D. Linklaters Letter[29]

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Lehman Brothers International (Europe)
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("**Lehman Brothers**")

31 May 2006

Dear Sirs

Repurchase Transactions under a Global Master Repurchase Agreement

1 Introduction

1.1 You have asked us to review the Global Master Repurchase Agreement ("**GMRA**") that you intend to use for repos or reverse repos and buy/sell backs of securities and financial instruments ("**Securities**") with various counterparties. References to the GMRA in this opinion are to both the 1995

[29] Letter from Linklaters, to Lehman Brothers International (Europe), re: Repurchase Transactions under a Global Master Repurchase Agreement (May 31, 2006) [LBEX-LBIE 000001]. Lehman's internal Repo 105/108 Accounting Policy and an internal PowerPoint presentation referenced several iterations of the Linklaters opinion letter and witnesses state that Lehman refreshed the Linklaters letter on more than one occasion. *See* Lehman, Global Balance Sheet Overview of Repo 105 (FID)/108 (Equities) (July 2006), at p. 3 [LBEX-WGM 748489] (stating that true sale opinion letter for GMRA was first obtained in May 2001, updated in September 2004, and further updated in May 2006); Lehman Brothers Holdings Inc., Accounting Policy Manual Repo 105 and Repo 108 (Sept. 9, 2006), at p. 1 [LBEX-DOCID 3213293] (stating that Linklaters has issued opinions under a GMRA); *see also* Examiner's Interview of Anuraj Bismal, Sept. 16, 2009, at p. 8 (stating that Edward Grieb refreshed the Linklaters letter). Though Lehman refreshed the letter several times, the Examiner has been able to locate only one version of the Linklaters letter, dated May 31, 2006.

version and the 2000 version of the GMRA: the analysis in relation to each of them is the same.

1.2 For the purposes of this opinion, we have examined a copy of the GMRA but no other documents. Terms defined in the GMRA have the same meanings in this opinion.

1.3 Under the GMRA, the parties thereto may enter into transactions for Securities ("**Transactions**") in which one party, as Seller, agrees to sell Securities (the "**Purchased Securities**") to the other party as Buyer, against the payment of a price (the "**Purchase Price**") for the Purchased Securities to Seller.

1.4 At the same time, the parties enter into an agreement under which Buyer will sell to Seller Securities equivalent to the Purchased Securities (the "**Equivalent Securities**") at a certain date or on demand against payment of a price (the "**Repurchase Price**") by Seller to Buyer.

1.5 The purpose of this opinion is to advise you about whether the transfer of the Purchased Securities to the Buyer for the Purchase Price may, under English law, be classified as a sale involving the disposition of the Seller's entire proprietary interest in the Purchased Securities, as opposed to a charge.

1.6 This opinion is limited to English law as applied by the English courts and is given on the basis that it will be governed by and construed in accordance with English law.

1.7 For the purpose of this opinion we have assumed that:

(a) there are no provisions of foreign law which would affect this opinion;

(b) the GMRA and each of the Transactions is within the capacity and powers of each of the parties to it, will be validly executed and delivered by those parties and is valid, binding and enforceable under English law;

(c) at the time of each Transaction each of the assets comprising the Purchased Securities are beneficially owned by Seller at the time of its transfer to Buyer; and

(d) the Purchased Securities consist of liquid securities, so that the Buyer could easily dispose of the Purchased Securities and acquire equivalent securities if it wished.

2 Reclassification of the transaction

2.1 General

Generally speaking, the English courts recognise both the freedom of the owner of an asset to transfer his interest in that asset to another person and the freedom of the parties to a contract to determine the nature of the interest that is to be transferred. Whether a contract involves the sale of the owner's entire interest in the asset or the transfer of some lesser interest, such as a charge, is primarily determined by construing the terms of the contract.

In determining whether a person has entered into a contract involving the sale of an asset, the courts will look at the substance of the transaction: the terminology used by the parties to the transaction is not necessarily conclusive. Furthermore, if a series of transactions with respect to the same asset are entered into at the same time, it is the substance of the overall arrangements which is important. For example, an arrangement between two parties may purport to involve a sale but on its true analysis actually amount to a charge. Whether this is the case will depend on whether the legal nature of what has been agreed has the characteristics which the law recognises as those of a sale or those of a charge.

