

SECURITIES REGULATION: INSIDER STATUS IN LEGAL  
FICTION AND FINANCIAL FACT—A PROPOSED  
REVISION TO SECTION 16(b)

On August 5, 1954, Joseph Thomas, a partner of the Lehman Brothers investment banking firm, replaced another Lehman partner on the board of directors of the Tidewater Associated Oil Company. On October 8, 1954, Tidewater publicly announced an option to convert its common to a new cumulative preferred. In the following five months, Lehman Brothers purchased 50,000 shares of Tidewater common, exercised the option to convert the common to the new cumulative preferred, and sold the preferred. On behalf of Tidewater, a stockholder sued Thomas and Lehman Brothers under section 16(b) of the Securities Exchange Act of 1934<sup>1</sup> to recover the profit realized by Lehman Brothers on these transactions. In *Blau v. Lehman*,<sup>2</sup> the United States Supreme Court held that Thomas was liable only to the extent of his proportionate interest in the partnership profits and that his directorship did not subject the Lehman Brothers partnership to the liability imposed upon corporate insiders by section 16(b). Although the Court implied that partnership liability might result from either the actual use of inside information or the deputation of a partner-director to represent the partnership on the board,<sup>3</sup> the practical effect of this decision is to immunize a director's

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<sup>1</sup> 48 Stat. 896 (1934), 15 U.S.C. § 78p(b) (1958). Section 16(b) provides in part:

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any security of such issuer (other than an exempted security) within any period of less than six months . . . shall inure to and be recoverable by the issuer . . . .

See generally LOSS, *SECURITIES REGULATION* (2d ed. 1961); Cole, *Insiders' Liabilities under the Securities Exchange Act of 1934*, 12 SW. L.J. 147 (1958); Cook & Feldman, *Insider Trading under the Securities Exchange Act*, 66 HARV. L. REV. 385, 612 (1953); Meeker & Cooney, *The Problems of Definition in Determining Insider Liabilities under Section 16(b)*, 45 VA. L. REV. 949 (1949); Rubin & Feldman, *Statutory Inhibitions upon Unfair Use of Corporate Information by Insiders*, 95 U. PA. L. REV. 468 (1947).

<sup>2</sup> 368 U.S. 403 (1962). The Chief Justice concurred in a dissent by Mr. Justice Douglas. The court of appeals decision, *Blau v. Lehman*, 286 F.2d 786 (2d Cir. 1960), is noted at 61 COLUM. L. REV. 926 (1961), 30 FORDHAM L. REV. 178 (1961), 49 GEO. L.J. 779 (1961), 14 STAN. L. REV. 192 (1961).

<sup>3</sup> The concept of deputation originated in a dictum by Judge Learned Hand in *Rattner v. Lehman*, 193 F.2d 564 (2d Cir. 1952) (concurring opinion), the only other case to consider partnership liability under § 16(b). The court of appeals in the *Blau* case disapproved the deputation test. 286 F.2d at 789.

It would seem that the non-director partners need not be troubled by the threat of a lone shareholder proving deputation. If neither the principles of partnership law (N.Y. PARTNERSHIP LAW § 20(1) provides, "Every partner is an agent of the partnership for the purpose of its business.") nor the acquisition of over 100 directorships is sufficient to establish "deputation," then the term is either meaningless or without application to the facts of financial life.

The unreliability of the deputation concept is evidenced by the disparate interpretations of the same facts by different judges. The district court in the *Blau* case excluded plaintiff's evidence of the systematic and deliberate acquisition of directorships by Lehman Bros. in order to further its own interests. Brief for Petitioner, pp. 24-25, *Blau v. Lehman*, 368 U.S. 403 (1962). The court then found "no evidence that the firm of Lehman Bros. deputed Thomas to represent its interests on the board . . ." *Blau v. Lehman*, 173 F. Supp. 590, 593 (S.D.N.Y. 1959), (Emphasis added.) On appeal Judges Medina and Swan found "no evidence of any deputizing or other affirmative action by the firm to cause Thomas to be made a director to protect the interests of the firm or to become its representative." 286 F.2d at 789. (Emphasis added.)

partners from liability for profits derived from the partnership's speculation in the securities of his corporation.<sup>4</sup>

This comment is an attempt to evaluate the wisdom of allowing trading partnerships to profit by speculating in the securities of corporations of which a partner is a director. Part I describes the economic functions performed by the investment banking system. Part II, supplemented by the Appendix listing some of the directorships held by Lehman partners and the directors of Lehman Corporation, examines the access to inside information, the financial power, and the potentially incompatible fiduciary relationships that result when one firm simultaneously performs all of the economic functions described in part I.<sup>5</sup> Part III examines business ethics in order to determine whether the necessary self-restraint of corporate insiders is sufficiently viable and common to protect the investing public. The conclusion proposes that section 16(b) be amended to make it responsive to some of the problems raised in parts II and III without frustrating the constructive economic functions performed by the investment banking system or unnecessarily restricting the financial freedom of the men who operate that system.

## I

The primary economic function of investment banking is to facilitate capital formation. Capital formation is the development of facilities to produce and market consumer goods; it is essential to both the adaptability of mature economies and the development of underdeveloped economies.<sup>6</sup> The two major external sources of capital for industry are the investment and commercial banking systems. The forms of capital supplied to industry by the commercial banker and the investment banker are as fundamentally different as the two systems that generate them. The commercial banker supplies industry with capital in the form of short term loans with a fixed interest and maturity. The investment banker provides industry with equity capital and long term loan funds through the underwriting and distributing of corporate securities.

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Judge Clark, dissenting, stated, "Here the evidence of director-participation is rather sharper than Judge Medina intimates and goes so far that it is hard to see what more the director could have done to assist his partners short of doing the trading himself." 286 F.2d at 795. Reviewing the findings below, the Supreme Court stated, "Inferences *could* perhaps have been drawn from the evidence to support petitioner's charges, but examination of the record makes it clear to us that the findings of the two courts below were not *clearly erroneous*." 368 U.S. at 408-09. (Emphasis added.) Compare the application of partnership law to partner-directors in *Lehman v. CAB*, 209 F.2d 289 (D.C. Cir. 1953).

<sup>4</sup> "What we do today allows all but one partner to share in the feast which the one places on the partnership table. They in turn can offer feasts to him in the 99 other companies of which they are directors." *Blau v. Lehman*, 368 U.S. 403, 420 (1962) (Douglas, J., dissenting).

