

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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: **Chapter 11 Case No.**
In re : **08-13555 (JMP)**
LEHMAN BROTHERS HOLDINGS INC., et al., :
: **(Jointly Administered)**
Debtors. :
:
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**ORDER ESTABLISHING
SCHEDULE IN CONNECTION WITH DISCOVERY
RELATED TO PLAN CONFIRMATION AND OTHER ISSUES**

Lehman Brothers Holdings Inc. and certain of its affiliated debtors (collectively the ‘Debtors’), filed a Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors, dated March 15, 2010 [Docket No. 7572], as amended on January 25, 2011 [Docket No.14150], and as may be further amended (hereinafter, the ‘Plan’). An Ad Hoc Group of Lehman Brothers Creditors (the ‘Ad Hoc Group’) filed a Joint Substantively Consolidating Chapter 11 Plan for Lehman Brothers Holdings Inc. and Certain of its Affiliated Debtors Other Than Merit, LLC, LB Somerset LLC and LB Preferred Somerset LLC, dated December 15, 2010 [Docket No. 13504], as may be amended (the ‘Ad Hoc Plan’). The Plan, the Ad Hoc Plan and any other plan or plans of reorganization filed in the above-captioned chapter 11 cases (the ‘Chapter 11 Cases’) will present contested issues of fact and law (‘Plan Issues’).

The Court has previously noted, and hereby finds, that it would be in the best interests of the Debtors and all interested parties that discovery in connection with Plan Issues arising out of objections to and/or the prosecution of the Plan, the Ad Hoc Plan and any other plan or plans of reorganization filed in the Chapter 11 Cases (‘Plan Discovery’) be conducted in an efficient, expeditious and orderly manner. Accordingly, it is hereby

ORDERED:

1. **No Other Plan Discovery:** Except as otherwise ordered by the Court, this Order shall control any and all discovery by any Debtor, committee, creditor or party in interest in connection with Plan Issues, but shall not affect the rights of any Debtor, committee, creditor or party in interest to seek discovery in connection with any other contested matters or adversary proceedings.

2. **Participation in Plan Discovery**

a) Any creditor, party in interest, or group of creditors or parties in interest seeking to participate in Plan Discovery shall file with the Court and serve on the attorneys for the Debtors and for the statutory committee of unsecured creditors appointed in the Chapter 11 Cases (the "Creditors' Committee") a completed "Notice of Intent," the form of which is attached hereto as Exhibit A. Each Notice of Intent must contain: (i) the name and address of the creditor or party in interest (or in the case of a group, the names and addresses of each of its members) and its or their attorneys; (ii) the amount and nature of the aggregate claims or interests held either individually or by the group; and (iii) a concise statement of the interest asserted by such creditor or party in interest in the outcome of issues related to Plan Discovery. Any Notice of Intent must be filed no later than fourteen (14) days following the entry of this Order (the "Notice of Intent Deadline"). In the absence of an order of the Court sustaining an objection to a Notice of Intent (as described in Paragraph 2(e) of this Order), a creditor, party in interest, or group timely filing a Notice of Intent shall be deemed a "Participant." For purposes of participation in Plan Discovery, "Participant" shall include the attorneys and any advisors for any Participant identified on the Notice of Intent filed by the Participant.

- b) The Debtors and the Creditors' Committee shall each be deemed a Participant in Plan Discovery without the need to file a Notice of Intent.
- c) Subject to Paragraph 2(g) below, any creditor, party in interest, or group of creditors or parties in interest that has filed or hereinafter files an alternative chapter 11 plan of reorganization in the Chapter 11 Cases (each, an "Alternative Plan"), including the Ad Hoc Group (each, an "Alternative Plan Proponent"), shall each be deemed a Participant as of the date of the filing of such plan, without the need to file a Notice of Intent.
- d) Subject to Paragraph 2(g) below, any creditor, party in interest, or group of creditors or parties in interest that has filed or hereinafter files an objection to the Plan or an Alternative Plan (each, a "Plan Objector") shall be deemed a Participant as of the date of the filing of such objection, without the need to file a Notice of Intent.
- e) The Debtors and the Creditors' Committee shall have the right to object to Notices of Intent on any and all grounds, including but not limited to those that are, *inter alia*, duplicative, harassing, or served by persons that are not parties in interest or do not comply with the requirements hereof or do not demonstrate a legally cognizable interest in participating in Plan Discovery.
- f) Within three (3) days following the Notice of Intent Deadline, the Debtors shall file with the Court a list of all Participants, which will be the official service list for Plan Discovery (the "Official Service List"). The Debtors shall amend the Official Service List, as necessary, from time to time and will file such amended service lists with the Court. Service in connection with Plan Discovery may be by electronic mail.
- g) Except as provided in Paragraphs 2(b), (c) and (d), any creditor, party in interest, or group of creditors or parties in interest who does not timely file a Notice of Intent, or who

