



## SECONDARY MARKET TRADING UPDATE

### Lehman Update: Post-Confirmation Claims Trading

On November 4, 2011 creditors of Lehman Brothers Holdings Inc. and its affiliated chapter 11 debtors (collectively, “Lehman”) voted on whether to accept or reject the Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors dated August 31, 2011 (the “Plan”). The Plan confirmation hearing is scheduled for December 6, 2011. The Plan is supported by the official committee of unsecured creditors<sup>1</sup> and more than 150 Lehman creditors, including 87 foreign Lehman affiliates, holding over \$450 billion of unsecured claims have agreed to vote to confirm the Plan by signing plan support agreements<sup>2</sup>. According to recent court filings, the Plan has been accepted by over 71,000 creditors (representing 95% of the number of creditors who voted and 96.68% of the amount of claims voted on the Plan). Assuming the Plan is confirmed in December, the expectation is that creditors will begin to receive distributions in the first quarter of 2012.

#### I. Distributions

Pursuant to the Plan, there will be an initial distribution of “Available Cash”<sup>3</sup> on or about the effective date of the Plan with semi-annual distributions on each March 30<sup>th</sup> and September 30<sup>th</sup> thereafter. Reserved amounts that become available (through claims being disallowed or reduced, litigation being resolved, or distributions not being collected) will be included as Available Cash for the subsequent semi-annual distributions. Distributions will be made only to claimants holding “Allowed Claims”<sup>4</sup> as of the relevant distribution date. Claims that were allowed solely for voting purposes will be deemed to be “Disputed Claims”<sup>5</sup> for distribution purposes and will therefore receive distributions only if and when they become Allowed Claims. Pursuant to the Plan, the holder of a Disputed Claim that becomes an

<sup>1</sup> Statement of the Official Committee of Unsecured Creditors (i) in Support of Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors and (ii) in Response to Objections to Such Plan, dated November 29, 2011.

<sup>2</sup> Debtors’ Memorandum of Law, Pursuant to Section 1123(b)(3)(A) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedures in Support of Plan Settlements, dated November 29, 2011.

<sup>3</sup> “Available Cash” is cash realized from business operations, asset sales, interest on investments and recoveries from litigation less (i) the amount of cash necessary to pay administrative expense claims, tax claims, priority claims, secured claims, convenience claims and convenience guarantee claims and (ii) estimated reserved amounts.

<sup>4</sup> “Allowed Claims” are claims (i) listed on the debtors schedules that are not contingent and not disputed, (ii) allowed pursuant to the Plan, (iii) that are not disputed, (iv) settled pursuant to the authority granted to the debtors pursuant to a final order (including the Derivatives Procedure Order) or (v) allowed pursuant to final order of the court.

<sup>5</sup> “Disputed Claims” are (a) claims for which a proof of claim has been timely and properly filed that are (i) disputed in whole or in part under the Plan or (ii) subject to a timely objection or request for estimation that has not been withdrawn or determined by final order or (b) claims for which a proof of claim was not timely or properly filed.

Allowed Claim following the effectiveness of the Plan will receive a catch up payment (plus interest) at the next distribution date that is at least 45 days after the date such Disputed Claim becomes an Allowed Claim (unless an earlier date is agreed upon by the applicable debtor and claimant).

## II. Post Confirmation Claims Trading Opportunities

The trend in recent large chapter 11 proceedings (including Enron, Adelphia, Northwest and Delta) is that claims continue to trade post-plan confirmation. We expect that Lehman claims will continue trading post-confirmation as well. The two likely scenarios for post-confirmation trading are:

- A. Stub Distributions: Purchasing Allowed Claims with an eye toward potential upside of subsequent or “stub” distributions.
- B. Disputed Claims: Purchasing Disputed Claims with the view toward collecting distributions upon allowance and/or negotiating a settlement. A holder of many large Disputed Claims may have leverage to negotiate a mass settlement with the Lehman estate.

## III. Post Confirmation Claims Trading Mechanics

A unique aspect of the Lehman bankruptcy proceedings is that the Plan contemplates two post-confirmation trading scenarios:

### A. Claims Register

Pursuant to the Plan, the claims register will remain functional post-confirmation, thereby allowing claims to transfer in the same method as claims transferred pre-confirmation (pursuant to Bankruptcy Rule 3001(e), by filing a Form 210A with accompanying evidence of transfer, known as a “3001(e) filing”). Post-confirmation claim transfers will continue to be recognized by the claims agent and Lehman, except within the 14 day period before and after each distribution date (during which time the register will be temporarily closed).

