2.0 B Convertible Preferred Stock	◆ Issued in June 2008 ◆ Non-Cumulative Mandatory Convertible Dividends at 8.75% ◆ Initial Conversion Rate between 30.2663 and 35.7142 per share at $33.04 - $28.00 ◆ Deeply Subordinated and senior only to Common Equity ◆ Included as CSE Equivalent Tier 1 Capital

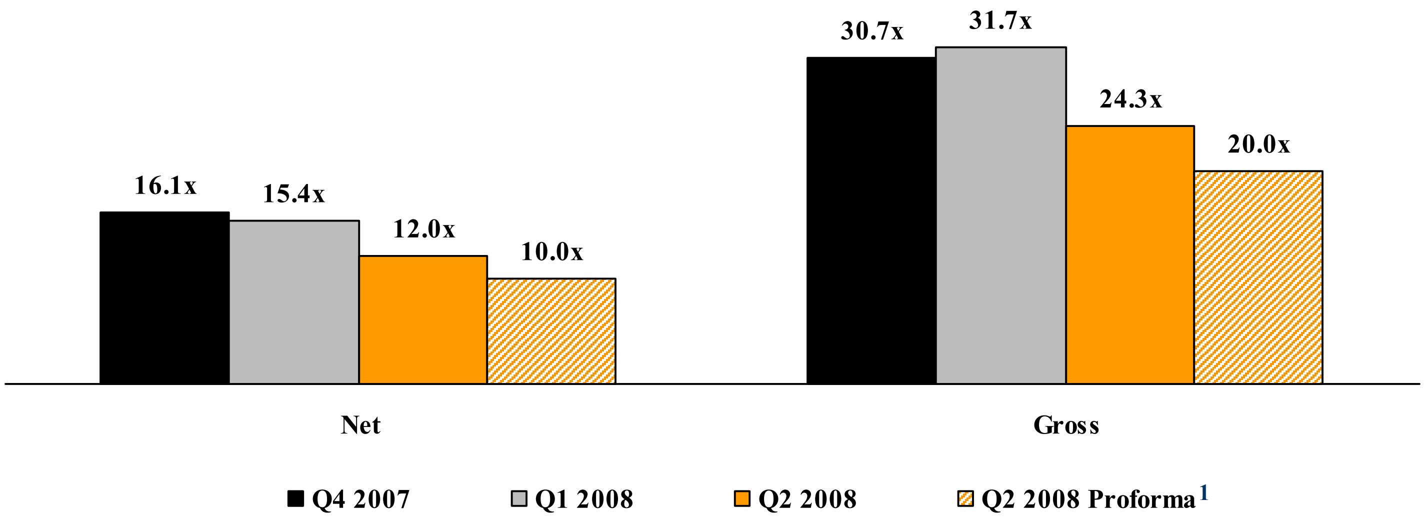
…As Well As Shrinkage of the Balance Sheet…

Net balance sheet (primarily inventory) was $70 billion lower than Q1 '08, and gross balance sheet was $147 billion lower

Gross and Net Balance Sheet

$ billions	*Actual* Q4' 07	*Actual* Q1' 08	*Actual* Q2 ' 08	*Reduction* Q2 '08 vs. Q1 '08
Net Assets	373	397	327	*(70)*
Gross Assets	691	786	639	*(147)*
Leveragable Equity	23	26	27	

Gross and Net Leverage Ratios

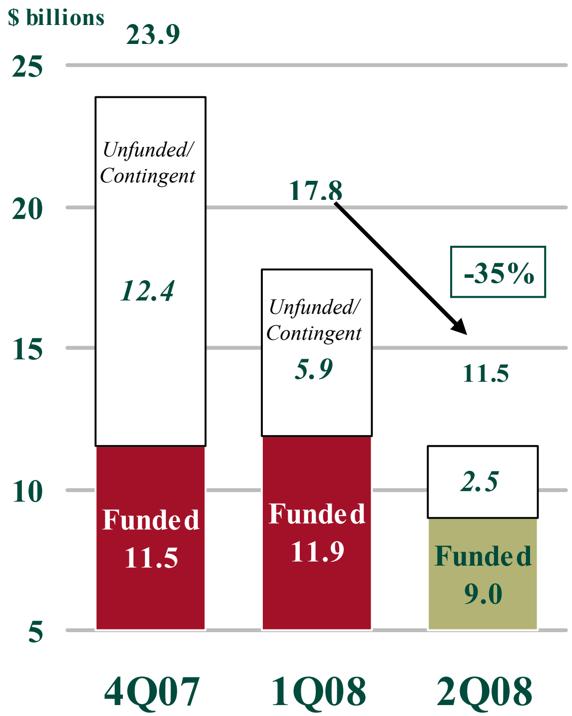


1. Proforma Q2 '08 includes $6.0 billion capital raise on 6/9/08 and $6.0 billion increase in assets

… Including Positions in High –Risk Assets…

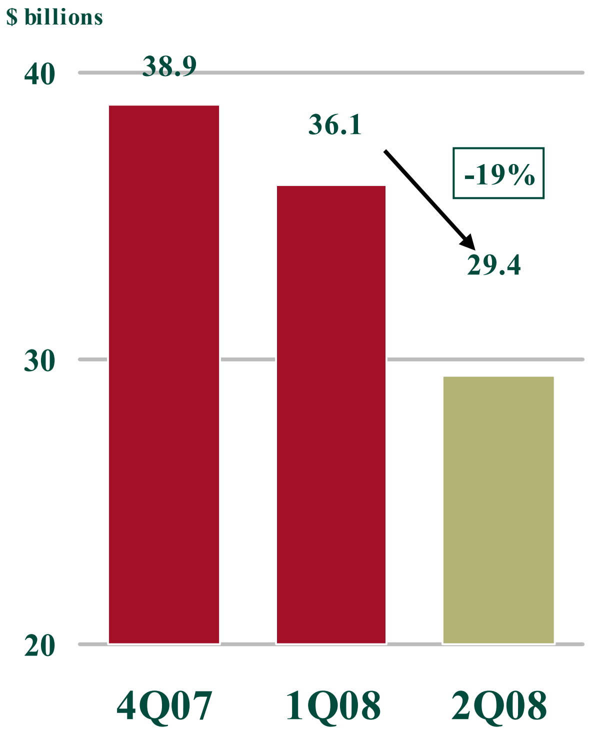
Significant reduction in key risk positions during 2Q '08

High Yield Acq Financing



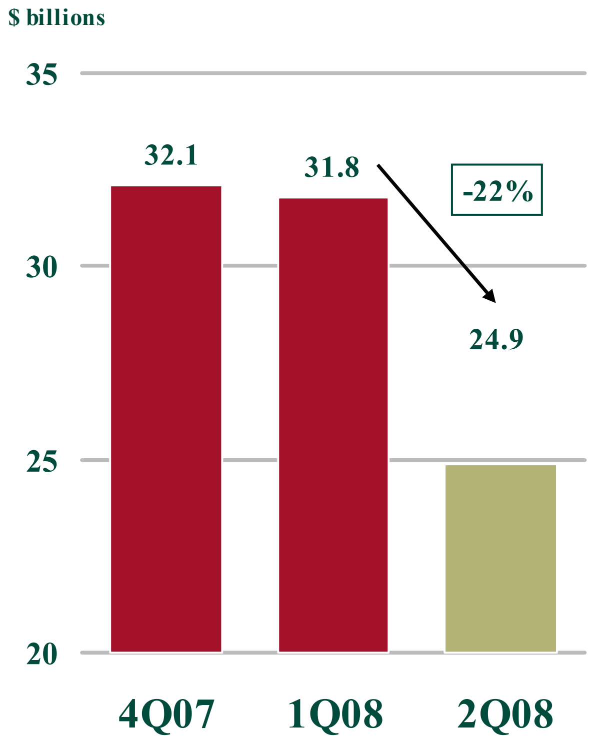
- Steady progress in selling/syndicating

Commercial Mortgages



- Sales across capital structure covering > 170 accounts

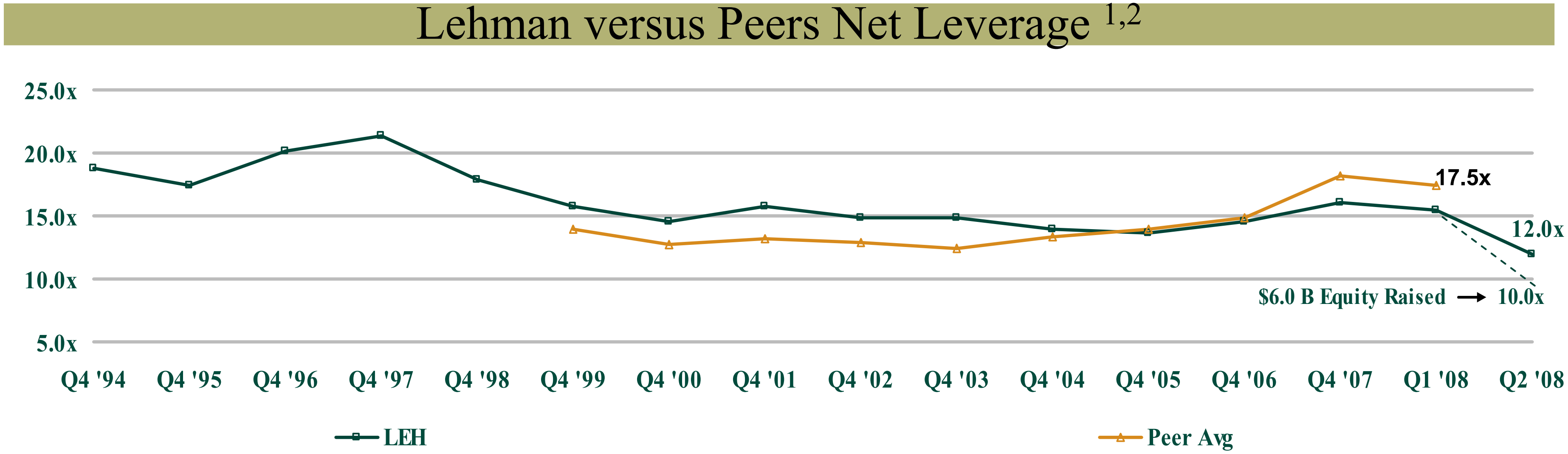
Residential Mortgages

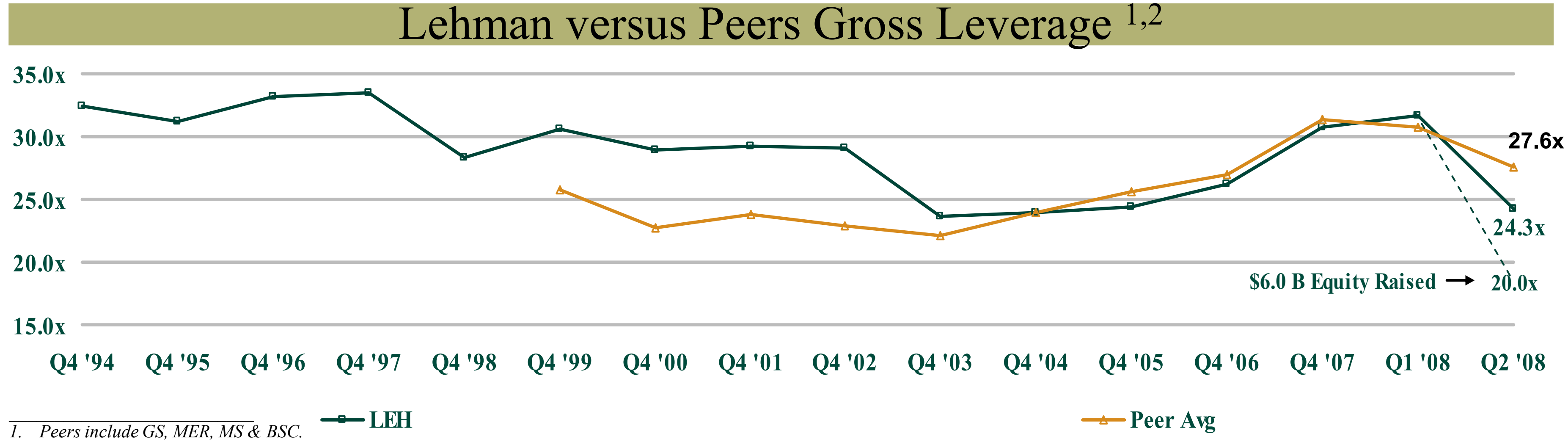


- Active trading market, approximately $11B sold and $6B purchased

…Result in Historically Low Leverage Levels

Lehman ended Q2 '08 with the lowest leverage ratios in its history as a public company