files a Notice of Intent to which the Debtors or the Creditors' Committee successfully object, shall not be permitted to participate in Plan Discovery absent leave of the Court. Any party who becomes a Participant after the Notice of Intent Deadline has passed must comply with all discovery deadlines set forth in this Order and shall not be allowed to reopen any discovery deadlines that have already passed, except as set forth in Paragraph 13 of this Order.

- h) All Plan Discovery shall be conducted in accordance with the terms of the Protective Order, attached hereto as Exhibit B, and approved by the Court in its entirety. In order to be eligible to receive Plan Discovery, each Participant must agree to abide by the Protective Order. Each Participant, including its attorneys and advisors who are involved in the Chapter 11 Cases, must sign the Agreement to Abide By the Protective Order, attached hereto as Exhibit C, and serve a copy upon attorneys for the Debtors. Any Participant (or the attorneys or advisors for any Participant who are involved in the Chapter 11 Cases) who does not sign the Agreement to Abide by the Protective Order shall not be permitted to participate in Plan Discovery.

3. Document Discovery from the Debtors: Document Requests and Search Terms

- a) No later than twenty-one (21) days following the Notice of Intent Deadline, Participants who wish to serve Document Requests shall collectively serve consolidated Document Requests relating to Plan Issues upon the Debtors pursuant to Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), as part of one of the following groups: (i) the creditors of Lehman Brothers Holdings Inc. (LBHI); (ii) the creditors of the derivative entity debtors, including Lehman Brothers Special Financing Inc. (LBSF), Lehman

Brothers OTC Derivatives Inc. (LOTC), Lehman Brothers Derivative Products Inc. (LBDP), Lehman Brothers Financial Products Inc. (LBFP), Lehman Brothers Commercial Corp. (LBCC), and Lehman Brothers Commodities Services Inc. (LBCS); (iii) the creditors of Lehman Commercial Paper Inc. (LCPI); (iv) creditors of the Debtors' affiliates that are in foreign insolvency proceedings and who are actively involved in discussions with the Debtors; and (v) creditors of other Debtors. Each of the foregoing groups may collectively serve one consolidated Document Request. A Participant who is a creditor of more than one Debtor may elect to participate in the group or groups of its choosing. The Participants in each of the foregoing groups will meet and confer among themselves and develop each group's consolidated Document Requests in order to avoid the service of multiple, duplicative Document Requests and the attendant costs and other burdens imposed on the Debtors to respond to such requests. No Participant shall waive, or be deemed to have prejudiced in any way, any of its rights or legal positions by joining a Document Request as prescribed in this Paragraph. Any Participant who, after the meet and confer process, will not agree to serve consolidated Document Requests may, in accordance with the procedure set out in Paragraph 15 of this Order, seek leave of the Court to serve a separate Document Request under terms and conditions that the Court deems appropriate.

- b) Each Participant or group of Participants serving Document Requests upon the Debtors shall simultaneously serve a list of proposed search terms that, in the reasonable estimation of such Participant or group, are reasonably calculated to yield e-mails and e-mail attachments responsive to the Document Requests without being overbroad or unduly burdensome to the Debtors.