In the present case, we understand that the Purchased Securities will be transferred to Buyer pursuant to the GMRA. Usually the courts look only to the documentation pursuant to which assets have been transferred to determine whether the parties intended such a transfer to be a sale (albeit that such documentation may be construed in the light of any relevant background material). Accordingly, provided that the documentation recording the transfer of the Purchased Securities to Buyer is consistent with the parties' intentions that Seller should have disposed of its entire proprietary interest in the Purchased Securities to the Buyer, that would, in our opinion, evidence a sale rather than a charge. However, a court would look at the overall arrangements to determine whether a transfer should be classified as a sale or as a charge where it is alleged either that the terms of the documentation by which the assets were transferred had been supplemented or modified by provisions in other documentation or else that the sale documentation was a "sham" (see paragraph 2.5 below).

Consequently, it is necessary to consider, with respect to any Transaction, whether the arrangements for Buyer to transfer to Seller or its agent Equivalent Securities against the payment of the Repurchase Price by Seller (less any dividends, interest or other distributions of any kind paid in respect of the Purchased Securities ("**Income**") then payable and unpaid by Buyer to

Seller), would mean that the arrangements pursuant to which the Purchased Securities were transferred to Buyer would be construed as a charge. If so, Seller would retain a proprietary interest in the Purchased Securities and would not have effected a sale of them. It is also necessary to consider whether the Buyer's agreement to transfer any Income to Seller indicates that Seller has not disposed of its entire proprietary interest in the Purchased Securities.

2.2 The distinction between a sale and a charge

In our opinion, one of the essential characteristics of a sale of an asset is that the seller intends to transfer outright to the buyer his entire proprietary interest in the asset. Conversely, one of the essential characteristics of a charge is that, despite any transfer of assets between the parties, they intend the person creating the charge to retain a proprietary interest in the property which is the subject of the charge, so that on the discharge of his obligations he is entitled to the return of that property from the chargee. In other words, the chargor has not transferred outright to the chargee his entire proprietary interest in the assets transferred but has retained such an interest as allows him to demand the return of those assets on the discharge of his obligations.

Assets may be transferred to a transferee under an arrangement whereby such assets will or may be transferred by the transferee at a later date back to the transferor. However, if, in such a situation, the transferor is merely entitled to the delivery of *equivalent assets* (such as securities of the same series and nominal value) rather than the very assets that were originally delivered, this is, in our opinion, inconsistent with the existence of a charge because the transferor does not intend to retain a proprietary interest in the assets originally delivered. The only exception to this is where the transferee is to hold the assets on a fungible basis, together with other property of the same type, and the intention is to return a proportionate share of the pool of property that is held in this way. In the present case, however, there is no evidence of any such intention in the GMRA. The mere fact that the securities which are to be delivered have the same CUSIP numbers as the ones that the transferee originally received would not prevent them from being regarded as equivalent assets rather than the very assets that were originally delivered.

2.3 The effect of the transfer of Equivalent Securities

2.3.1 Transfer to Seller of equivalent assets and the option of cash settlement in the event of redemption of the Purchased Securities

Paragraph 3(f) of the GMRA provides that Buyer shall transfer Equivalent Securities to Seller (i.e., Securities which are equivalent to, and not necessarily the same as, the Securities comprising the Purchased Securities, or, if and to the extent that the Purchased Securities have been redeemed, by paying a cash sum equivalent to the proceeds of the redemption). Moreover, Buyer is not required to hold the Purchased Securities separately from its own assets and nothing in the GMRA expressly restricts Buyer's right to deal with the Purchased Securities. This makes it clear that the parties do not intend Seller to have the right to require the return of the particular Purchased Securities transferred to Buyer in any Transaction or, therefore, to retain any proprietary interest in the Purchased Securities. In our opinion, therefore, and subject to the points made below, the transfer of Purchased Securities under any Transaction would be construed as a sale rather than a charge.

2.3.2 Substitution

Paragraph 8 of the GMRA states that, if Seller requests and Buyer so agrees, a Transaction may be varied by the transfer by Buyer to Seller of Securities equivalent to the Purchased Securities (or of such of the Purchased Securities as shall be agreed) in exchange for the transfer by Seller to Buyer of other Securities of such amount and description as shall be agreed ("**New Purchased Securities**").

In our opinion, the variation of any Transaction by Seller transferring the New Purchased Securities to Buyer in return for Securities equivalent to the Purchased Securities does not affect the analysis that the original transfer of Purchased Securities would be construed as involving a sale rather than a charge. Again, Seller's right is to Equivalent Securities not the Purchased Securities. Likewise, provided that Seller's transfer of New Purchased Securities to Buyer under paragraph 8 of the GMRA is, and is intended to be, subject to the same arrangements applying to the purchase of the Purchased Securities under the GMRA, we believe that such transfer would also be regarded as involving a sale of the New Purchased Securities by Seller rather than a charge. This is not affected simply because the consideration received by Seller in return for making that transfer may be itself the transfer of Equivalent Securities by Buyer.