<sup>5</sup> See House Select Committee on Small Business, *Interlocking Directors and Officials of 135 Large Financial Companies of the United States*, H.R. REP. No. 1278, 85th Cong., 1st Sess. (1957), for a thorough description of the interlocking relationships among the 135 largest financial firms.

<sup>6</sup> See Bogen, *Economics of Investment Banking*, in INVESTMENT BANKERS ASSOCIATION OF AMERICA, *FUNDAMENTALS OF INVESTMENT BANKING* 3 (1947); see generally CHILDS, *LONG-TERM FINANCING* (1961). The estimated gross proceeds from new securities offered for cash in the United States during the period Jan.-Nov. 1961, totaled \$33,269,209,000, of which securities \$11,936,922,000 were corporate and \$21,332,287,000 were noncorporate. The proposed uses of the proceeds from these corporate offerings were new money, \$9,807,336,000 (of the new money \$6,930,842,000 was for plant and equipment and \$2,876,495,000 was for working capital), retirement of securities, \$827,608,000, and other purposes, \$1,050,924,000. SEC STATISTICAL BULL. 13, 15 (Jan. 1962).

Both the commercial banker and the investment banker solicit funds from the public, thus competing for the utilization of idle capital and the reallocation of existing investment capital. The commercial banker receives money in the form of deposits that he reinvests for his own account at a higher rate than that returned to the depositor. The investment banker receives money by selling corporate securities.<sup>7</sup> He usually does not invest his own money in a new issue but rather provides the formal, organized system through which others may invest in the new issue. He assures the issuer of capital either by purchasing the entire issue outright or by obligating himself to purchase whatever part of the issue he is unable to sell to the ultimate investors by a certain date.<sup>8</sup> His profit is derived from the "spread," *i.e.*, the difference between the price per share he pays to the issuer and the price per share he receives from the the ultimate investors. The spread involves recompense for managerial services, retailing, risk, and out of pocket costs.<sup>9</sup>

Two main combinations, the purchase group and the selling group, are involved in underwriting and distributing corporate securities. The purchase group is composed of the "manager" or "originator" of the issue and, if the issue is sufficiently large to necessitate spreading the risk of the venture, various wholesalers associated with him. The originator is usually an investment banking firm that maintains continued contact with corporations needing new money.<sup>10</sup> The wholesalers associated with him in the purchase group are other firms that originate

<sup>7</sup> The Banking Act of 1933, ch. 89, 48 Stat. 162 (1933) (codified in scattered sections of 12, 39 U.S.C.), separated commercial from investment banking by prohibiting commercial banks from underwriting securities and investment banking firms from accepting deposits.

<sup>8</sup> Even under an outright purchase agreement the investment banker acts as a conduit rather than as an investor. This is because the investment banker does not pay the issuer until the closing date of the issue; by that time the investment banker has usually retailed the entire issue.

<sup>9</sup> For example, in the initial public offering of Ford stock the spread was allocated as follows: management fee \$.10; selling fee \$.10; risk \$.30; out of pocket costs \$.10. As the following chart of the average flotation cost of registered corporate securities for 1951, 1953, and 1955 illustrates, the size of the spread varies with the amount of the issue.

AMOUNT OF ISSUE	BONDS	PERCENT OF SELLING PRICE		
		Preferred	Common	Common (excluding mining corps.)
Under \$500,000 . . . . .	-----	-----	27.15	19.69
\$500,000-\$1,000,000 . . . . .	11.49	12.63	21.76	13.68
\$1,000,000-\$2,000,000 . . . . .	8.17	8.07	13.58	12.84
\$2,000,000-\$5,000,000 . . . . .	3.78	4.88	9.97	8.61
\$5,000,000-\$10,000,000 . . . . .	1.83	3.72	6.17	6.38
\$10,000,000-\$20,000,000 . . . . .	1.52	2.92	4.66	4.88
\$20,000,000-\$50,000,000 . . . . .	1.33	3.20	5.37	5.48
Over \$50,000,000 . . . . .	1.19	2.51	-----	-----

Taken from Miller, *Long-Term Small Business Financing from the Underwriter's Point of View*, 16 J. FINANCE 280, 284 (1961).

<sup>10</sup> The acquisition of directorships by investment banking firms in order to acquire and retain the underwriting business of corporations raises antitrust problems. See, *e.g.*, *United States v. Morgan*, 118 F. Supp. 621 (S.D.N.Y. 1953). For a spirited and candid discussion of the *Morgan* case, see Steffen, *The Investment Bankers' Case: Some Observations*, 64 YALE L.J. 169 (1954); Whitney, *The Investment Bankers' Case—Including a Reply to Professor Steffen*, 64 YALE L.J. 319 (1955); Steffen, *The Investment Bankers' Case: Observations in Rejoinder*, 64 YALE L.J. 863 (1955); Whitney, *The Investment Bankers' Case: A Surrejoinder*, 64 YALE L.J. 873 (1955).

as well as firms that specialize in distribution. Each member of the purchase group assumes responsibility for the disposal of a certain portion of the new issue.

The originator is responsible for setting up and underwriting the entire issue and contracts with the issuer on behalf of the entire purchase group. The originator must evaluate the issuing corporation and the industry in which the issuer is engaged and correlate the financial objectives of the issuer to the securities market. The originator then sets up the issue, negotiates the spread, and if the issue is a large one, organizes the underwriting and distributing syndicate.

The selling group is the link between the purchase group and the ultimate investor. It is composed of firms that specialize in retailing as well as firms that retail incident to conducting a general brokerage business. A retailer may act as a broker, an agent who purchases and sells for a principal and is compensated by a commission, or as a dealer, a principal who purchases and sells for his own account and is compensated by the price differential. As dealer or broker, a retailer may purchase or sell in an auction market, *e.g.*, the New York Stock Exchange, or a negotiated market, *e.g.*, the over-the-counter market.<sup>11</sup>

In addition to his primary function of facilitating capital formation the investment banker performs numerous secondary functions. He acts as a financial advisor and investment counsellor to corporations whose principal business is other than investing in securities, to investment companies, and to individual clients. He will assist in corporate mergers, acquisitions, and consolidations, activities that may require anything from a simple purchase of shares on the market to complex exchanges of various classes of publicly held securities. The investment banker's financial acumen and knowledge of corporations, industry, and the securities market qualifies him to establish fair ratios for such exchanges of securities.

Finally, the investment banker engages in entrepreneurial activities for his own account, which may take the form of "lock-up" transactions involving the discovery and development of business opportunities.<sup>12</sup> He also participates in the securities market for his own individual account and for that of his firm. This may take the form of arbitrage,<sup>13</sup> investment, or speculation. It was the latter type of transaction that was questioned in the *Blau* case.

