



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-3010

January 29, 2008

Jeffrey A. Welikson  
Vice President and Corporate Secretary  
Lehman Brothers Holdings Inc.  
1301 Avenue of the Americas  
New York, NY 10019

Re: Lehman Brothers Holdings Inc.  
Incoming letter dated December 17, 2007

Dear Mr. Welikson:

This is in response to your letter dated December 17, 2007 concerning the shareholder proposal submitted to Lehman by the Free Enterprise Action Fund. We also have received a letter from the proponent dated December 27, 2007. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Jonathan A. Ingram  
Deputy Chief Counsel

Enclosures

cc: Steven J. Milloy  
Managing Partner & General Counsel  
Action Fund Management, LLC  
12309 Briarbush Lane  
Potomac, MD 20854

January 29, 2008

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Lehman Brothers Holdings Inc.  
Incoming letter dated December 17, 2007

The proposal requests that the board of directors prepare an environmental sustainability report.

We are unable to concur in your view that Lehman may exclude the proposal under rule 14a-8(i)(7). Accordingly, we do not believe that Lehman may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

John R. Fieldsend  
Attorney-Adviser

# LEHMAN BROTHERS

December 17, 2007

## VIA ELECTRONIC MAIL

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Ladies and Gentlemen:

Lehman Brothers Holdings Inc. ("Lehman") received a letter dated October 29, 2007 from the Free Enterprise Action Fund (the "Proponent"), presenting a stockholder proposal to be included in Lehman's next proxy statement (the "Proposal"). The Proposal is attached hereto as Exhibit A, together with other correspondence with the Proponent regarding proof of beneficial ownership. We respectfully request that the staff of the Division of Corporation Finance (the "Staff") confirm that it will not recommend any enforcement action against Lehman if it omits the Proposal. We submit that the Proposal may be properly omitted from the proxy materials pursuant to Rule 14a-8(i)(7) because it relates to the conduct of ordinary business operations.

### **The Proposal**

The Proposal requests that Lehman prepare an "Environmental Sustainability Report" by October 2008. The Proposal notes that the report may include: (i) Lehman's operating definition of environmental sustainable development; (ii) a review of current Lehman policies, practices and projects related to environmental sustainability; and (iii) a summary of long-term plans to integrate environmental sustainability objectives with Lehman's operations. In addition, the proposal notes that the report may focus on Lehman's global warming/climate change activities.

The supporting statement for the Proposal states, among other things, that Lehman's management "may be taking action based on erroneous information about global warming" and questions some of the information presented in a February 2007 report authored by Lehman's senior economic policy advisor, entitled *The Business of Climate Change: Challenges and Opportunities*. The report examines how climate change, and actions taken by regulators and others based on the belief that climate change is occurring, is likely to impact businesses in various sectors and it discusses some of the challenges and opportunities presented by climate change to companies and investors.

### **Rule 14a-8(i)(7) – Ordinary Business**

Under Rule 14a-8(i)(7), a company may exclude a proposal if it deals with a matter relating to the company's ordinary business operations. The general policy underlying the "ordinary business" exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impractical for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 34-40018

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OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

(May 21, 1998). This general policy rests on two central considerations: (i) “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight”; and (ii) the “degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which the shareholders, as a group, would not be in a position to make an informed judgment.” Id. Lehman believes that the foregoing policy considerations clearly justify exclusion of the Proposal. As a global financial services firm, advising investing and corporate clients of potential risks and opportunities relating to the markets and surroundings in which they operate constitutes part of Lehman’s day-to-day business operations.

In determining whether a stockholder proposal that requests preparation and dissemination of a special report to stockholders on specific aspects of a company’s business is excludable, the Staff has indicated that it “will consider whether the subject matter of the special report ... involves a matter of ordinary business.” See Exchange Act Release No. 34-20091 (Aug. 16, 1983). Where a proposal makes reference to environmental matters, the Staff has indicated that it will “consider both the proposal and the supporting statement as a whole,” in making a determination as to whether it may be excluded on the basis of Rule 14a-8(i)(7). See Staff Legal Bulletin No. 14C (Jun. 28, 2005). Here, the Proposal and the supporting statement taken as a whole relate to nothing outside of Lehman’s ordinary business. Lehman regularly provides advice to companies and investors around the world as it seeks to create value for its clients. With the globalization of trade and investment flows, Lehman believes it is imperative that it continue to strategically deploy its intellectual capital, capabilities and solutions in order to better help clients meet their goals. In particular, Lehman has recently undertaken several key initiatives to ensure that its clients have access to and can benefit from its knowledge and experience with the issues relating to climate change that both companies and investors face.