- c) The Debtors shall consider all Document Requests and search terms that are timely served on them and will, in good faith, generate a master list of search terms ('Search Term List') reasonably calculated to lead to the production of responsive e-mails and e-mail attachments. The Debtors shall make the Search Term List available to Participants no later than fourteen (14) days after the deadline for serving Document Requests and proposed search terms set forth in Paragraphs 3(a) and 3(b).
- d) The Debtors shall consider all Document Requests that are timely served and will, in good faith, generate a master list of custodians, time periods and other parameters ('Search Parameters') that will govern the universe of documents to be searched and produced by the Debtors. The Search Parameters will be made available to Participants together with the Search Term List.
- e) The Debtors shall not search for or produce to the following categories of privileged documents:
- i) Hard copy files of in-house and outside counsel;
 - ii) Documents and communications solely between in-house counsel and outside counsel;
 - iii) Internal documents and communications solely within an outside counsel's law firm;
 - iv) Documents and communications solely between or among outside counsel law firms for a single client;
 - v) Documents and communications solely between or among client and inside counsel; and
 - vi) Internal documents and communications solely within an advisor.
- f) The Debtors will not serve formal written responses to the specific Document Requests, but will serve general objections, if any, at the same time the Search Parameters are made available; and the absence of specific written objections will not constitute a waiver of

any of the Debtors' rights, objections or positions with respect to any specific request in a Document Request. In addition, notwithstanding the foregoing, the Debtors will set forth, simultaneously with providing the Search Parameters (i) a list of requests for which they assert no documents exist within the Debtors' possession, custody or control matching the document described in the request, (ii) a list of requests which are unduly burdensome or not reasonably calculated to lead to admissible evidence and the bases for such objections; and (iii) a list of requests that are unclear and require further clarification and the bases for such objections. The Debtors shall meet and confer with applicable Participants within seven (7) days of the Debtors providing such list with respect to any unclear requests.

- g) If necessary, Participants who have served Document Requests, individually or as part of a Participant group, on the Debtors shall raise any objections regarding the Search Term List and/or the Search Parameters no later than seven (7) days after the Search Term List and Search Parameters are served. The Debtors and applicable Participants shall meet and confer concerning such objections during the fourteen (14)-day period following the service of such objections. Any disputes concerning the Search Term List, the Search Parameters, and/or the Debtors' responses to Document Requests that are not resolved by the end of the fourteen (14)-day meet and confer period shall be brought to the Court's attention within seven (7) days after the final meet and confer, in accordance with the procedures set forth in Paragraph 15 of this Order.
- h) Any Participant seeking an amendment to the Search Term List or Search Parameters after the Search Term Lists and Search Parameters have been finalized must seek leave from the Court, in accordance with the procedures set forth in Paragraph 15 of this Order,

but may do so only after first meeting and conferring with the Debtors and the other Participants, as applicable.

- i) The Debtors shall search for and produce documents as expeditiously as is reasonably practical after the Search Term Lists and Search Parameters are finalized and will inform Participants when document production is substantially complete by serving a notice (Notice of Substantial Completion). The Debtors' document production shall be substantially complete when the Debtors believe in good faith that all material documents requested have been produced, but for limited categories or documents that need to be located, obtained, and/or reviewed. The Notice of Substantial Completion will also identify with reasonable specificity any categories of documents that remain to be produced.

4. Data Repository

- a) The Debtors shall, if reasonably practical, upload non-privileged responsive documents to an online data repository (the "Data Repository") on a rolling basis. The Data Repository review tool shall provide basic functions and features such as searching, tagging, printing, and downloading.
- b) After signing and providing to the Debtors' attorneys the Agreement to Abide by the Protective Order, a Participant will be granted access to the Data Repository. Each Participant shall, upon request, be given up to five (5) separate login credentials for the Data Repository. Any Participant who wants additional login credentials for the Data Repository will be provided with such login credentials at the Participant's own expense, at a cost of \$100 per additional login per month.

- c) The Debtors shall have the right to produce documents that are not reasonably conducive to being uploaded into the Data Repository by other means, including but not limited to supervised review of hard copy documents. The Debtors will notify all Participants if any documents will be made available by such other means, and will provide reasonable advance notice of the terms and conditions under which such documents will be made available.