### B. Liquidating Trust

Pursuant to the Plan, the administrator may determine that it is in the best interest of the debtors (or a particular debtor) and its creditors to move all or some of the assets of one or more Lehman debtors into a liquidating trust and administer distributions through the trust. The purpose of the liquidating trust is to liquidate assets and distribute the proceeds of such liquidation to creditors holding Allowed Claims and not to conduct any other business. Upon the establishment of a liquidating trust, applicable creditors holding Allowed Claims will have their claims converted into non-certificated beneficial interests in the trust. The trust will be dissolved upon the earlier of (i) a complete liquidation/distribution or (ii) three years from the date the trust is established. In the past, many chapter 11 cases with significant tail litigation (such as this one) set up liquidating trusts and often the beneficial interest in those trusts were traded in the secondary market. It is expected that if a liquidating trust is established for any or all Lehman debtors, the beneficial interests in that trust will be transferrable and traded much the way Lehman claims are currently traded (other than the 3001(e) filing).

## IV. Conclusion

The anticipated confirmation of the Plan will likely generate significant trading of Lehman claims.

A claim purchaser may buy Allowed Claims with a view toward collecting on future distributions. A claim purchaser may also buy Disputed Claims with the intention of negotiating a settlement and collecting on all proceeds. Upon the confirmation of the Plan, claims will continue to trade in the same manner they traded pre-confirmation. It is also

possible that one or more liquidating trusts will be established by the Plan administrator in the future. It is expected that if and when any liquidating trust is established, the beneficial interests in that trust will be traded as well.

If you have any questions or would like more information regarding the matters discussed in this memorandum, please call your usual contact at Sidley Austin LLP, or any attorney listed below.

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### **Secondary Market Trading Practice**

Sidley's Secondary Market Trading practice group advises clients on a diverse range of transactions related to the purchase and sale of bank loans, bankruptcy claims, mortgage loans, restricted securities and other illiquid assets traded in the secondary market. We also advise clients in the purchase of large portfolios of assets and assist in the diligence and risk analysis on such transactions. Our clients include some of the largest broker-dealers and investment banks in the world, as well as leading hedge funds, private equity firms and asset managers. Our lawyers have extensive experience in both LSTA and LMA documentation, as well as customized documentation tailored to meet the needs of unique transactions, including the transfer of mortgage loans, restricted securities and bankruptcy claims.

In addition to advising clients in connection with the transfer of Lehman claims, Sidley has advised creditors, investors, financial advisors, hedge funds, derivative product providers and others in connection with the work-out and restructuring of a number of derivatives, structured investments and other contracts and instruments affected by the insolvency of Lehman and its affiliates. Sidley has also worked with clients and advised on Lehman-related matters with respect to US federal bankruptcy law, English law, German law, Hong Kong law and Japanese law and has worked together with Swiss lawyers in connection with Lehman Brothers Finance S.A. and with Dutch lawyers in connection with Lehman Brothers Treasury Co. B.V.

Sidley has represented investors in litigation connected with Lehman in the US and England, including in US LBSF v. Bank of America National Association, et al. Adv. Pro. No. 10-03547 (Bankr. S.D.N.Y.) and LBSF v. Ballyrock ABS CDO 2007-1 Limited, Adv. Pro. No. 09-01032 (Bankr. S.D.N.Y.) and in England Perpetual Trustee Company Limited v BNY Corporate Trustee Services Limited, Lehman Brothers Special Financing Inc (the so-called "flip clause" litigation), BNY Corporate Trustee Services Ltd v Eurosail-UK 2007-3BL Plc, Anthracite Rated Investments (Jersey) Ltd v Lehman Brothers Finance S.A. and Fondazione Enasarco v Lehman Brothers Finance S.A.

In addition to our experience in assisting clients in trading assets currently in the secondary market, our group keeps an eye towards the future. In this extremely turbulent world economy we work to keep a step ahead in advising clients on new potential trading opportunities and strategies on a global basis.

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