2.3.3 **Margin Payments**

With respect to any transaction under the GMRA, at any time from the date of the purchase of the Purchased Securities (the "**Purchase Date**") to the date of the purchase of the Equivalent Securities (the "**Repurchase Date**") (or, if later, the date of the delivery of the Equivalent Securities to Seller or the date of the termination of the Transaction), each party is entitled to calculate its exposure under that Transaction (the "**Transaction Exposure**"). The Transaction Exposure is the difference between (i) the Repurchase Price multiplied by the applicable Margin Ratio (subject to recalculation where the Transaction relates to Securities of more than one description to which different Margin Ratios apply) and (ii) the Market Value of Equivalent Securities at such time. Buyer will have a Transaction Exposure if the value of (i) is greater than the value of (ii) and Seller will have a Transaction Exposure if the value of (ii) is greater than the value of (i).

Paragraph 4 of the GMRA provides that if at any time a party has a Net Exposure in respect of the other party, it may by notice require the other party to make a transfer to it of an aggregate amount or value at least equal to that Net Exposure (a "**Margin Transfer**"). There will be a Net Exposure if the aggregate of all of the first party's Transaction Exposures (plus any unpaid Income Payments due to it but less the amount of Net Margin provided to it) exceeds the aggregate of all the other party's Transaction Exposures (plus any unpaid Income Payments due to it but less the amount of Net Margin provided to it).

Subject to paragraph 4(d), when a party has a Net Exposure and requires the other party to pay a Margin Transfer to it, the Margin Transfer may be satisfied by the payment (or repayment) of Cash Margin or the delivery of Margin Securities (or Equivalent Margin Securities). Because the above arrangements do not give Seller any right to the Purchased Securities, they do not affect our opinion that the transfer of the Purchased Securities under any Transaction would be construed as involving a sale rather than a charge.

Paragraph 4 of the GMRA, however, further provides that Net Exposure may be eliminated by the repricing of Transactions or the adjustment of Transactions, or a combination of these methods.

If a Transaction is *repriced*, the Original Transaction is terminated and the parties enter into a new Transaction (the "**Repriced Transaction**"). Purchased Securities under the Repriced Transaction are Securities equivalent to the Purchased Securities under the Original Transaction. The obligations of the parties with respect to the delivery of Purchased Securities and the payment of the Purchase Price under the Repriced Transaction are set off against their obligations with respect to the delivery of Equivalent Securities and the payment of the Repurchase Price under the Original Transaction and, accordingly, only a net cash sum is paid by one party to the other.

If a Transaction is *adjusted*, the Original Transaction is terminated and the parties enter into a new Transaction (the "**Replacement Transaction**"), under which the Purchased Securities are Securities agreed between the parties, the Market Value of which is substantially equal to the Repurchase Price under the Original Transaction. The other terms of the Replacement Transaction are as agreed between the parties. Assuming that under the Replacement Transaction the parties agree that Buyer shall transfer Equivalent Securities against payment of the Repurchase Price as per the provisions of GMRA, we would restate our opinion in paragraph 2.3.1 above.

Accordingly, we do not believe that these provisions affect our conclusion that the transfer of the Purchased Securities under the Original Transaction would be construed as involving a sale rather than a charge.

2.4 The effect of the arrangements regarding Income

Paragraph 5 of the GMRA provides that Buyer will pay to Seller an amount equal to any Income which is paid in respect of the Purchased Securities in the specified period. In certain circumstances, a transfer of assets coupled with the retention of the right to receive the income on the assets could be construed as involving the retention of a proprietary interest in or relating to the assets, i.e. a transfer of title subject to the reservation that the rights to income are to be held on trust for the transferor. Alternatively, an undertaking to pay income on the assets could be construed as involving an implied restriction on the transferee's freedom to deal with the assets.

In the present case, however, paragraph 5 of the GMRA makes it clear that Buyer's obligation in this respect is simply an obligation to pay an amount which is equivalent to any Income paid in respect of the Purchased Securities (there being, under the GMRA, no obligation to hold such Income in a separate account or any other indication that a trust over it and/or the right to receive it is intended).

As a result, we do not think that the arrangements regarding the payment of any amounts equivalent to Income to Seller would be construed as involving the retention by Seller of a proprietary interest in the Purchased Securities. Accordingly, they do not affect the conclusion that, in our opinion, the transfer of the Purchased Securities to Buyer would be construed as involving a sale rather than a charge.