5. Document Discovery from Alternative Plan Proponents

- a) Participants, including the Debtors and the Creditors' Committee, who seek to serve Document Requests relating to Plan Issues upon Alternative Plan Proponents pursuant to Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7034 and 9014, shall do so no later than twenty-one (21) days after the Notice of Intent Deadline. Participants other than the Debtors and the Creditors' Committee wishing to serve such requests shall meet and confer among themselves and develop consolidated Document Requests if reasonably practical. All Participants, in order to avoid the service of multiple, duplicative document requests and the attendant burdens on Alternative Plan Proponents of responding to them, shall first review any Document Requests that have already been served on an Alternative Plan Proponent and avoid serving new duplicative Document Requests.
- b) Each Participant serving Document Requests upon an Alternative Plan Proponent shall simultaneously serve a list of proposed search terms that, in the reasonable estimation of such Participant, are reasonably calculated to yield e-mails and e-mail attachments responsive to the Document Requests without being overbroad or unduly burdensome to the Alternative Plan Proponent served.

- c) Alternative Plan Proponents shall serve written responses and objections to any Document Requests timely served on them no later than twenty-one (21) days following the deadline for serving such requests. In addition, the Alternative Plan Proponents shall consider all Document Requests and search terms that are timely served on them and will, in good faith, generate both a master list of search terms reasonably calculated to lead to the production of responsive e-mails and e-mail attachments, and a master list of custodians, time periods and other parameters that will govern the universe of documents to be searched and produced by the Alternative Plan Proponents. The custodians in the search parameters shall include every individual employed or retained by the applicable Alternative Plan Proponent that the Alternative Plan Proponent reasonably expects will be called as a witness at any hearing concerning any Plan Issues.
- d) The Alternative Plan Proponents shall make the search term list and search parameters available to Participants no later than twenty-one (21) days after the deadline for serving Document Requests and proposed search terms.
- e) If necessary, Alternative Plan Proponents who have been served with search term lists shall meet and confer with applicable Participants regarding any disputes concerning served search terms, and other search parameters to be used by such Alternative Plan Proponent, as well as responses to Document Requests, during the fourteen (14)-day period following the service of such search term lists and parameters. Any disputes concerning an Alternative Plan Proponents' search terms or other search parameters not resolved by the end of the fourteen (14)-day meet and confer period shall be brought to the Court's attention within seven (7) days after the final meet and confer, in accordance with the procedures set forth in Paragraph 15 of this Order.

- f) Alternative Plan Proponents shall search for and produce documents as expeditiously as reasonably practical after being served a Document Request. Alternative Plan Proponents shall provide a copy of all responsive document productions to the Debtors in accordance with the specifications set forth in Exhibit D, and, if reasonably practical, the Debtors shall upload them to the Data Repository.

6. Document Discovery from Other Participants

- a) Participants, including the Debtors, the Creditors' Committee and Alternative Plan Proponents, may serve Document Requests relating to Plan Issues upon Participants other than the Debtors or Alternative Plan Proponents pursuant to Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7034 and 9014; provided, however, that all such requests must be served in a timely manner such that they permit a reasonable amount of time for served Participants to produce in response thereto no later than 75 days prior to the Confirmation Hearing (defined below).
- b) Each Participant serving Document Requests (the "Requesting Participant") upon a Participant other than the Debtors or Alternative Plan Proponents (the "Producing Participant") shall simultaneously serve a list of proposed search terms that, in the reasonable estimation of such Requesting Participant, are reasonably calculated to yield e-mails and e-mail attachments responsive to the Document Requests without being overbroad or unduly burdensome to the Producing Participant.
- c) Producing Participants shall serve written responses and objections to any Document Requests timely served on them no later than twenty-one (21) days following the deadline for serving such requests. In addition, the Producing Participant shall consider all Document Requests and search terms that are timely served on it and will, in good

faith, generate both a master list of search terms reasonably calculated to lead to the production of responsive e-mails and e-mail attachments, and a master list of custodians, time periods and other parameters that will govern the universe of documents to be searched and produced. The Producing Participant shall make the search term list and search parameters available to Participants no later than twenty-one (21) days after the deadline for serving Document Requests and proposed search terms.