Lehman believes, as is noted in the February 2007 report, that climate change, or the perception that climate change is occurring, “poses many challenges but also presents many business opportunities” for its clients. The February 2007 report surveys investment opportunities across 16 different sectors and approaches the topic of global warming first and foremost as an *economic* issue. Regardless of whether global warming is actually taking place, legislative and other actions being taken by policy makers that believe it is taking place are, Lehman believes, altering the risk profile of some businesses and impacting the outlook for certain investments.

Determining how Lehman should advise existing clients or attract new clients in response to any development in the marketplace are clearly routine matters in the ordinary course of Lehman’s business and cannot reasonably be managed by stockholders. Some of the statements and conclusions Lehman makes in actively advising clients of material risks to their operations and markets, are by their nature open to differing interpretations. The Proponent’s belief that Lehman’s management “may be taking action based on erroneous information” is off the mark, as it is clear that both businesses and investors must take legislative and other actions surrounding global warming into account in their decision-making. The content of Lehman’s environmental reports and press releases are inextricably interwoven with its business operations, which seek to ensure that its existing and future clients have access to and can benefit from its intellectual capital, regardless of subject matter.

The Staff has previously recognized the principle that determinations of what type of product a company produces or distributes, or how that information is used, are routine matters

in the ordinary course of business and cannot reasonably be managed by stockholders. See, e.g., Time Warner Inc. (Feb. 19, 1993) (permitting exclusion of a proposal to establish a lyric review committee as relating to the nature, content and distribution of the company's product) and Capital Cities/ABC Inc. (Mar. 23, 1987) (permitting exclusion of a proposal requesting that the Board report to shareholders on, among other things, policies to assure that the company's controversial or violent programming be factual and balanced). The Proposal similarly deals with the nature and content of the product, or advice, Lehman generates and deploys as part of its ordinary business and which from time to time may be viewed as incorrect by some members of the public or be used or construed in ways Lehman did not intend. As is noted in the supporting statement for the Proposal, the Proponent believes that Lehman's February 2007 report is based on "erroneous information" and implies that the purpose of the Proposal is to ensure that management "undertake reasonable due diligence" with respect to the content of reports generated using corporate assets. To allow stockholder resolutions to police the content of its advice to clients, or mandate additional reports if stockholders disagree with the advice, would mean that many of Lehman's day-to-day business decisions would be subject to scrutiny, or veto, by persons whose special interests or viewpoints were touched by the intellectual capital in question. Lehman's management is best equipped to make decisions as to the production and content of the advice it gives to its clients in the ordinary course of its business.

Among other things, the Proposal requires that a report be prepared that includes a summary of Lehman's plans to integrate environmental sustainability objectives "with Lehman's operations." The Staff has concurred that proposals requesting the preparation of a report concerning ordinary business matters falls under the realm of ordinary business operations of a company and are therefore excludable under Rule 14a-8(i)(7). See Citigroup Inc. (Feb. 12, 2007) (permitting exclusion of a proposal submitted by the Proponent here requesting that the company prepare an annual "Equator Principles Right-to-Know Report" regarding the impact on Citigroup's lending practices of adoption of the Equator Principles, a banking industry framework for addressing environmental and social risks in project financing); Wachovia Corp. (Feb. 10, 2006) and Wells Fargo & Co. (Feb. 16, 2006) (management could exclude proposals that requested reports addressing the effects on their business strategy of the challenges created by global climate change). See also Chrysler Corp. (Feb. 18, 1998) (permitting exclusion of a proposal requesting a report to shareholders based on review of company's international code/standards, including practices related to environmental issues). Accordingly, Lehman believes that the Proposal, which seeks preparation of a report concerning ordinary business matters may be omitted under Rule 14a-8(i)(7).

