



COUNTY OF SAN MATEO

INTERDEPARTMENTAL CORRESPONDENCE

To: All Superintendents
From: Michael Murphy, County Counsel
John C. Beiers, Chief Deputy County Counsel
Subject: Update on Lehman Brothers
Date: May 21, 2009

This memorandum is provided to update school districts on the status of the County's efforts to recover losses due to the Lehman bankruptcy.

1. Bankruptcy Action-- As you recall, Lehman is the largest bankruptcy ever in the United States. When Lehman filed for bankruptcy in September 2008, it had \$639 billion in assets. Over the past eight months, Lehman has been selling these assets in order to pay the creditors at the conclusion of the bankruptcy. According to our New York bankruptcy lawyers, the sale of assets is moving fairly rapidly at this point and they are expecting the Plan of Reorganization to be filed by the end of this year. Typically, once the Plan is filed, it is "the beginning of the end" and the process is completed a few months later. Our bankruptcy lawyers are therefore estimating the bankruptcy process to be complete in approximately 12 months, with a final payout to creditors at roughly 25 cents on the dollar. An article published by the Bloomberg Press on May 14th cites the current CEO of Lehman (appointed to wind down the company) as indicating that recovery can be expected in the 18 to 20 cents range, which our counsel believes is a conservative estimate. At this point, the market is still pegging the sale price in the 13 to 18 cents range (depending on the instrument).

2. Lawsuit by the County of San Mateo against the Lehman Officers and Directors and Ernst and Young-- The Cotchett firm has been engaged the last few months in a legal battle with the defense lawyers over venue. Unfortunately, the defendants were successful in removing the case from state court in San Francisco to federal court, in the Southern District of New York. State court is generally seen by plaintiffs in securities cases as a more favorable venue than federal court. The Cotchett firm reports that the assigned federal judge in Southern District of New York, Judge Kaplan, decided not to send the case back to San Francisco, in substantial part because there are several similar actions around the country that he felt should be consolidated in one court. On a positive note, Judge Kaplan has a reputation as an experienced, smart and independent judge.

In addition to several individual cases and a case brought by the State of New Jersey, one of the companion cases is a huge class action lawsuit with a similar complaint to ours. This case is considered the "lead case," and we are now waiting on the outcome of the defendant's motion to dismiss that case to determine the fate of our action. If Judge Kaplan dismisses that class action, we

can expect a similar motion to be filed in our case with a similar outcome. The plaintiffs will defeat the motion if they can demonstrate that Lehman was hiding information from investors about their true financial state while investors, such as the County of San Mateo, continued to invest. The Lehman officers and directors will argue that their company was no different than other companies—they were victims of the same national, if not global, economic tsunami as everybody else. The Cotchett firm remains cautiously optimistic about the outcome of this motion and have not learned anything since the filing of the case that has given them any cause for alarm. The motions should be decided by the end of 2009, and if we prevail, then discovery will begin and take roughly 12 months to complete, with a trial likely to be scheduled for 2011.

3. Legislative Update--As you are no doubt aware, Chairman Barney Frank scheduled and held a hearing before the House Financial Services Committee on May 5, 2009, on the specific question of the “effect of the Lehman bankruptcy on state and local governments”. This hearing, held at the request of Congresswomen Jackie Speier and Anna Eshoo, served to highlight in stark terms the impact of the Lehman losses. In addition to testimony by Congresswomen Eshoo and Speier, testimony was provided by a panel of five public officials, including Board of Supervisor Richard Gordon and Chancellor Ron Galatolo. Other panel members included a Controller from Florida, a Treasurer from Colorado and an economist, who emphasized that the real loss, in economic terms, goes beyond the specific dollar loss suffered by the entities invested in Lehman. Testifying in opposition was the Treasurer of Orange County, who appeared at the behest of two Southern California congressmen (but without the knowledge of the Orange County Board of Supervisors). We believe that the hearing revealed strong support among many of the House members attending the hearing for use of TARP funding to assist public entities, as contemplated in section 103(7) of HR 1424 (2008).

Working with Mary McMillan, we are now focusing our efforts on capitalizing on the momentum created by the hearing. We have followed up the hearing with a letter to Chairman Frank asking for his assistance in determining next steps. We have also followed up on our earlier request to Michael Tae of the Treasury Department to ensure that he was aware of the hearings and to ask that he take immediate action to allocate TARP funding to those public instrumentalities that suffered losses as a result of the failure of Lehman Brothers. Finally, Chairman Frank and Congresswomen Eshoo and Speier are sending a letter directly to Treasury Secretary Timothy Geithner requesting this immediate assistance under TARP.

All Superintendents
May 21, 2009
Page 3

L:\CLIENT\SCHOOLS\Lehmanupdate.doc