- d) If necessary, Producing Participants who have been served with search term lists shall meet and confer with applicable Participants regarding any disputes concerning served search terms, and other search parameters to be used by such Producing Participant, as well as responses to Document Requests, during the fourteen (14)-day period following the service of such search term lists and parameters. Any disputes concerning a Producing Participant's search terms or other search parameters not resolved by the end of the fourteen (14)-day meet and confer period shall be brought to the Court's attention within seven (7) days after the final meet and confer, in accordance with the procedures set forth in Paragraph 15 of this Order.
- e) Producing Participants shall search for and produce documents as expeditiously as reasonably practical after being served a Document Request. Producing Participants shall provide a copy of all responsive document productions to the Debtors in accordance with the specifications set forth in Exhibit D, and, if reasonably practical, the Debtors shall upload them to the Data Repository.
- f) All Participants, in order to avoid the service of multiple, duplicative document requests and the attendant burdens on Producing Participants of responding to them, shall first

review any Document Requests that have already been served on a Participant and avoid serving new duplicative Document Requests.

7. Document Discovery From Non-Participants

- a) Participants, including the Debtors, the Creditors' Committee and Alternative Plan Proponents, may serve Document Requests and/or document subpoenas relating to Plan Issues upon non-Participants pursuant to Rule 45 of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 9014 and 9016; provided, however, that all such requests for document discovery must be served in a timely manner such that they permit a reasonable amount of time for production no later than 75 days prior to the Confirmation Hearing (defined below).
- b) Each Participant serving subpoenas or Document Requests upon a non-Participant shall simultaneously serve a list of proposed search terms that, in the reasonable estimation of such Participant, are reasonably calculated to yield e-mails and e-mail attachments responsive to the subpoenas or Document Requests without being overbroad or unduly burdensome to the non-Participant.
- c) Non-Participants shall serve written responses and objections to any subpoenas or Document Requests timely served on them no later than twenty-one (21) days following the deadline for serving such requests. In addition, non-Participants shall consider all subpoenas or Document Requests and search terms that are timely served on them and will, in good faith, generate both a master list of search terms reasonably calculated to lead to the production of responsive e-mails and e-mail attachments, and a master list of custodians, time periods and other parameters that will govern the universe of documents to be searched and produced. The non-Participant shall make the search term list and

search parameters available to Participants no later than twenty-one (21) days after the deadline for serving subpoenas or Document Requests and proposed search terms.

- d) If necessary, non-Participants who have been served with search term lists shall meet and confer with applicable Participants regarding any disputes concerning served search terms, and other search parameters to be used by such non-Participants, as well as responses to subpoenas or Document Requests, during the fourteen (14)-day period following the service of such search term lists and parameters. Any disputes concerning a non-Participant's search terms or other search parameters not resolved by the end of the fourteen (14)-day meet and confer period shall be brought to the Court's attention within seven (7) days after the final meet and confer, in accordance with the procedures set forth in Paragraph 15 of this Order.
- e) Non-Participants responding to subpoenas or Document Requests shall search for and produce documents as expeditiously as reasonably practical after being served a subpoena or Document Request. Non-Participants shall provide a copy of their document productions to the Debtors in accordance with the specifications set forth in Exhibit D, and, if reasonably practical, the Debtors shall upload them to the Data Repository.
- f) If reasonably necessary, documents produced by non-Participants in response to subpoenas or Document Requests shall be afforded confidential treatment in accordance with the terms set forth in the Protective Order even if such non-Participants have not signed the Agreement to Abide by the Protective Order.
- g) All Participants, in order to avoid the service of multiple, duplicative subpoenas or Document Requests and the attendant burdens on non-Participants of responding to them, shall first review any subpoenas and Document Requests that have already been served

on a non-Participant and avoid serving new duplicative subpoenas or Document Requests.

8. **Initial Disclosures:** No Participant, including but not limited to the Debtors, the Creditors' Committee and Alternative Plan Proponents, shall be required to make initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1), as incorporated by Bankruptcy Rules 7026 and 9014.
9. **Privilege Log**
 - a) Subject to Section 3(e) above, if the Debtors withhold any documents on the grounds of privilege, work product, or any other type of protection or immunity from disclosure, the Debtors shall produce a privilege log consistent with Federal Rule of Civil Procedure 26(b)(5), as incorporated by Bankruptcy Rules 7026 and 9014.
 - b) Any person or entity other than the Debtors that receives a Document Request or document subpoena and that withholds any documents on the grounds of privilege, work product, or any other type of protection or immunity from disclosure shall produce a privilege log consistent with Federal Rules of Civil Procedure 26(b)(5), as incorporated by Bankruptcy Rules 7026 and 9014.
 - c) If only part of a document is withheld on the grounds of privilege, work product, or any other type of protection or immunity from disclosure, the remainder of the document shall be produced.
10. **Interrogatories**
 - a) **Interrogatories Served Upon the Debtors:** Pursuant to Rule 33(a)(1) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7033 and 9014, Participants may collectively serve upon the Debtors no more than twenty-five (25)

