

that things were not going well for Lehman at the FRBNY.²⁸¹⁵ Weil attorneys Miller, Fife, Dannhauser and Thomas A. Roberts went to the FRBNY to represent Lehman.²⁸¹⁶ On the way to the FRBNY meeting, Roberts received a call from another Weil partner saying that Citibank had been told that Lehman was being liquidated and was requesting that Weil represent Citibank.²⁸¹⁷

On September 14, 2008, the Federal Reserve issued a press release stating that “[t]he collateral eligible to be pledged at the Primary Dealer Credit Facility (“PDCF”) has been broadened to closely match the types of collateral that can be pledged in the tri-party repo systems of the two major clearing banks.”²⁸¹⁸ Upon learning of the expansion of the PDCF window, Lowitt and Fuld initially believed that Lehman’s problem was solved and that Lehman would be able to open in Europe by borrowing from the PDCF.²⁸¹⁹ However, Lehman soon learned that it was not eligible to use the window.²⁸²⁰ The FRBNY limited the collateral LBI could use for overnight financing to the collateral that was in LBI’s box at JPMorgan as of Friday, September 12, 2008.²⁸²¹ That restriction was referred to as the “Friday criteri[on].”²⁸²²

²⁸¹⁵ Examiner’s Interview of Harvey R. Miller, Apr. 23, 2009, at p. 7.

²⁸¹⁶ *Id.*

²⁸¹⁷ *Id.*

²⁸¹⁸ Federal Reserve, Press Release (Sept. 14, 2008), *available at* <http://www.federalreserve.gov/newsevents/press/monetary/20080914a.htm>, Sept. 14, 2008, last visited, May 26, 2009.

²⁸¹⁹ Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 13.

²⁸²⁰ *Id.*

²⁸²¹ Examiner’s Interview of Robert Azerad, Apr. 20, 2009, at p. 5; Examiner’s Interview of Christopher Burke, July 7, 2009, at p. 3. An experimental allocation by Lehman to the PDCF on Monday morning

Fuld told the Examiner that on Sunday afternoon, Sirri, head of the SEC's Trading and Markets Division, called Fuld and asked him to "promise [Sirri] one thing," which was that Lehman would not file for bankruptcy protection.²⁸²³ Not long after that conversation with Sirri, McDade called Fuld from the meeting at the FRBNY to tell him that "the Fed has just mandated that we file for bankruptcy."²⁸²⁴ At the FRBNY, Baxter said that Lehman needed to file by midnight that night.²⁸²⁵ Miller asked why and objected that it could not happen by midnight.²⁸²⁶ He said that a Lehman bankruptcy would "bring great destabilization in the market," "bring trading to a halt," and result in "Armageddon."²⁸²⁷ In response, the Government representatives told the Lehman representatives that it was decided and there were cars available to return them to Lehman's building.²⁸²⁸

After Lehman's executives returned from the meeting at the Federal Reserve, the Board meeting resumed and discussed "the Fed's direct and authoritative statements

showed at least \$72 billion of eligible Lehman securities being swept into the PDCF system. See e-mail from John N. Palchynsky, Lehman, to Craig L. Jones, Lehman *et al.* (Sept. 15, 2008) [LBEX-DOCID 076981]; see also Lehman, PDCF Schedule of Eligible Securities (Sept. 14, 2008) [LBEX-DOCID 405695].

²⁸²² Examiner's Interview of Robert Azerad, Apr. 20, 2009, at p. 5; Examiner's Interview of Christopher Burke, July 7, 2009, at p. 3. According to Azerad, this restriction prevented Lehman from posting the range of collateral to the PDCF that other firms were allowed to post after September 15, 2008. Examiner's Interview of Robert Azerad, Apr. 20, 2009, at p. 5; see also e-mail from Timothy Lyons, Lehman, to Ian T. Lowitt, Lehman (Sept. 14, 2008) [LBEX-DOCID 070210] (stating "the fed is letting the other eighteen broker dealers fund a much broader range of collateral than us").

²⁸²³ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 12.

²⁸²⁴ *Id.* at p. 13.

²⁸²⁵ Examiner's Interview of Harvey R. Miller, Apr. 23, 2009, at p. 7.

²⁸²⁶ *Id.*

²⁸²⁷ *Id.*

²⁸²⁸ *Id.* at p. 8.