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L Imes Letter to Gary Cohen re Use of N Dominguez Quotes

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December 8, 2010

BY FACSIMILE AND ELECTRONIC MAIL

Mr. Gary J. Cohen
General Counsel
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006-4614

Re: FCIC's December 6, 2010 Letter to Nestor Dominguez

Dear Mr. Cohen:

I am counsel to Nestor Dominguez and write in response to your December 6, 2010 letter, which Susanna Buerger forwarded to me. As you know, Mr. Dominguez provided two interviews to the Financial Crisis Inquiry Commission ("FCIC") staff – one on March 2, 2010 (which was not tape recorded) and one on September 28, 2010 (which was tape recorded). In your December 6 letter, you set forth "quotes" purportedly from these two interviews that the FCIC may "include or paraphrase" in its forthcoming public report.¹ You ask that counsel provide you with comments. We appreciate the opportunity to comment and have reviewed the bullet points carefully, compared their content to summaries of the March 2 interview and the tape of the September 28 interview, and discussed them with Mr. Dominguez.

A. Bullet Points Based on March 2 Interview

Three of the eight bullet points based on the March 2 interview do not accurately recount what Mr. Dominguez said or are incomplete in a way that could mislead the reader.

Third Bullet Point

The third bullet point reads:

¹ I note that to the extent the statements you attribute to Mr. Dominguez were derived from the March 2 interview, they are not in fact quotes since no stenographer was present to create a transcript and the interview was not taped. In fact, the FCIC's Memorandum For the Record ("MFR") includes a disclaimer that states: "This MFR is a paraphrasing of the dialogue and should not be quoted as a transcript." (March 2, 2010 FCIC Mem. For the Record at 1.) Thus, any record of that interview consists of notes taken by all attorneys who were present.

In 2005, Citi's CDO desk was a tiny unit in the company's investment banking arm, accounting for less than 1% of revenues – “eight guys and a Bloomberg” terminal, in the words of Nestor Dominguez, co-head of the desk.

The “quote” here is not correct and jumbles what Mr. Dominguez actually said. During the March 2 interview, Mr. Dominguez said that he was part of Citi's (then Salomon Smith Barney's) fledgling credit derivative business in about 1998, when the CDO desk was “three guys and a Bloomberg.” Asked later in the interview about growth in headcount on Citi's New York cash CDO desk, Mr. Dominguez recalled that as of 2003 (not 2005), the desk had approximately eight people. Thus the “quote” is incorrect in at least two respects: (1) Mr. Dominguez said the desk had approximately eight people in 2003, not 2005; and (2) the Bloomberg terminal comment related to 1998, not 2005.² Clearly, by 2005, Citi had more than a single Bloomberg terminal supporting the cash CDO group. Thus, on this particular factual issue, an accurate summary of what Mr. Dominguez said is:

In 1998, Mr. Dominguez was part of Citi's (then Salomon Smith Barney's) fledgling credit derivative business, when the CDO desk was “three guys and a Bloomberg.” By 2003, the headcount for that desk had increased to approximately eight people.

In addition, we cannot verify the accuracy of the “less than 1% of revenues” reference for 2005 (or 2003). That percent-of-revenue number did not come from Mr. Dominguez and is best verified for any particular year with Citigroup. It is also unclear what comprises the larger set of revenues of which the CDO desk's revenues accounted for less than one percent. Moreover, counsel for Citi has informed us that they have been unable to determine how the FCIC arrived at the “less than 1%” figure.

Fourth Bullet Point

The fourth bullet point reads:

But, for the time being – for the fees, the bonuses, the careers – this “strategic initiative,” in the words of Nestor Dominguez, co-head of the CDO desk, was very profitable for Citigroup.

Although the language in this bullet point is unclear, we assume that it refers to Citi's liquidity puts program, the genesis of which was discussed in Mr. Dominguez's March 2 interview.