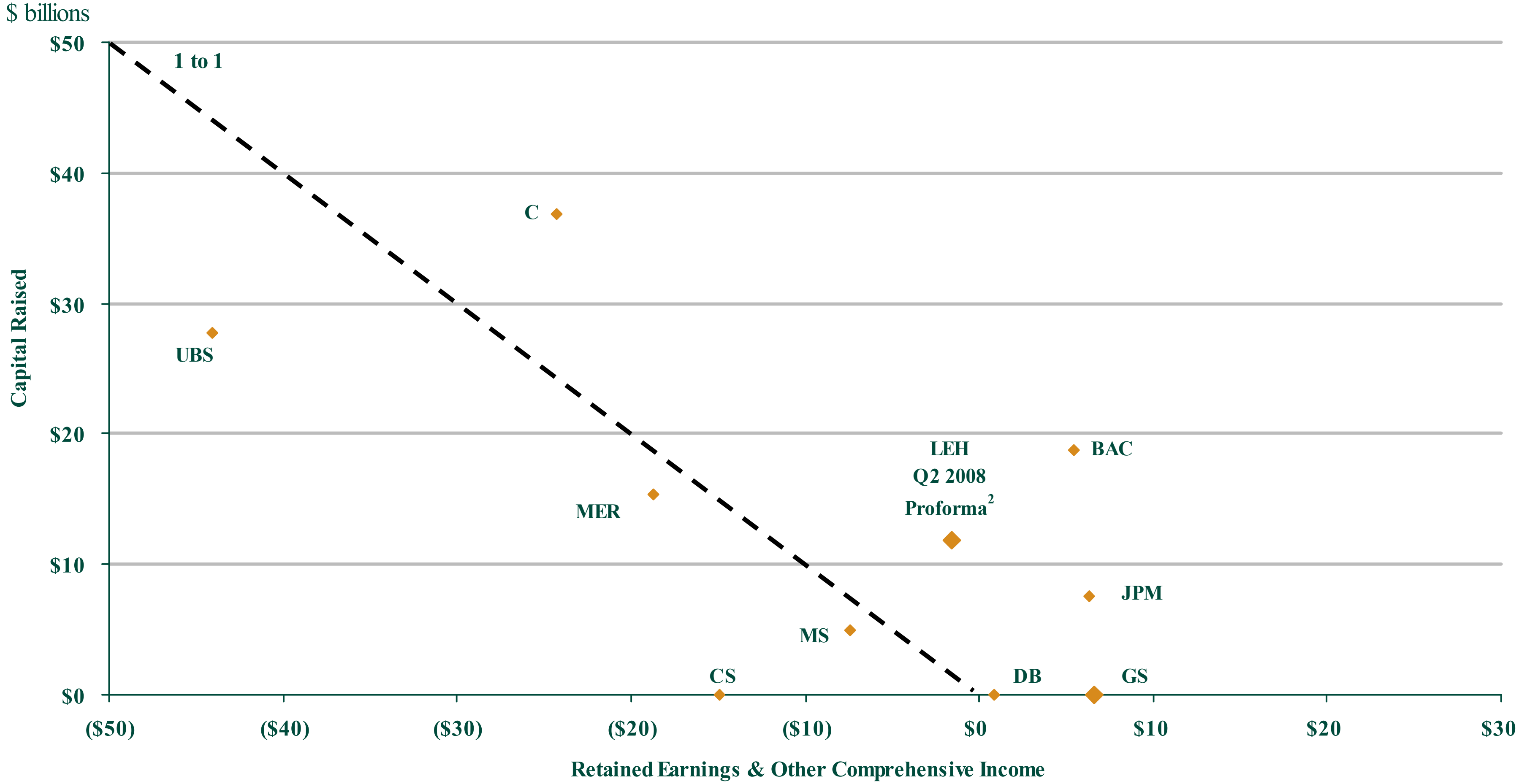


1. *Peers include GS, MER, MS & BSC.*
2. *Gross Peer Average includes estimated GS and MS for Q2 '08 from their respective press releases and MER for Q1 '08. Net peer leverage not available for public numbers.*

Capital Raising More than Enough to Offset Lower Earnings

The Firm has proactively raised capital when markets were opportune and has adequate capital to cover depressed earnings during the current downturn

Capital Raised[1] versus Retained Earnings and Other Comprehensive Income Q3 '07 to Q1 '08



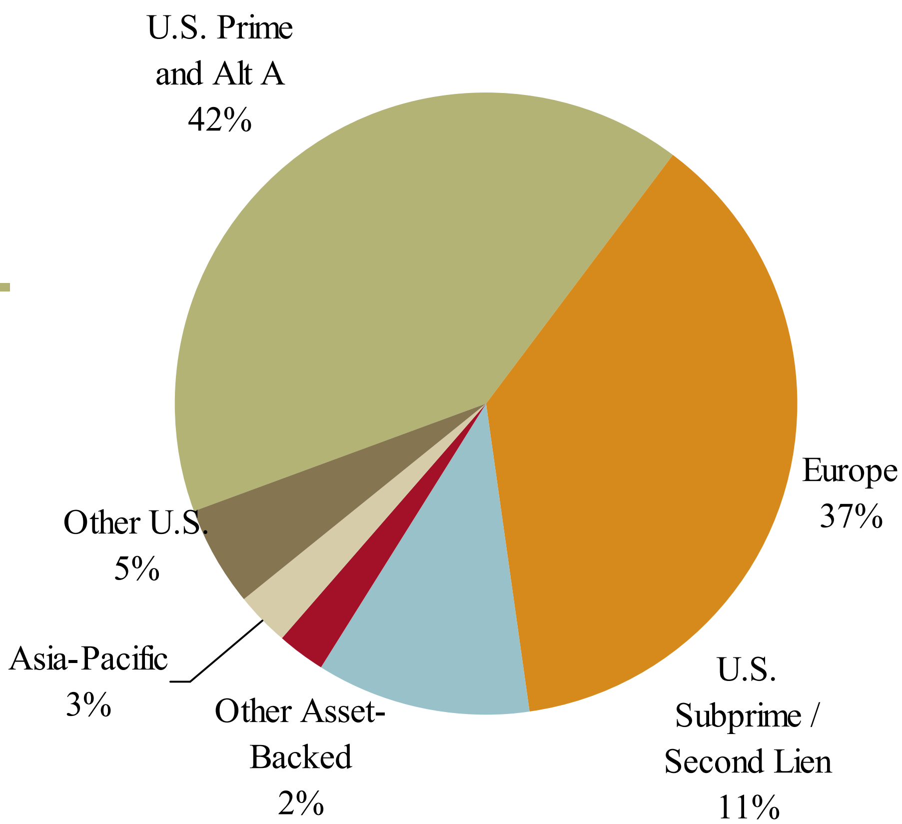
1. *Includes equity capital raised through 5/30/08 for peers*
2. *Includes $6.0 billion capital raise on 6/9/08*

Significant Reduction in Residential Mortgage Inventory…

Aggregate Residential Mortgage-Related Inventory

In $ Billions	Q4 '07	Q1 '08	Q2 '08
U.S. Prime and Alt A	12.7	14.6	10.2
Europe	10.2	9.5	9.3
U.S. Subprime/Second Lien	5.3	4.0	2.8
Other Asset-Backed	1.1	0.9	0.6
Asia-Pacific	0.5	0.7	0.7
Other U.S.	2.3	2.1	1.3
	32.1	31.8	24.9

As of Q2 '08



- Reduction in overall residential mortgage related exposure by 22% versus Q1 '08
- Reduction of 30% for both US Prime/Alt A and Subprime/Second Lien versus Q1 '08

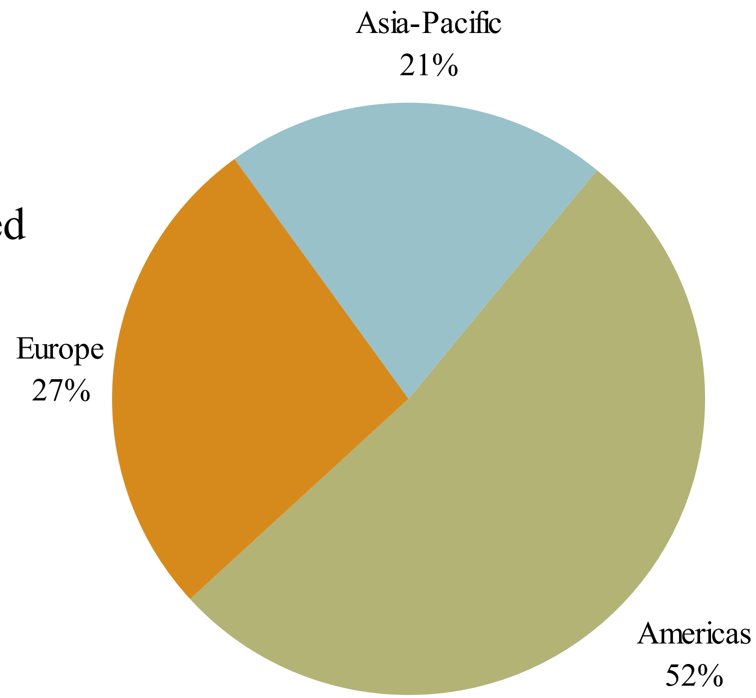
…As Well As Commercial Mortgage Inventory…

Aggregate Commercial Mortgage Related-Inventory

In $ Billions	Q4 '07	Q1 '08	Q2 '08
Whole loans	26.2	24.9	19.9
Securities & Other	12.7	11.2	9.5
Real Estate held for sale	12.8	12.9	10.4
	51.7	49.0	39.8

- Commercial mortgage inventory is well diversified
  - $20.9 billion in US
  - $10.7 billion in Europe
  - $8.2 billion in Asia
- Reduction in overall commercial mortgage related exposure by 19% versus Q1 '08
- Weighted average LTV of senior whole loans is 76% and mezzanine whole loans is 78%
- 94% of securities are investment grade

