

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

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In re	: Chapter 11
	:
LEHMAN BROTHERS HOLDINGS INC., <i>et al.</i>,	: Case No. 08-13555 (JMP)
	:
Debtors.	: (Jointly Administered)
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**ORDER DIRECTING APPOINTMENT OF AN EXAMINER
PURSUANT TO SECTION 1104(c)(2) OF THE BANKRUPTCY CODE**

By motion, dated October 20, 2008, The Walt Disney Company (“TWDC”) as a claimant against Lehman Brothers Commercial Corporation (“LBCC”) and Lehman Brothers Holdings Inc. (“LBHI”) applied for the appointment of an examiner in these jointly administered chapter 11 cases pursuant to section 1104(c)(2) of title 11 of the United States Code (“Bankruptcy Code”) (“TWDC Motion”), on the basis that the fixed, liquidated, unsecured debts other than debts for goods, services, taxes, or owing to an insider exceeded \$5 million; and no party in interest having contested that pursuant to section 1104(c)(2) of the Bankruptcy Code that the appointment of an examiner is mandatory; and upon the joinders to the TWDC Motion by Harbinger Capital Partners Special Situations Fund, LP, and Harbinger Capital Partners Master Fund I., Ltd., f/k/a Harbert Distressed Investment Master fund, Ltd., (collectively, the “Harbinger Funds”) dated October 31, 2008 and Bank of America, NA (“BoA”) dated October 31, 2008; and the motion of Thomas P. DiNapoli, New York State Comptroller as Administrative Head of the New York State and Local Retirement Systems and Sole Trustee of the New York State Common Retirement Fund (“NYS Comptroller”) for the appointment of a trustee or in the alternative an examiner with expanded powers dated November 4, 2008 (“NYS Comptroller

Motion”), and the joinder of the Lead Plaintiffs in Class Action No. 08-CV5523(LAK) ECF CASE pending in the United States District Court for the Southern District of New York to the NYS Comptroller Motion for the appointment of an examiner with expanded powers dated November 24, 2008; and the Response of the United States Trustee (the “U.S. Trustee”) dated November 12, 2008 to the TWDC Motion dated January 9, 2009; and the Response of the Official Committee of Unsecured Creditors (“UCC”) to the TWDC Motion dated January 9, 2009, the Objection of Barclays Capital Inc. (“Barclays”) to a portion of the TWDC Motion dated January 9, 2009 and the Objection of James W. Giddens, as SIPA Trustee for the liquidation of the business of Lehman Brothers Inc. (“SIPA Trustee”) to the TWDC Motion and the Response of LBHI, et al., as Debtors and Debtors In Possession, in opposition to the NYS Comptroller Motion for the appointment of a trustee, dated January 5, 2009; and the Response of TWDC to the Objections of the UCC, the SIPA Trustee, and Barclays dated January 13, 2009 and the Reply of the NYS Comptroller dated January 13, 2009; and a hearing having been held before the Court, on due notice, on January 14, 2009 and the Court having heard and considered all of the arguments and comments made by the parties in interest to the motions for the appointment of an examiner; and upon the record made before the Court and the record having been So Ordered to direct the appointment of an examiner in these jointly administered chapter 11 cases and, after due deliberation and sufficient cause appearing therefor, it is

ORDERED:

1. The United States Trustee is directed to appoint an examiner (“Examiner”) as soon as practicable.
2. The Examiner’s duties shall include an investigation (“Investigation”) as to:

- Whether LBCC or any other entity that currently is an LBHI chapter 11 debtor subsidiary or affiliate (“LBHI Affiliate(s)”) has any administrative claims against LBHI resulting from LBHI’s cash sweeps of cash balances, if any, from September 15, 2008, the commencement date of LBHI’s chapter 11 case, through the date that such applicable LBHI affiliate commenced its chapter 11 case.
- All voluntary and involuntary transfers to, and transactions with, affiliates, insiders and creditors of LBCC or its affiliates, in respect of foreign exchange transactions and other assets that were in the possession or control of LBHI Affiliates at any time commencing on September 15, 2008 through the day that each LBHI Affiliate commenced its chapter 11 case.
- Whether any LBHI Affiliate has colorable claims against LBHI for potentially insider preferences arising under the Bankruptcy Code or state law.
- Whether any LBHI Affiliate has colorable claims against LBHI or any other entities for potentially voidable transfers or incurrences of debt, under the Bankruptcy Code or otherwise applicable law.
- Whether there are more colorable claims for breach of fiduciary duties and/or aiding or abetting any such breaches against the officers and directors of LBCC and/or other Debtors arising in connection with the financial condition of the Lehman enterprise prior to the commencement of the LBHI chapter 11 case on September 15, 2008.

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"The Proper Role of an Examiner in Chapter 11 Cases"