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NOT ADM TTED TO THE NEW YORK BAR

December 1, 2010

**By Email and Federal Express**

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

**Re: Publication of Financial Crisis Inquiry Commission (“FCIC”)  
Summaries of JPMorgan and Bear Stearns Interviews**

Dear Gary:

On behalf of JPMorgan Chase & Co. (with its subsidiaries, “JPMorgan”), I write to inform you of gross inaccuracies in the FCIC memoranda purporting to summarize FCIC interviews of JPMorgan and Bear Stearns witnesses (the “Memoranda”).

In our November 22, 2010 letter to the FCIC, we objected to the publication of JPMorgan and Bear Stearns interview summaries and audio files on the FCIC’s website as part of its “oral history” project. We emphasized that the FCIC had never before informed us of its intention to publish these interview summaries and audio files. To the contrary, we were repeatedly assured that the interviews would be treated confidentially and that their purpose was to aid the Commission in drafting its Report and briefing the Commissioners in advance of hearings. Indeed, more than one of the

**Confidential Treatment Requested by JPMorgan**

Memoranda make clear that witnesses were led to believe summaries of their interviews would not be published by the FCIC. For example, in one Memorandum, Sarah Knaus writes that Tom Krebs “informed [the witness] that I was just taking notes for Tom’s assistance.” In another Memorandum, Mr. Krebs told the witness “we’re taking notes to facilitate correct responses.” In our November 22 letter, we also pointed out that the publication of the interview summaries and audio files would result in gratuitous free discovery for plaintiffs in litigation against JPMorgan and Bear Stearns.

Although we had not had an opportunity to review the Memoranda prior to submitting our November 22 letter, we also specifically objected to the publication of the Memoranda based on our belief that they would be incomplete and inaccurate, resulting in misleading and incorrect information being provided to the public. Since writing to you on November 22, we have had the opportunity to conduct a preliminary review of the Memoranda, which has confirmed our concerns and reinforced our view that the Memoranda should not be published on the FCIC’s website or disclosed publicly except through the National Archives after a minimum waiting period of five years.

Given the short time remaining for the FCIC to complete its work, rather than wait until the completion of our review, we wanted to highlight now just a few of the many gross inaccuracies in the Memoranda that we’ve encountered to date:

*First*, many of the Memoranda are made to look like transcripts, which creates the misleading impression that they are accurate and complete records of what was said during the interviews when, in fact, they are incomplete (and often inaccurate) summary Memoranda. While disclaimers at the beginning of several of the Memoranda indicate that the Memoranda contain paraphrases of interview dialogue and are not transcripts, the caveats are either incomplete or unclear. And several of the transcript-style Memoranda contain no disclaimers at all.

Indeed, the FCIC itself cannot rely on its own Memoranda for complete and accurate quotations of witnesses. In the Commission’s letter to one Bear Stearns witness today, it seeks to confirm the accuracy of an alleged quote from the witness’s FCIC interview. However, neither the quote, nor any words remotely resembling the quote, appear in the FCIC’s Memorandum of the interview.

*Second*, the FCIC has omitted critical information and context that renders portions of the Memoranda misleading and inaccurate. For example, one Memorandum states that Bear Stearns was working on its consultants’ recommendations regarding risk management, but omits the witness’s statement that Bear Stearns had already undertaken the tasks recommended on its own initiative and had hired the consultants to confirm that the goals were worthwhile.

*Third*, the Memoranda are replete with grossly inaccurate paraphrases of the witnesses. For example, one Memorandum indicates that the witness said \$500

million was provided to certain hedge funds when, in fact, the witness said exactly the opposite—*i.e.*, that the money was not provided to the hedge funds, but instead was provided to an unrelated entity. Another Memorandum states that the hedge funds contained credit card related securities, when, in fact, the witness stated that the securities were *credit-based*. While these discrepancies may seem inconsequential to the FCIC, the extremely large number of grossly inaccurate paraphrases in the Memoranda should be reason alone to withhold them from publication.<sup>1</sup>

**Fourth**, for those Memoranda not written in transcript style, it is often impossible to tell who the speaker is—*i.e.*, whether the witness is speaking, counsel is speaking, or the FCIC is providing editorial or explanatory commentary. In one particular Memorandum, the FCIC does not even identify a JPMorgan witness by name, and notes simply that the interview was with “personnel from JPMorgan and Paul Weiss.”

**Fifth**, the Memoranda frequently contain garbled passages where the FCIC’s accounts of the witnesses’ responses bear little relationship to what was actually said. For example, one witness’s explanation of a deal involving New York City bonds contains several sentences that are badly mangled, making the resulting narrative incoherent. Further, we note that the Memoranda often omit entire questions and/or responses, further contributing to the confused dialogue. For example, in several instances, the FCIC summarized the responses to questions, but failed to indicate the questions.

**Sixth**, in countless instances the Memoranda attribute statements to the wrong individuals. For example, in several Memoranda, numerous interview questions are incorrectly attributed to the witnesses and the responses are attributed to the FCIC questioners.

**Seventh**, the Memoranda often fail to record statements by witnesses that indicate they were guessing, and/or had no involvement in or responsibility for the issue being discussed. For example, in one Memorandum, the FCIC includes the witness’s criticism of a company decision, but omits the witness’s qualifications on his response—*i.e.*, that he was not involved in the decision, had no responsibility for the decision, and did not know if other alternatives to the decision were feasible.

**Eighth**, in many instances, basic information such as the interview date, time, location, and/or attendees is incorrectly recorded in the Memoranda. For instance,

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<sup>1</sup> As the FCIC is aware, there also is ongoing litigation concerning many of the topics covered during FCIC interviews. Should the FCIC publish the Memoranda on its website, we believe it likely that plaintiffs in civil litigation will seek to depose the FCIC staffers who wrote the Memoranda and/or call them as witnesses at trial.

Gary J. Cohen, Esq.

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in the summary of one Bear Stearns interview, the Memorandum incorrectly indicates that a prominent Morgan Stanley hedge fund manager attended the interview with his two lawyers.

*Finally*, we note that the Memoranda are riddled with typographical errors.

These are just a few examples of the many gross inaccuracies in the Memoranda. In light of the unreliable and misleading content of the Memoranda, we believe it would be unfair—not only to JPMorgan, but also to the individuals who voluntarily appeared for interviews—and wholly inappropriate for the FCIC to publish the Memoranda on its website. We reiterate our prior request that the FCIC withhold all JPMorgan and Bear Stearns interview summaries from publication, leaving the release of the Memoranda to the National Archives after a minimum waiting period of five years.

Thank you for your attention to these matters. We would be happy to answer any questions that you have.

Sincerely,

Handwritten signature of Eric S. Goldstein in black ink, written in a cursive style.

Eric S. Goldstein

cc: Brad S. Karp, Esq.