

## BANKRUPTCY REPORT

Bankruptcy report number 9 of the trustees of

**Lehman Brothers Securities N.V.**

**20 January 2012**

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Company name	: Lehman Brothers Securities N.V. (" <b>LBS</b> ")
Bankruptcy reference	: E.J.F. 2/2009
Bankruptcy date	: 30 January 2009 (the " <b>Bankruptcy Date</b> ")
Trustees	: Mr. M.R.B. Gorsira and Mr. R.F. van Beemen (the " <b>Trustees</b> ")
Supervisory judge	: Mr. A.J. Beukenhorst (the " <b>Supervisory Judge</b> ")
Activities Company	:The objective of LBS is the structuring and issuing of derivative products linked to equity securities with the purpose to obtain a return on investment.
Turnover data	: Operating income according to the audited annual accounts 2007 (as of 30 November 2007): USD 21,895
Reporting period	: 27 September 2011 up to and including 18 January 2012
Hours spent in period under review	: 1.346,7
Total hours spent to date	: 9.141,4

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### Summary of key issues

- After the approval of the Supervisory Judge, on 19 October 2011 the Trustees have entered into a settlement agreement with the U.S. Debtors<sup>1</sup> and Lehman Brothers Investment Management Company Ltd.;

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<sup>1</sup> As used herein, the "Debtors" means Lehman Brothers Holdings Inc. ("**LBHI**"); Lehman Brothers Special Financing Inc. ("**LBSFI**"); Lehman Commercial Paper Inc.; Lehman Brothers Commercial Corporation ("**LBCC**"); Lehman Brothers Financial Products Inc.; Lehman Brothers OTC Derivatives Inc. ("**LOTC**"); Lehman Brothers Derivative Products Inc.; Lehman Brothers Commodity Services Inc.; Lehman Scottish Finance L.P.; CES Aviation LLC; CES Aviation V LLC; CES Aviation IX LLC; East Dover Limited; Luxembourg Residential Properties Loan Finance S.a.r.l; BNC Mortgage LLC; Structured Asset Securities Corporation; LB Rose Ranch LLC; LB 2080 Kalakaua Owners LLC; Merit LLC; LB Somerset LLC; LB Preferred Somerset LLC; LB 745 LLC; PAMI Statler Arms LLC.

- In October 2011 the Trustees met with various creditors in New York and London to discuss the progress of the settlement of the LBS bankruptcy and the valuation principles to be applied to the valuation of the LBS Securities;
- The Trustees are a party to the *Cross-Border Insolvency Protocol* (the "**Protocol**") and have participated in a meeting on 15 November 2011 in New York with the official representatives that are also parties to the Protocol;
- On 6 December 2011, the United States bankruptcy judge, James M. Peck confirmed the modified Third Amended Plan of LBHI and Its Affiliated Debtors;
- After the approval of the Supervisory Judge, the Trustees have entered into a settlement agreement with Lehman Brothers International (Europe) (in administration) ("**LBIE**"), dated 22 December 2011. This settlement agreement relates to the Unfunded Securities;
- After a request by the Trustees, the Supervisory Judge has ordered on 3 January 2012 that claims of LBS creditors have to be filed with the Trustees on or before Wednesday 29 February 2012. By the same order the Supervisory Judge has determined that the claims admission meeting in the LBS bankruptcy will be held on Thursday 3 May 2012 at 09:00 a.m. in the Courthouse at the Wilhelminaplein 4 in Curacao;
- The Trustees have published the definitive valuation principles regarding the valuation of the LBS Securities; and
- The Trustees have added a new page on the website regarding the claim filing: [www.ekvandoorne.com/bankruptcy-lehman-brothers-securities/60-claim-filing](http://www.ekvandoorne.com/bankruptcy-lehman-brothers-securities/60-claim-filing)

## **1. General**

- 1.1 This is the ninth bankruptcy report of the Trustees. The information provided in this report – especially the financial information – is still subject to further investigation. Please be advised that information may have to be substantially amended following such further investigation.
- 1.2 With regard to the progress of the bankruptcy, the Trustees will communicate with the creditors via electronic mailings (through the electronic communication systems of the clearing systems) and via the website: [www.ekvandoorne.com/bankruptcy-lehman-brothers-](http://www.ekvandoorne.com/bankruptcy-lehman-brothers-)

[securities/38-general-information](#). Please note that the information and documents published on the website may (at any time) be subject to changes.