² Note that Mr. Dominguez was not asked how many people worked on the cash CDO desk in 2005, the year you reference in bullet point three of your letter. He only talked about 1998 (“three guys and a Bloomberg”), 2003 (approximately eight people), and 2006 (20 or more people, including the groups that created CLOs, Trust Preferred Securities, and ABS CDOs).

The fourth bullet point is incomplete and misleading because it implies that the liquidity puts initiative (which Mr. Dominguez inherited in 2003) was launched without regard for risk and only with regard for “fees, bonuses and careers.”³ In the March 2 interview, Mr. Dominguez explained that the liquidity puts program was initially run through the credit derivatives business but that, in the summer of 2005, the program was moved to the CDO business as part of an initiative to increase the profitability of Global Structured Credit Products by using the balance sheet allocation for a purpose that generated a higher yield than simply holding the super senior notes. Mr. Dominguez emphasized the perceived lack of risk in the program, observing that the liquidity puts program was simply a good way to generate yield from the safe, highly-rated super senior assets. Even the FCIC staff’s own memorandum of the March 2 interview states: “Here was a product that we felt had *de minimus* risk, but that we felt had a much higher _____.”⁴ (March 2, 2010 FCIC Mem. For the Record at 12.)

Fifth Bullet Point

The fifth bullet point reads:

No doubt about it, Dominguez told the FCIC, the AAA or A-1 ratings, the multiple fees, and the low capital requirements made the liquidity puts “a much better trade” than the typical CDOs at the time.

This bullet point presents in a confusing way what Mr. Dominguez said at the March 2 interview. Mr. Dominguez did not compare the liquidity puts to typical CDOs and call them “a much better trade,” as that would have been comparing apples and oranges. Specifically, as Mr. Dominguez explained, liquidity puts were designed to be held on the balance sheet; in contrast, CDOs are designed to be distributed to investors. Mr. Dominguez did say that liquidity puts were seen as a much safer option for Citi and that, on risk reward, they were better than traditional bank liquidity.

B. Bullet Point Based on September 28 Taped Interview

First Bullet Point

The first bullet point was based on the September 28 taped interview of Mr. Dominguez. The first bullet point reads:

“Lots of folks [were] looking for leverage – leverage as an institution, or leverage in the structure, different leverage methodologies for different investors,” Citigroup’s Nestor Dominguez told the FCIC.

³ In his interview, Mr. Dominguez did not discuss “fees, bonuses and careers” in connection with the liquidity puts program. That is apparently the FCIC staff’s addition, which should be made clear.

⁴ The FCIC’s memorandum had a blank here. (See March 2, 2010 FCIC Mem. For the Record at 12.) The word the FCIC staff missed in taking notes is “return.”

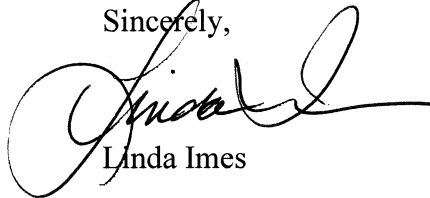
We listened to the FCIC's recording of the December 7 interview, searching for the language you quote. We think your quote is incorrect, as we instead heard this on the tape:

You could either take leverage individually, as an institution, or you could take leverage within the structure. Clearly in the market there were all sorts of, there were different kinds of investors that did different methodologies for leveraging-up low-yielding assets, to get something that's more acceptable to their end investors.

Nowhere within the vicinity of this discussion did we hear Mr. Dominguez say that "[l]ots of folks [were] looking for leverage." If this part of the quote was taken from elsewhere in the September 28 interview, it should (at the very least) be followed by an ellipsis reflecting that fact.

We respectfully object to the inclusion of any unverified, inaccurate, or misleading information or quotes in your public report, as identified above. We hope that this letter will assist the FCIC in presenting accurate and clear information in its report.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Imes", with a large, stylized flourish extending to the right.

Linda Imes