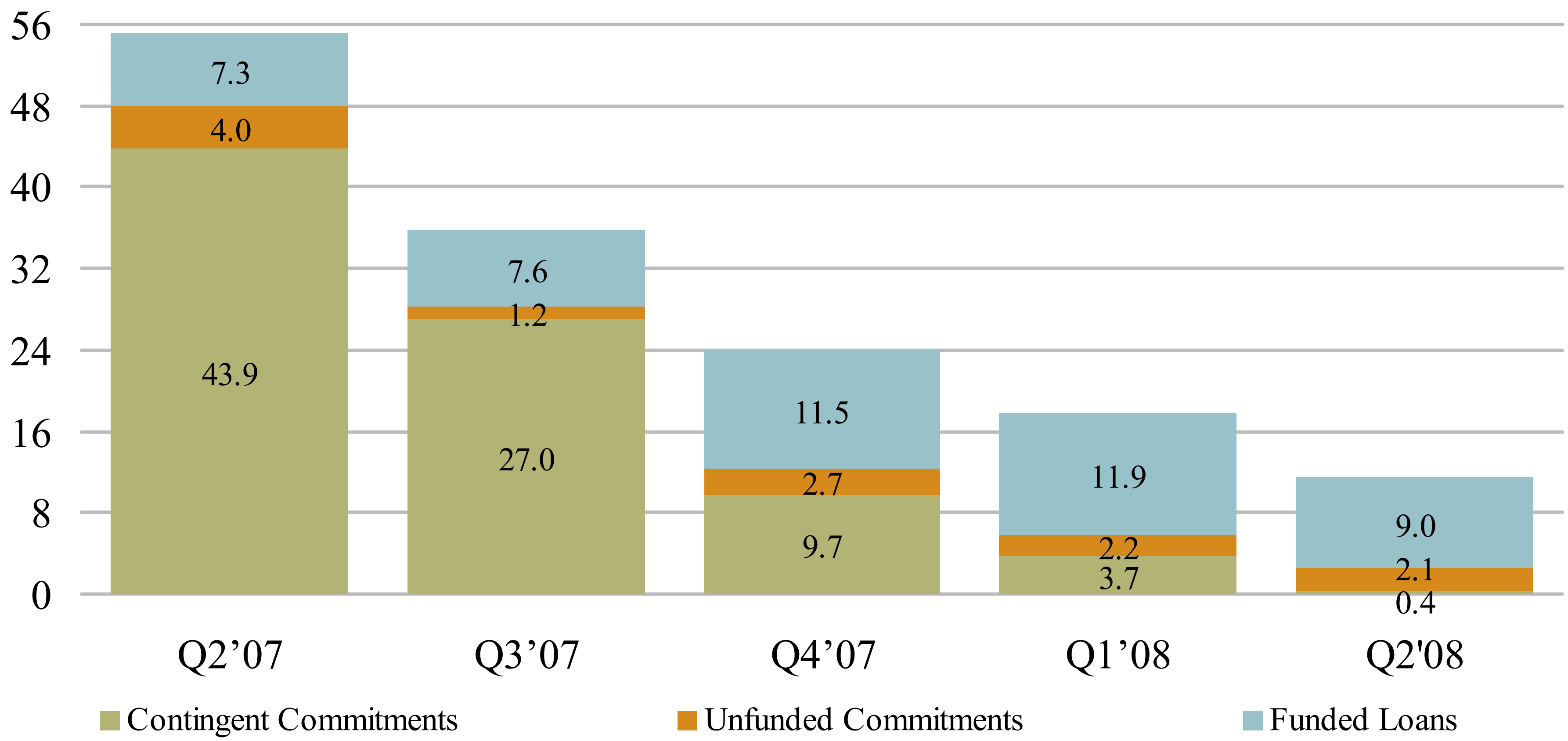
As of Q2 '08



…And Leveraged Loan Exposure…

Overall high yield acquisition facilities are down from $55.2bn (Q2'07) to $11.5bn (Q2'08) and are down 37% versus Q1 '08

Lehman Brothers High Yield Loan Exposure (in $ billions)



…While Level III Assets Are Stable

At the end of Q2 '08 the amount of Level III assets are expected to decline from $40.2 billion in Q1 '08 to approximately $38.0 billion (final numbers will be available at the time of filing 10Q)

Level III Asset Breakdown

$ Billions	Mortgage and Asset-backed	Corporate Debt and Other	Corporate Equities	Derivative Assets, Net	Total	% of Total Assets
Q2 '07	12.9	2.5	4.1	1.3	20.8	3%
Q3 '07	23.8	2.1	4.9	1.6	32.4	5%
Q4 '07	25.2	3.1	8.1	2.5	38.9	6%
Q1 '08	23.8	4.2	9.4	2.8	40.2	5%
Q2 '08				Approximately 38.0		
	Subprime Inventory; NPLs in Commercial Real Estate; Retained Interests (BBB and below)	Corporate NPLs and Distressed Portfolios	Private Equity Investments	Exotics including Inflation and Municipal-Related		

Building A "Liquidity Fortress"

Lehman's funding framework has allowed us to maintain a strong liquidity and cash capital position despite market challenges

Best-in-Class Funding Framework

Funding Framework

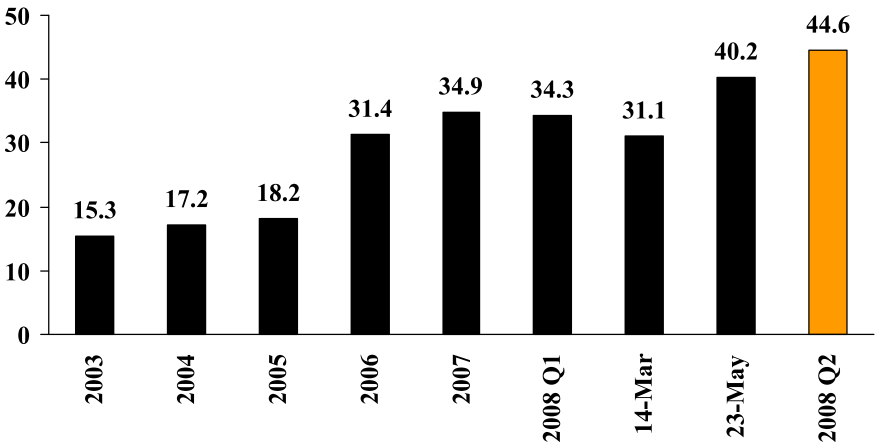
- No need to access unsecured financing for over one year
- Minimal reliance on commercial paper, short-term unsecured financing or asset-backed commercial paper programs
- No reliance on customer free credit balances

We have a strong liquidity position in absolute terms and relative to our peers

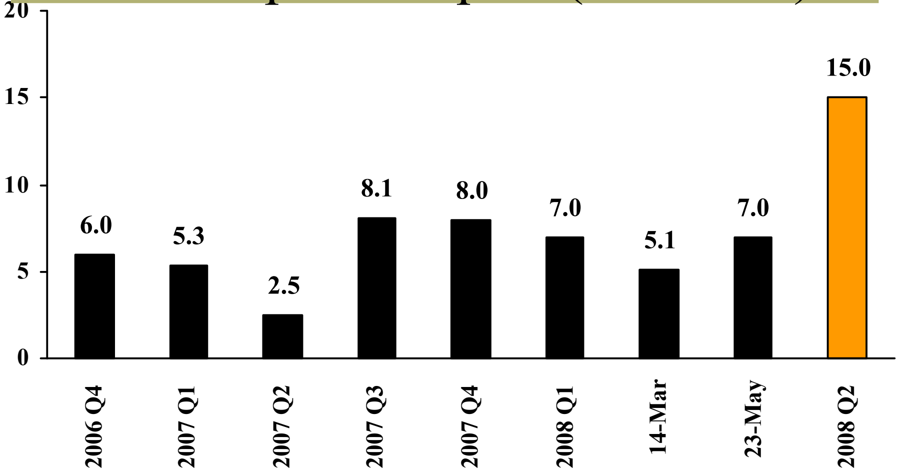
The Firm's three banking entities are able to raise cost-effective financing

Closed Q2 '08 with $45 billion of liquidity, and a $15 billion excess over our cash capital requirements [1,2]

Liquidity Pool ($ billions)



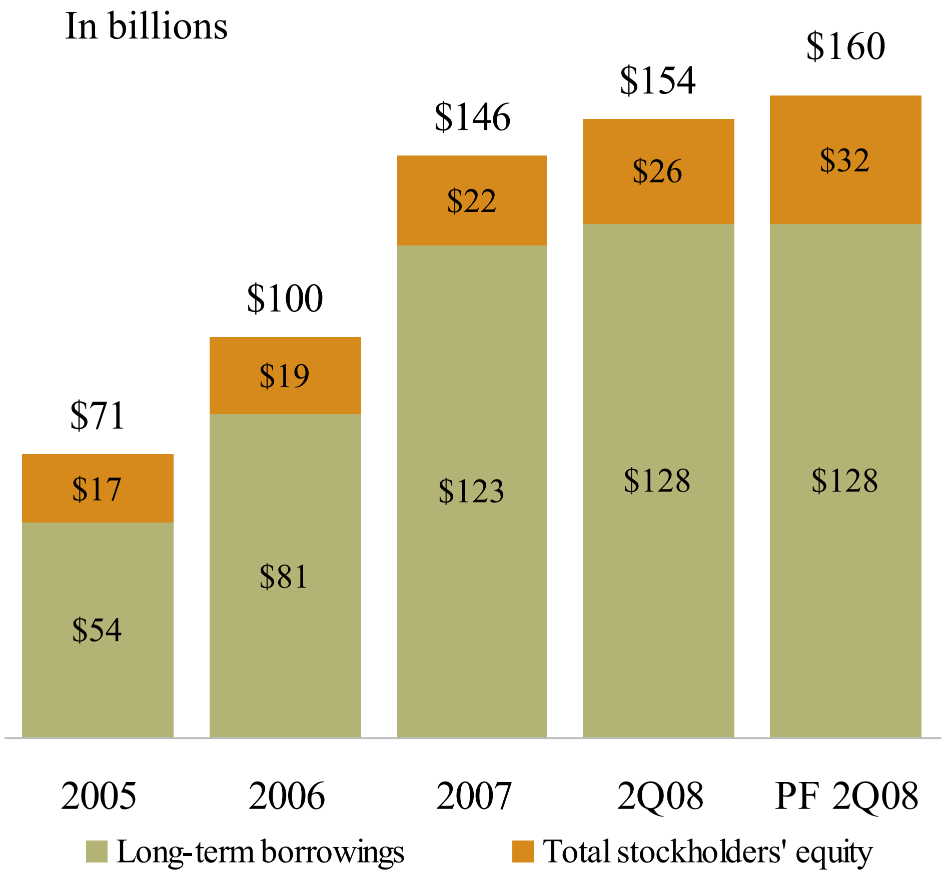
Cash Capital Surplus ($ billions)



1. *Cash capital consists of stockholders' equity, the estimated sustainable portion of core deposit liability at our bank subsidiaries, and liabilities with remaining term of one year or more.*
2. *The liquidity pool is presented at pledge value*

And a Very Strong Capital Position

Total Long-Term Capital[1]



Highlights

- Firm is financed with Long term sources of finance
- $154B of capital at 2Q 2008
- Accomplished full year funding plan
- Estimated Tier 1capital under CSE (BASEL II like) will be >10% (> 12% including June capital raise)

1. *Total long-term capital includes long-term borrowings (excluding any borrowings with remaining contractual maturities within twelve months of the financial statement date) and total stockholders' equity. We believe total long-term capital is useful to investors as a measure of our financial strength*

Appendices

BUSINESS SEGMENT AND GEOGRAPHIC NET REVENUES 2Q '08 (Preliminary and Unaudited) (In millions)

Business Segments[a]	Quarter Ended May 31, 2008	Quarter Ended Feb 29, 2008	Quarter Ended May 31, 2007	% Change from Feb 29, 2008	% Change from May 31, 2007
Capital Markets:					
Fixed Income	$ (2,975)	$ 262	$ 1,902		
Equities	601	1,410	1,692		
Total	(2,374)	1,672	3,594	NM	NM
Investment Banking:					
Global Finance – Debt	288	322	540		
Global Finance – Equity	330	215	333		
Advisory Services	240	330	277		
Total	858	867	1,150	(1)%	(25)%
Investment Management:					
Asset Management	496	618	460		
Private Investment Management	352	350	308		
Total	848	968	768	(12)%	10%
Total Net Revenues	$ (668)	$ 3,507	$ 5,512	NM	NM

Geographic Net Revenues	Quarter Ended May 31, 2008	Quarter Ended Feb 29, 2008	Quarter Ended May 31, 2007	% Change from Feb 29, 2008	% Change from May 31, 2007
Europe and the Middle East	$ (499)	$ 760	$ 1,829		
Asia-Pacific	57	1,348	762		
Total Non-Americas	(442)	2,108	2,591	NM	NM
U.S.	(290)	1,342	2,888		
Other Americas	64	57	33		
Total Americas	(226)	1,399	2,921	NM	NM
Total Net Revenues	$ (668)	$ 3,507	$ 5,512	NM	NM

(a) . Certain prior-period amounts reflect reclassifications to conform to the presentation in the current period

