

[No Incoming Letter Submitted]

Investment Advisers Act of 1940 – Section 203(c), 203(g), and 206(3)

Barclays Capital Inc.

September 19, 2008

IM Ref No. 20089191553
Barclays Capital Inc.

RESPONSE OF THE
DIVISION OF INVESTMENT MANAGEMENT

File No. 8-41342

Dear Ms. Fleischman:

You have requested assurance that the Division of Investment Management (“Division”) would not recommend enforcement action to the U.S. Securities and Exchange Commission (“Commission”) under Section 203(c) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 203-1 thereunder if your client, Barclays Capital Inc. (“BCI”), treats the purchase of the assets and liabilities of Lehman Brothers Inc., a registered investment adviser (“Lehman Brothers”), contemplated under the asset purchase agreement dated as of September 16, 2008, and amended on September 19, 2008, among BCI, Lehman Brothers, and certain other parties thereto (the “Acquisition”) as an acquisition or assumption of substantially all of the assets and liabilities of the advisory business of Lehman Brothers for purposes of Advisers Act Section 203(g), Rule 203-1 under the Advisers Act, and Instruction 4.a(1) for Part 1A of Form ADV.

You also have requested that the Division provide assurances that it would not recommend enforcement action to the Commission under Section 206(3) of the Advisers Act if, following the Acquisition, BCI engages in certain principal transactions with former advisory clients of Lehman Brothers (which client accounts were transferred to BCI in connection with the Acquisition) under the extraordinary circumstances and for the limited period of time described below.

You state that, prior to the Acquisition, advisory clients of Lehman Brothers may have entered into transactions with BCI and that some of those transactions are pending (*i.e.*, were entered into but have not yet settled) or otherwise remain open. For example, trades may have been entered into but have not yet settled, and trades (such as repos and swaps) may have been entered into for which the advisory clients and BCI are counterparties. You are concerned that the former trades might be viewed as violating Section 206(3) of the Advisers Act because, prior to settlement, BCI will not be able to make the required disclosures and obtain the required consent of the clients to the transactions pursuant to Section 206(3). For similar reasons, you also are concerned that BCI might be deemed to have violated Section 206(3) of the Advisers Act if it were to unwind (or otherwise close out, by entering into offsetting transactions) the latter transactions with respect to the advisory clients after the Acquisition. You request relief

from Section 206(3) of the Advisers Act with respect to both types of transactions, for a limited period of time (no longer than fifteen business days from the date of this letter), to enable the former trades to settle and to unwind the latter transactions clients without complying with Section 206(3).

Based on these the foregoing and the information you conveyed to us on behalf of your client by telephone call on September 19, 2008, as well as the extraordinary circumstances surrounding the Acquisition, the Division staff would not recommend enforcement action to the Commission under Section 203(c) of the Advisers Act if BCI treats the purchase of the assets and liabilities of Lehman Brothers contemplated under the Acquisition as an acquisition or assumption of substantially all of the assets and liabilities of the advisory business of Lehman Brothers for purposes of Advisers Act Section 203(g), Rule 203-1 under the Advisers Act, and Instruction 4.a(1) for Part 1A of Form ADV.

In addition, the Division staff would not recommend enforcement action under Section 206(3) of the Advisers Act if BCI engages in the types of transactions described above for a period up to fifteen business days after the Acquisition without complying with Section 206(3) of the Advisers Act, provided that: (a) BCI makes the disclosures required by Section 206(3) to each advisory client within fifteen business days after each transaction; (b) each transaction is consistent with the policy of the advisory client participating in the transaction; (c) BCI maintains and preserves for a period of not less than six years, the first two years in an easily accessible place: (1) a written copy of all records relating to each transaction, and (2) a written record of each such transaction setting forth a description of the instrument purchased or sold, the identity of the parties to the transaction, and the terms of the purchase or sale transaction.

These positions are based solely on the circumstances described above, and any different circumstances might require a different conclusion. This response expresses the Division staff's position on enforcement action only and does not represent a legal conclusion regarding the matters discussed herein, or the applicability of any other federal or state law.

Sincerely,

A handwritten signature in black ink that reads "David W. Blass". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

David W. Blass
Assistant Director
Division of Investment Management
U.S. Securities and Exchange Commission