- 1.3 In this ninth bankruptcy report the Trustees provide an update regarding the progress of the settlement of the bankruptcy of LBS over the last 4 months.
- 1.4 Subjects discussed in the prior bankruptcy reports, but not discussed in this bankruptcy report, may however still be subject to further investigation and/or analysis, but no or little progress has been made regarding those subjects in this reporting period.

## **2. Lehman Brothers Securities N.V.**

### *2.1 General*

LBS was incorporated on 31 October 2003 and is a wholly-owned subsidiary of Lehman Brothers Asia Holdings Limited, seated in Hong Kong, which in turn is a wholly-owned subsidiary of LBHI. LBHI is incorporated in Delaware in the United States and is the holding company of the worldwide operating Lehman Brothers group of companies (the "**Lehman Brothers Group**").

LBS had its corporate seat at E-Commerce Park, Vredenberg in Curacao. Mr. Jonathan Josef Knapp is listed in the Commercial Register as the Managing Director of LBS (the "**Managing Director**").

### *2.2 Cause of bankruptcy*

On 15 September 2008 LBHI filed a petition in the U.S. Bankruptcy Court seeking relief under Chapter 11 of the United States Bankruptcy Code. The Lehman Brothers Group has subsequently closed all its subsidiaries globally. As LBS was then unable to pay its debts, LBS requested the Court of First Instance of the Netherlands Antilles, venue Curacao, that it be declared bankrupt on 30 January 2009.

## **3. Cross-border insolvency protocol**

### *3.1 Protocol Meetings*

The Protocol Parties met on 15 November 2011 in New York. The next Protocol meeting is scheduled for February/March 2012, place to be determined.

#### 4. U.S. Debtors

On 19 October 2011 the Trustees have reached a settlement agreement with the U.S. Debtors<sup>2</sup> and Lehman Brothers Investment Management Company Ltd. to support the U.S. Debtors' Third Amended Plan. The settlement agreement also provides LBS with (i) an allowed intercompany claim of USD5.174 billion against LBHI; (ii) an allowed intercompany claim of USD74.6 million against Lehman Brothers Special Financing Inc.; and (iii) an allowed derivative claim of USD1.3 million against Lehman Brothers Commercial Corporation.

The Trustees have published a copy of the executed settlement agreement on the website.

#### 5. Lehman Brothers International (Europe)

In the autumn of 2010 the Trustees filed a claim of approximately USD 12 billion with LBIE in relation to the non-payment by LBIE of the purchase price of certain LBS issued securities (the "**LBS Securities**"), some of which were (i) sold on by LBIE to third parties (the "**Funded Securities**"); (ii) not sold on to third parties and were held by LBIE in its depot (the "**Unfunded Securities**"); and (iii) sold on to third parties by LBIE, but subsequently repurchased (the "**Repurchased Securities**") (see also paragraph 5 of the sixth bankruptcy report, dated 30 November 2010). As reported in the previous bankruptcy reports, the Trustees have been conducting extensive legal and factual analysis of the matter, and have been working with the LBIE administrators to reconcile the population of these LBS Securities with the records held by the Clearing Systems and LBIE. The result of this work is that the Trustees and the LBIE administrators have reached a settlement agreement pursuant to which LBIE has transferred the Unfunded Securities and the Repurchased Securities to LBS. In consideration for this, the Trustees have withdrawn the USD 12 billion claim regarding the non-payment of the purchase price of the LBS Securities.

#### 6. Lehman Brothers Finance SA

Next to the claim filed with LBIE, the Trustees also filed a back-to-back hedge claim under the Equity Hedging Agreement with LBF/LBFNA in the amount of approximately USD 12 billion in the autumn of 2010 (see also paragraph 3.3 of the fourth bankruptcy report, dated 13 April 2010 and paragraph 5 of the sixth bankruptcy report, dated 30 November 2010). The

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<sup>2</sup> As used herein, the "Debtors" means Lehman Brothers Holdings Inc. ("**LBHI**"); Lehman Brothers Special Financing Inc. ("**LBSFI**"); Lehman Commercial Paper Inc.; Lehman Brothers Commercial Corporation ("**LBC**"); Lehman Brothers Financial Products Inc.; Lehman Brothers OTC Derivatives Inc. ("**LOTC**"); Lehman Brothers Derivative Products Inc.; Lehman Brothers Commodity Services Inc.; Lehman Scottish Finance L.P.; CES Aviation LLC; CES Aviation V LLC; CES Aviation IX LLC; East Dover Limited; Luxembourg Residential Properties Loan Finance S.a.r.l; BNC Mortgage LLC; Structured Asset Securities Corporation; LB Rose Ranch LLC; LB 2080 Kalakaua Owners LLC; Merit LLC; LB Somerset LLC; LB Preferred Somerset LLC; LB 745 LLC; PAMI Statler Arms LLC. Nothing in this report should be deemed or construed as an admission of liability or claims, or as a waiver of any rights, claims or defenses.