BUSINESS SEGMENT AND GEOGRAPHIC NET REVENUES 1H ‘08 (Preliminary and Unaudited) (In millions)

Business Segments [a]	Six Months Ended May 31, 2008	Six Months Ended May 31, 2007	% Change from May 31, 2007
Capital Markets:			
Fixed Income	$ (2,714)	$ 4,075	
Equities	2,011	3,021	
Total	(703)	7,096	NM
Investment Banking:			
Global Finance – Debt	610	968	
Global Finance – Equity	545	508	
Advisory Services	570	524	
Total	1,725	2,000	(14)%
Investment Management:			
Asset Management	1,114	876	
Private Investment Management	703	587	
Total	1,817	1,463	24%
Total Net Revenues	$ 2,839	$ 10,559	(73)%

Geographic Net Revenues	Six Months Ended May 31, 2008	Six Months Ended May 31, 2007	% Change from May 31, 2007
Europe and the Middle East	$ 261	$ 3,197	
Asia-Pacific	1,405	1,356	
Total Non-Americas	1,666	4,553	(63)%
U.S.	1,052	5,916	
Other Americas	121	90	
Total Americas	1,173	6,006	(80)%
Total Net Revenues	$ 2,839	$ 10,559	(73)%

(a) . Certain prior-period amounts reflect reclassifications to conform to the presentation in the current period

MTM Adjustments Gain/(Loss)

(Unaudited, $Billions)

	For the Three Months Ended May 31, 2008		For the Six Months Ended May 31, 2008		Fiscal Year 2007 through May 31, 2008 [1]	
	Gross	Net [2]	Gross	Net [2]	Gross	Net [2]
Residential mortgage-related positions	$ (2.4)	$ (2.0)	$ (5.4)	$ (2.8)	$ (10.1)	$ (4.1)
Other asset-backed-related positions	(0.4)	(0.4)	(0.6)	(0.5)	(1.2)	(0.7)
Commercial mortgage and real estate-related investments [3]	(0.9)	(1.3)	(2.3)	(2.3)	(3.7)	(3.2)
Acquisition finance facilities (funded and unfunded)	(0.3)	(0.4)	(1.0)	(0.9)	(2.0)	(1.3)
Subtotal	$ (4.0)	$ (4.1)	$ (9.3)	$ (6.5)	$ (17.0)	$ (9.3)
Valuation of debt liabilities [4]	0.4	0.4	1.0	1.0	1.9	1.9
Total	$ (3.6)	$ (3.7)	$ (8.3)	$ (5.5)	$ (15.1)	$ (7.4)

(1) Substantially all of these adjustments occurred in the twelve months ended May 31, 2008.
(2) The net impact represents the remaining impact from the components after deducting the impact of certain economic risk mitigation strategies. Gross balances shown do not reflect the impact of economic hedges.
(3) Included within this category are valuation adjustments attributable to commercial mortgage-related positions, equity investments in real estate companies and debt and equity investments in parcels of land and related physical property.
(4) Represents the amount of gains on debt liabilities for which the Firm elected to fair value under SFAS No. 159. These gains represent the effect of changes in the Firm's credit spread and exclude any Interest income or expense as well as any gain or loss from the embedded derivative components of these instruments. Changes in valuations are allocated to the businesses in relation to the cash generated by, or funding requirements of, the underlying positions.

Mortgage and Asset-Banked securities [1]

(Unaudited, $Billions)

	At			Percent Inc / (Dec)	
	Nov. 30, 2007	**Feb. 29, 2008**	**May 31, 2008**	**May *vs.* Feb.**	**May *vs.* Nov.**
Residential mortgages					
Securities	$ 16.7	$ 18.2	$ 15.0		
Whole loans	14.2	11.9	8.3		
Servicing and other	1.2	1.7	1.6		
Subtotal	32.1	31.8	24.9	(22) %	-22 %
Commercial mortgages					
Whole loans	$ 26.2	$ 24.9	$ 19.9		
Securities and other	12.7	11.2	9.5		
Subtotal	38.9	36.1	29.4	(19) %	-24 %
Other asset-backed securities	$ 6.2	$ 6.5	$ 6.5		
Total	$ 77.2	$ 74.4	$ 60.8	(18) %	-21 %

(1) Balances shown exclude those for which the Company transferred mortgage-related loans to securitization vehicles where such transfers were accounted for as secured financings rather than sales under SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities-a replacement of FASB Statement No. 125* . The securitization vehicles issued securities that were distributed to investors. The Company does not consider itself to have economic exposure to the underlying assets in those securitization vehicles beyond the Company's retained interests (which are included above).

Residential mortgage-related (1)

(Unaudited, $Billions)

	At			Percent Inc / (Dec)	
	Nov. 30, 2007	**Feb. 29, 2008**	**May 31, 2008**	**May *vs.* Feb.**	**May *vs.* Nov.**
Residential mortgages					
U.S.					
Alt-A/Prime [1]	$ 12.7	$ 14.6	$ 10.2		
Subprime/Second Lien [2]	5.3	4.0	2.8		
Other U.S.	2.3	2.1	1.3		
Subtotal	20.3	20.7	14.3	(31) %	-30 %
Europe	$ 10.2	$ 9.5	$ 9.3		
Asia-Pacific	0.5	0.7	0.7		
Other asset-backed	1.1	0.9	0.6		
Total	$ 32.1	$ 31.8	$ 24.9	(22) %	-22 %

(1) For purposes of this presentation, the Company has categorized U.S. residential mortgages frequently referred to as Alt-A within Prime.
The Company generally defines U.S. Alt-A residential mortgage loans as those associated with borrowers who may have creditworthiness of "prime" quality but may have traits that prevent the loans from qualifying as "prime." Those traits could include documentation deficiencies related to the borrowers' income disclosure, referred to as partial or no documentation; or the underlying property may not be owner occupied despite full or lower documentation of the borrowers' income levels.

(2) The Company generally defines U.S. subprime residential mortgage loans as those associated with borrowers having a credit score in the range of 620 or lower using the Fair Isaac Corporation's statistical model, or having other negative factors within their credit profiles. We also include residential mortgage loans that were originated through BNC Mortgage LLC ("BNC") prior to its closure in the third quarter of the Company's 2007 fiscal year. BNC served borrowers with subprime qualifying credit profiles but also served borrowers with stronger credit history as a result of broker relationships or product offerings and such loans are also included in our subprime business activity.

Residential mortgage-related (2)

(Unaudited, $Billions)

	At		Percent Change
Residential mortgages	**Feb. 29, 2008**	**May 31, 2008**	**May *vs.* Feb.**
U.S.			
Alt-A/Prime			
Whole loans	$ 3.7	$ 2.1	
Securities:			
AAA	6.4	3.9	
Other RMBS[1]	2.8	2.6	
Servicing and Other	1.7	1.6	
Subtotal	14.6	10.2	(30) %
Subprime/Second Lien			
Whole loans	$ 1.3	$ 1.1	
Securities:			
AAA	1.6	0.9	
Other RMBS[1]	1.1	0.8	
Servicing and Other	—	—	
Subtotal	4.0	2.8	(30) %
Other U.S.			
Whole loans	$ 1.6	$ 1.0	
Securities	0.5	0.3	
Servicing and Other	—	—	
Subtotal	2.1	1.3	(38) %
Europe			
Whole loans	$ 5.0	$ 3.6	
Securities	4.5	5.7	
Servicing and Other	—	—	
Subtotal	9.5	9.3	(2) %
Asia-Pacific			
Whole loans	$ 0.3	$ 0.5	
Securities	0.4	0.2	
Servicing and Other	—	—	
Subtotal	0.7	0.7	—
Asset-backed securities	0.9	0.6	(33) %
Total	$ 31.8	$ 24.9	(22) %

[1] Includes amounts related to residuals.

Commercial mortgage & RE – related investments (1)

(Unaudited, $Billions)

	At			Percent Inc / (Dec)	
	Nov. 30, 2007	**Feb. 29, 2008**	**May 31, 2008**	**May *vs.* Feb.**	**May *vs.* Nov.**
Commercial mortgages					
Whole loans	$ 26.2	$ 24.9	$ 19.9		
Securities and other	12.7	11.2	9.5		
Subtotal	38.9	36.1	29.4	(19) %	-24 %
Real estate held for sale [1]	$ 12.8	$ 12.9	$ 10.4		
Total	$ 51.7	$ 49.0	$ 39.8	(19) %	-23 %

[1] These positions are reflected within Real estate held for sale and are accounted for at the lower of its carrying amount or fair value less cost to sell. The Company makes equity and debt investments in entities whose underlying assets are real estate held for sale. The Company consolidates those entities in which we are the primary beneficiary in accordance with FIN No. 46-R, *Consolidation of Variable Interest Entities (revised December 2003)—an interpretation of ARB No. 51* . The Company does not consider itself to have economic exposure to the total underlying assets in those entities. The amounts presented are the Company's net investment and therefore exclude the amounts that have been consolidated but for which the Company does not consider itself to have economic exposure.

Commercial mortgage & RE – related investments (2)

(Unaudited, $Billions)

	At May 31, 2008	May 31, 2008 *vs.* February 29, 2008 Inc / (Dec)		At May 31, 2008			May 31, 2008		At May 31, 2008				
		Dollars	Percent	Americas	Europe	Asia	Number of Positions	Average Position Value[1]	WALTV[2]	WAM[3]	WALA[4]	Fixed	Float
Whole loans													
Senior	$ 19.5	$ (4.8)	(20) %	$ 10.7	$ 4.7	$ 4.1	875	$ 22.2	76 %	34	18	9 %	91 %
Mezzanine	5.9	(1.3)	(18) %	4.6	0.7	0.6	299	19.8	78 %	26	13	15 %	85 %
NPLs[5]	1.9	(0.1)	(3) %	0.2	—	1.7	327	5.8					
Equity	7.2	(1.0)	(12) %	4.5	1.5	1.2	670	10.7					
									Inv. Grade	Non-Inv. Grade	AA or Better		
Securities	5.3	(2.2)	(29) %	0.9	3.8	0.6	371	14.2	94 %	6 %	77 %		
Total	$ 39.8			$ 20.9	$ 10.7	$ 8.2	2,542	$ 15.7					

(1) In millions.

(2) WALTV is weighted average loan to value at origination.

(3) WAM is weighted average number of months remaining to fully extended maturity.

(4) WALA is weighted average loan age in months.

(5) NPLs are loans purchased as non-performing loans.

Acquisition Finance Facilities (Funded & Unfunded)

(Unaudited, $Billions)

	At			Percent Inc / (Dec)	
	Nov. 30, 2007	**Feb. 29, 2008**	**May 31, 2008**	**May *vs.* Feb.**	**May *vs.* Nov.**
High grade					
Contingent	$ 10.2	$ 7.2	$ 1.7		
Unfunded	—	0.8	1.1		
Funded	1.7	2.9	3.7		
Subtotal	11.9	10.9	6.5	(40) %	-45 %
High yield [1]					
Contingent	$ 9.7	$ 3.7	$ 0.4		
Unfunded	2.7	2.2	2.1		
Funded	11.5	11.9	9.0		
Subtotal	23.9	17.8	11.5	(35) %	-52 %
Total	$ 35.8	$ 28.7	$ 18.0	(37) %	-50 %

(1) For purposes of this presentation, high yield amounts are defined as commitments to or loans to companies rated BB+ or lower or equivalent ratings by recognized credit rating agencies, as well as non-rated securities or loans that in the Company's management's opinion are non-investment grade. Additionally and for purposes of this presentation, the Company has categorized amounts contingently committed as "Contingent"; amounts that were contingently committed in the prior period but unfunded in the current period as "Unfunded;" and amounts that were contingently committed in the prior period but funded in the current period as "Funded."

