

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

FOGEL CAPITAL MANAGEMENT, INC., And
On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

RICHARD S. FULD, JR., MICHAEL L.
AINSLIE, JOHN F. AKERS, ROGER S.
BERLIND, THOMAS H. CRUIKSHANK,
MARSHA JOHNSON EVANS, SIR
CHRISTOPHER GENT, ROLAND A.
HERNANDEZ, HENRY KAUFMAN, JOHN D.
MACOMBER, BANC OF AMERICA
SECURITIES LLC, CITIGROUP GLOBAL
MARKETS INC., MERRILL LYNCH, PIERCE
FENNER & SMITH INCORPORATED,
MORGAN STANLEY & CO. INCORPORATED,
UBS SECURITIES LLC., and WACHOVIA
CAPITAL MARKETS, LLC.,

Defendants.

NO. 08-CV-8225 (LAK)

JURY TRIAL DEMANDED

OPERATIVE PLASTERERS AND CEMENT
MASONS INTERNATIONAL ASSOCIATION
LOCAL 262 ANNUITY FUND, Individually And
On Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

RICHARD S. FULD, JR.; CHRISTOPHER M.
O'MEARA; JOSEPH M. GREGORY; ERIN
CALLAN; IAN LOWITT; MICHAEL L.
AINSLIE; JOHN F. AKERS; ROGER S.
BERLIND; THOMAS H. CRUIKSHANK;
MARSHA JOHNSON EVANS; SIR
CHRISTOPHER GENT; ROLAND A.
HERNANDEZ; HENRY KAUFMAN; JOHN D.
MACOMBER; ABN AMRO HOLDING N.V.;
ANZ SECURITIES, INC.; BANC OF AMERICA
SECURITIES LLC; BBVA SECURITIES INC.;
(Caption continued on next page)

NO. 08-CV-5523 (LAK)

BNY CAPITAL MARKETS, INC.; CABRERA CAPITAL MARKETS, LLC; CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID; CIBC WORLD MARKETS CORP.; CITIGROUP GLOBAL MARKETS INC.; DAIWA SECURITIES SMBC EUROPE LIMITED; DnB NOR MARKETS; DZ FINANCIAL MARKETS LLC; RBS GREENWICH CAPITAL; HARRIS NESBITT CORP.; HSBC SECURITIES (USA) INC.; HVB CAPITAL MARKETS, INC.; LOOP CAPITAL MARKETS, LLC; MELLON FINANCIAL MARKETS, LLC; MERRILL LYNCH, PIERCE, FENNER & SMITH INC.; MIZUHO SECURITIES USA, INC.; MORGAN STANLEY & CO. INC.; nabCAPITAL; SECURITIES, LLC; NATIONAL AUSTRALIA BANK LIMITED; RBC DAIN RAUSCHER INC.; SANTANDER INVESTMENT SECURITIES, LLC; NATIONAL AUSTRALIA BANK LIMITED; RBC DAIN RAUSCHER INC.; SANTANDER INVESTMENT SECURITIES INC.; SCOTIA CAPITAL (USA) INC.; SIEBERT CAPITAL MARKETS NATIONAL AUSTRALIA BANK LIMITED; RBC DAIN RAUSCHER INC.; SANTANDER INVESTMENT SECURITIES INC.; SCOTIA CAPITAL (USA) INC.; SIEBERT CAPITAL MARKETS; SG CORPORATE & INVESTMENT BANKING; SOVEREIGN SECURITIES CORPORATION, LLC; SUNTRUST ROBINSON HUMPHREY, INC.; TD SECURITIES (USA) LLC; UBS SECURITIES LLC; UTENDAHL CAPITAL PARTNERS, L.P.; WACHOVIA CAPITAL MARKETS, LLC; WELLS FARGO SECURITIES, LLC; WILLIAMS CAPITAL GROUP, L.P.,

Defendants.

**NOTICE OF FOGEL CAPITAL MANAGEMENT, INC.'S
CONSENT TO CONSOLIDATION AND WITHDRAWAL OF ITS
MOTION FOR APPOINTMENT AS LEAD PLAINTIFF, AND
CONCOMITANT SELECTION OF LEAD COUNSEL**

On September 24, 2008, Plaintiff Fogel Capital Management, Inc. (“FCM”) commenced *Fogel Capital Management, Inc. v. Richard S. Fuld et al.*, No. 08-08225 (the “*FCM Action*”) an action asserting violations of the federal securities laws on behalf of purchasers of Preferred Series “J” stock (“Series J Stock”) issued by Lehman Brothers Holdings Inc. (“Lehman”). On October 13, 2008, FCM moved to be appointed lead plaintiff in the *Fogel Action*. See *FCM Action* D.I. No. 19.

