

Shareholder	Type	Number of shares	% Ownership
ESOP	Class A	16,000	40
James Nelson	Class A	12,200	30.5
Dorothy Nelson	Class A	11,800	29.5
Total	40,000	100

4. As stated earlier, the Appraisal was prepared on June 15, 2001 by Hawthorne Company, an independent qualified appraisal firm (the Appraiser). The Appraisal considered three valuation approaches: (i) the market approach, (ii) the income approach, and (iii) the asset approach. In determining fair market value of the Shares, the Appraisal primarily relied on the income approach. The Appraisal utilized the single-period capitalization of cash flows method in the valuation of the Shares. Using this method, the Appraiser generated an estimate of the long-term sustainable "free cash flow" of the Employer, given its current operating status.⁴

The Appraiser represents that it utilized an 18% required annual rate of return in the past valuations of the Shares. Because the Appraiser did not believe the risk profile of the Employer had changed since the last valuation, it continued to utilize an 18% required annual rate of return in the Appraisal. By subtracting an estimate of long-term growth from the required rate of return, the Appraiser arrived at a capitalization rate of 9.5%. This capitalization rate of 9.5% was applied to the projected net cash flow figure. Under this methodology, the Appraisal established a fair market value of a minority interest in the Stock at \$140 per Share as of December 31, 2000.

5. An update to the Appraisal was prepared on August 28, 2001 (the Update), which was the date of the Stock Redemption. The Update stated that the ESOP should sell 3,600 Shares to the Employer for the purchase price of \$511,200, or \$142 per Share.⁵ In preparing the Update, the Appraiser reviewed the Employer's current annual

financial statements; the Employer's operational status as of August 28, 2001; the Stock Redemption Agreement; the Employer's Board of Directors' minutes approving the Stock Redemption, and subscription agreements between the Employer and the Nelsons. In addition, the Appraiser held discussions with representatives of the Employer regarding the current operations, financial condition, future prospects, projected operations and performance of the Employer. Finally, the Appraiser considered any restrictions on transferability associated with the Shares.⁶

6. The Stock Redemption was a one-time cash transaction. The ESOP did not pay any commissions or other expenses associated with the sale. The applicant represents that the fair market value of the Shares was determined by an independent, qualified appraiser at the time of the transaction. In this regard, the Employer paid the ESOP \$142 per Share, in accordance with the Appraiser's valuation of the Stock, as stated in the Update, at the time of the transaction. The applicant maintains that the sale was in the best interest and protective of the ESOP and its participants and beneficiaries at the time of the transaction. Among other things, the sale increased the liquidity and diversification of the ESOP's portfolio. The sale enabled the ESOP to realize a portion of the gains that had been earned on the investment, following its acquisition of the Stock in 1996. Specifically, the transaction allowed the ESOP's participants to realize a reasonable rate of return from the appreciation of the Stock over a 5-year period.

7. The applicant's current legal counsel states that at the time of the sale, the Employer was represented by another law firm. The applicant states

that the prior law firm failed to advise the Employer that the Stock Redemption would be a prohibited transaction under the Act. In this regard, the applicant maintains that the prior law firm drafted the legal documents governing all aspects of the Stock Redemption and the subsequent sale to the Nelsons. The Employer represents that it understood, from the nature of the prior law firm's involvement in designing and documenting the transaction, that the law firm did not see any legal obstacles to completing the transaction. When the Employer's current legal counsel discovered the prohibited transaction, the applicant promptly applied to the Department to request a retroactive exemption.

8. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The Stock Redemption was a one-time cash transaction;

(b) The ESOP received the current fair market value for the Shares, as established by an independent, qualified appraiser;

(c) The ESOP paid no commissions or other expenses associated with the Stock Redemption; and

(d) The Stock Redemption provided the ESOP and its participants and beneficiaries with more liquidity, a reasonable rate of return on its investment in the Stock, and an opportunity to diversify the overall investment portfolio.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693-8540. (This is not a toll-free number.)

Lehman Brothers Holding Inc. (LBHI) and Lehman Brothers Inc. (LBI), et al. (Collectively, the Applicants) Located in New York, NY

[Application No. D-11164]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408 of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set

⁴ The Appraiser defined "free cash flow" as all cash remaining after operating the business, repaying debt, and investing in fixed assets. Thus, "free cash flow" represents the theoretical dividend paying capacity of the Employer. The Appraiser then applied an appropriate capitalization multiple to that estimate of cash flows.

⁵ The Update was actually characterized as a "fairness opinion" by the Appraiser. Under the Update, the Appraiser concluded that the ESOP would not be receiving less than fair market value for the Stock. In response to the Department's request for more specificity regarding the valuation, the Appraiser noted, by letter dated March 6, 2003, that they were of the opinion that on August 28, 2001, the fair market value of the Stock was approximately \$141.00 per share.

⁶ The appraiser further maintains that its method of valuation of the Shares follows the guidelines set forth by the IRS's Revenue Ruling 59-60, 1959-1 Cum. Bull. 237 [as modified by Rev. Rul 68-609 (1968-2 C.B. 327)] for the valuation of corporate securities. In addition, the Appraiser followed the guidelines of the Valuation Advisory Committee of the ESOP Association [incorporating the Department's Proposed Regulations Relating to the Definition of "Adequate Consideration" (see 53 FR 17632; May 17, 1988)], the Uniform Standards of Professional Appraisal Practice, the American Society of Appraisers, and the Institute of Business Appraisers.