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<sup>11</sup> "The term *over-the-counter market* is a misnomer. So are the expressions *unlisted market* and *offboard market*. All apply to the same thing: the processes, places and people involved in all securities transactions that take place without benefit of the facilities of an organized stock exchange." Trigger, *The Over-the-Counter Market*, in INVESTMENT BANKERS ASSOCIATION OF AMERICA, FUNDAMENTALS OF INVESTMENT BANKING 537 (1947).

<sup>12</sup> A good example of a "lock up" transaction is Lehman Bros.' purchase of the Jergins Corporation, a family controlled oil company, for \$29,000,000, the following account of which is taken from Wise, *The Bustling House of Lehman*, Fortune, Dec. 1957, p. 186. Lehman Bros. raised the \$29,000,000 purchase price by borrowing \$19,000,000 from the Chase Manhattan Bank and by obtaining a total of \$10,000,000 from the partnership itself, Lehman Corp., other corporations, *e.g.*, CIT Financial Corp., and other investment banking firms. Lehman Bros. renamed the corporation "Monterey Oil" and, within two years, caused it to sell: (1) an office building; (2) a gasoline plant; (3) a minority interest in an electronics firm (Beckman Instruments) for \$10,000,000, of which \$5,000,000 was returned to the investors and \$5,000,000 went to reduce the bank loan to \$14,000,000; and (4) its interest in the San Ardo oil field for \$18,200,000, of which \$14,000,000 closed the bank loan and \$4,200,000 was returned to the investors. This left Monterey Oil (now liquidating) with assets remaining worth \$28,000,000. Thus, within two years, the investors were returned \$38,000,000 on a \$10,000,000 investment. See also MAYER, WALL STREET: MEN AND MONEY 220 (1955).

<sup>13</sup> "Arbitrage" is either the purchase and sale of the same security in different markets at different prices, or the purchase of a security exchangeable for another security and a sale of the second security in order to profit from the disparity in the prices of the two securities.

## II

The economic implications of allowing an insider's partners to speculate in the securities of his corporation can be demonstrated by examining the activities of a large investment banking firm. The financial relationships and operations of Lehman Brothers are typical of large investment banking firms and illustrate the problems that result when each of these firms simultaneously performs all of the economic functions described in part I.<sup>14</sup> The directorships held by Lehman partners<sup>15</sup> and by the directors of Lehman Corporation, a closed-end management investment company originated and controlled by Lehman Brothers,<sup>16</sup> may be summarized as follows: the 24 Lehman partners hold 82 directorships in 69 corporations with total assets of \$21,335,555,000; the 21 directors of Lehman Corporation hold a total of 131 directorships in 97 corporations with total assets of \$88,439,779,000; the Lehman partners and the directors of Lehman Corporation hold a combined total of 167 directorships in 128 corporations with total assets of \$100,642,148,000. More than one half of this figure represents the assets of other financial institutions such as banks, insurance companies, and other investment companies.<sup>17</sup> This centralization of important directorships concentrates in one

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<sup>14</sup> For an interesting and informative article, see Wise, *The Bustling House of Lehman*, *Fortune*, Dec. 1957, p. 157. See also House Select Committee on Small Business, *Interlocking Directors and Officials of 135 Large Financial Companies of the United States*, H.R. REP. NO. 1278, 85th Cong., 1st Sess. (1957). This report demonstrates that the appetite for directorships evidenced by Lehman Bros. is typical of other large financial firms. Thus, "of the 135 large financial companies making up the 'base' companies of the report, 107 [79%] had 1 or more interlocking connections with 1 or more of the other 135 base companies. . . . The same 'base' companies have been shown to have interlocking connections with 901, or 55 percent, of the 1,642 other companies in the study." *Id.* at XVIII.

<sup>15</sup> "The Commission's public records disclose that the 23 partners of Lehman Brothers hold over 100 directorships (SEC File No. 801-364), many of which are in companies registered on national securities exchanges." Brief for the SEC as Amicus Curiae, p. 8, *Blau v. Lehman*, 368 U.S. 403 (1962). The Appendix to this comment does not include directorships held in corporations not listed in STANDARD & POOR'S CORP., STANDARD CORPORATION DESCRIPTIONS (1961) or MOODY'S INVESTORS SERVICE, MOODY'S BANK & FINANCE MANUAL (1961), nor does it include subsidiaries controlled by corporations that are listed in the Appendix.

<sup>16</sup> Eight of the twenty-one directors of Lehman Corp. are Lehman partners. Lehman Bros. has a management contract with Lehman Corp. whereby Lehman Bros. "advises on the purchase and sale of portfolio securities, gives overall direction to the Corporation's operations and places the facilities of its large organization at the disposal of the Corporation at all times." [1961] LEHMAN CORP. ANN. REP. 4.

<sup>17</sup> See the Appendix. As to the scope of the Appendix, see note 15 *supra*. One hundred billion dollars is approximately six times the gold reserves of the United States Treasury; five times the total of all taxes collected by all of the states from all sources in 1960; equal to the total of the assessed valuation of property in California, Illinois, Michigan, and New York; and, over one third of the total of the assessed valuation of property in all of the states. See 28 TAX POLICY 10 (Oct. 1961); TAX FOUNDATION, INC., FACTS AND FIGURES ON GOVERNMENT FINANCE (10th ed. 1958-1959).

On the concentration of economic power in the United States, see BERLE & MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (1932); LAIDLER, *CONCENTRATION OF CONTROL IN AMERICAN INDUSTRY* (1931); LASSWELL & KAPLAN, *POWER AND SOCIETY* (1950); MILLS, *THE POWER ELITE* (1956); NUTTER, *THE EXTENT OF ENTERPRISE MONOPOLY IN THE UNITED STATES, 1899-1939* (1951); House Select Committee on Small Business, *Interlocking Directors and Officials of 135 Large Financial Companies of the United States*, *supra* note 14; TNEC, *Investigation of Concentration of Economic Power*, S. Doc. No. 35, 77th Cong., 1st Sess. (1941); Adelman, *The Measurement of Industrial Concentration*, 33 REV. ECONOMICS & STATISTICS 269 (1951); Berle, *The Developing Law of Corporate Concentration*, 19 U. CHI. L. REV. 639 (1952). For a recent evaluation of BERLE & MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (1932), see Manne, *The "Higher Criticism" of the Modern Corporation*, 62 COLUM. L. REV. 399 (1962) and the reply of Professor Berle, *Modern Functions of the Corporate System*, 62 COLUM. L. REV. 433 (1962).

group of men: (1) maximum access to inside information, (2) maximum power to use inside information in market activities, and (3) numerous incompatible fiduciary relationships. The effects of this concentration will be discussed in the following paragraphs.

