

Lehman Files A Proposed Plan Of Reorganization

By Joon P. Hong and Michael Friedman

Lehman Brothers Holdings Inc. (“[LBHI](#)”) and its affiliate and subsidiary debtors (collectively, “[Lehman](#)”) filed their proposed chapter 11 plan of reorganization in their jointly administered chapter 11 proceedings on Monday, March 15, 2010 ([Docket No. 7572](#)). Monday was the last day for Lehman to file a plan pursuant to section 1121(d) of the Bankruptcy Code in order for Lehman to maintain the exclusive right to file and obtain confirmation of a plan.¹

The plan is a joint plan for all of the debtors in the jointly administered chapter 11 cases. Although the plan is lacking in many of the essential details, some key components of the proposed plan are:

- **no substantive consolidation** - the plan recognizes the corporate integrity of each debtor and allowed claims against a particular debtor are to be satisfied from the assets of that debtor;
- **intercompany claims recognized** - such claims are to be allowed, so long as the holder of the intercompany claim also recognizes and honors the claims against such holder which are held by other debtors and affiliates;
- **“Debtor Allocation Agreement”** - Lehman will file at least 10 days prior to the last date on which creditors may vote on the plan, the Debtor Allocation Agreement which will, among other things, identify and allocate rights and obligations among the debtors (including intercompany claims);
- **guarantee claims recognized** - the plan recognizes guarantee claims asserted against LBHI by both affiliates of LBHI and by non-affiliate third parties;²
- **broad definition of “Guarantee”** - guarantee includes (i) a guarantee issued pursuant to an ISDA Master Agreement in connection with a derivatives transaction, (ii) any other guarantee issued in connection with a transaction or (iii) a board or corporate resolution guaranteeing the debts of an affiliate;
- **redistribution of subordinated unsecured claims recoveries** - distributions on account of claims against LBHI arising under subordinated notes, which are listed in the plan, are to be redirected to holders of senior unsecured claims against LBHI;
- **formation of new asset management company** - LBHI will form LAMCO, a new subsidiary, which will provide management services to the debtors and administer the debtors’ assets under the plan; and
- **two year objection period** - objections to claims may be filed on or before the date that is two years after effective date of the plan, or such other date as ordered by the court.³

¹ March 15, 2010 was not the deadline to file a plan for those Lehman entities that commenced their chapter 11 cases after September 15, 2008. However, inasmuch as Lehman has filed a single joint plan in the jointly administered chapter 11 cases, and LBHI commenced its chapter 11 case on September 15, 2008, March 15th was the effective last date for Lehman to file a plan.

² [Schedule 6](#) of the proposed plan sets forth certain “Third-Party Guarantee Class Maximum” amounts for various debtors and affiliates of the debtors, which maximum amounts are used to determine the permitted amount of third party guarantee claims under the plan. It is unclear, and the plan does not explain, how these Maximum amounts were calculated or what they represent precisely, but because they are used to calculate the permitted amount of third party guarantee claims against LBHI, they affect and may potentially cap recoveries on such guarantee claims.

³ As a result of the long objection period, there will likely be continued uncertainty in the trading market regarding allowance of claims even after confirmation of the plan.

Memorandum

March 16, 2010

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Lehman did not file a disclosure statement, which is usually filed together with a proposed plan. Instead, Lehman requested an extension of time until April 14, 2010 to file a disclosure statement, without prejudice to request further extensions of time. Lehman's motion for additional time to file a disclosure statement is scheduled to be heard on March 17, 2010.

Lehman states in its extension motion that it has not had ample time to complete a comprehensive and adequately informative disclosure statement. Lehman requests the additional time so that it can, among other things, review the report by the court appointed examiner, which was unsealed on Thursday, March 11, 2010, assess the value of the debtors' assets and liabilities, analyze various data and issues (including substantive consolidation, intercompany issues and analyses of potential avoidance claims), review and reconcile more than 66,000 claims aggregating approximately \$875 billion, and do other things so that it can provide a more meaningful disclosure statement.

Now that Lehman has filed a plan, it has the exclusive right until May 17, 2010 to obtain confirmation of the plan.⁴ Between now and then, Lehman must, among other things, file a disclosure statement, obtain court approval of the disclosure statement, circulate ballots and solicit votes on the plan, provide appropriate notice of a confirmation hearing, and obtain confirmation of the plan following the conclusion of the confirmation hearing. Given the timing, it would be virtually impossible for Lehman to accomplish all of those things by May 17th. If Lehman fails to obtain confirmation of the plan by that date, other parties in interest may then file their own proposed plans.

In light of the condensed time-frame for confirmation of the plan, the current lack of a disclosure statement, the open status of many significant litigations currently pending in the Lehman chapter 11 cases, and the lack of specific details in the plan, we anticipate that the plan

will be a fluid document with many modifications. As Lehman itself noted in its motion to extend the time to file a disclosure statement, the plan that was filed will "necessarily be amended and modified" before the debtors will seek confirmation of the debtors' plan.

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If you have any questions regarding the matters discussed in this memorandum, please call your usual contact at Richards Kibbe & Orbe LLP or one of the persons listed here.

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⁴ Under the Bankruptcy Code, a debtor's exclusive period to obtain confirmation of a proposed plan cannot be extended beyond a date that is 20 months after the date of commencement of its chapter 11 case. May 15, 2010 is the date that is 20 months after September 15, 2008, the date when LBHI commenced its chapter 11 case. But since May 15th is a Saturday, the exclusivity period runs until the next business day, or Monday, May 17, 2010.