written interrogatories, including all subparts, relating to Plan Issues (Interrogatories'), no later than twenty-eight (28) days after the Notice of Intent Deadline. Interrogatories to the Debtors shall be limited to identification and authentication and shall not include contention interrogatories. If necessary, Participants shall meet and confer among themselves to determine the content and scope of the Interrogatories to the Debtors, and priority shall be given to the Creditors' Committee and Alternative Plan Proponents. Any Participant who, after the meet and confer process, will not agree to serve Interrogatories consistent with this paragraph may, in accordance with the procedure set out in Paragraph 15 of this Order, seek leave of the Court to serve a separate Interrogatory under terms and conditions that the Court deems appropriate.

- b) **Interrogatories Served Upon Alternative Plan Proponents:** Pursuant to Rule 33(a)(1) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7033 and 9014, Participants, including the Debtors and the Creditors' Committee, may collectively serve upon each Alternative Plan Proponent no more than twenty-five (25) written interrogatories, including all subparts, relating to Plan Issues, no later than twenty-eight (28) days after the Notice of Intent Deadline. Interrogatories to Alternative Plan Proponents shall be limited to identification and authentication and shall not include contention interrogatories. If necessary, Participants shall meet and confer among themselves to determine the content and scope of the Interrogatories to Alternative Plan Proponents and priority shall be given to the Debtors and the Creditors' Committee. Any Participant who, after the meet and confer process, will not agree to serve Interrogatories consistent with this paragraph may, in accordance with the procedure set out in Paragraph

15 of this Order, seek leave of the Court to serve a separate Interrogatory under terms and conditions that the Court deems appropriate.

- c) **Interrogatories Served Upon Participants Other Than the Debtors or Alternative Plan Proponents:** Pursuant to Rule 33(a)(1) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7033 and 9014, Participants, including the Debtors and the Creditors' Committee, may serve no more than twenty-five (25) written Interrogatories relating to Plan Issues upon any Participant other than the Debtors or Alternative Plan Proponents; provided, however, that all such interrogatories must be served in a timely manner such that they permit a reasonable amount of time for served Participants to respond thereto no later than seventy-five (75) days prior to the Confirmation Hearing (defined below). Interrogatories to Participants shall be limited to identification and authentication and shall not include contention interrogatories. If necessary, Participants shall meet and confer among themselves to determine the content and scope of the Interrogatories to Participants and priority shall be given to the Debtors, the Creditors' Committee and Alternative Plan Proponents.

11. **Depositions**

- a) **Notice Period for Depositions of the Debtors:** No later than thirty (30) days after the Debtors serve the Notice of Substantial Completion, Participants may collectively serve one (1) Notice for Deposition upon the Debtors pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7030 and 9014, plus ten (10) deposition notices directed to current employees of the Debtors, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7030 and 9014. If necessary, Participants shall meet and confer regarding these

deposition notices no later than twenty-one (21) days after the Debtors serve the Notice of Substantial Completion.