## Conclusion

For the reasons set forth above, it is respectfully submitted that the omission of the Proposal from Lehman's next proxy statement is proper. We respectfully request your confirmation that the Staff will not recommend enforcement action if the Proposal is omitted. Lehman presently anticipates mailing its proxy materials for the 2008 Annual Meeting of Stockholders on or about March 5, 2008. We would appreciate a response from the Staff in time for Lehman to meet this schedule. In order to facilitate delivery of the Staff's response to this letter, the Staff's decision may be sent by facsimile to Lehman at (646) 758-2651 and to the Proponent at (301) 330-3440.

In accordance with Rule 14a-8(j), Lehman is simultaneously sending a copy of this letter and all attachments to the Proponent. A copy of this letter has been e-mailed to [cfletters@sec.gov](mailto:cfletters@sec.gov) in compliance with the instructions found at the Commission's web site and in lieu of our providing six additional copies of this letter pursuant to Rule 14a-8(j).

If the Staff has any questions, requires further information, or wishes to discuss this matter, please call me at (212) 526-0546.

Very truly yours,

LEHMAN BROTHERS HOLDINGS INC.

By: Jeffrey A. Welikson

Name: Jeffrey A. Welikson

Title: Vice President and Corporate Secretary

cc. Steven J. Milloy  
(Action Fund Management, LLC)

Andrew R. Keller  
(Simpson Thacher & Bartlett LLP)



action fund  
management, LLC

12309 briarbush lane  
potomac, md 20854  
t 301/258 2852  
f 301/330 3440

Post-It® Fax Note	7671	Date	10-29-07	# of pages	2
To	JEFF WELIKSON	From	STEVEN MILLOY		
Co./Dept.		Co.	APM / FEAOX		
Phone #	646 758 2651	Phone #	301 258-2852		
Fax #		Fax #			

BY FAX

October 29, 2007

Mr. Jeffrey A. Welikson  
Corporate Secretary  
Lehman Brothers Holdings, Inc.  
1301 Avenue of the Americas  
New York, NY 10019

Dear Mr. Welikson:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Lehman Brothers Holdings, Inc. (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

The Free Enterprise Action Fund (FEAOX) is the beneficial owner of approximately 452 shares of the Company's common stock, 273 shares of which have been held continuously for more than a year prior to this date of submission. The FEAOX intends to hold the shares through the date of the Company's next annual meeting of shareholders. Proof of ownership will be submitted by separate correspondence.

The FEAOX's designated representatives on this matter are Mr. Steven J. Milloy and Dr. Thomas J. Borelli, both of Action Fund Management, LLC, 12309 Briarbush Lane, Potomac, MD 20854. Action Fund Management, LLC is the investment adviser to the FEAOX. Either Mr. Milloy or Dr. Borelli will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Mr. Milloy at 301-258-2852. Copies of correspondence or a request for a "no-action" letter should be forwarded to Mr. Milloy c/o Action Fund Management, LLC, 12309 Briarbush Lane, Potomac, MD 20854.

Sincerely,



Steven J. Milloy  
Managing Partner

Investment Adviser to the FEAOX, Owner of Lehman Brothers Holdings Common Stock

Attachment: Shareholder Proposal: Environmental Sustainability Report

### Environmental Sustainability Report

Resolved: The shareholders request that the Board of Directors prepare by October 2008, at reasonable expense and omitting proprietary information, an Environmental Sustainability Report. The report may include:

1. Lehman's operating definition of environmental sustainable development;
2. A review of current Lehman's policies, practices and projects related to environmental sustainability; and
3. A summary of long-term plans to integrate environmental sustainability objectives with Lehman's operations.

The report may focus on Lehman's global warming/climate change activities.

#### Supporting Statement:

Lehman says that it "is engaged in efforts to find environmentally sustainable solutions and to develop market-based solutions in response to the threat posed by climate change..." [Press Release, September 26, 2007]

But it seems that management may be taking action based on erroneous information about global warming.

Management uses the so-called "hockey stick" chart to support the notion that "the Earth's mean temperature has risen sharply in recent decades." [See Lehman's "The Business of Climate Change: Challenges and Opportunities," p.6 (February 2007).]

But the hockey stick graph has been scientifically discredited. [See e.g., U.S. Senate Committee on Environment and Public Works, "Inhofe Says NAS Report Reaffirms 'Hockey Stick' Is Broken" (June 22, 2006), <http://epw.senate.gov/pressitem.cfm?id=257697&party=rep.>]

Moreover, the discrediting of the hockey stick graph occurred long before Lehman issued its February 2007 report.