LEHMAN BROTHERS

June 2008

Carlo Pellerani, International Treasurer

2Q 2008 Business and Financial Review

Annex 9

LEHMAN BROTHERS

July 2008

Liquidity Management At Lehman Brothers

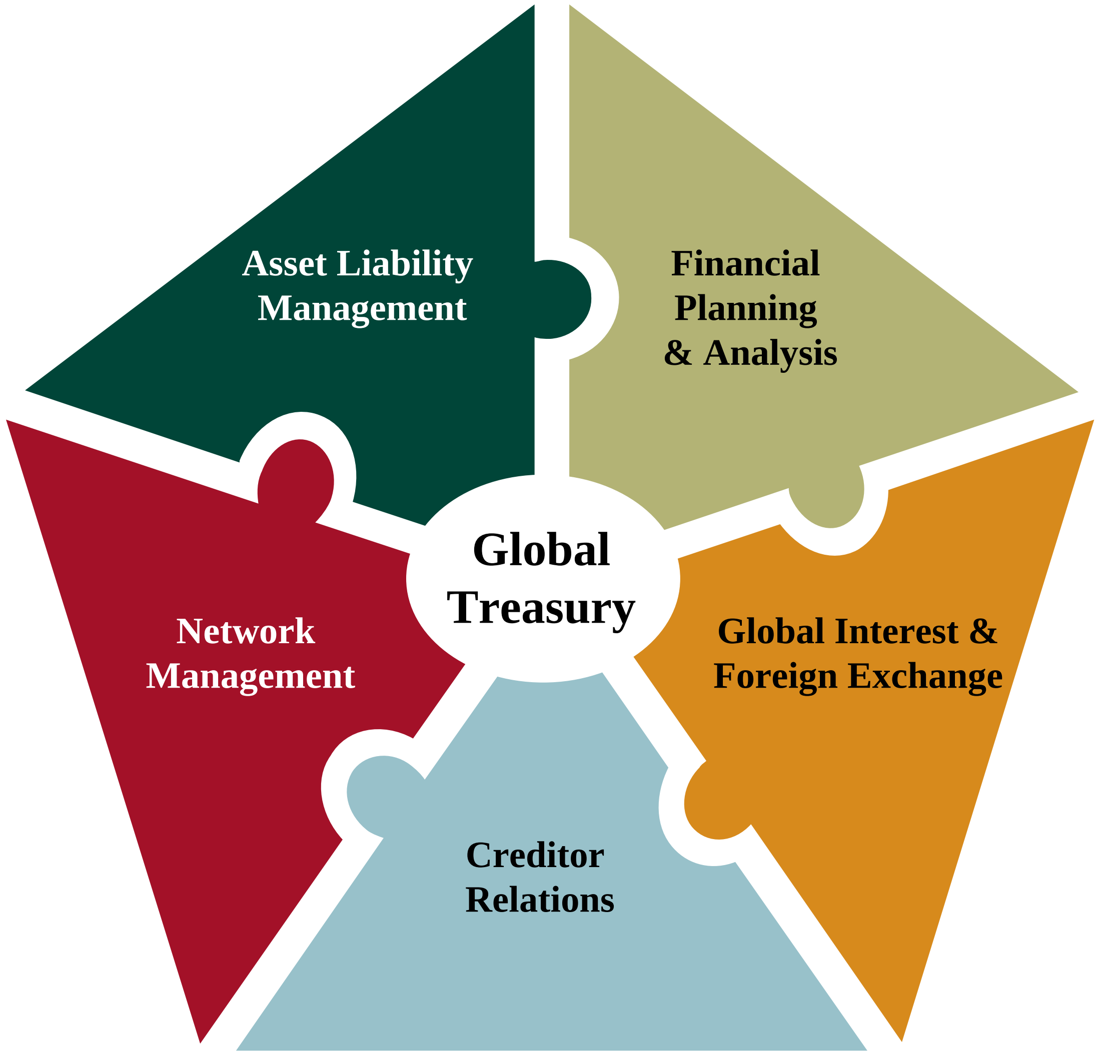
Confidential Presentation

Table of Contents

Introduction to Global Treasury

Global Treasury Disciplines

Global Treasury is comprised of the following core disciplines



Global Treasury Disciplines Overview

Global Treasury's primary responsibility is to keep the firm safe from a liquidity standpoint, to fund all business needs and to ensure effective use of the Firm's capital

Asset Liability Management

- Manages key corporate treasury risks of liquidity, interest rate and foreign currency
- Manages funding and capital structure issues
- Develops liquidity management policy and projects and monitors liquidity
- Funds business activities and manages the liquidity pool

Financial Planning & Analysis

- Responsible for effective management of equity capital
- Manages relationships with credit rating agencies
- Provides analyses to senior management to support decision making on financial policy

Global Interest & Foreign Exchange

- Works with Product and Legal Entity Controllers to manage and report interest expense
- Ensures that the expense of secured and unsecured funding is accurately allocated
- Manages various aspects of non-dollar equity, P/L and FAS 133 / FAS 157 / FAS 159 processes

Creditor Relations

- Establishes and maintains relationships with credit providers and communicates the Firm's credit profile
- Builds relationships with creditors to ensure access to reliable credit in all market environments

Network Management

- Negotiates and tracks fee arrangements to securities/cash clearing service providers
- Manages service relationships
- Acts as an internal consultant to businesses looking to enter new markets or launch new products
- Is the expense line owner for clearance expenses Firm-wide

Liquidity Management

Treasury's liquidity management philosophy is embedded in the Funding Framework – the set of rules and guidelines for determining the appropriate funding of assets

Treasury is responsible for managing the liquidity and liquidity risk on a daily basis

Liquidity pool reporting	Cash capital reporting	Secured funding reporting
Short-term liquidity outflow projections	Debt issuance: short-term and long-term	Equity planning: including hybrid equity

This management is done in collaboration with the rest of the Firm

- The Finance Committee, which is comprised of key Finance senior management, is responsible for updating the rules of the Funding Framework
- Through an initiative called the "Funding Optimization Project" launched in 2004, Treasury and the Secured Financing desks (Fixed Income & Equities) have partnered together to improve funding efficiency and liquidity management policies for secured funding and the Prime Broker business

The Funding Framework

Introduction to the Funding Framework

Established and implemented in the aftermath of the liquidity event of 1998

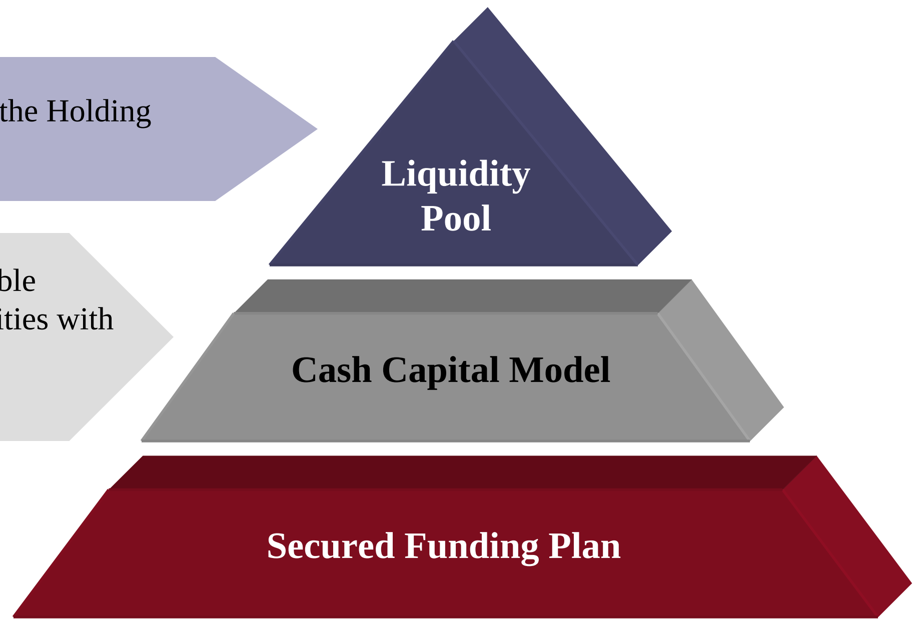
- The Lehman Brothers Funding Framework is based on a set of conservative principles guiding the funding of assets and mitigating liquidity risk. It has been refined and augmented over the years as the Firm enters new businesses and as the liquidity risk of existing businesses changes
- At its core are the following principles:
  - Remain in a state of constant liquidity readiness
  - Do not rely on asset sales, increase in operational effectiveness or access to the unsecured debt market in a time of crisis
  - Be proactive with key stakeholders before and during a liquidity event: regulators, creditors, trading counterparts and rating agencies
- The conservative assumptions embedded in the Funding Framework (e.g., fund boxed positions with cash capital, irrespective of the liquidity characteristics of the positions) is what distinguishes the Firm's Framework from that of our peers

The Framework is Structured Around Three Dimensions

- The liquidity pool covers cash outflows over a 12 month horizon at the Holding Company

- Cash capital consists of stockholders' equity, the estimated sustainable portion of core deposit liabilities at our bank subsidiaries, and liabilities with remaining term of one year or more
- Covers funding of illiquid assets as well as contingent liquidity risk

- Mitigates the liquidity risk associated with short-term secured funding, including the Prime Broker business



Core Principles of Capital and Liquidity Management

Our capital and liquidity management is based on four principles

Liquidity Strategy Principle	Implication to Funding Framework
◆ We must remain in a constant state of liquidity readiness	◆ Maintain a large cash position in the Holdings Chain, sufficient to absorb the impact of a very severe liquidity event
◆ We should not rely on asset sales or increases in unsecured borrowings or funding efficiencies in a liquidity crisis	◆ Do not plan on reducing balance sheet for liquidity reasons in a liquidity event (although may do so for risk reasons)
◆ We should not overestimate the availability of secured financing in a liquidity crisis	◆ Establish 'Reliable Secured Funding' levels by asset category by counterparty
◆ Legal entity structure places constraints on liquidity flows which should be explicitly accounted for in liquidity planning	◆ Separate Cash Capital Model for each regulated entity and the Holdings Chain; treat all excess cash in restricted entities as 'trapped'

Cash Capital Uses

All unsecured funding requirements in normal operating conditions require cash capital

	Examples	Cash Capital Principle
Illiquid positions	◆ Corporate and commercial whole loans ◆ Long-term non-trading assets ◆ Exchange margin & other LT collateral ◆ Fixed income, equity derivative and FX	◆ Funded 100% with cash capital ◆ Determine whether a position is illiquid by looking at its fundability in a stress liquidity event
Secured haircuts on long inventory	◆ Reverse repo agreements and borrowed securities ◆ Collateralized funding to counterparts	◆ Cash capital charge dependent on asset haircut ◆ Haircuts conservatively estimated and regularly reviewed ◆ If asset cannot be reliably funded on a secured basis in a liquidity event, the haircut assessed against the asset is 100%
Operational friction	◆ Inventory in the "box" ◆ Cash at banks	◆ Unsecured financing assessed a "box" charge irrespective of liquidity characteristics ◆ Cash at banks deemed not to be freely available to Holdings
Legal entity trapped	◆ Intercompany margin postings ◆ Structural trapped liquidity	◆ Margin posted by other entities into regulated entities ◆ Surplus cash due to regulatory capital requirements
Contingent liquidity	◆ CP backstops ◆ High-yield revolvers ◆ Secured lines of credit	◆ Prefund unfunded loans to mitigate contingent liquidity risk ◆ Revolvers typically include covenants that prevent draws in distressed market events
"Match funding"	◆ Integrated transaction on asset and liability side	◆ Asset and liability have self-funding and self-liquidating characteristics ◆ Structures reviewed on an individual basis

Cash Capital Sources

Target cash capital sources to exceed uses by \$4 - \$7 billion on an ongoing basis

