

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").