2.5 The effect of the arrangements regarding voting

The GMRA contains no provisions regarding voting rights. Accordingly, any voting rights attached to the Purchased Securities the record date for which is after they are transferred to the Buyer will pass to the Buyer. This is consistent with our conclusion that the transfer would be construed as involving a sale rather than a charge.

The position is slightly different under the Equities Annex to the GMRA (2000 version) (the "**Equities Annex**"), which contains certain supplementary terms and conditions for transactions in equities. Paragraph 4(b) of the Equities Annex provides that, where voting rights fall to be exercised in relation to any Purchased Securities which are equities and in respect of which Equivalent Securities have not been transferred, the Buyer shall use its best endeavours to arrange for voting rights of that kind to be exercised in relation to the relevant number of securities of that kind in accordance with the Seller's instructions.

If a provision entitling the Seller to direct how the votes attached to the Purchased Securities must be exercised were construed as imposing an obligation on the Buyer to continue to hold the Purchased Securities, such a provision might call into question whether the Seller had agreed to transfer its entire proprietary interest in the Purchased Securities to the Buyer. The courts might conclude that the substance of the arrangements in such a case was that the Buyer had agreed to hold the Purchased Securities during the term of the transaction and, notwithstanding the references to Equivalent

Securities, the true agreement was that the Buyer had agreed to redeliver the Purchased Securities on the termination of the transaction. This might, in turn, lead to the conclusion that the arrangements were intended to involve no more than a charge granted by the Seller over the Purchased Securities in favour of the Buyer. Alternatively, the GMRA might be construed as imposing a trust over the voting rights in favour of the Seller.

Paragraph 4(b) of the Equities Annex, however, provides that the Seller's right to give instructions regarding the exercise of voting rights applies only if the Buyer is holding the Purchased Securities. The Equities Annex cannot, therefore, be construed as imposing an express or implied obligation on the Buyer to continue to hold the Purchased Securities, or as constituting a trust over the voting rights in favour of the Seller. Accordingly, this does not affect our conclusion that the GMRA involves a sale of the Purchased Securities, even if they include equities and the Equities Annex is used.

2.6 Sham transactions

In coming to the conclusions set out in this opinion, we have assumed that the GMRA accurately reflects the agreement between the parties. If it is merely a "sham", i.e. the common intention of the parties is not to create the legal rights and obligations which the GMRA has the appearance of creating, then extrinsic evidence may be adduced to enable the courts to discover what was actually agreed. For example, if the parties' common intention is that the Buyer will not transfer Equivalent Securities on the Repurchase Date, but this provision has been included to make the transfer of the Purchased Securities by Seller look like it involves a sale, the courts will ignore such provision in determining whether the transfer actually did involve a sale or not.

Similarly, if the parties subsequently enter into an agreement (orally, in writing or by conduct) which is inconsistent with the GMRA, the courts may decide that they have agreed to vary the terms of the GMRA. We have therefore assumed that no such agreement has been or will be entered into.

3 Transfer of ownership

The steps that are required to be taken to transfer assets from one person to another are determined by reference to the laws of the jurisdiction in which the assets are regarded in law as being situated (the *lex situs* of the assets). Hence, even if, as a matter of English law, Seller would be regarded as having sold the Purchased Securities to Buyer (i.e. as having *agreed* to transfer its entire proprietary interest in the Purchased Securities to Buyer), whether Seller's entire proprietary interest has in fact been transferred pursuant to the GMRA is a matter for the *lex situs* of the Purchased Securities. In other words, the mere entry into of the GMRA (or any Transactions under it) will not be sufficient to transfer title to the Purchased Securities. The Purchased Securities must actually be transferred pursuant to the GMRA. The steps that need to be taken to achieve this will be a matter for the *lex situs*. Where title to the Purchased Securities is evidenced by entries in a register or account maintained by or on behalf of an intermediary and Regulation 19 of the Financial Collateral Arrangements (No.2) Regulations 2003 applies, this will be the law of the country in which the account is maintained.