	Examples	Cash Capital Principle
Equity and long term debt	◆ Equity ◆ Preferred and trust preferred ◆ Long term debt with remaining term > 1yr	◆ Limit amount of maturing debt over any rolling three, six and twelve month horizon (12.5%, 17.5% and 30.0% of total, respectively) ◆ If debt limits are exceeded, do not recognize excess as reliable liquidity ◆ Source diversity by limiting individual aggregate holdings to 5% of Lehman Brothers' total debt outstanding
Cash capital structures	◆ Evergreen structures ◆ Non-extendible structures ◆ Structured notes	◆ Extendible secured and unsecured structures with terms > 1yr ◆ Structures with completely reliable funding with remaining terms >1 yr
Restricted entity cash capital	◆ Certificates of deposit ◆ Schuldschein	◆ Liabilities with insurance wrap
Committed facilities	◆ Revolving credit facilities	◆ \$2.0 billion U.S. and \$2.5 billion European syndicated facilities ◆ Routinely drawn and repaid for working capital purposes ◆ Average utilization is 33-50% ◆ Included as a source only when drawn

No reliance on hot money such as customer free credits or short term debt as a cash capital source

Bank Entity Asset Growth and Asset Funding – UPDATE

Strong asset growth at bank entities provides a reliable funding source

- The three banking entities all benefit from raising cost-effective financing in a depositor-protected environment

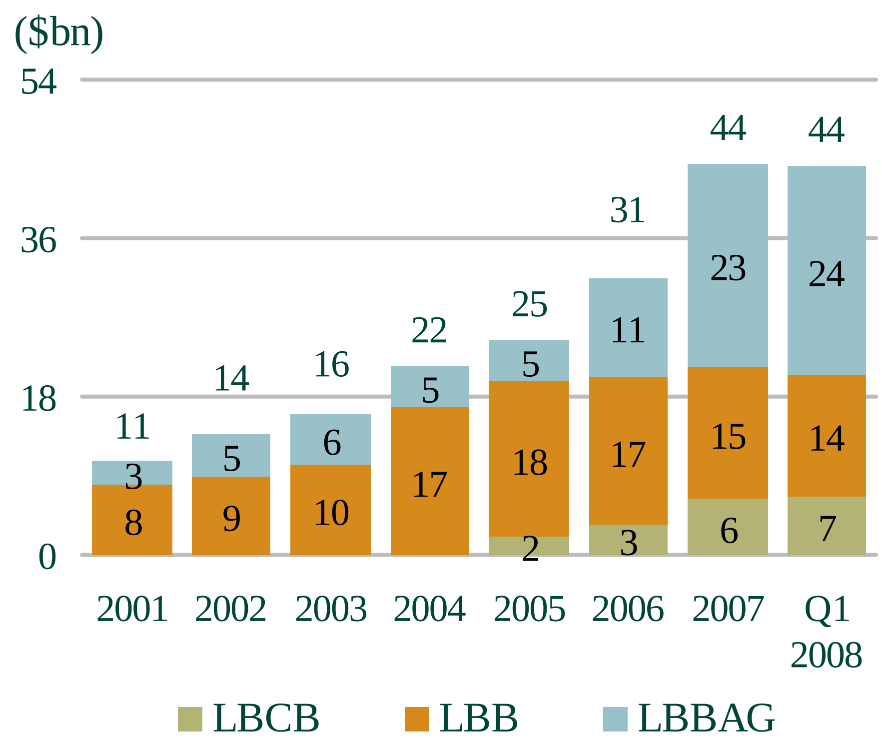
Lehman Brothers Banking Entities

– **Lehman Brothers Bank (LBB):** Funds all US residential mortgage origination. Additionally funds commercial mortgages and investment grade US loans. Can access the Fed discount window

– **Lehman Brothers Commercial Bank (LBCB):** Funds commercial mortgages, derivative receivables and corporate and industrial loans. Can access the Fed discount window

– **Lehman Brothers Bankhaus (LBBAG):** Funds securities on repo and loans (commercial, residential and corporate). Can access the ECB discount window

Lehman Brothers Banking Entities – Total Assets



% of Firm's Net Assets

8%	10%	10%	12%	12%	12%	12%	11%

Contingent Liquidity Risk

- The Funding Framework is designed to set rules in order to protect the Firm in a stress liquidity environment. In a stress environment, whether Lehman-specific or market-wide, we plan for an increase in cash capital requirements due to
  - Unfunded loan commitments that get drawn due to a contraction in the market liquidity or due to a series of credit events impacting Lehman's banking clients
  - One-notch downgrade of Lehman's credit ratings
- The committed portfolio is very diversified across clients and industries, which is an effective liquidity risk mitigant
- To further mitigate the risk, the majority of loan commitments are booked in the bank entities
  - Best suited to handle commitment risk because of access to the insurance-protected deposit markets, the Central Bank and, in the case of the U.S. bank entities, FHLB borrowing windows
  - Additionally, the liquidity risk is prefunded with cash capital based on a quantitative assessment of the draw, which takes into account client ratings and industries
- A downgrade of Lehman's ratings would mechanically result in an increase in cash capital requirements – primarily due to additional cash collateralization of our derivatives receivables
  - The increase in funding requirements due to a one-notch downgrade is also funded with cash capital

Managing Secured Liquidity Risk

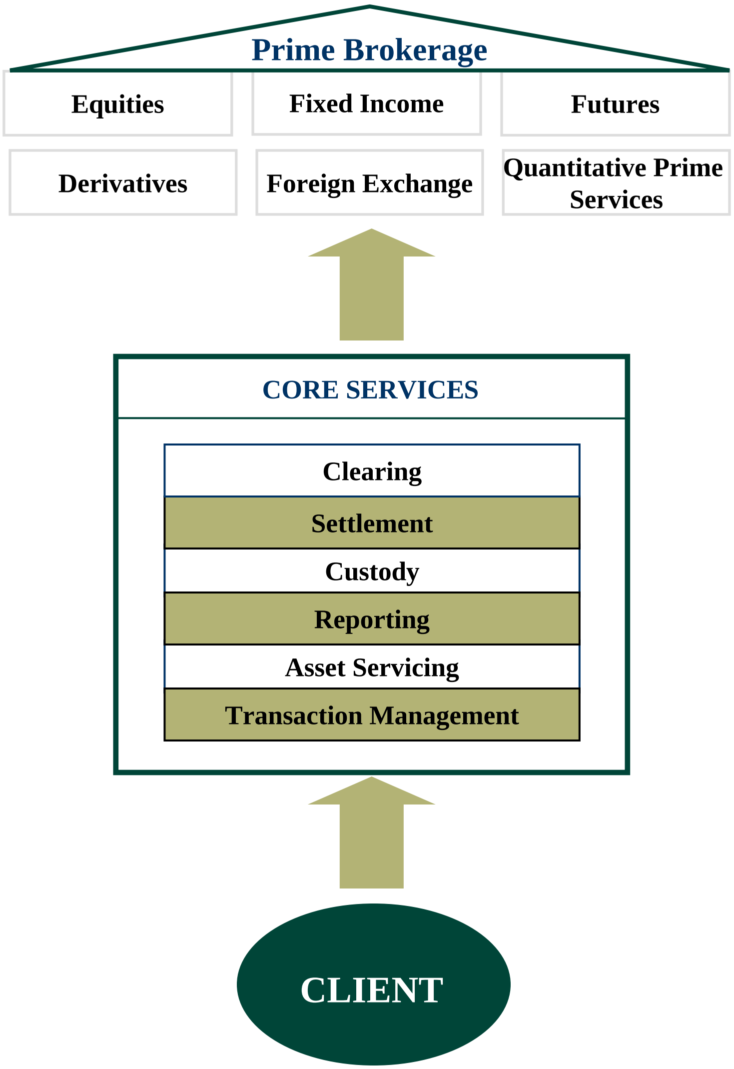
- Short term secured financing represents the largest source of secured funding for the Firm. Consequently, one key objective is to ensure that these funding sources are maintained in adverse market environments
  - Do not want to put Lehman Brothers in a position where a lack of liquidity results in an impairment of the franchise
- Manage secured liquidity using a four-pronged risk mitigation strategy, which conservatively assumes: (i) no reliance on Holdings' liquidity and (ii) no reliance on customer collateral or free credits

Secured Financing Risk Mitigation Strategy

Traditional Approach	**Assess reliability of funding counterparts**	◆ Reliability of repo counterparties are being assessed continuously on an asset class-by-asset class basis ◆ Funding is typically with counterparts, which have a long and deep funding/trading history with Lehman Brothers (e.g., clearing banks, large asset managers)
Recent Enhancements	**Overfund less liquid asset classes**	◆ Capital Markets Prime Services as a matter of policy funds more less liquid collateral than it needs, thereby creating a "cushion" in case counterparts stop funding Lehman Brothers or ask for higher quality collateral
	Use of Lehman Brothers Bankhaus	◆ Contrary to Lehman Brothers Bank or Lehman Brothers Commercial Bank, Lehman Brothers Bankhaus is able to fund good quality collateral (~$3 billion) held by other Lehman entities, such as LBIE ◆ This collateral can be funded either on an unsecured basis (Bankhaus operates in a deposit-protected environment) or can be repoed to the discount window of the ECB
	"Transform" balance sheet	◆ In a severe liquidity event, Lehman Brothers would reduce liquidity-consuming proprietary positions, such as the Matched Book ◆ Additionally, we would use our structuring capabilities to create liquid, investment grade securities out of a pool of less liquid collateral (e.g., through CLO or CDO)

Liquidity Risk of Prime Broker Business

Capital Markets Prime Services



Target self sufficiency of the business

- Prime brokerage provides clients with a range of centralized record keeping, clearing and custodial services in addition to financing of securities positions and providing access to a supply of both liquid and illiquid securities for borrowing and short covering
- Prime broker business is typically a cash generating business because the equity (customer free credit balances) and margin requirements are typically in excess of the actual cash requirements of the business (financing and short covering haircuts as well as the customer collateral left in the box)
  - The key funding principle for the prime broker business is that it should be self-sufficient
  - The business typically generates enough cash to cover the withdrawal of the customer free credit balances, mitigate the risk of a reduction in secured funding (either through haircut widening or loss of counterparties) and a reduction in operational effectiveness (e.g., increase in the amount of collateral in transit across depots)

Maximum Cumulative Outflow (MCO)

MCO defines the size of the liquid cash pool needed in a stress environment

MCO is based on the following assumptions

- Cannot issue any short-term or long term debt, or draw on uncommitted bank lines for one year
- Roll off of all unsecured short-term debt will be covered by the liquidity pool
- Average secured financing haircut increases
- Additional funding requirements resulting from a credit rating downgrade
- Anticipated funding requirement for contingent commitments
- Opportunistic repurchase of up to $2 billon of capital

MCO model determines the target level for free cash on hand needed to ensure a liquidity position of at least $2 billion after a stress period lasting 90 days and a positive position throughout a stress period lasting one year

MCO policy aims to maintain a liquidity pool for Holdings and its unrestricted subsidiaries that covers, in a stressed liquidity environment, all expected cash outflows for one year

Contingency Funding Plan (CFP)

The CFP is a detailed action plan activated in a liquidity event

Components of the Contingent Liquidity Plan

- Creates an executable plan for a comprehensive response to extreme liquidity events by geographical region, functional area, and business
- Defines roles and responsibilities within the management framework to execute the plan
- Provides key contact points within and outside the firm for decision making and implementation
- Identifies key resources within the firm, including senior management, information, and operational support that need to be mobilized to implement the plan
- Incorporates a comprehensive communication strategy to consolidate feedback to senior management and creditor institutions.

