

compliance through the termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. The NRC engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, the NRC proposes reasonable timetables for achieving compliance and consult with and assist recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, the NRC's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, the NRC acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, the NRC will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonable require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

In determining a recipient entity's compliance with Title VI, the NRC's primary concern is to ensure that the entity's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient

entity's appropriate use of the methods and options discussed in this policy guidance is viewed by the NRC as evidence of that entity's willingness to comply voluntarily with its Title VI obligations.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26263; 812-12966]

Lehman Brothers Inc., et al.; Notice of Application

November 24, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: On October 31, 2003, the Commission issued a temporary order ("Temporary Order") and notice of application for a permanent order ("Original Notice") under section 9(c) of the Act.¹ This notice reflects that Neuberger Berman, LLC ("Neuberger LLC") and Neuberger Berman Management Inc. ("Neuberger Management," and together with Neuberger LLC, the "Neuberger Applicants") were added as named applicants after the issuance of the Original Notice. The Temporary Order, which also applied to the Neuberger Applicants, remains effective as issued.

APPLICANTS: Lehman Brothers Inc. ("Lehman"), Lehman Brothers Asset Management Inc. ("LBAM"), Lincoln Capital Fixed Income Management Company, LLC ("Lincoln Capital"), and the Neuberger Applicants (together, the "Applicants").²

FLING DATES: The application was filed on April 28, 2003, and amended on November 21, 2003. Applicants have agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the

Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 19, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, Lehman, 745 Seventh Avenue, New York, NY 10019; LBAM, 399 Park Avenue, New York, NY 10022; Lincoln Capital, 200 S. Wacker Drive, Suite 2100, Chicago, IL 60606; and the Neuberger Applicants, 605 Third Avenue, New York, NY 10158.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 942-7927, or Todd F. Kuehl, Branch Chief, at 202-942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

Applicants' Representations

1. Lehman, a Delaware corporation, is a full service investment banking firm, which, among other activities, engages in securities offerings, including initial public offerings, secondary offerings and debt financings, and provides merger and acquisition and other services. LBAM serves as investment adviser to one registered investment company ("Fund"), Lincoln Capital serves as investment subadviser for eight Funds, and the Neuberger Applicants serve as investment adviser, sub-adviser, principal underwriter, or depositor to one or more Funds. Lehman acts as the depositor or principal underwriter for one or more Funds.³

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered an injunction (the "Federal Injunction") against Lehman in

¹ Invest Company Act Release No. 26241 (October 31, 2003).

² Applicants request that any relief granted pursuant to the application also apply to any other company of which Lehman is or hereafter becomes an affiliated person (included in the term Applicants).

³ Any registered unit investment trusts ("UIT") or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

a matter brought by the Commission.⁴ The Commission alleged in the complaint ("Complaint") that Lehman violated certain Conduct Rules of the National Association of Securities Dealers ("NASD") and Rules of the New York Stock Exchange ("NYSE") (the NASD Conduct Rules and NYSE Rules together, the "Exchange Rules") by engaging in acts and practices that created or maintained inappropriate influence by Lehman's investment banking business (the "Investment Banking Department") over the research analysts in Lehman's research department (the "Research Department"). The Federal Injunction enjoined Lehman directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, Lehman consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief. Applicants state that Lehman expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a "State Injunction," and, together with the Federal Injunction, the "Injunctions"). Applicants request that this application cover any disqualifications of the Applicants under section 9(a) of the Act resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Lehman is an affiliated

person of each of LBAM, Lincoln Capital, and the Neuberger Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting them from the disqualification provisions of section 9(a) of the Act.⁵

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor, or principal underwriter for a Fund.⁶ Applicants state that the Complaint did not expressly reference the conduct of any current or former officer or employee of Lehman who is or was involved in providing underwriting services to the Funds underwritten by Lehman.⁷ While LBAM's, Lincoln Capital's, and the Neuberger Applicants' portfolio

managers may have had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds.⁸ Although some of the Funds held securities in their portfolios at the time that Lehman issued research reports concerning the issuers of such securities, Applicants state that Lincoln Capital and the Neuberger Applicants were not acquired by Lehman Holdings, and LBAM did not begin serving as investment adviser to any Fund, until after the time period covering the conduct that forms the basis for the Injunctions. As far as Lehman is aware, none of the current or former officers, employees, portfolio managers, or any other investment personnel employed by Lehman, who is or was involved in providing principal underwriting services to the Funds, acted in their capacity as such based on any non-public information relating to the conduct underlying the Injunctions. In addition, each of the Applicants that serve or may serve as an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers designed to protect the Funds from any conflict of interest that may arise between portfolio managers and other employees of Lehman.

5. The Applicants have or will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund that it advises, subadvises, or principally underwrites (each, a "Board"), including the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Injunctions, any impact on the Funds, and this application.⁹ The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and

⁵ On October 31, 2003, the Commission issued the Temporary Order exempting Applicants, including the Neuberger Applicants, from the provisions of section 9(a) until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005 (Investment Company Act Release No. 26241).

