

Yale University

EliScholar – A Digital Platform for Scholarly Publishing at Yale

YPFS Documents (Series 1)

[Browse by Media Type](#)

12-13-2010

W Ricciardi Letter to Gary Cohen re Use of Deutsche Material

Walter Ricciardi

Follow this and additional works at: <https://elischolar.library.yale.edu/ypfs-documents>

Recommended Citation

Ricciardi, Walter, "W Ricciardi Letter to Gary Cohen re Use of Deutsche Material" (2010). *YPFS Documents (Series 1)*. 6457.

<https://elischolar.library.yale.edu/ypfs-documents/6457>

This Document is brought to you for free and open access by the Browse by Media Type at EliScholar – A Digital Platform for Scholarly Publishing at Yale. It has been accepted for inclusion in YPFS Documents (Series 1) by an authorized administrator of EliScholar – A Digital Platform for Scholarly Publishing at Yale. For more information, please contact elischolar@yale.edu.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373 3000

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

WRITER'S DIRECT DIAL NUMBER

212-373-3350
WRITER'S DIRECT FACSIMILE

212-492-0350
WRITER'S DIRECT E-MAIL ADDRESS

wricciardi@paulweiss.com

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO. 7 DONG SANHUAN ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846 0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

MATTHEW W. ABBOTT
ALLAN J. ARFFA
ROBERT A. ATKINS
JOHN E. BAUGHMAN
LYNN B. BAYARD
DANIEL J. BELLER
CHRIS A. BENSON
MITCHELL L. BERG
MARK S. BERGMAN
BRUCE BIERENSON
H. CHRISTOPHER BOEHNING
ANGELO BONVINO
HENK BRANDS
JAMES L. BRONSTEIN
RICHARD J. BRONSTEIN
DAVID W. BROWN
SUSANNA M. BUEBEL
PATRICK S. CAMPBELL
JEANETTE K. CHAN
YVONNE Y. CHAN
LEWIS R. CLAYTON
JAY COHEN
KELLEY A. CORNISH
CHARLES E. DAVIDOW
DOUGLAS R. DAVIS
THOMAS V. DE LA BASTIDE II
ARIEL J. DECKELBAUM
JAMES M. DUBIN
ALICE BELISLE EATON
ANDREW J. EHRLICH
LESLIE GORDON FAGEN
MARC FALCONE
ANDREW C. FINCH
ROBERTO FINZI
PETER E. FISCH
ROBERT C. FLEDER
MARTIN FLUMENBAUM
ANDREW J. FOLEY
HARRIS B. FRIEDUS
MANUEL S. FREY
KENNETH A. GALLO
MICHAEL E. GERTZMAN
PAUL D. GINSBERG
ROBERT D. GOLDBAUM
ERIC S. GOLDSTEIN
ERIC GOODISON
CHARLES H. GOOGE, JR.
ANDREW G. GORDON
BRUCE A. GUTENPLAN
GAINES GWATHMEY, III
ALAN S. HALPERIN
CLAUDIA HAMMERMAN
GERARD E. HARPER
BRIAN S. HERMANN
ROBERT M. HIRSH
MICHELE HIRSHMAN
JOYCE S. HUANG
DAVID S. HUNTINGTON
MEREDITH J. KANE
ROBERTA A. KAPLAN
BRAD S. KARP
JOHN C. KENNEDY
ALAN W. KORNBERG
DANIEL J. KRAMER
DAVID K. LAKHDIR
STEPHEN P. LAMB
JOHN E. LANGE
DANIEL J. LEFFELL
XIAOYU GREG LIU
JEFFREY D. MARELL
JULIA TARVER MASON
MARCO V. MASOTTI
EDWIN S. MAYNARD
DAVID W. MAYO
ELIZABETH R. MCCOLM
MARK F. MENDELSON
JOY S. MYERSON
JOHN E. NATHAN
CATHERINE NYARADY
ALEX YOUNG K. OH
JOHN J. O'NEIL
KELLEY D. PARKER
ROBERT P. PARKER
MARC E. PERLMUTTER
MARK F. POMERANTZ
VALERIE E. RADWANER
CAREY R. RAMOS
CARL L. REISNER
WALTER G. RICCIARDI
WALTER RIEMAN
RICHARD A. ROSEN
ANDREW N. ROSENBERG
PETER J. ROTHENBERG
JACQUELINE P. RUBIN
RAPHAEL M. RUSSO
JEFFREY D. SAFERSTEIN
JEFFREY B. SAMUELS
DALE M. SARRO
TERRY E. SCHIMEK
KENNETH M. SCHNEIDER
ROBERT B. SCHUMER
JAMES H. SCHWAB
STEPHEN J. SHIMSHAK
DAVID R. SICULAR
MOSES SILVERMAN
STEVEN SIMKIN
JOSEPH J. SIMONS
MARILYN SOBEL
TARUN M. STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
ROBYN F. TARNOWSKY
JUDITH R. THOYER
DANIEL J. TOAL
MARK A. UNDERBERG
LIZA M. VELAZQUEZ
LAWRENCE G. WEE
THEODORE V. WELLS, JR.
BETH A. WILKINSON
STEVEN J. WILLIAMS
LAWRENCE I. WITDORCHIC
JORDAN E. YARETT
KAYE N. YOSHINO
TRANG YU
TRACEY A. ZACCONE
T. ROBERT ZOCZOWSKI, JR.