Shareholders expect that management will undertake reasonable due diligence before undertaking action with corporate assets as management action based on erroneous information may not be "sustainable" for shareholders or the environment.

# LEHMAN BROTHERS

KAREN B. CORRIGAN  
VICE PRESIDENT AND ASSISTANT SECRETARY

November 9, 2007

**BY FAX ((301) 330-3440) AND OVERNIGHT DELIVERY**

Mr. Steven J. Milloy  
Managing Partner  
Action Fund Management, LLC  
12309 Briarbrush Lane  
Potomac, MD 20854

Dear Mr. Milloy:

I am responding to your October 29, 2007 letter (the "Letter") to Lehman Brothers Holdings Inc. ("Lehman") containing a shareholder proposal from The Free Enterprise Action Fund ("FEAOX") requesting Lehman to prepare a report by October 2008 discussing environmental sustainability matters. The Letter noted that you are acting as FEAOX's designated representative on this matter.

In order to submit a shareholder proposal, FEAOX must satisfy the requirements of Rule 14a-8 of Regulation 14A of the Securities and Exchange Commission. Under Rule 14a-8(b), FEAOX must have continually held at least \$2,000 in market value of Lehman common stock for at least one year by the date the proposal was submitted. FEAOX is not a registered holder of Lehman common stock. Therefore, Rule 14a-8(b) requires proof of ownership through a written statement from the record holder of FEAOX's securities as to which FEAOX claims beneficial ownership or a copy of a Schedule 13D or 13G or a Form 3, 4 or 5 filing reflecting your ownership of Lehman common stock. The Letter did not include such proof, but noted that verification of your ownership position would be submitted by separate correspondence. As of the date hereof, no proof of your ownership of Lehman common stock has been delivered to us.

Please remedy this deficiency by submitting the required information to me by November 23, 2007.

Sincerely,



Karen B. Corrigan

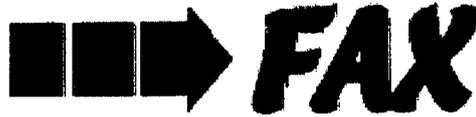
LEHMAN BROTHERS HOLDINGS INC.

1501 AVENUE OF THE AMERICAS, NEW YORK, NY 10019 TELEPHONE 212 526 0583 FACSIMILE 646 758 2653 EMAIL: KAREN.CORRIGAN@LEHMAN.COM

CFOCC-00035532

**ACTION FUND MANAGEMENT**

12309 Briarbush Lane  
Potomac, MD 20854



**Phone:** 301-258-9320  
**Fax:** 301-3303440  
**Email:** steve@feaox.com

**Date:** November 13, 2007  
**From:** Steven Milloy

**URL:**

**Pages:** 2 (including cover)

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**TO:** Karen Corrigan

**FAX:** 646-758-2655

**RE:** FEAOX shareholder proposal

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Proof of ownership attached. Please confirm receipt.

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**Note:** The information contained in this fax is intended only for the individual to whom it is addressed or agent responsible to deliver it to the intended recipient. If you have received this communication in error please immediately notify us by telephone. If there are any problems with the receipt of this document, please call us at 301-258-9320.

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November 13, 2007

Mr. Jeffrey A Welikson  
Corporate Secretary  
Lehman Brothers Holdings, Inc  
1301 Avenue of the Americas  
New York, NY 10019

Re: Shareholder Resolution of the Free Enterprise Action Fund

Dear Mr. Welikson,

Huntington National Bank holds 452 shares of the Lehman Brothers Holdings common stock beneficially for the Free Enterprise Action Fund, the proponent of a shareholder proposal submitted to Lehman Brothers Holdings and submitted in accordance with Rule 14(a)-8 of the Securities and Exchange Act of 1934. Of the 452 shares of the Company stock, 273 are held by Huntington National Bank and have been beneficially owned by The Free Enterprise Action Fund continuously for more than one year prior to the submission of this resolution, October 29, 2007. Please refer to the attachment for the purchase dates of said stock.

Please contact me if there are any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Barker', with a long horizontal flourish extending to the right.