The partners of Lehman Brothers have access to the inside information of the more than one hundred corporations of which they are directors as well as to the inside information of the numerous other corporations for which they have acted as underwriters, investment advisers, or management consultants. In addition, each of the eight partner-directors of Lehman Corporation may benefit from the knowledge that the thirteen nonpartner-directors derive from their seventy-two other directorships.<sup>18</sup> Lehman Brothers and Lehman Corporation also maintain large, competent research and analysis staffs that collect and evaluate corporate information.<sup>19</sup> Finally, there is circulation of inside information among the partners themselves incident to their activities as directors and advisors to industry.<sup>20</sup>

Coupled with the origination, collection, evaluation, and circulation of inside information is the power to use that information effectively in market activities. Lehman Brothers directly controls the investment of approximately two billion

<sup>18</sup> This possibility results from the duty of the directors of Lehman Corp. to disclose all information pertinent to managing the Lehman Corp. portfolio. However, the duty to speak is opposed by the incompatible duty not to disclose the confidential information of the other corporations of which they are directors.

It is arguable that the directors' duty not to disclose the inside information of the other corporations of which they are directors is a prior disability which the investors in Lehman Corp. accept, thus negating the incompatible duty to Lehman Corp. On the duties of directors of mutual funds, compare Lobell, *Rights and Responsibilities in the Mutual Fund*, 70 YALE L.J. 1258 (1961), with Comment, *The Mutual Fund and its Management Company: An Analysis of Business Incest*, 71 YALE L.J. 137 (1961). See generally Eisenberg & Phillips, *Mutual Fund Litigation—New Frontiers for the Investment Company Act*, 62 COLUM. L. REV. 73 (1962).

<sup>19</sup> Basic to the investment advisory services of Lehman Brothers is the work of its Economics Department . . . The department, one of the largest in any Wall Street firm, is concerned with making judgments as to the likely course of the economy not only over the next year or two but for the longer term as well. . . . The economist's decisions are based partly upon the study of statistical records. . . . In addition, a *high level of personal interchange is maintained with leaders in business and government*. . . . From such discussions come adjustments in *published* reports, a sharpening of estimates and a clearer focus upon essentials.

[1961] THE ONE WILLIAM STREET FUND, INC. ANN. REP. 8. (Emphasis added.)

On the average, Lehman Brothers analysts spend about *one quarter* of their time on field trips *in order to talk with top corporate officials* in the United States and abroad. Such visits establish and develop *favorable relationships*. These contacts are of great value in the constant search for facts required to make investment recommendations.

[1961] THE ONE WILLIAM STREET FUND, INC. ANN. REP. 9. (Emphasis added.)

In the *Annual Report of the One William Street Fund*, the favorable relationships enjoyed by Lehman Bros., as well as the practical utilization of those relationships, is conveyed by a photograph of a member of the Investment Advisory Service, the financial vice president of the Bristol-Myers Company, and a Lehman partner "discussing new developments." "At year-end, The Fund held 100,000 shares of Bristol-Myers Company with a market value of \$9.1 million." *Ibid.* Thus, Lehman Bros. both enjoys and advertises access to inside information.

<sup>20</sup> At these Monday Lunchees the partners are also likely to discuss a variety of problems confronting the corporations on whose boards they serve. The main question at a recent meeting was whether several security issues should be postponed in view of tumbling stock prices. There was discussion, too, of whether a manufacturing company whose profits were declining should cut its dividend.

Wise, *The Bustling House of Lehman*, Fortune, Dec. 1957, p. 159.

dollars,<sup>21</sup> and through directorships indirectly influences the financial policies of sixty-nine corporations with total assets exceeding twenty billion dollars.<sup>22</sup>

The partners of one firm simultaneously acting as underwriters, brokers, dealers, investment counsellors, management consultants, professional directors, and general entrepreneurs are inevitably faced with pervasive conflicts of interest.<sup>23</sup> Thus, as the investment manager of Lehman Corporation, Lehman Brothers has a duty to manage its portfolio efficiently. But as broker to Lehman Corporation, the interest of Lehman Brothers is to keep the account active.<sup>24</sup> As director of the One William Street Fund, Inc., an open-end management investment company originated and controlled by Lehman Brothers,<sup>25</sup> the partner-director's duty is to obtain competent investment management as cheaply as possible. But as a Lehman partner and investment manager of One William Street, the partner-director has a duty to the partnership to obtain as high a management fee as possible. Thus, as a Lehman partner he requests, and as a One William Street director he approves, a certain management fee.<sup>26</sup>

When one man simultaneously represents the underwriter, the issuer, and the ultimate investor, he is subject to incompatible fiduciary duties. The partner's duty to his partnership is to negotiate as high a spread as possible. The director's duty to his corporation is to assure it a maximum net return on a new issue. The partner-director's duty to Lehman Corporation is to supervise its portfolio. Thus, the Lehman partner as Lehman partner requests, and as director of the issuer

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<sup>21</sup> The sources and means of control are:

Lehman Corporation . . . . .	\$ 353,812,000
One William Street . . . . .	294,102,000
Investment Advisory Service . . . . .	1,000,000,000 (estimated)
Partnership portfolio & personal wealth of partners	500,000,000 (estimated)
	\$2,147,914,000

Thus, Lehman Brothers controls directly the investment of more money than the assessed valuation of property in each of the following states: Arizona, Arkansas, Delaware, Georgia, Maine, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, South Carolina, South Dakota, Utah, Vermont, and Wyoming. See TAX FOUNDATION, INC., *FACTS AND FIGURES ON GOVERNMENT FINANCE* (10th ed. 1958-1959).

<sup>22</sup> This approximately equals the assessed valuation of property in California. Although the partner-director has only one vote, his advice and recommendations on financial matters would be especially persuasive since he controls, as a Lehman partner, a significant source of capital, and is an expert on matters of corporate finance. In some corporations, Lehman partners hold offices in addition to their directorships; e.g., one Lehman partner is a member of the executive committee of Paramount Pictures, Inc. and another Lehman partner is a member of the executive and financial committees of the Twentieth Century Fox Corp. See Appendix.

<sup>23</sup> On shareholder acceptance of prior disabilities, see note 18 *supra*.

<sup>24</sup> Lehman Bros. received \$225,000 for management services and \$482,979 in brokerage commissions from Lehman Corporation in 1961. [1961] *LEHMAN CORP. ANN. REP.*

<sup>25</sup> See note 26 *infra*.

