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R Brown Letter to Gary Cohen re Use of Interview Materials

Reginald J. Brown

Sarah Pfuhl

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December 13, 2010

Reginald J. Brown

VIA HAND DELIVERY

+1 202 663 6430(t)

+1 202 663 6363(f)

reginald.brown@wilmerhale.com

Gary Cohen, Esq.
Financial Crisis Inquiry Commission
1717 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006-4614

Re: Response to Potential Release of Interview Memoranda

Dear Gary:

We represent Bank of America Corporation, including Merrill Lynch and Countrywide (“BAC”), and submit this letter on BAC’s behalf. We write to share our views regarding the possible release of materials from the Financial Crisis Inquiry Commission’s (“FCIC”) interviews with current BAC employees Denis Manelski, Michael Schloessmann, and Cindy Simantel.

With respect to Ms. Simantel, we have not yet had an opportunity to review the FCIC’s interview memorandum, which has not yet been uploaded to the virtual data room. We were told by FCIC staff on November 23, 2010, that the memo would be made available soon, so please let us know if you no longer intend to use it.

We have reviewed the FCIC’s memoranda for the interviews of Mr. Manelski and Mr. Schloessmann, and we are open to discussions regarding the FCIC’s use of specific quotes, if accurate, from those interviews. We believe, however, that the memos as a whole should not be released, for two reasons. First, we do not think these individuals hold sufficiently senior positions at BAC for the public to have a strong interest in their interviews. Second, we have significant concerns about the accuracy and reliability of the information contained in the memos. For example:

- The transcript-like format of the memos creates the false impression that they reflect the verbatim contents of the interviews. While one of the memos states at the beginning that it is not a transcript and should not be treated as such, the other contains no such disclaimer.
- The memos do not always contain the complete questions and responses from the interviews. The selective nature of the memos’ contents creates a risk that statements will be misinterpreted because they lack proper context.
- The memos sometimes omit caveats or disclaimers made by witnesses prior to answering certain questions. Mr. Manelski’s memo, for example, fails on occasion to reflect that Mr. Manelski specifically said he was “just guessing” and was “not speaking on behalf of the company.” Witnesses were frequently asked questions

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about which they lacked direct personal knowledge, and they offered their best guess in order to be helpful to the FCIC. Such speculation should not be presented as a statement of fact.

- The memos contain factual and typographical mistakes. In one memo, questions and answers are attributed to the wrong people. The other memo inaccurately reflects who attended the interview.

The above issues call into question the accuracy, completeness, and usefulness of the FCIC's interview memos, and we believe their release would likely cause more confusion than clarity.¹ We do not believe it would be appropriate to suggest line edits since the memos are your own work product, and we would therefore suggest that the memos be maintained as your records for historical purposes and that we simply work with you to provide prompt feedback regarding specific comments you plan to quote or paraphrase. Our intention is to work cooperatively with you to ensure that comments used by the FCIC are accurate and appropriately characterized, and we can assure you that we will seek to validate the statements promptly.

Please contact me (202-663-6430) or Sarah Pfuhl (212-295-6305) if you have any questions or would like to discuss this further.

Sincerely,

/s/ Reginald J. Brown

Reginald J. Brown
Sarah Pfuhl

¹ The current disclaimer at the beginning of Mr. Manelski's interview memo is also woefully inadequate to compensate for the above-mentioned limitations of the memos. The FCIC's interview memo states: "This is a paraphrasing of the interview dialogue and is not a transcript and should not be quoted as such." This disclaimer does not cover the issues identified above regarding inaccuracies and selective omissions. In addition, Mr. Schloessmann's interview memo contains no disclaimer at all. At a minimum, prior to any decision by the FCIC to release its interview memos, we would like an opportunity to discuss an appropriate and robust disclaimer regarding the problems we have identified in the memos. Otherwise there is a significant risk that the information will be mischaracterized and misinterpreted.