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Froeba Letter re Use of MFR 1 to Gary Cohen

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December 17, 2010

Mr. Gary Cohen
General Counsel
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW Suite 800
Washington, DC 20006

By E-mail and Express Mail

Dear Mr. Cohen:

Thank you for arranging to have the Memorandum for the Record dated April 27, 2010 (the "MFR") sent to me for review on Wednesday of this week. I believe that the MFR reflects its author's good-faith attempt to outline the general topics discussed at the interview between the FCIC's representatives and Gene Phillips and myself (the "Interview"). However, as I will try to show below, it includes so many inaccuracies and errors that it is not a reliable record of the actual content of the Interview. As such, it is not at all appropriate for public scrutiny and I urge that it be kept confidential. (In what follows, I distinguish between the content of the MFR and the content of the actual Interview.)

Expectation of Confidentiality. I have contacted Mr. Phillips about the MFR and both he and I believe that we received assurances from FCIC representatives before the Interview (we both believe that it was from Mr. Bondi) that it would be kept confidential. Mr. Phillips believes that this may even be reflected in an e-mail exchange that he is attempting to locate. Of course, we would both be willing to submit affidavits confirming this if necessary. More importantly, if we had believed that the Interview would be made public, we would have requested permission to record the meeting (which took place at our office and could easily have been done) so that we would have had an accurate record of what was actually said. The fact that we did not request such a record reflects our belief at the time that the Interview would be kept confidential.

Evidence of this Expectation. Even if Mr. Phillips is unable to locate these e-mails, it is clear from the MFR itself that I expected the Interview would be kept confidential. In the Interview, I was willing to disclose the name ^{36 CFR 1256.56 - Privacy} [REDACTED]. This is because I believed that her name would be kept confidential and that her identity would only be made public if she consented to the disclosure by speaking to the FCIC herself. However, only a few weeks after the Interview, I was unwilling to provide this same name because I believed that doing so would cause it to be made public on those occasions, both in my prepared FCIC testimony ("Testimony") and in the answers I gave at the June 2010 FCIC New York hearing. I refused even though Chairman Angelides expressly requested that I disclose the name at the hearing. When I explained at the hearing that I did not want to violate her privacy, he agreed that her name should not be made public. (Presumably, he has not changed his view on this point and would support not making the MFR public even if only to protect this woman's privacy.) Thus, I clearly believed that the Interview would never be made public. Had I believed otherwise, I would not have disclosed this woman's name at the Interview. I had a general expectation of confidentiality at the Interview and this expectation affected the whole of the Interview.

Extraneous Content. Without citation or attribution, the text of the MFR also includes information that neither Gene Phillips nor I provided at the Interview. There is no way to distinguish from the text of the

MFR what information was provided by us at the Interview and what was gathered independent of us and added by the author. Here are just two examples of this problem. There are others.

- The MFR includes employment information and a telephone number for Sergey Pekarsky. We did not have that information at the Interview and, therefore, were not the source of the information in the MFR. I have no idea whether the information is correct or not.
- The MFR describes Isaac Efrat ^{36 CFR 1256.56 - Privacy} Neither Gene Phillips nor I ever referred to Isaac Efrat ^{36 CFR 1256.56 - Privacy} during the Interview. To the best of my recollection, this was a term that the FCIC personnel themselves applied to Isaac Efrat at the Interview. As I believe they mentioned to us, they had heard someone else apply the term to him at a prior Interview. When I mentioned Isaac Efrat's name in the course of my Interview, they brought up the term. I had never even heard the term used about Isaac Efrat before and have never used the term myself on any occasion. However the MFR suggests that the term was used by me or Gene Phillips.

Factual Inaccuracy. The Interview contains many inaccurate statements. Here are a few examples. There are many others. Some of these inaccuracies are not critical to the content of the MFR (although it is troubling that the two below make me appear to be distorting my professional background).

- I was not at Skadden Arps from 1990 to 1997. I was there from 1994 to 1997.
- I was not a Senior Vice President from 1997 to 2007. I started as a Vice President – Senior Analyst, was promoted to Senior Credit Officer and was then promoted to Senior Vice President.