<sup>26</sup> In 1961, Lehman Brothers received \$1,473,085 for investment management services from The One William Street Fund. This fee represented approximately seventy per cent of the total expenses of One William Street for the year. [1961] *THE ONE WILLIAM STREET FUND, INC. ANN. REP.*

The One William Street Fund recently offered to reduce its payments to Lehman Bros. by at least \$125,000 a year in order to settle a 1960 stockholder's suit charging the fund with paying excessive management fees to Lehman Bros. See *Wall Street Journal*, Feb. 28, 1962, p. 4, col. 4 (Pacific Coast ed.). "There were about sixty derivative suits pending in March involving thirty funds. May, *Observations*, 193 *THE COMMERCIAL AND FINANCIAL CHRONICLE* 968 (1961)." *The Mutual Fund and Its Management Company: An Analysis of Business Incest*, 71 *YALE L.J.* 137 n.1 (1961). On the recent mutual fund litigation, see Eisenberg & Phillips, *Mutual Fund Litigation—New Frontiers for the Investment Company Act*, 62 *COLUM. L. REV.* 73 (1962).

recommends, that the underwriting be managed by Lehman Brothers; as manager he requests, and as director he accepts, a certain spread; as underwriter he solicits an order for a block of the new issue from Lehman Corporation that he, as a director of Lehman Corporation, votes to place.<sup>27</sup>

The directors of Lehman Corporation owe it a duty to disclose all information pertinent to its present and proposed investments. These same men owe a duty to the other corporations on whose boards they sit not to disclose inside information, especially to competitors. Yet, directors of the following competing corporations are also directors of Lehman Corporation: Ford Motor Company, General Motors Corporation, and Studebaker Corporation; Shell Oil Company and Standard Oil Company (California); International Business Machine Corporation, Smith Corona Marchant Inc., Sperry Rand Corporation, and Underwood Corporation; Continental Airlines, Inc., Pan American World Airways, Inc., and Trans World Airlines, Inc.<sup>28</sup>

An impasse would seem to arise in the following hypothetical, but not improbable, situation. A Lehman partner through his directorship acquires confidential information from which he deduces that his corporation is a poor investment risk and that the market value of its securities will be severely depressed when the news becomes public in a few days. As a director of One William Street, which owns a large block of shares, does he advise it to sell? As a director of Lehman Corporation, which plans to purchase a large block of shares, does he advise against the purchase? As investment counsellor to a charitable trust that checks with him prior to investing one million dollars in the corporation, does he remain silent?<sup>29</sup>

Lehman partners and Lehman Corporation directors have earned the respect of the financial community for their business ethics as well as for their financial expertise. Nevertheless, by facilitating the maximum utilization of the financial acumen, managerial skill, and entrepreneurial ingenuity of these men, the economic system has created a serious structural problem. The centralization of inside information and financial power, and the consequent potential conflicts of interest, inhibit rather than foster allegiance to acceptable fiduciary standards. A real question arises whether one can ask or expect corporation insiders to remain unmoved by the constant temptation to procure large profits with minor breaches of incompatible fiduciary duties.

### III

It is apparent that the problems posed in part II represent a danger to the investing public. In addition, the magnitude of the financial power involved indicates that some form of regulation is desirable. Past and present financial machinations demonstrate that the self-restraint of corporate insiders is not always sufficient protection for the ordinary investor.

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<sup>27</sup> Lehman Bros. has acted as underwriter for, or a Lehman partner or a director of Lehman Corp. is also a director of, more than fifty per cent (both by number of companies and by value of securities held) of the companies represented in the Lehman Corp. portfolio. These figures are derived from [1961] LEHMAN CORP. ANN. REP. and the Appendix.

<sup>28</sup> See Appendix. The effect of the Lehman interlocking relationships on competition in commercial aviation has been the basis of administrative action and adjudication. See *Lehman Brothers Interlocking Relationships Case*, 15 C.A.B. 656 (1952), *portion reviewed aff'd*, *Lehman v. CAB*, 209 F.2d 289 (D.C. Cir. 1953), *cert. denied*, 347 U.S. 916 (1954); FULDA, *COMPETITION IN THE REGULATED INDUSTRIES: TRANSPORTATION* 236-38 (1961).

<sup>29</sup> As to SEC treatment of similar incompatible fiduciary duties, see generally Cady, Roberts & Co., SEC Securities Exchange Act Release No. 6668 (Nov. 8, 1961), 75 HARV. L. REV. 1449 (1962); Comment, *Broker Silence and Rule 10b-5: Expanding the Duty to Disclose*, 71 YALE L.J. 736 (1962).



Past abuse is summarized in the Senate report on the hearings that led to the enactment of the Securities Exchange Act of 1934:<sup>30</sup> "Among the most vicious practices unearthed at the hearings was the flagrant betrayal of their fiduciary duties by directors and officers of corporations who used their positions of trust and the confidential information which came to them in such positions to aid them in their market activities."<sup>31</sup> These early predatory practices were not perpetrated solely by patently disreputable operators. Rather, they were practiced by such ostensibly reliable men and institutions as Richard Whitney, President of the New York Stock Exchange and the brother of a Morgan partner;<sup>32</sup> Albert H. Wiggin and the Chase National Bank of which he was the chief executive officer;<sup>33</sup> and Charles E. Mitchell and the National City Bank of which he was the chairman.<sup>34</sup>

Recent events suggest a similar disparity between legal maxims and business practice<sup>35</sup> if the self-dealing of the ex-president of the Chrysler Corporation,<sup>36</sup> the Re and subsequent scandals on the American Stock Exchange,<sup>37</sup> and, in a slightly different context, the price-fixing activities of the manufacturers of electrical

<sup>30</sup> *Hearings on Stock Exchange Practices Before the Senate Committee on Banking and Currency*, 73rd Cong., 1st & 2d Sess. (1933-1934). See also PECORA, *WALL STREET UNDER OATH* (1939) (written by the committee's chief counsel). The abuses leading to the enactment of the Securities Exchange Act of 1934 are summarized in § 2 of that act, 48 Stat. 881 (1934), 15 U.S.C. § 78b (1958). The best known general discussions from an earlier day are: BRANDEIS, *OTHER PEOPLE'S MONEY, AND HOW THE BANKERS USE IT* (1914); RIPLEY, *MAIN STREET AND WALL STREET* (1927); VEULEN, *ABSENTEE OWNERSHIP AND BUSINESS ENTERPRISE IN RECENT TIMES* (1923). For material analyzing § 16(b), see note 1 *supra*.