The Plan was last activated in the aftermath of September 11, 2001 as a precautionary measure

- Although there was no liquidity event on September 11, 2001, the firm was very long cash and was able to provide liquidity to European banks that had trouble funding their dollar positions
- Activated primarily because of the state of disarray of the secured funding markets

Liquidity Metrics

Proven Funding Framework

We ended 2008 Q2 in our strongest liquidity position ever

Holdings	◆ Ended the second quarter with a record liquidity pool of $45 billion and cash capital surplus of $15 billion
Secured Funding	◆ $27 billion of overfunding in the repo book ◆ 58% of repo book, excluding governments and agencies, funded with term repo
Lehman Bank Entities	◆ Record $46 billion of assets funded in our banks at the end of May
Unencumbered Assets	◆ Not included in the liquidity pool are unencumbered assets $60.6 billion in unregulated subsidiaries and $87.3 billion in regulated subsidiaries as of May 31 and the liquidity pools held at the bank entities and broker dealers

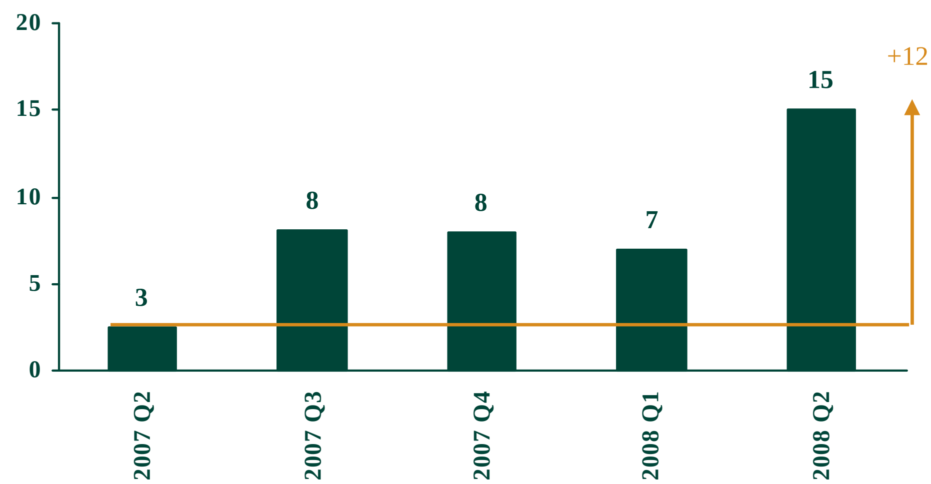
Holding's Liquidity

Record liquidity pool and cash capital surplus

- Liquidity pool is managed by Treasury for the Holding Company. It is invested in cash and cash equivalents (e.g., money market funds) and good quality collateral for which there is ample unused funding capacity with external counterparts
- Since the third quarter of 2007 when the funding environment became more challenging, we have grown our liquidity pool by $19 billion and our cash capital surplus by $12 billion
  - We closed the second quarter of 2008 with a record liquidity pool of $45 billion
- Holdings' cash capital surplus historically fluctuated in a range of $2 - $6 billion. During the summer of 2007, the Firm conservatively increased the target to $4 - $7 billion
  - Cash capital surplus also at record levels of $15 billion at the end of the second quarter

Liquidity Pool ($ billions)

Cash Capital Surplus ($ billions)



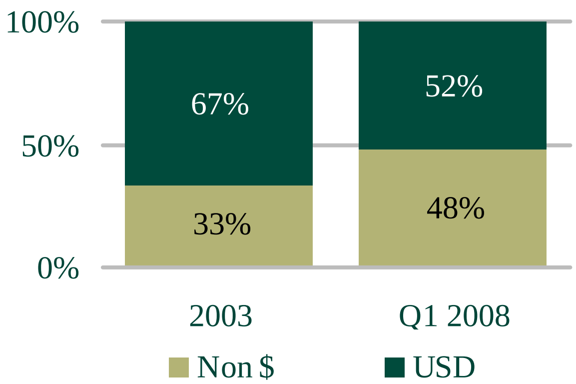
Funding Strategy

Funding Diversification - Needs to be Updated

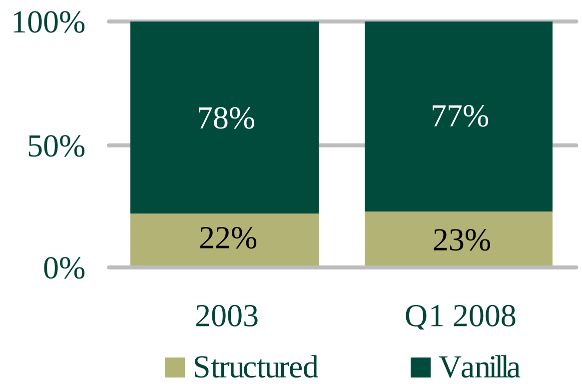
Diversify issuances by currency, type and region to broaden debt investor base

- Currency sources - currency base is diversified, ~ 48% of long-term debt issued in currencies other than USD
- Funding instruments - in addition to plain vanilla debt, diversify funding base by issuing structured notes
- Investor base - diversify issuances geographically with ~ 53% of long-term debt portfolio issued in Europe and Asia

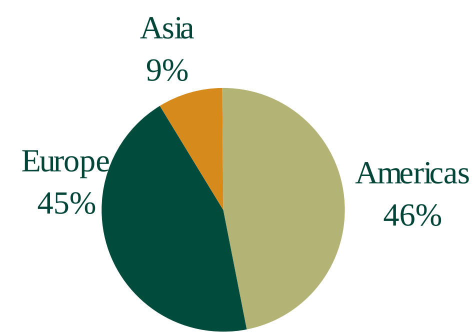
Issuance Mix by Currency



Issuance Mix by Type



2008 Issuance Mix by Region



2008 Funding Plan Was Completed in 1st Half of the Year

Benchmark Issuances

Long Term Debt

- Dec. 17th, $1.5 billion of 10 year senior fixed rate debt at 1ML + 194

Long Term Debt

- Jan. 14th, $4.0 billion of 5 year senior fixed rate debt at 1ML + 214

Long Term Debt

- Apr. 18th, $2.5 billion of 10 year senior debt at 1ML + 250

Long Term Debt

- Apr. 30th, £0.5 billion ($1.0 billion) 10-year senior debt at Gilts + 315 bps

Long Term Debt

- May 03rd, issued $2 billion 30 year subordinated debt at 1ML + 271

Dec | **Jan** | **Feb** | **Mar** | **Apr** | **May** | **Jun** | **2H2008**

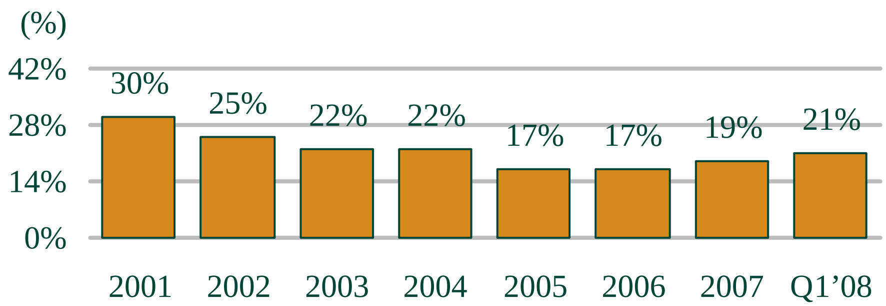
Although we completed debt issuance program, we may issue further during the latter part of the year to “pre fund” 2009 debt issuance requirements

Managing Rollover Risk - UPDATE

Limit rollover risk by distributing debt maturities

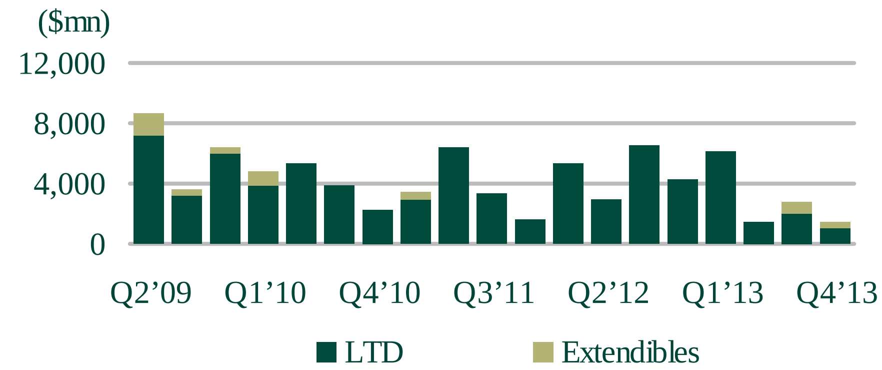
- Reduce the impact of a liquidity event by not relying on short-term debt
- Instead, increase the share of debt that is long-term while ensuring that the percentage of maturing long-term debt is no more than 12.5%, 17.5% and 30.0% of outstanding long-term debt borrowings over any 3-month, 6-month and 12-month horizon, respectively

Short Term Debt to Total Debt



($bn)	2001	2002	2003	2004	2005	2006	2007	Q1'08
St Debt[2]	12.5	10.3	9.9	9.9	11.4	20.6	28.1	34.5
Total Debt	42.3	41.1	45.9	59.3	65.3	101.8	151.2	162.8

Maturing Long-Term Debt[1]



Months	Limits		Actual		Period
3	12.5%	16,051	7%	8,881	3/01/09 – 5/31/09
6	17.5%	22,472	10%	12,675	11/01/09 - 4/30/10
12	30.0%	38,523	18%	23,646	5/01/12 - 4/30/13

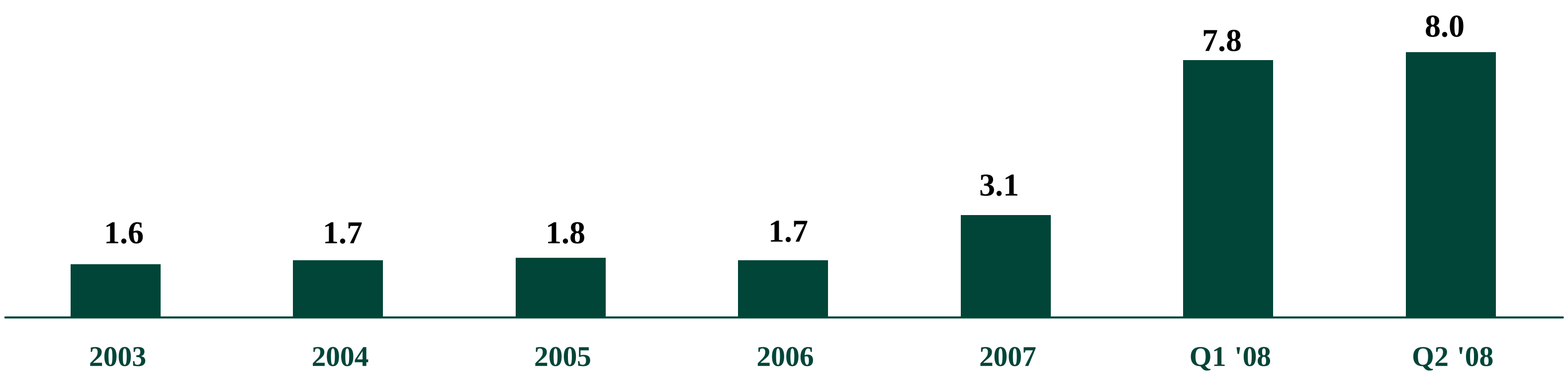
1. *$5.05 billion of extendibles are shown at their earliest maturity dates. Extendibles are long-term debt, the earliest maturity date of which is automatically extended unless debt holders instruct us to redeem their debt. Because the redemption notification must occur at least one year prior to the earliest maturity date, extendibles are included in long-term debt. Moreover, because the earliest maturity date generally is extended, extendibles "roll" through the long-term debt profile.*
2. *Short term debt includes current portion of long term debt.*

Commercial Paper

Strategic use of commercial paper rather than as a funding source for core requirements

- Use term commercial paper to mitigate short-term liquidity outflows such as unforeseen operational friction (fails), a sudden drop in prime broker lock-ups or sudden changes in secured funding
  - Do not use commercial paper to fund core requirements or illiquid assets because it is not a good source of cash capital
- Issue overnight commercial paper for two reasons
  - As a way to introduce new investors to Lehman Brothers' commercial paper in the hope that they will buy term CP over time – as evidenced by the growth in our term CP program in April and May
  - To measure sentiment toward Lehman Brothers: CP investors tend to be lead indicators of improving markets
- Conservatively do not attribute any liquidity value to overnight CP program even though there is still a market, albeit a small one, in most market environments