Furthermore the nature of Buyer's interest in the Purchased Securities will depend on the nature of the assets constituting the Purchased Securities and the way in which such are held by Buyer. In other words, that interest may not be a proprietary interest. For example, if as provided by paragraph 6(a) of the GMRA, delivery of the Purchased Securities takes place by book entry transfer through Euroclear, Clearstream or an agreed securities clearing system, this may not involve the transfer of a proprietary interest in any securities held in such system but merely an adjustment to the contractual (or other) obligations between the system (or its operator) and the person through which the Purchased Securities are held by Buyer in the system (ie the asset in question could be contractual rights in respect of the Purchased Securities, rather than the Purchased Securities themselves). However, in each case, provided that Seller transfers to Buyer all the rights and interests it may have in or in relation to the Purchased Securities, retaining no enforceable interests, and intending to transfer its entire proprietary interest, then in our opinion, the transfer would properly be considered a sale as opposed to a charge.

4 The creation of a fresh proprietary interest

Even if the arrangements between Seller and Buyer for the transfer of the Purchased Securities would be construed as a sale and, hence, an agreement to transfer Seller's entire proprietary interest in the Purchased Securities, it also needs to be considered whether, in respect of any Transaction, the obligation of Buyer to transfer Equivalent Securities to Seller on the Repurchase Date gives Seller a fresh proprietary interest in the Equivalent Securities.

4.1 The effect of the obligation to deliver Equivalent Securities

Under English law, where a person has a contractual right to require the delivery of an asset and the courts would be prepared to grant a decree of specific performance to enforce the delivery obligation, he is treated as having the beneficial ownership of that asset. Accordingly, where the *lex* *situs* of the Securities constituting the Equivalent Securities is English law, then if Seller could obtain such a decree in respect of Buyer's obligations to transfer Equivalent Securities, Seller would be the beneficial owner of the Equivalent Securities and Buyer would hold the Equivalent Securities on trust for it.

An order of specific performance is a discretionary remedy and whether it will be given in any case will, therefore, depend on the circumstances. Generally, the courts will order specific performance where a failure to perform cannot be adequately compensated for by an award of damages, but not otherwise. The courts have previously taken the view that where a person owns assets which are not readily available (i.e. where their equivalent cannot be readily obtained from another source), damages may not be an adequate remedy for a breach of an obligation he has accepted to transfer them, and this will justify an order of specific performance. However, a court will not usually order specific performance of an obligation to transfer an asset where the obligee may fulfill his obligations to a counterparty either by transferring the asset or by doing something else.

Whether Seller has, as a result of Buyer's obligation to transfer Equivalent Securities, a proprietary interest in the Equivalent Securities, will depend on the liquidity of the Securities which comprise the Equivalent Securities. If the Securities are readily available in the market, specific performance would not, in our opinion, be available and so this obligation of Buyer would not give Seller a proprietary interest in the Equivalent Securities. On the other hand, if the Equivalent Securities are very illiquid, so that there is only a very limited market for them, following the Repurchase Date, a decree of specific performance probably could be obtained by Seller to enforce Buyer's obligations. At least at that stage, therefore, Seller probably would have a proprietary interest in the assets. In the present case we have assumed that, in respect of any transaction, all the Securities comprising the Equivalent Securities are liquid. The issue therefore would only arise if this were to cease to be the case prior to the Repurchase Date.

4.2 The effect of the agreement to pay Income to Seller and vote in accordance with its instructions

It might be argued that Buyer's agreement in paragraph 5 of the GMRA to pay to Seller any Income which is paid in respect of the Purchased

Securities could be construed as involving an assignment of, or a declaration of trust over, Buyer's rights to that Income. Similarly, it might be argued that the arrangements in the Equities Annex regarding the exercise of voting rights could be construed as involving an assignment of, or a declaration of trust over, the voting rights attached to the Purchased Securities. However, for the same reasons that we do not consider that this agreement would be construed as the *reservation* of a proprietary interest in respect of the Purchased Securities (see paragraphs 2.4 and 2.5 above), we do not believe that it would be construed as the creation of a fresh proprietary interest over them, whether in respect of Income or voting rights.

5 Conclusion

Subject to the qualifications set out in this opinion, in respect of each Transaction, following the transfer by Seller to Buyer of the Purchased Securities, in our opinion, Seller will have disposed of its entire proprietary interest in the Purchased Securities by way of sale.

6 Reliance on this opinion

This opinion is addressed to you solely for your benefit in connection with the issue of the Notes. It is not to be transmitted to anyone else, nor is it to be relied upon by anyone else or for any other purpose or quoted or referred to in any public document or filed with anyone without our express consent. However, a copy of this opinion may be provided by Lehman Brothers to its auditors for the purpose of preparing the firm's balance sheets. We accept no responsibility or legal liability to any person other than the addressees specified above in relation to the contents of this opinion.

Yours faithfully

/s/ Linklaters

Linklaters