<sup>31</sup> S. REP. NO. 1455, 73d Cong., 2d Sess. 68 (1934).

<sup>32</sup> See SEC, *REPORT ON INVESTIGATION IN THE MATTER OF RICHARD WHITNEY PURSUANT TO SECTION 21(a) OF THE SECURITIES EXCHANGE ACT OF 1934* (Nov. 1, 1938).

<sup>33</sup> See PECORA, *WALL STREET UNDER OATH* 131-88 (1939).

<sup>34</sup> *Id.* at 70-130.

<sup>35</sup> The most rigorous standard to which a court can hold a fiduciary is set forth in a famous statement of Chief Justice Cardozo: "Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behaviour." *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928).

<sup>36</sup> "William Newberg resigned as firm's president; 'differences of opinion' on corporation policy noted," *Wall Street Journal*, July 1, 1960, p. 22, col. 2; "Disclosed William C. Newberg's resignation as president resulted from dispute over profits received from 'interests in' Chrysler suppliers; said Mr. Newberg to hand over 'profits in excess of \$450,000.' made from 'interests in vendor companies,'" *Id.* July 22, 1960, p. 3, col. 1; "Discovered William Newberg, former president, owned half-interest in two companies that supply Chrysler with car parts," *Id.* July 29, 1960, p. 3, col. 2; "Newberg case may spur stiffer S.E.C. rules on executives' interest in supplier firms," *Ibid.*; "William C. Newberg, former president, sued company, charging he was 'scapegoat' to hide self-dealing by others; firm called suit 'baseless,'" *Id.* Jan. 19, 1961, p. 2, col. 2; "Newberg charged in suit he was promised job as chairman of Studebaker-Packard Corp.," *Id.* Jan. 19, 1961, p. 2, col. 4. Captions from *THE WALL STREET JOURNAL INDEX* (1960-1961).

<sup>37</sup> "American Stock Exchange revoked registration of stock specialists J. E. and G. F. Re, following S.E.C. charges of violations of securities laws," *Wall Street Journal*, May 16, 1960, p. 8, col. 2; "Editorial on casual attitude of American Stock Exchange officials towards upcoming S.E.C. investigation," *Id.* June 29, 1961, p. 10, col. 1; "American Stock Exchange decided not to censure G. A. Re and G. F. Re; disclosed some data on meeting dealing with expelled specialist team," *Id.* July 7, 1961, p. 6, col. 4; "Guterman, gambling charges, misuse of Amex rules figured in McCormick resignation," *Id.* Dec. 14, 1961, p. 1, col. 4; "Special committee of members urged sweeping reforms, unit asked more firms be represented on board, stronger administration," *Id.* Dec. 22, 1961, p. 3, col. 1; "S.E.C. assailed Exchange for rules

equipment<sup>38</sup> can be taken as examples. The 1961 *Report of the Securities and Exchange Commission* states that more injunctions were sought and more convictions were obtained in 1961 than in any previous year.<sup>39</sup>

Equally significant is the attitude of business executives that profiting from the use of inside information is either not wrong or not very wrong. A recent survey of business executives posed the following hypothetical:

Imagine that you are a member of the board of directors of a large corporation. At a board meeting you learn of an impending merger with a smaller company which has had an unprofitable year, and whose stock is presently selling at a price so low that you are certain it will rise when news of the merger becomes public knowledge.<sup>40</sup>

Of the executives replying, forty-two per cent stated that they would purchase stock in the smaller company for themselves and sixty-one per cent replied that they thought the average executive would buy some for himself.<sup>41</sup>

The capacity of swindlers to achieve financial eminence, the belief of many executives that inside information, like capital gains, is merely one of the fruits of corporate success, and the presence of a gullible and speculative investing public<sup>42</sup> poses a threat of abuse that has been noted by the financial community itself. One brokerage firm has sent its managers and registered representatives a bulletin advising them that:

[T]he warning flags are flying, and it behooves everyone of you to recognize this signal and to conduct yourself accordingly. . . . Our network with busy wardrobe offices provides a perfect workshop for manipulation of the securities market. Manipulation and "rigging" of markets is as old as our business. At the present time it is against the law. . . . We must carefully guard against being "used" by irresponsible and avaricious groups or individuals of any kind.<sup>43</sup>

The number of past and present abuses of their positions by corporate insiders supports the proposition that effective regulation should be external. Moreover, the difficulty of proving that inside information was wrongfully used and the possibility that different judges will give different interpretations to the same facts seem to require that an objective, rather than a subjective, standard should

breakdown; criticized floor traders, specialists, four key men," *Id.* Jan. 8, 1962, p. 3, col. 1. Captions from THE WALL STREET JOURNAL INDEX (1960-1962).

On contemporary stock swindles and swindlers, see Euster, *Other Side of the Coin; Even in a Great Bull Market Some Investors Lose*, Barrons, Aug. 31, 1959, p. 5; *Little Mine that Wasn't*, Forbes, Oct. 15, 1961, p. 16; Ruchti, *Must the Buyer Beware?*, Supervisory Management, Sept. 1958, p. 50; *Turning Heat on Boiler Rooms*, Business Week, Aug. 9, 1958, p. 54; *Wall Street and SEC Trip Up Con Man Peddling Stocks for Nonexistent Company*, Business Week, Aug. 13, 1960, p. 107; Wise & Klaw, *The Spoilers: The World of Lowell Birrell*, Fortune, Nov. 1959, p. 170; Wise, *The World of A.L. Guterma*, Fortune, Dec. 1959, p. 144.

<sup>38</sup> See Smith, *The Incredible Electrical Conspiracy*, Fortune, April 1961, p. 132; May 1961, p. 161.

<sup>39</sup> See Wall Street Journal, Mar. 8, 1962, p. 5, col. 3 (Pacific Coast ed.).

<sup>40</sup> Baumhart, *How Ethical Are Businessmen*, Harv. Bus. Rev., July-Aug. 1961, p. 16.

<sup>41</sup> *Ibid.* Section 16(b) was enacted in order to "bring these practices into disrepute and encourage the voluntary maintenance of proper fiduciary standards . . ." H.R. REP. NO. 1383, 73d Cong., 2d Sess. 13 (1934). The survey suggests the need of more rigorous encouragement.

<sup>42</sup> Keith Funston, president of the New York Stock Exchange, cautioned against "gullibility and greed," citing inexperienced investors buying highly speculative stocks. Wall Street Journal, Apr. 6, 1959, p. 5, col. 1.

