

Management Company, LLC ("Lincoln Capital") (together, the "Applicants").¹

FILING DATES: The application was filed on April 28, 2003. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period. Applicants have also 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 November 25, 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; and Lincoln Capital, 200 S. Wacker Drive, Suite 2100, Chicago, IL 60606.

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 a temporary order and a 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") and Lincoln Capital serves as investment subadviser for eight Funds. Lehman acts as the depositor or principal underwriter for Funds.²

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against Lehman in a matter brought by the Commission.³ 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 and Lincoln Capital 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 have 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.

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.⁴ 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

¹ 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).

² 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.

³ *Securities and Exchange Commission v. Lehman Brothers Inc.*, 03 Civ. 2940 (WHP) (S.D.N.Y., filed April 28, 2003) (the "Action").

⁴ Lincoln Capital was acquired by Lehman Brothers Holdings Inc., the ultimate parent company of the Applicants, on January 31, 2003, and the only Fund advised by LBAM was first registered on May 7, 2003. Both of these events occurred after the conduct giving rise to the Injunctions.