Commercial Paper Outstanding ($ Billions)



Rating Agency Comments on Lehman Liquidity

The rating agencies have recently commented favorably on the Firm's liquidity and have also been supportive of recent Fed action to provide additional solutions to an industry-wide structural liquidity issue

- "…its excess liquidity position ($34 billion at Feb. 29, 2008) is among the largest proportionately of the U.S. broker-dealers, and its sources-to-uses ratio is the strongest of the five."
  - S&P, Research Update; March 21, 2008

- "Lehman has consistently been among the top financial institutions in managing risk, including market, credit, and liquidity risks."
- "…Lehman's liquidity management and position remain robust and are underpinned by a funding framework that is scaled to the firm's expectations for, and vetting of, reliable secured funding…
  - Moody's, Research Update; March 17, 2008

- "Liquidity remains strong with Lehman's lower reliance on short-term funding relative to its peers…"
- "…Lehman has managed its liquidity well in the last eight months."
  - Fitch, Research Update; April 1, 2008

- "Lehman's liquidity position is robust…"
  - DBRS, Research Update; March 19, 2008

Lessons Learned From Bear Stearns Liquidity Event

Key Liquidity Metrics At Lehman Brothers & Bear Stearns

- Lehman Brothers had stronger liquidity metrics at the end of Q1 ‘08 than Bear Stearns
  - 60% greater balance sheet but 130% greater equity
  - Bear Stearns’ short-term debt stood at 1.5x its liquidity pool vs. 1.0x for Lehman Brothers
- Bear Stearns had very few unencumbered assets
  - Half of BSC STD was secured, which might have exacerbated the liquidity crisis in view of the exceptionally low amounts of unencumbered assets
- Bear Stearns was very reliant on customer free credit balances; if it lost these, it would need to quickly create substantial secured funding capacity for equities at a time when lenders would be likely to pull away
- Bear Stearns had almost no margin for error in terms of liquidity management. A reduction in short-term debt or in customer free credit balances would leave it in a precarious liquidity position

Q1 ‘08 Key Liquidity Metrics ($ billions)

	Bear Stearns		Lehman Brothers	LEH / BSC
Net balance sheet	254		397	1.6x
Net Leverage	22.6x		15.4x	0.7x
Liquidity pool	17		34	2.0x
STD excluding current portion	16		16	1.0x
Current portion of LTD	10	(E)	19	1.9x
Total short-term debt	26		35	1.3x
Short-term debt / Liquidity pool	1.5x		1.0x	0.7x
Unencumbered assets	14		161	11.5x
Free credit balances	43		13	0.3x

Lehman Brothers Would Have Reacted Differently

Bear Stearns Liquidity Crisis	Lehman Brothers
◆ "At first, some counterparties began pulling back from providing unsecured lending."	◆ No reliance on short-term unsecured funding. Liquidity framework assumes that unsecured debt cannot be rolled in a liquidity event
◆ "Then the same reluctance to deal with Bear was extended to secured lending on less liquid and lower-quality securities."	◆ More conservative secured funding approach – Less liquid assets (e.g., mortgages) funded with cash capital – Overfunding in lower quality collateral (e.g., high yield corporates) to avoid having to rely on new funding – Very well coordinated and proactive program of communicating with our creditors during the liquidity event. All senior management, including Dick Fuld, involved in calling key contacts at counterparties
◆ "Some skittish prime brokerage clients began moving their cash balances elsewhere."	◆ Prime broker business overfunded by repoing long positions to avoid relying on customer free credit balances ◆ Lock ups calculated on a daily basis during a liquidity event
◆ "As rumors swirled about Bear's financial position, these actions in turn influenced other counterparties."	◆ Treasury, Investor Relations and Corporate Communications are in constant communication with key stakeholders. Significant amount of senior management's time spent to address rumors and to reassure key stakeholders
◆ "Clients and lenders began also to reduce their exposure to Bear Stearns. This, in turn, created large volumes of novations of derivative contracts." • SEC Chairman Cox, Address to the Security Traders 12th Annual Washington Conference, May 7, 2008	◆ No change in "business as usual" philosophy. Disputed calls in derivatives businesses are normal considering lack of transparent marks in the OTC derivatives markets

Lessons From Bear Stearns Liquidity Event

- The Bear Stearns liquidity event highlighted the liquidity risk in the broker dealers, specifically secured funding risk and prime broker liquidity risk
  - Secured funding capacity disappeared for harder to fund assets such as mortgages or high yield securities, which we fund with cash capital (mortgages) or which we overfund (high yield securities)
  - As prime broker clients withdrew their free credit balances, the business started consuming cash and Bear Stearns was unable to find new secured funding capacity to replace the lost cash. This is the reason why we structured the business to be cash generative

- Although the mitigation of both of these risks was already included in our Funding Framework, the speed at which the crisis evolved ($17 billion liquidity loss at Bear Stearns in 48 hours) made us refine our liquidity stress scenario
  - Revised liquidity stress scenario is significantly more conservative than what we experienced during the week of March 17

Annex 10

ANNEX 10: Buy-backs by LBT

Cleaned SN	8digit SN	Note Type	Class	Series #	ISIN	Buyback Date	MatDate	Trade Status	Book	Customer	Customer Type	Current Notional	Full / Partial	Repurchase nominal	PorS	CCY	USD notional equiv.on the buyback date (original repurchase nominal)	USD notional equiv.as of 12th Sept (current repurchase nominal)	Buyback Clean Price	Actual cash paid (local currency per note)	OriginalFXRate	Trace to bank statements	DMA comments	Original USD equivalent actual cash paid	FxRate	Current USD equivalent actual cash paid	Buyback Reason	Program	HaircutExpected Life	Listing	Note of Issue	Calculation Agent	Note Description	Investor
GDP0059	GDP00059	EQUITY LINKED NOTE	EQ	GDP0059	DE000A0S5NN9	20080909	20121107	VER	LTD	BONYFFTMTN	0	1559000	Partial	1.559.000	P	EUR	2.125.049,52	2.170.497,48	111,656%	1.396.255,99	1,36	OK		1.903.215,60	1,392237	1.943.919,25	Lehman/Market Concern/Equities Inventory (Aug 08)	GDPN	20121107	0	LONDON	LBIE	OFFENSIVE AUTOREDEEMER NOTE LINKED TO SX5E INDEX	PRIVATE
MTN1311	MTN01311	EQUITY LINKED NOTE	EQ	MTN1311B	XS0137335468	20080903	20081026	VER	LTD	JPMCHASEMTN	BANK	580000	Partial	580.000	P	USD	580.000,00	580.000,00	98,976%	574.060,80	1,00	OK		574.060,80	1	574.060,80	Lehman/Market Concern	EMTN	20081026	0	LONDON	LBIE	GAIM FUND LINKED NOTE	PARAGON
MTN1638	MTN01638	ZERO COUPON NOTE	VA	MTN1638	XS0161760441	20080904	20090228	VER	LTD	JPMCHASEMTN	BANK	350000	Partial	350.000	P	EUR	373.221,80	487.282,95	97,374%	340.809,00	1,07	OK		363.421,00	1,392237	474.486,90	Lehman/Market Concern	EMTN	20090228	LUX	LONDON	LBIE	6 YEAR ZERO COUPON BOND	BANCA PROFILO
MTN1653	MTN01653	EQUITY LINKED NOTE	EQ	MTN1653	XS0162150071	20080912	20090313	VER	LTD	JPMCHASEMTN	BANK	250000	Partial	250.000	P	EUR	268.240,25	348.059,25	97,687%	244.217,50	1,07	OK		262.035,85	1,392237	340.008,64	Lehman/Market Concern	EMTN	20090313	LUX	LONDON	LBIE	6 YEAR EVEREST NOTE	AXA
MTN1659	MTN01659	FIXED RATE NOTE	IR	MTN1659	XS0162301625	20080904	20080916	VER	LTD	JPMCHASEMTN	BANK	492700	Partial	492.700	P	EUR	453.662,39	685.955,17	99,757%	491.502,74	0,92	OK		452.559,99	1,392237	684.288,30	Lehman/Market Concern	EMTN	20080916	LUX	LONDON	LBIE	PUTTABLE NOTE	0
MTN3844	MTN03844	EQUITY LINKED NOTE	EQ	MTN3844	XS0245046544	20080903	20090303	VER	LTD	JPMCHASEMTN	BANK	5000000	Partial	5.000.000	P	EUR	5.949.550,00	6.961.185,00	100,000%	5.000.000,00	1,19	OK		5.949.550,00	1,392237	6.961.185,00	Lehman/Market Concern	EMTN	20090303	0	LONDON	LBIE	EXCHANGEABLE ELN ON SAP AG	0
MTN6446	MTN06446	EQUITY LINKED NOTE	EQ	MTN6446	XS0289980749	20080912	20100312	VER	LTD	JPMCHASEMTN	BANK	3000000	Full	3.000.000	P	USD	3.000.000,00	3.000.000,00	100,000%	3.000.000,00	1,00	OK		3.000.000,00	1	3.000.000,00	Restructure	EMTN	20070612	0	LONDON	LBI	AUTOCALLABLE MEMORY COUPON NOTES TO BASKET	PRIVATE
MTN7968	MTN07968	EQUITY LINKED NOTE	EQ	MTN7968	XS0313347055	20080908	20091215	VER	LTD	JPMCHASEMTN	BANK	16552900	Partial	16.552.900	P	SEK	2.493.926,13	2.415.708,38	98,342%	16.278.452,92	0,15	OK		2.452.576,83	0,145939	2.375.655,93	Lehman/Market Concern	EMTN	20080803	0	LONDON	LBIE	EXPRESS CERTIFICATE ON SVENSKA CELLULOSA AB	PRIVATE
MTN8769	MTN08769	EQUITY LINKED NOTE	EQ	MTN8769	XS0328465306	20080912	20081025	VER	LTD	JPMCHASEMTN	BANK	316980	Partial	316.980	P	GBP	587.000,05	554.905,19	98,598%	312.535,94	1,85	No find	No payment has been processed on this buyback - not yet settled (scheduled for value date 18th Sept)	578.770,31	1,7506	547.125,42	Lehman/Market Concern	EMTN	20081025	0	LONDON	LBIE	1 YR GBP ELN	PRIVATE
MTN9397	MTN09397	COMMODITY LINKED NOTE	CD	MTN9397	XS0338072019	20080909	20091227	VER	LTD	JPMCHASEMTN	BANK	995000	Partial	995.000	P	USD	995.000,00	995.000,00	98,911%	984.164,45	1,00	Diff. amount	DMA's error - paid in two shapes - $984,154.50 (D00005518489) and $10 (D00005520258) see attached	984.164,45	1	984.164,45	Lehman/Market Concern	EMTN	20091227	0	ASIA	LBIE	COMMODITY BASKET LINKED NOTES	CATHAY UNITED BANK
MTN9639	MTN09639	COMMODITY LINKED NOTE	CD	MTN9639	XS0341923240	20080911	20090129	VER	LTD	JPMCHASEMTN	BANK	7000000	Full	7.000.000	P	USD	7.000.000,00	7.000.000,00	97,003%	6.790.210,00	1,00	OK		6.790.210,00	1	6.790.210,00	Lehman/Market Concern	EMTN	20090129	0	LONDON	LBIE	SHARK NOTE ON GOLD SPOT IN USD	PRIVATE
MTN10492	MTN10492	EQUITY LINKED NOTE	EQ	MTN10492	XS036164182[illegible]	2008090[illegible]	2018103[illegible]	VER	LTD	JPMCHASEMTN	BANK	1000000	Partial	1.000.000	P	EUR	1.578.582,00	1.392.237,00	100,000%	1.000.000,00	1,58	OK		1.578.582,00	1,392237	1.392.237,00	Restructure	EMTN	2015051[illegible]	0	LONDON	LBIE	RENDEMENT EXPRESS 7 %	DEXIA