<sup>43</sup> Quoted in *Hearings on H.J. Res. 438 Before a Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce*, 87th Cong., 1st Sess. 2 (1961).

be employed.<sup>44</sup> Finally, the concentration of financial power and insider information in investment banking firms, as well as their vulnerability to pervasive conflicts of interest, indicates that their activities are especially appropriate for such regulation.<sup>45</sup>

#### CONCLUSION

The circulation and use of inside information is an inevitable incident of the centralization of economic power and responsibility. However, *wrongful* use of the information and power possessed by the men who operate the investment banking system can be inhibited without either frustrating the constructive economic functions they perform or unnecessarily restricting their financial freedom. Short swing speculative transactions by the insider or his associates in the securities of his corporation are a perfect vehicle for market manipulation and the betrayal of fiduciary duties.<sup>46</sup> Yet these transactions further no constructive economic interest.<sup>47</sup> The regulatory method adopted in section 16(b) of removing the motivation to engage in such transactions by making insiders liable for profits realized on short swing speculative transactions in the securities of their corporations seems sound. But section 16(b) should be amended to relate its coverage to the facts of financial life.

It is therefore submitted that the statutory definition of "insider" should be amended to include those business associates of an insider who because of their financial relationship to him are also likely to learn the corporate secrets. This could be done by amending section 16(b) so that any director, officer, beneficial owner, partner, trustee or beneficiary of any corporation, partnership, or trust of which the insider is a director, officer, beneficial owner, partner, trustee or beneficiary, is an insider to the same extent as the insider if a significant amount of the business of the corporation, partnership, or trust involves acting as an underwriter, broker, dealer, banker, investment counsellor, management consultant, investing in securities for its own account, or any combination of the preceding. Since it is within the power of the insider to sever the relationship creating insider status, it seems fair to put the burden upon him either to sever the relationship or to convince the Securities and Exchange Commission that a particular speculative transaction or series of transactions deserves exemption from the operation of the amended section 16(b). The public concern to minimize the effects of conflicts of interest would seem to outweigh the legitimate expectancies of men who profit from short swing speculation in the securities of corporations of which they or their close business associates are insiders.

*James E. Crilly, III*

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<sup>44</sup> See note 4 *supra*.

<sup>45</sup> See note 14 *supra*.

<sup>46</sup> See generally PECORA, WALL STREET UNDER OATH (1939).

<sup>47</sup> The effect on market liquidity of short swing speculative transactions by insiders in the securities of their corporations is too tenuous to overcome the strong public interest in discouraging such transactions.

## APPENDIX

CORPORATION	ASSETS IN THOUSANDS OF DOLLARS <sup>1</sup>	DIRECTORSHIPS HELD <sup>2</sup>		
		Lehman Non- Directors of Lehman Corp.	Partners Directors of Lehman Corp.	Outside Directors of Lehman Corp.
<b>CHEMICALS</b>				
Air Reduction Co.	265,837			1
American Potash & Chem. Co.	72,498		1	
Commercial Solvents Corp.	79,566		1	
Diamond Alkali Co.	142,961			1
General Aniline & Film Corp.	181,449			1
Harshaw Chem. Co.	43,452			1
	<hr/> 785,763			
<b>ENTERTAINMENT</b>				
Paramount Pictures Corp.	174,035	1		
Twentieth Century Fox Corp.	124,049		1	1
	<hr/> 298,084			
<b>FINANCIAL</b>				
<b>BANKS</b>				
Bankers Trust Co. (New York)	3,063,837			2 <sup>3</sup>
Central Savings Bank of N.Y. City	518,243			1
Chase Manhattan Bank	10,051,937			2
Chemical Bank N.Y. Trust Co.	5,046,859	1		
Connecticut Bank & Trust Co.	448,506			1
Federal Reserve Bank of N.Y.	-----			1
Irving Trust Co.	2,199,650			1
National City Bank of Cleveland	828,429			1
Sears Bank & Trust Co.	135,138	1		
Wells Fargo Bank-Am. Trust Co.	2,842,379			1
<b>INSURANCE COMPANIES</b>				
American Mut. Liab. Ins. Co.	177,907			1
Atlantic Mut. Ins. Co.	87,876			1
Connecticut Gen. Life Ins. Co.	2,232,223			1
Metropolitan Life Ins. Co. (N.Y.)	17,941,244			1
Mutual Life Ins. Co. of N.Y.	2,761,885			1
Pacific Mut. Life Ins. Co. (L.A.)	49,301			1
Security Title Ins. Co.	25,650		1	
<b>INVESTMENT COMPANIES</b>				
Affiliated Fund Inc.	804,505			1 <sup>4</sup>
American Business Shares Inc.	28,636			1 <sup>5</sup>
General Am. Investors Co.	26,675		1	
Lehman Corp.	353,812		8	13
The One William Street Fund, Inc.	294,102	1	3	2
Scudder Fund of Canada Ltd.	57,744 <sup>6</sup>		1	

<sup>1</sup> Assets are derived from STANDARD & POOR'S CORP., STANDARD CORPORATION DESCRIPTIONS (as of April 1, 1962); MOODY'S INVESTORS SERVICE, MOODY'S BANK & FINANCE MANUAL (1961).

<sup>2</sup> The directorships are derived from DUN & BRADSTREET, INC., 1962 MILLION DOLLAR DIRECTORY; STANDARD & POOR'S CORP., POOR'S REGISTER OF DIRECTORS AND EXECUTIVES: UNITED STATES AND CANADA (1961).

<sup>3</sup> In addition, one outside director of Lehman Corp. is a member of the finance committee.

<sup>4</sup> Vice-President only.

<sup>5</sup> Vice-President only.

<sup>6</sup> Figures in Canadian dollars.