Trustees and the LBF/LBFNA administrators met a couple of times in order to share information and (legal) views on this matter. Unfortunately, those discussions have not been fruitful. In this reporting period the Trustees and the LBF/LBFNA administrators have had no contact.

## 7. Creditors

### 7.1 *Order from the Supervisory Judge*

The Supervisory Judge has ordered that claims of LBS creditors have to be filed with the Trustees on or before Wednesday 29 February 2012 (the "**Claim Filing Date**"). By the same order the Supervisory Judge has determined that the claims admission meeting (the "**Claims Admission Meeting**") in the LBS bankruptcy will be held on Thursday 3 May 2012 at 09:00 a.m. (the "**Claims Admission Meeting Date**") in the Courthouse at the Wilhelminaplein 4 in Curacao.

### 7.2 *Claim Filing Procedure*

On the Claim Filing Date, the Trustees will actively 'allow' all ISIN/CUSIP codes based on the books and records of the Clearing Systems<sup>3</sup> as listed in **Annex 1**<sup>4</sup>, which represent the warrants and certificates that were issued by LBS in the past (the "**LBS Securities**") under the UK Warrant & Certificate Program and the Swiss Certificates Program (the "**Programs**") and were still outstanding on 12 September 2008. This means that, contrary to the order of the Supervisory Judge, the LBS note holders are not required to file a claim with the Trustees regarding their holdings of LBS Securities to have their claims allowed. The Trustees will make bankruptcy distributions of available monies on all allowed ISIN/CUSIP codes (subject to the valuation of the LBS Securities) *without* the need for LBS note holders to file claims with the Trustees.

Subject to paragraphs 3 and 4 of the LBS Securities Claim Filing Notice, the LBS Securities will **not** be prevented from trading ('blocked') as part of this procedure.

The Trustees will prepare a list with the provisionally admitted (*erkende*) claims, including the valuation (in accordance with the valuation principles that will be applied, as described in paragraph 8 below) of the provisionally admitted LBS Securities. The Trustees will also prepare a list of potentially disputed (*betwiste*) claims, if any, mentioning the grounds on which these are disputed. These lists will be lodged by the Trustees not later than Thursday 26 April

<sup>3</sup> "Clearing Systems": Euroclear Bank, Clearstream Bank, SIX SIS Ltd., VPS ASA, Euroclear Sweden and any alternative clearing system.

<sup>4</sup> Please note that **Annex 1** has been updated on 20 January 2012.

Nothing in this report should be deemed or construed as an admission of liability or claims, or as a waiver of any rights, claims or defenses.

2012 at the offices of the clerk of the Court in First Instance in Curacao for public inspection and published on the website.

The Trustees plan only to allow the persons who are at that time shown in the records of the relevant Clearing Systems as the holder of a particular amount of LBS Securities (the "**Holders**") and the persons holding an account with Euroclear Sweden and/or VPS ASA on behalf of an owner of LBS Securities (the "**Nominees**") to speak at the Claims Admission Meeting in person and/or by proxy. If by proxy a written power of attorney will have to be submitted to the Supervisory Judge unless the proxy holder is an attorney admitted to the Curacao Bar and registered with the Joint Court of Appeals of Aruba, Curacao, St. Maarten and of Bonaire, St. Eustatius and Saba.

Further instructions for Holders and Nominees in connection with the Claim Admission Meeting are included in the LBS Securities Claim Filing Notice.

### 7.3 *Beneficial Owners*

In accordance with paragraph 3.2 of the LBS Securities Claim Filing Notice, Beneficial Owners are not expected to put in queries about the claim filing procedure or to attend the Claim Admission Meeting.

However, if a Beneficial Owner can provide the following information, then such Beneficial Owner will be allowed to (i) enter into direct communication with the Trustees in respect of the claim filing procedure described in the LBS Securities Claim Filing Notice or other purpose; (ii) object to the Valuation Principles; and/or (iii) attend the Claims Admission Meeting:

1. The Beneficial Owner must submit to the Trustees a letter or other sufficient evidence of its holding from the appropriate Clearing System addressed to the Holder (such as a bank or prime broker that has an account at such Clearing System) confirming that the Holder is on such Clearing System's books and records as holder of the position. This letter must include (i) The ISIN/CUSIP code for the LBS Security; (ii) the date of which this position was held at the Clearing System; and (iii) the nominal amount and/or units held for that position.
2. The Beneficial Owner must also submit a letter to the Trustees from the Holder indicating (i) that they are the Beneficial Holder of that position and (ii) the contact information of the person(s) authorized to communicate with the Trustee.

