

Lehman Commercial Paper Inc. Files for Chapter 11

Lehman Commercial Paper Inc. (“LCPI”), a subsidiary of Lehman Brothers Holdings Inc. (“Lehman”) that provides administrative agency services for many credit facilities, filed for chapter 11 in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on Sunday night. LCPI also serves as a lender in several credit facilities, and has ceased funding many of its commitments since the onset of Lehman’s chapter 11 case.

Together with its chapter 11 petition, LCPI filed a motion seeking emergency relief from the Bankruptcy Court, which relief was granted late yesterday. The Bankruptcy Court’s order, which attempts to provide clarity on LCPI’s continuing role as administrative agent in credit facilities and as grantor of loan participations to third-parties, includes the following determinations:

1. **Agency Accounts:** Funds contained in a designated agency account (no. 30434141) maintained by LCPI at Citibank, N.A. (the “Agency Account”) are not LCPI’s property (except to the extent of LCPI’s share in such funds as a lender) and LCPI may continue to use the Agency Account consistent with its prior practice. The order also directs Citibank, N.A. to continue to maintain, service and administer the Agency Account, and to receive, honor, process and pay all payments and transfers (including those relating to the pre-chapter 11 period).
2. **Agency Resignation:** LCPI is authorized, but not directed, to resign from any administrative agent position as LCPI determines in its business judgment, subject to the provisions in the applicable credit agreements and to enter (with notice to the Bankruptcy Court) into customary successor agency agreements to facilitate transfer of the agency roles to successors.
3. **Elevation of Loan Participations:** LCPI may, in consultation with the creditors’ committee appointed in the Lehman chapter 11 case, elevate holders of loan participations to “lender status” subject to and in accordance with the provisions of the applicable credit agreements, but with a reservation of the rights of parties to argue that such participations were not true participations.

While the Bankruptcy Court’s order provides some clarity around the ownership of funds that are transferred by and through LCPI, it remains to be seen how market participants, and LCPI in particular, contend with the inevitable rush to replace LCPI as administrative agent and fill the hole in funding LCPI’s commitments.

Based on the order and given the circumstances, (a) payments made to LCPI (as administrative or paying agent) should be made exclusively through the Agency Account and (b) particularly in light of LCPI’s failure to fund its commitment in many cases, it is likely that LCPI will seek broad releases of claims when it enters into any agency transfer agreements, and these agreements should be carefully considered.

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