CORPORATION	ASSETS IN THOUSANDS OF DOLLARS <sup>1</sup>	DIRECTORSHIPS HELD <sup>2</sup>	
		Lehman Non- Directors of Lehman Corp.	Partners Directors of Lehman Corp.
<b>MISCELLANEOUS</b>			
American Express Co.	787,844		2
CIT Financial Corp.	2,364,839		1
Great Western Financial Corp.	890,606	1	
Standard Financial Corp.	110,871		1
	<u>54,130,698</u>		
<b>MANUFACTURING AND MISCELLANEOUS</b>			
<b>AUTOMOTIVE MANUFACTURING</b>			
Ford Motor Co.	3,756,804		1
Ford Motor Co. of Canada Ltd.	333,338		1
Fruehauf Trailer Co.	204,701	1	
General Motors Corp.	7,841,902		1
Studebaker Corp.	159,931		1
<b>GENERAL MANUFACTURING</b>			
Anchor-Hocking Glass Corp.	79,270		1
Brunswick Corp.	530,375	1	
Caterpillar Tractor Co.	640,000		1
Emhart Mfg. Co.	41,837		1
FMC Corp.	326,285		1
Gar Wood Industries Inc.	19,894	1 <sup>7</sup>	
Industrial Rayon Corp.	69,227		1
Midland Ross Corp.	117,920		1
U. S. Industries Inc.	71,318		1
<b>MISCELLANEOUS</b>			
General Realty & Utilities Corp.	22,064		1
Wells Fargo & Co.	2,778		1
Western Union Telegraph Co.	348,205		1
	<u>14,565,849</u>		
<b>MERCHANDISING</b>			
<b>STORES</b>			
Allied Stores Corp.	286,717	2	1
Associated Dry Goods Corp.	178,954		1
Bond Stores Inc.	62,901		1
Federated Dept. Stores Inc.	365,470		1
Gimbel Bros. Inc.	219,118		2
Gray Drug Stores Inc.	14,196		1
Interstate Dept. Stores Inc.	37,555	1	
May Dept. Stores Co.	419,985		1
McCrary Corp.	282,138		1
Nieman Marcus Co.	22,682	1	
Sears Roebuck & Co.	2,203,856	1	
<b>MANUFACTURING CONSUMER PRODUCTS</b>			
Chesebrough-Ponds Inc.	62,275		1
City Prods. Corp.	137,622	1	
Ekco Prods. Corp.	67,079		1
General Cigar Co.	49,708	1	
General Foods Corp.	549,414		1
International Silver Co.	52,868		1
Jewel Tea Co.	135,084	1	
United Fruit Co.	337,641		1
Whirlpool Corp.	220,577	1	
	<u>5,705,840</u>		

<sup>7</sup> Retired from Lehman Bros.

CORPORATION	ASSETS IN THOUSANDS OF DOLLARS <sup>1</sup>	DIRECTORSHIPS HELD <sup>2</sup>		
		Lehman Non- Directors of Lehman Corp.	Partners Directors of Lehman Corp.	Outside Directors of Lehman Corp.
<b>METAL &amp; MINING</b>				
American Metal Climax Inc.	310,315			1
Flintkote Co.	228,370	1		1
Jones & Laughlin Steel Corp.	793,550			1
North Am. Coal Corp.	34,454			1
	<u>1,366,689</u>			
<b>OIL &amp; GAS</b>				
American Climax Petroleum Corp. <sup>8</sup>	-----			1
Columbian Carbon Co.	88,940	1		
Distillate Prod. Corp. <sup>9</sup>	-----	1		
Halliburton Co.	159,713	1		
Kerr McGee Oil Indus. Inc.	219,016	1		
Monterey Oil Co.	(liquidating)	1	1	
Mountain Fuel Supply Co.	137,543			1
Murphy Corp.	144,616	1		
Quebec Natural Gas Corp.	97,874	1		
Republic Natural Gas Co.	50,338	1		
Shell Oil Co.	1,885,344			1
Standard Oil Co. (Calif.)	2,782,283			1
Tidewater Oil Co.	897,849	1		
Trans Canada Pipe Lines Ltd.	311,623	1		
TXL Oil Corp.	36,769		1	
	<u>6,812,008</u>			
<b>PACKAGING</b>				
Continental Can Co.	767,318			1
Maryland Cup Corp.	23,265	1		
	<u>790,583</u>			
<b>PAPER PRODUCTS</b>				
KVP Sutherland Paper Co.	99,063	1		
Mead Corp.	251,410			1
	<u>350,473</u>			
<b>RUBBER</b>				
Dayco Corp.	71,936	1		
U.S. Rubber Co.	645,016			1
	<u>716,952</u>			
<b>TECHNOLOGICAL PRODUCTS</b>				
<b>BUSINESS MACHINES</b>				
International Business Mach. Corp.	1,535,366			1
Smith Corona Marchant Inc.	86,345		1	1
Sperry Rand Corp.	895,218			1
Underwood Corp.	72,761		1	
<b>ELECTRONICS &amp; ELECTRICAL EQUIPMENT</b>				
Globe Union Inc.	31,709	1		
Litton Indus. Inc.	119,004	1		
Microwave Associates Inc.	7,653	1		
Radio Corp. of Am.	815,503		1	
Westinghouse Elec. Corp.	1,521,138			1

<sup>8</sup> 100% subsidiary of American Metal Climax.<sup>9</sup> Affiliate of Maracaibo Oil Exploration Corp.

CORPORATION	ASSETS IN THOUSANDS OF DOLLARS <sup>1</sup>	DIRECTORSHIPS HELD <sup>2</sup>		
		Lehman Non- Directors of Lehman Corp.	Partners Directors of Lehman Corp.	Outside Directors of Lehman Corp.
SPACE				
Avco. Corp.	176,460	1		
Bendix Corp.	408,836			1
PRECISION INSTRUMENTS				
Beckman Instruments	49,078		1	
Bulova Watch Co.	62,496			1
	5,781,567			
TEXTILES				
Cluett, Peabody & Co.	82,736			1
Collins & Aikman Corp.	35,394		1	
Reeves Bros. Inc.	39,869		1	
United Piece Dye Works Inc.	6,312	1		
Van Raalte Co.	25,928	1		
	190,239			
TRANSPORTATION				
AIR				
Continental Air Lines Inc.	82,115		1	
Pan Am. World Airways Inc.	585,734		1	
Trans World Airlines Inc.	525,311			1
AUTO				
Fifth Ave. Coach Lines Inc.	85,720		1	
Hertz Corp.	148,550		1	
Hertz Am. Express Int'l Ltd. <sup>10</sup>	.....		1	1
RAILROAD				
Northern Pac. Ry. Co.	1,010,701			1
Southern Pac. Co.	2,241,104			1
MISCELLANEOUS				
Air Express Int'l Hong Kong Ltd. <sup>11</sup>	.....		1	
U.S. Lines Inc.	180,169			1
	4,859,404			
UTILITIES				
Holyoke Water Power Co.	49,061			1
Middle So. Util. Inc.	1,024,477			1
Pacific Gas & Elec. Co.	3,214,461			1
	4,287,999			
Total Assets Represented	100,642,148			
Total Directorships		36	46	85

<sup>10</sup> Owned by American Express Co. (49%) and Hertz Corp. (51%).

<sup>11</sup> 100% subsidiary of Air Express Int'l.