Other inaccuracies are extremely serious and affect the core content of the MFR.

- At no point in the Interview did I ever indicate that I believed “*there was a reverse engineering section at Moody’s.*” The MFR goes on to say that I did not “*have any names or . . . know where it was organized.*” Both statements are completely false. To my knowledge, Moody’s never had such an “engineering section.” I have never suggested otherwise to anyone. I have had Interviews with the SEC, with the Justice Department and with the US Attorney’s Office. At none of these Interviews did I make such a claim. Indeed, I made no such claim at the Interview. I have no idea upon what statement or misunderstanding this assertion is based but it is simply wrong.
- I never stated that “*all salaries at Moody’s went up significantly*” after the spinoff. In fact just the opposite was true. Most salaries did not go up at Moody’s. Following the spinoff, Moody’s employees gradually began to enjoy higher income (though not salaries) in connection with the exercise of stock options. Salaries did go up in the Derivatives Group because it was having employee retention problems. Salaries did not go up elsewhere in the company even though other areas were also having retention problems.
- I never stated that Isaac Efrat ^{36 CFR 1256.56 - Privacy} ^{36 CFR 1256.56 - Privacy} The text of the MFR suggests otherwise and does not accurately reflect my comments about Isaac Efrat’s departure from Moody’s.

Misleading Presentation. The Interview was conducted in a question and answer format. However, this is not presented in any way in the MFR. For simple factual questions and answers, this omission does not result in a distortion of the Interview. However, at various occasions, I was asked questions that required me to speculate and I was encouraged to do so to help facilitate the FCIC’s investigation, for example, about Brian Clarkson’s character and about his and Yuri Yoshizawa’s motives in the decisions they made in late 2006 and 2007. To the extent that they are even accurate in the MFR (and in many cases they are not), my responses to these invitations to speculate are still misleading so long as it is not clear that they

were asked and answered as mere speculation. This was unambiguously clear at the Interview and it is not in any way communicated in the MFR.

Substantive Insufficiency. The MFR attempts to summarize two discussions of substantive issues from the Interview. The one (entitled “CDO Model”) concerns the advent of Moody’s correlated binomial methodology for use in assessing the correlation of the underlying securities held in CDOs of ABS. The other (entitled “Moody’s London CLO – Rating Corporate Loans”) concerns a change made to Moody’s default probability assumptions in analyzing European CLOs. Both topics are highly technical and, even by an expert, would not easily be summarized in writing. Unfortunately, the MFR tries to summarize both issues. With all due respect, the two summaries are confused, confusing and almost entirely wrong. They would need to be rewritten completely to reflect the actual discussion at the Interview. My discussion of the second issue at the Interview (regarding European CLOs) was substantively identical to the written description of the issue I provided in my Testimony. To assess the substantive problems in the MFR, it is only necessary to compare the MFR’s discussion of this issue with the one in my Testimony. As you will see from my Testimony, this issue was never about a problem with Moody’s CLO model.* Accordingly, I never said anything like the statement in the MFR that “[i]n New York everyone knew the model was BS.” This issue had to do with bad inputs to the model not a bad model – an entirely different problem. The description of the two substantive issues in the MFR are so wide of the mark that we will suffer real professional injury if they are in any way attributed to me or to Mr. Phillips.

In summary, I believe that the best result for the FCIC, for its representatives, for Mr. Phillips and for me (and for most of the people mentioned in it) is that MFR not be made public. If anyone would like to discuss this with me further, please feel free to contact me.

If it is determined that the MFR will be made public, I would ask that you give us at least five business days advance warning. I would also ask that, before any release, you allow us to provide you with a proposed corrected version of the MFR that addresses its many inaccuracies (some of which are described herein and many of which are not).

Thank you.

Mark Froeba

*The author may have been blurring his recollection of my description of this issue with his own recollection – from other sources or from some discussion at the Interview -- of a problem Moody’s had with its CPDO model. This issue was reported by the Financial Times in a story that led to several Moody’s employees being terminated. However, the MFR lists the names of these people in its discussion of this issue.