*NOT ADMITTED TO THE NEW YORK BAR

December 13, 2010

Via Email and Federal Express

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

Re: *Treatment of Confidential Materials*

Dear Gary:

The law firms of Paul, Weiss, Rifkind, Wharton & Garrison LLP, Latham & Watkins LLP, and Wilmer Cutler Pickering Hale and Dorr LLP have each represented Deutsche Bank AG ("Deutsche Bank") in connection with interviews of current and former Deutsche Bank employees conducted by, or document productions made to, the Financial Crisis Inquiry Commission ("FCIC"). We understand that the FCIC is beginning to finalize its written report, which could contain portions of these interviews, and also is considering the wholesale disclosure on the FCIC's website of summaries, transcripts and/or audio files of these interviews, as well as other documents and data produced by Deutsche Bank. For the reasons stated below, we object to the disclosure of any of these materials at this time.

To date, we have received letters from the FCIC indicating that it may seek to disclose portions, if not all, of the contents of the confidential interviews of Michael

CONFIDENTIAL TREATMENT REQUESTED BY DEUTSCHE BANK AG

Lamont, Greg Lippmann, Patrick McKenna, and Eugene Xu. The FCIC conducted additional confidential interviews with Deutsche Bank personnel, regarding which we have not received such letters, namely: Michael Commaroto, Tom Devine, David Rosenblum, Richard Rizzo, Neil Schneider, Vaughn Smith, and Joseph Swartz. It is our understanding that the FCIC does not presently intend to use any portion of these additional interviews.

With respect to the interviews in connection with which we received letters, we understand that, among other things, the FCIC is considering including quotations or other excerpts from the interviews in its final written report. We contacted the FCIC staff in an effort to gain a more precise understanding of the FCIC's intentions, and the staff indicated that it was not yet in a position to confirm for us whether it intended to include in its final written report any such excerpts from these or any other interviews of Deutsche Bank personnel. The staff committed to us in that call that, insofar as the FCIC does seek to include any such excerpts, it will identify the relevant excerpts for us in advance of publication so that we have a reasonable opportunity to provide additional arguments in favor of confidentiality.

We look forward to that opportunity. Indeed, there is a particular risk that the release of the content of interviews without sufficient context or appropriate caveats could cause unfair prejudice — particularly in light of the fact that interviewees typically did not review records or other materials in advance of the interviews and relied instead on their personal recollections and were often pressed to supply their subjective, personal views.

Although we welcome and appreciate the staff's commitment to allow us an opportunity to provide more detailed objections, we think it nevertheless important to outline at this time our overall objection to the release or disclosure of the interviews of current or former Deutsche Bank personnel — whether in the FCIC's report or on its website. We believe any such release or disclosure would be contrary to the assurances of confidentiality provided by FCIC staff with respect to these interviews, would unfairly prejudice Deutsche Bank and the individual interviewees, and is unnecessary in light of the existing procedure for dissemination of the FCIC's investigative materials through the National Archives.

During our interactions over the past year, FCIC staff explicitly assured us that the tape recordings of interviews would be afforded confidential treatment subject only to the FCIC's confidentiality protocol. Had we been informed that the FCIC intended to publicly disclose the content of these interviews, we would have tailored our approach to the interviews accordingly, and may well have insisted that additional procedures be put in place. In sum, publication of any tape recordings, transcripts or summaries from these interviews would be unfair and inconsistent with the FCIC's past representations.

We do not object, however, to the National Archives' release of tape recordings, transcripts or summaries of the FCIC's interviews with Deutsche Bank personnel after 12 years, which would be consistent with the treatment of Executive Branch records stored under the Presidential Records Act. At the very least, we believe that these materials should not be released within the next 5 years, which is the length of time the FCIC has indicated as the presumptive minimum period for protection of confidential materials, absent an overriding public interest as determined by a majority vote of Commissioners or by joint agreement of the Chairman and Vice Chairman.

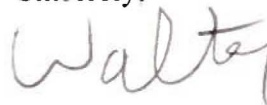
We do not at this time have reason to believe there is any such overriding public interest in the immediate disclosure of any of the interview tape recordings, transcripts or summaries. To the contrary, Deutsche Bank and the individual interviewees have legitimate overlapping and distinct privacy interests weighing against immediate publication: the interviews contain confidential information relating to the interviewees themselves, Deutsche Bank, and third parties.¹ Moreover, much of this information relates to, and could unfairly prejudice Deutsche Bank with respect to, pending or likely investigations and litigation.

* * *

For all of the reasons set forth above, prior to any final decision being made regarding the release of the tape recordings, transcripts, summaries or excerpts of interviews with any Deutsche Bank personnel, or any other Deutsche Bank materials provided to the FCIC, we request an opportunity to discuss our concerns with you further.

Please contact Walter Ricciardi at Paul Weiss at 212-373-3350 with any questions.

Sincerely,



Walter Ricciardi

¹ Similarly, much of the data and documents provided to the FCIC — both within the context of witness interviews and without — is highly sensitive and proprietary, and includes confidential business information that could cause unwarranted competitive harm to Deutsche Bank and its shareholders.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Gary J. Cohen, Esq.

4

cc: Richard Owens, Esq.
Latham & Watkins LLP
Dan Gallagher, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
Charlie Gambino, Esq.
Director and Counsel
Deutsche Bank AG New York

CONFIDENTIAL TREATMENT REQUESTED BY DEUTSCHE BANK AG