#### 7.4 *Communication regarding the claim filing procedure*

On 6 January 2012 the Trustees circulated and published three notices, an Annex and a claim filing form. The notices relate to the claim filing procedures that have been set up by the Trustees. Furthermore, they published the LBS Q&A Notice, which provide the LBS creditors with answers to *frequently asked questions* regarding the LBS claim filing procedure. It is highly recommended that LBS creditors check the website regularly for updates.

### 8. **Valuation of LBS Warrants & Certificates**

#### 8.1 *General*

In the LBS Securities Claim Filing Notice the Trustees announced the definitive valuation principles for the valuation of the LBS Securities (the "**Definitive Valuation Principles**"). The valuation of any claims against LBHI in LBHI's Chapter 11 case on the basis of guarantees issued by LBHI under the LBS Securities does not fall within the responsibility of the Trustees and is therefore not addressed in this notice.

The Trustees have published the valuation principles they intended to apply to the valuation of the LBS Securities in their third and fourth bankruptcy reports. Further to those publications they had numerous discussions with LBS note holders and LBHI regarding the valuation of the LBS Securities. The Trustees deem it very important that the claim filing procedure and the related valuation of the LBS Securities will be handled in a(n) (cost) efficient and transparent process. In that respect they concluded that the valuation of the LBS Securities should be undertaken by the LBS estate itself, in accordance with valuation principles formulated by the Trustees.

#### 8.2 *Valuation*

The starting point for the valuation of the LBS Securities are the terms and conditions of the underlying contracts (the "**Final Terms**"). The Final Terms specify the amounts that are payable to Holders and Nominees and when such amounts are due and payable (the "**Contractual Amount**"). The Trustees adhere to the Final Terms as much as possible and to the extent permitted by Curacao law. Furthermore, the Trustees seek to align the Definitive Valuation Principles with the principles formulated by the bankruptcy trustees of Lehman Brothers Treasury Co. B.V. ("**LBT**"), wherever this is possible given the nature of the securities. However, the LBS Securities are of a different nature than the securities issued by LBT.

This may lead to differences between the two sets of valuation principles and the valuation of the securities.

The LBS Securities do not (automatically) become due and payable as a result of the bankruptcy of LBS or the LBHI Chapter 11 case. In principle the LBS Securities become due and payable on the settlement date (applicable to warrants) or the redemption date (applicable to certificates) (the "**Maturity Date**").

However, there are numerous exceptions to this principle. The majority of the LBS Securities contain, among others, *trigger events*, *kick-in events*, *early redemption events* and *early exercise events*. These events would cause an early settlement or an early redemption ("**Early Settlement Event**"). Market tools such as triggers, strikes, and barriers were linked to the market fluctuations of certain reference assets. In the event that the value of such reference asset, taken as collective or merely individually within a basket, infringed upon such thresholds, a settlement or redemption would then occur. The amount due and payable as a result of the occurrence of such Early Settlement Event may differ from the amount due at the Maturity Date, both amounts shall be referred to as the "**Contractual Amount**".

The Contractual Amount is referred to in the Final Terms either as cash settlement amount or physical settlement amount if the claims have become due and payable due to the passing of the Maturity Date, and as early cash settlement amount or early physical settlement amount if the claims have become due and payable due to an Early Settlement Event.

Four categories of claims can be distinguished:

1. Determinable claims arisen from LBS Securities that have become due and payable before the bankruptcy date (30 January 2009);
2. Determinable claims arisen from LBS Securities that have become due and payable within one year after the Bankruptcy Date;
3. Determinable claims arisen(/-ing) from LBS Securities that (have) become due and payable later than one year after the Bankruptcy Date; and
4. Indeterminable claims.

Each of the above mentioned categories will be valued according to a separate valuation method. These methods shall be described hereunder.

8.2.1 *Category I – Determinable claims due and payable before the Bankruptcy Date*

Determinable claims due and payable before the Bankruptcy Date will be admitted by the Bankruptcy Trustees for their Contractual Amount increased by any interest that accrued to the benefit of the respective Holders or Nominees in accordance with the Final Terms until the Bankruptcy Date.