Subsequently, the Court-appointed Lead Plaintiff in *Operative Plasterers and Cement Masons Int’l Assoc. Local 262 Annuity Fund, et al. v. Lehman Brothers Holdings, Inc., et al.*, No. 08-Civ-5523 (LAK) (the “*Operative Plasterers Action*”) filed an opposition to FCM’s lead plaintiff motion (*Fogel Action* D.I. No. 36) as well as a motion to consolidate the *FCM Action* with the *Operative Plasterers Action* (D.I. No. 40). Lead Plaintiff in the *Operative Plasterers Action* argued that the claims asserted by the *FCM Action* are included in the Amended Complaint filed by Lead Plaintiff in its action on October 27, 2008. Lead Plaintiff’s Amended Complaint includes claims on behalf of all persons and entities who purchased or acquired publicly-traded securities of Lehman and its subsidiaries (including stock, preferred shares, bonds, and/or call options or who sold put options) between June 12, 2007 and September 15, 2008. See *Operative Plasterers Action* D.I. No. 52 (Amended Complaint).

Because the *FCM Action* and the *Operative Plasterers Action* assert claims with similar theories of liability, and because consolidation is likely to avoid needless duplication of judicial resources, FCM agrees that the *FCM Action* should be consolidated with the *Operative Plasterers Action* under Rule 42(a) of the Federal Rules of Civil Procedure.

Accordingly, FCM hereby consents to the consolidation of its action with the related action styled *Operative Plasterers Action* and withdraws its Motion for Appointment as Lead

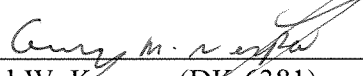
Plaintiff and Concomitant Selection of Wolf Haldenstein Adler Freeman & Herz LLP and
Gainey & McKenna as Co-Lead Counsel (*FCM Action* D.I. No. 19).

Dated: November 7, 2008

New York, New York

Respectfully submitted,

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

By: 
Daniel W. Krasner (DK 6381)
Gregory M. Nespole (GN 6820)
Gustavo Bruckner (GB 7701)
270 Madison Avenue
New York, New York 10016
Telephone: (212) 545-4600
Facsimile: (212) 545-4653
Email: Krasner@whafh.com
Nespole@whafh.com
Bruckner@whafh.com

GAINEY & MCKENNA
Thomas J. McKenna
295 Madison Avenue, 4th Floor
New York, NY 10017
Telephone: (212) 983-1300
Facsimile: (212) 983-0383
Email: tjmckenna@gaineyandmckenna.com
tjmlaw2001@yahoo.com

Counsel for Fogel Capital Management, Inc.

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On Behalf Of All Others Similarly Situated,

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Defendants.

CERTIFICATE OF SERVICE

1. Gustavo Bruckner, Esq., an attorney admitted to practice law before the courts of the State of New York, hereby declares that on November 10, 2008, I caused to be served a true and correct copy of plaintiff's *Consent to Consolidation and Withdrawal of its Motion for*

Appointment as Lead Plaintiff, and Concomitant Selection of Lead Counsel: (i) electronically on all counsel registered for electronic service for this case; (iii) via electronic mail on the following counsel:

Patricia Hynes, Esq.
Allen & Overy LLP
1221 Avenue of the Americas
New York, NY 10020
patricia.hynes@allenoverly.com

Eric M. Albert, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
ealbert@stblaw.com

And (ii) by first-class mail on the following defendants or their counsel:

Banc of America Securities LLC
c/o CT Corporation System
111 8th Avenue, 13th floor
New York, NY 10011

Citigroup Global Markets, Inc.
388 Greenwich Street
New York, NY 10013

Merrill Lynch, Pierce, Fenner & Smith Inc.
c/o CT Corporation System
111 8th Avenue, 13th floor
New York, NY 10011

Morgan Stanley & Co. Inc.
c/o CT Corporation System
111 8th Avenue, 13th floor
New York, NY 10011

UBS Securities, LLC,
c/o Registered Agent, Corporation Service
Company
80 State Street
Albany, NY 12207

Wachovia Capital Markets, LLC,
c/o Registered Agent, Corporation Service
Company
80 State Street
Albany, NY 12207

Dated: November 10, 2008

/s/
Gustavo Bruckner