



KIRKLAND & ELLIS LLP

Private Equity Newsletter

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.

If you have any questions about the matters addressed in this Kirkland PEN article, please contact the following Kirkland authors or your regular Kirkland contact.

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PENpoints

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**The 8th Annual IVCA CFO Summit
Chicago, Illinois
October 16, 2008**

This annual event, held at the University of Chicago's Gleacher Center, is offered for the benefit of venture capital and private equity firm CFOs and their staff. Topics covered will include: tax and accounting issues, fund formation structuring issues and non-cash compensation. Kirkland partner Bruce I. Ettelson, P.C., will discuss fund formation issues and updates.

**PEI Infrastructure Investor Forum
New York, New York
October 22 - 23, 2008**

This inaugural forum in New York will look at infrastructure from the perspectives of both fund managers and investors. Kirkland partners Bruce Gelman and Thomas Geraghty will lead a workshop focusing on "State of the Art Structuring for Infrastructure Funds and Investments."

**KICP for Clients: The Fundamentals of
Investing in Public Companies
Chicago, Illinois
October 28, 2008**

Join Kirkland partners Christopher Butler, P.C., Keith S. Crow, P.C., Peter D. Doyle, R. Scott Falk, P.C., Robert M. Hayward, Marc Kieselstein, P.C., R. Henry Kleeman and Gerald T. Nowak at this Kirkland seminar, which will focus on the fundamentals of investing in public companies. Featured topics will include: "Investing through the Public Stock Markets," "Tactics of and Defenses Against Activist Shareholders" and "Alternative Investments in Public Companies." There is no charge for this seminar.

**The Ninth Annual European Real Estate and
Private Fund Investing Forum
London, England
October 29 - 30, 2008**

This two-day seminar will focus on topics including: a macroeconomic overview, fund allocation and portfolio management strategies, the latest

structures and debt financing available in today's market, U.S. residential distress and distressed opportunities in Europe. Kirkland partners Gary E. Axelrod and Jennifer M. Morgan will speak.

**The Kellogg School of Management's 2008
Real Estate Conference
Evanston, Illinois
November 5, 2008**

This year's conference will focus on a variety of relevant, action-oriented topics such as: the challenges and opportunities of operating in a volatile market, distressed strategies, executing deals in a changing global landscape and the multi-prong approach to true sustainable development. Kirkland is a sponsor of this event.

**University of Chicago's Second Annual Real
Estate Conference: Gridlock in the Capital
Markets
Chicago, Illinois
November 10 - 11, 2008**

This year's conference will feature prominent alumni from the university's Graduate School of Business and guest speakers discussing current issues effecting the commercial real estate industry. Kirkland partner Nathaniel M. Marrs will speak at this event.

**Yale School of Management Private Equity
Conference
Greenwich, Connecticut
November 14, 2008**

This year's conference, "The Road Ahead," will focus on looking at longer term opportunities in sectors and regions that represent the next frontier of private equity investing. Specific topics will include: investment opportunities in clean technology and infrastructure, global sourcing and deployment of private capital, and the emerging operational imperative within private equity firms. Kirkland partners Stephen Fraidin and Kirk A. Radke will speak.

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Kirkland & Ellis LLP's Private Equity Practice

Kirkland & Ellis LLP's private equity attorneys handle leveraged buyouts, growth equity transactions, recapitalizations, going-private transactions and the formation of private equity, venture capital and hedge funds on behalf of more than 200 private equity firms in every major market around the world.

Kirkland has been widely recognized for its preeminent private equity practice. *The Lawyer* magazine recently recognized Kirkland as one of the firms in "The Transatlantic Elite," noting that the firm is "leading the transatlantic market for the provision of top-end transactional services ... on the basis of a stellar client base, regular roles on top deals, market-leading finances and the cream of the legal market talent." In 2008, Mergermarket ranked Kirkland first by volume for Global and North American Buyouts in its "League Tables of Legal Advisers to Global M&A for Full Year 2007." Also in 2008, Kirkland received prestigious first-tier rankings in both private equity and fund formation from Chambers & Partners. Kirkland was named the "International Law Firm of the Year" in 2007 by *The Lawyer* magazine.

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