John Barker  
Trust Relationship Associate - Senior  
Huntington National Bank  
Ph: 614-331-9709  
Fx: 614-331-6192

action fund  
management, LLC

12309 briarbush lane  
potomac, md 20854  
T 301/258 2852  
F 301/330 3440

December 27, 2007

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OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

VIA OVERNIGHT DELIVERY

Office of the Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.W.  
Washington, DC 20549

Re: Shareowner Proposal of the Free Enterprise Action Fund to Lehman  
Brothers Holdings, Inc. under Exchange Act Rule 14a-8

Dear Ladies and Gentlemen:

This letter is submitted on behalf of the Free Enterprise Action Fund ("FEAOX") in response to a December 17, 2007 request from Lehman Brothers Holdings, Inc. ("Lehman") to the Division of Corporation Finance ("Staff") for a no-action letter concerning the above-captioned shareowner proposal.

Action Fund Management, LLC is the investment advisor to the FEAOX and is authorized to act on its behalf in this matter.

We believe that Lehman's request is without merit and that there is no legal or factual basis for Lehman to exclude the Proposal from its 2008 Proxy Materials.

Finally, we request that Mr. Thomas J. Kim, chief counsel of the Division of Corporation Finance and a former attorney for the General Electric Company, formally recuse himself from any role in this matter.

**I. Environmental sustainability is a significant social policy issue that overcomes the "ordinary business operations" exception.**

The Proposal requests that Lehman prepare an Environmental Sustainability Report. Environmental sustainability is the sort of significant social policy issue that the Staff has deemed transcends the "ordinary business operations" exception for shareholder proposals. [See Exchange Act Release 40,018 (May 21, 1998) and Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005)].

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**II. The Staff has previously refused a no-action request on a similar shareholder proposal.**

In 2006, for example, the Staff refused a no-action request from Wendy's International concerning a shareholder proposal submitted by Domini Social Investments for an environmental sustainability report. Other similar precedent may exist. The current Proposal is substantially similar to the one at issue in the Wendy's International matter.

**III. Shareholder proposals for environmental sustainability reports are common.**

Many registrants have included (willingly or not) environmental sustainability proposals in their proxy materials including *Comerica* (filed April 11, 2007), *Goldman Sachs* (filed March 19, 2007), *Kellogg* (filed March 19, 2007) and *Wendy's Int'l* (filed March 12, 2007). The environmental sustainability report requested by the Proposal is not materially different from any of the proposals already included in proxy materials.

**IV. Thomas Kim should recuse himself from this matter.**

We request that Thomas Kim, chief counsel of the Staff, recuse himself from this matter because he is a former attorney for the General Electric Company ("GE") and he may be biased against the FEAOX because of its shareholder activities.

While Mr. Kim was employed by GE:

- The Staff twice refused to grant GE no-action requests on global warming shareholder proposals filed by the FEAOX;
- FEAOX re-filed its global warming proposal on October 30, 2007 while Mr. Kim may still have been employed by GE;
- A member of Gibson, Dunn & Crutcher, GE's law firm, was sanctioned by his employer for sending an obscene e-mail to the FEAOX related to a shareholder proposal filed with GE. See <http://blogs.wsj.com/law/2007/02/12/law-blog-email-of-the-day-by-gibson-dunns-larry-simms/>.
- GE joined the U.S. Climate Action Partnership, many members of which have received shareholder proposals from the FEAOX.

**V. Conclusion**

Based upon the forgoing analysis, we respectfully request that the Staff reject Lehman's request for a "no-action" letter concerning the Proposal. If the Staff does not concur with our position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response. Also, we request to be party to any and all communications between the Staff and Lehman and its representatives concerning the Proposal.

A copy of this correspondence has been timely provided to Lehman and its counsel. In the interest of a fair and balanced process, we request that the Staff notify the

undersigned if it receives any correspondence on the Proposal from Lehman or other persons, unless that correspondence has specifically confirmed to the Staff that the Proponent or the undersigned have timely been provided with a copy of the correspondence. If we can provide additional correspondence to address any questions that the Staff may have with respect to this correspondence or Lehman's no-action request, please do not hesitate to call me at 301-258-2852.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven", followed by a long horizontal line extending to the right.

Steven J. Milloy  
Managing Partner & General Counsel

cc: Jeffrey Welikson, Lehman Brothers Holdings, Inc.  
Charlene Caprio, Simpson Thacher & Bartlett LLP