⁶ Lehman Brothers Holdings Inc. ("Lehman Holdings"), the ultimate parent company of the Applicants, acquired Lincoln Capital on January 31, 2003, and acquired the Neuberger Applicants on October 31, 2003. The only Fund advised by LBAM was first registered on May 7, 2003. Each of these events occurred after the conduct giving rise to the Injunctions.

⁷ The Complaint also refers to general practices regarding the relationship between the Investment Banking and Research Departments. It is possible that one or more current or former officers or employees of the Applicants, who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds, was at some time an officer or employee of the Investment Banking or Research Departments.

⁸ Lehman states that it acts as principal underwriter to certain UITs whose portfolio securities were selected by an unaffiliated third party depositor based on information published by the Research Department.

⁹ The Applicants also will advise the Boards of any State Injunctions that are issued. With respect to the UITs discussed in footnote 6, Lehman states that it has provided or will provide written notification to the trustees for each of these UITs and their independent depositor concerning the Injunctions, any impact on the UITs, and this Application, and will provide any other related information that may be requested by the trustees or independent depositors.

⁴ *Securities and Exchange Commission v. Lehman Brothers Inc.*, 03 Civ. 2940 (WHP) (S.D.N.Y., filed April 28, 2003) (the "Action").

other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Lehman and certain affiliated persons of Lehman previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the Application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 1, 2003:

Closed Meetings will be held on Tuesday, December 2, 2003 at 2 p.m. and Thursday, December 4, 2003 at 4 p.m., and Open Meetings will be held on Wednesday, December 3, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room and Thursday, December 4, 2003 at 3 p.m., in Room 1C30, the William O. Douglas Room.

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (6), (7), 9(B) and (10) and 17 CFR 200.402(a) (5), (6), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in closed sessions.

The subject matter of the Closed Meeting scheduled for Tuesday, December 2, 2003 will be:

Formal orders of investigation; Institution and settlement of administrative proceedings of an enforcement nature;

Regulatory matter regarding a financial institution;

Adjudicatory matter; and Institution and settlement of injunctive actions.

The subject matter of the Open Meeting scheduled for Wednesday, December 3, 2003 will be:

1. The Commission will consider whether to adopt new rule 38a-1 under the Investment Company Act, new rule 206(4)-7 under the Investment Advisers Act, and amendments to rule 204-2 under the Advisers Act. These rules and rule amendments would require each investment company ("fund") and each investment adviser registered with the Commission to adopt and implement compliance policies and procedures, to review those policies and procedures periodically for their adequacy and the effectiveness of their implementation, and to designate a chief compliance officer who, in the case of funds, would report directly to the board.

For further information, please contact Hester Peirce at (202) 942-0690 or Jamey Basham at (202) 942-0719.

The Commission will also consider whether to propose amendments to rule 22c-1 under the Investment Company Act of 1940 designed to eliminate late trading of redeemable securities issued by a registered investment company ("fund"). The proposed amendments would require that an order to purchase or redeem fund shares be received by the fund, its primary transfer agent, or a registered securities clearing agency, by the time that the fund establishes for

calculating its net asset value in order to receive that day's price.

For further information, please contact Adam B. Glazer or Penelope W. Saltzman at (202) 942-0690.

2. The Commission will consider whether to propose amendments to Forms N-1A, N-3, N 4, and N-6 under the Securities Act of 1933 and the Investment Company Act of 1940. The proposals would (1) require open-end management investment companies and variable insurance products to disclose in their prospectuses information about the risks of, and policies and procedures with respect to, the frequent purchase and redemption of investment company shares; (2) clarify that open-end management investment companies and insurance company managed separate accounts that offer variable annuities are required to explain both the circumstances under which they will use fair value pricing and the effects of using fair value pricing; and (3) require open end management investment companies and insurance company managed separate accounts that offer variable annuities to disclose their policies with respect to disclosure of portfolio holdings information.

For further information, please contact Kieran G. Brown or Sanjay Lamba at (202) 942 0721.

The subject matter of the Open Meeting scheduled for Thursday, December 4, 2003 will be:

The Commission will hear oral argument on an appeal by Enron Corporation from an initial decision of an administrative law judge. The law judge denied Enron's applications for exemption from the provisions of the Public Utility Holding Company Act of 1935 ("Act"). In the first application, filed April 12, 2000, Enron requested an exemption pursuant to Sections 3(a)(3) and 3(a)(5) of the Act. The law judge denied that application, finding that Enron failed to show that it is only incidentally a public utility holding company and that it does not derive a material part of its income from its public utility subsidiary, Portland General Electric Company. In its second application, filed on February 28, 2002, and amended on May 31, 2002, Enron sought an exemption pursuant to Section 3(a)(1) of the Act. The law judge also denied that application, finding that Enron failed to show that Portland General is predominantly intrastate in character and that it carries on business substantially in a single state.

Enron contends that the law judge erred when she found that Enron was not entitled to the exemptions for which it applied. The Public Utility Commission of Oregon, which regulates