8.2.2 *Category II – Determinable claims due and payable within one year after the Bankruptcy Date*

Claims arisen within one year after the Bankruptcy Date will be valued at their Contractual Amount, as if the claim had arisen before the Bankruptcy Date. However, the Contractual Amounts that are legally defined as *interest* shall be recognized on a discounted basis. The interest amount shall be discounted to the Bankruptcy Date. The discount rate shall, in accordance with the principles issued by LBT, consist of a risk-free interest rate and a credit spread component of 2.5 percent.

The applicable risk-free interest rate is the rate on government bonds issued in the currency of the relevant LBS Security that prevailed in the financial markets as of 12 September 2008. With respect to each currency, the appropriate risk-free interest rate is the implied risk-free forward rate for the term to maturity that corresponds with the period between the Bankruptcy Date and the date on which the Contractual Amount became due and payable.

8.2.3 *Category III – Determinable claims due and payable later than one year after the Bankruptcy Date*

The admissible amount for claims that become due after 30 January 2010 is determined by calculating the present value of the Contractual Amount at 30 January 2010. In order to calculate the present value of the Contractual Amount on 30 January 2010, all future contractual payments (including Contractual Amounts legally defined as interest) are to be taken into account and discounted to 30 January 2010. The discount rate shall, in accordance with the principles issued by LBT, consist of a risk-free interest rate and a credit spread component of 2.5 percent.

The applicable risk-free interest rate is the rate on government bonds issued in the currency of the relevant LBS Security that prevailed in the financial markets as of 12 September 2008. With respect to each currency, the appropriate risk-free interest rate is the implied risk-free forward rate for the term to maturity that corresponds with the period between the first anniversary of the Bankruptcy Date and the date on which the Contractual Amount became due and payable.

#### 8.2.4 *Category IV – Indeterminable claims*

Indeterminable claims shall be admitted for their estimated value on the Bankruptcy Date. Such estimation of the value of LBS Securities by the Bankruptcy Trustees shall be based on a range of factors including, if applicable, the LBHI valuation thereof of 12 September 2008. If a claim is partially indeterminable, then the determinable part shall be valued in accordance with the valuation method applicable to determinable claims that become due and payable on the same date, as described in the paragraphs 8.2.1; 8.2.2; 8.2.3. The indeterminable part shall be valued in accordance with the valuation method applicable to indeterminable claims.

#### 8.3 *Further information*

##### 8.3.1 *Physical Delivery*

Claims for the physical delivery of underlying assets shall be converted into monetary claims. Such claims shall be admitted for the value thereof on the Bankruptcy Date.

##### 8.3.2 *Currency*

All claims in the bankruptcy of LBS will be converted in local Curacao currency, the Netherlands Antillean Guilder ("**ANG**") against the prevailing exchange rate as per the Bankruptcy Date.

##### 8.3.3 *Statutory Interest*

Statutory or contractual interest – if applicable – can only be claimed until the Bankruptcy Date and must be claimed explicitly and separately.

#### **9. Improper management**

The Trustees will further investigate the manner in which the Managing Director and the Supervisory Board have fulfilled their duties.

#### **10. Fraudulent acts in respect of creditors**

The Trustees will further investigate whether fraudulent acts (*paulianens handelen*) have been committed.

## 11. Miscellaneous

- 11.1 As to the timing, the Trustees note that the winding-up of the bankruptcy of LBS largely depends on the completion of the Chapter 11 proceedings of LBHI as well as the Trustees' investigation into the bookings of LBS's assets and liabilities.
- 11.2 This ninth bankruptcy report (as well as every subsequent bankruptcy report) will be available on the website. The bankruptcy reports are also available for inspection at the Court of First Instance in Curacao.

## 12. Time line

- i) The Trustees plan to have meetings with creditors in New York (Monday 30 January 2012 – Thursday 2 February 2012) and London (Tuesday 7 February 2012 – Thursday 9 February 2012) to discuss – among others issues – the claim filing procedure and the valuation principles. If creditors wish to meet with the Trustees either in New York or in London, they are invited to contact the co-trustee Robert F. van Beemen at [beemen@kvandoorne.com](mailto:beemen@kvandoorne.com);
- ii) The Trustees expect to publish the valuation of the LBS Securities at the end of February 2012 / beginning of March 2012;
- iii) Claim Filing Date: Wednesday 29 February 2012;
- iv) Publication of the list of provisionally admitted (*erkende*) claims and potentially disputed (*betwiste*) claims: Thursday 26 April 2012; and
- v) Claims Admission Meeting Date: Thursday 3 May 2012.

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