- b) No Participant who joins a consolidated Rule 30(b)(6) notice prescribed by paragraphs 11(a), (e) and (f) will be deemed to have joined all individual topics listed therein, nor shall any Participant waive, or be deemed to have prejudiced in any way, any of its rights or legal positions by joining a consolidated Rule 30(b)(6) notice as prescribed in this Paragraph. Any Participant who, after the meet and confer process, will not agree to serve a consolidated Rule 30(b)(6) notice may, in accordance with the procedure set out in Paragraph 15 of this Order, seek leave of the Court to serve a separate Rule 30(b)(6) notice.
- c) **The Debtors' Designation of Witnesses:** In response to any Notice for Deposition served upon the Debtors, the Debtors shall prepare a list of designated witnesses for each of the noticed Rule 30(b)(6) topics and the dates and locations when such witnesses will be made available to be deposed. Such list shall also include the names and titles of witnesses employed or retained by the Debtors who have been individually named in Notices for Deposition and the dates and locations designated when such individuals will be made available to be deposed.
- d) **Participation in Depositions of the Debtors:** Only Participants, including the Creditors' Committee, may attend and participate in depositions of the Debtors' witnesses either in person or, at the option and expense of the Participant, by telephone or video link. Though the number of in-person attendees will be limited to the space available, the Creditors' Committee and Alternative Plan Proponents shall be entitled to attend in person. The length of time allotted for depositions will be governed by Rule 30(d)(1) of

the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7030 and 9014. Participants wishing to ask questions at any such depositions shall be required to allocate such time among themselves in a fair and reasonable manner, with priority given to the Creditors' Committee and Alternative Plan Proponents. Every effort should be made to avoid duplicative questioning.

e) **Notice Period for Depositions of Alternative Plan Proponents:** No later than thirty (30) days after the Debtors serve the Notice of Substantial Completion, Participants (including the Debtors and the Creditors' Committee) may collectively serve one (1) Notice for Deposition upon the Alternative Plan Proponents pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7030 and 9014, and may serve deposition notices pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7030 and 9014, upon Alternative Plan Proponents.

f) **Notice Period for Depositions of (i) Participants Other Than the Debtors or Alternative Plan Proponents and (ii) Non-Participants:**
No later than forty-five (45) days after the Debtors serve the Notice of Substantial Completion, Participants may serve (i) Notices for Deposition upon Participants other than the Debtors or Alternative Plan Proponents pursuant to Rule 30 of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7030 and 9014, and (ii) deposition subpoenas upon non-Participants pursuant to Rule 45 of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 9014 and 9016. Upon request, and where such information is available, the Debtors will provide the last known address or the name(s) of the attorney(s) representing former employees of the Debtors.

g) **Participation in Depositions of (i) Participants Other Than the Debtors and (ii) Non-Participants:**

The duration of depositions shall be governed by Rule 30(d)(1) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rules 7030 and 9014. Participants wishing to ask questions at any such depositions shall be required to allocate time among parties in good faith and in a fair and reasonable manner, with priority given to (in order of priority) the Debtors, the Creditors' Committee and Alternative Plan Proponents, and every effort should be made to avoid duplicative questioning.

12. **Requests for Admission:** No Participant, including but not limited to the Debtors, the Creditors' Committee and Alternative Plan Proponents, shall be required to respond to any Request for Admission under Rule 36 of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rule 7036.

13. **Discovery in Connection with Subsequent Filings:**

- a) In the event that the Debtors or Alternative Plan Proponents materially amend any provisions in a plan of reorganization filed in the Chapter 11 Cases after the Notice of Intent Deadline, Participants, including the Debtors, the Creditors' Committee and Alternative Plan Proponents, may serve supplemental Document Requests on such filing party, solely limited to issues raised by such amendments, no later than fourteen (14) days following such filing.
- b) In the event that, after the Notice of Intent Deadline, any creditor, party in interest, or group of creditors or parties in interest (i) files an objection to the Plan or an Alternative Plan or (ii) files an Alternative Plan, such filing party may serve Document Requests on any Participant and any Participant may serve Document Requests upon such filing party,

solely limited to issues raised by such new filings, no later than twenty-one (21) days following the filing of such objection or Alternative Plan.

- c) Deadlines for the production of documents in response to Document Requests served pursuant to Paragraphs 13(a) and (b) above, as well as deadlines for depositions and interrogatories, if any, concerning the filings and/or filing parties referenced in Paragraphs 13(a) and (b) above, shall be set by the Court, in the absence of an agreement between interested Participants.
- d) The filing of an Alternative Plan or an objection to the Plan or an Alternative Plan after the Notice of Intent Deadline shall not provide a basis for anyone to seek discovery from Participants concerning issues that were fairly raised in documents filed prior to the Notice of Intent Deadline.
- e) The date that all fact discovery from the Debtors and Alternative Plan Proponents, including but not limited to depositions of the Debtors and Alternative Plan Proponents, is complete shall be the 'Fact Discovery Cutoff'. The Debtors shall file with the Court a 'Notice of Fact Discovery Cutoff' within five (5) days of the completion of such fact discovery.

14. **Expert Discovery:**

- a) **Expert Disclosures:** Participants, including the Debtors, the Creditors' Committee, Alternative Plan Proponents and Plan Objectors, shall identify all proposed testifying experts and serve all disclosures required by Federal Rule of Civil Procedure 26(a)(2), as incorporated by Bankruptcy Rules 7026 and 9014, including full expert reports, no later than thirty (30) days after the Notice of Fact Discovery Cutoff is filed. All experts who will receive Plan Discovery must sign the Agreement to Abide By the Protective Order

and testifying experts must serve a copy of the signature page upon attorneys for the Debtors.

- b) **Rebuttal Experts:** Participants shall identify and serve all disclosures regarding rebuttal experts, including rebuttal expert reports, no later than sixty (60) days after the Notice of Fact Discovery Cutoff is filed.
 - c) **Expert Depositions:** All depositions of experts (including rebuttal experts) shall be completed no later than ninety (90) days after the Notice of Fact Discovery Cutoff is filed. Participants wishing to ask questions at any such depositions shall be required to allocate such time among Participants in a fair and reasonable manner, with priority given to (in order of priority) the Debtors, the Creditors' Committee and Alternative Plan Proponents, and every effort should be made to avoid duplicative questioning.
15. **Discovery Disputes:** Any dispute with respect to Plan Discovery that Participants or non-Participants cannot resolve after good faith consultation may be presented to the Court by a letter from the attorney for the Participant or non-Participant seeking relief, with a copy to the attorneys for the Debtors, the Creditors' Committee, the Participant or non-Participant opposing relief, and all Participants on the Official Service List. Any response thereto will be made by letter to the Court delivered within five (5) days after service to the applicable Participant or non-Participant and a copy provided to all Participants on the Official Service List. Except with prior leave of Court, no letter will exceed three (3) pages in length, and no additional submissions will be permitted. The Debtors and the Creditors' Committee will communicate with the Court to schedule status conferences/hearings during which such discovery disputes will be heard.

16. **Status Conferences:** The Court shall hold status conferences concerning Plan Discovery: (a) after the meet and confer referenced in Paragraph 3(g) of this Order, if any, is completed; (b) after the Notice of Substantial Completion is issued; and (c) after the Notice of Fact Discovery Cutoff is filed. The Debtors and the Creditors' Committee will communicate with the Court to schedule such status conferences.
17. **Non-Waiver of Privilege:** The inadvertent production by any Participant or non-Participant of any privileged document or information, or any other document or information otherwise precluded or protected from disclosure, in response to any discovery requests shall not be deemed a waiver of any applicable privilege or immunity with respect to such document or information (or the contents or subject matter thereof) or with respect to any other document or discovery. Any such produced privileged or protected document must immediately be returned (whether or not the receiving Participant disputes the claim of privilege or protection) to the producing Participant or non-Participant or its attorneys on request or upon discovery of such inadvertent production by the receiving Participant, and the receiving Participant shall certify that all copies of such produced privileged or protected document have been returned or destroyed.
18. **Use of Materials Produced:** Participants shall have the right to object to the use by any other Participant of materials produced through Plan Discovery in any matter or proceeding outside of the Chapter 11 Cases on evidentiary or any other grounds.
19. **Hearing Dates and Pre-trial Conference:** The Court will set dates for hearings related to confirmation of a plan of reorganization in the Chapter 11 Cases ('Plan Confirmation'). No later than forty-five (45) days prior to the first date set by the Court to consider Plan

Confirmation (the “Confirmation Hearing”) and no earlier than seventy-five (75) days after the Notice of Fact Discovery Cutoff is filed, the Court will schedule a pre-trial conference to discuss, *inter alia*, briefing, exhibit lists, witnesses, and motions *in limine*.

20. **Jurisdiction**: The Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: March __, 2011
New York, New York

HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE