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December 2, 2010

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

Re: Recordings of Interviews of Gary Gorton, Alan Frost and Pierre Micottis

Dear Mr. Cohen:

We appreciate your sharing with us the recordings of interviews of our clients Gary Gorton, Alan Frost, and Pierre Micottis. These informal interviews were conducted by a lawyer on the FCIC staff, Dixie Noonan, on May 11, 2010 (Prof. Gorton and Mr. Frost) and June 14, 2010 (Mr. Micottis). The first two interviews took place in New York City, while the interview of Mr. Micottis, who resides in London, took place by telephone.

We also appreciate your openness to a discussion on the confidentiality of the recordings, as you invited in the letters that accompanied the recordings. This offer is in keeping with the gracious treatment we were accorded by Ms. Noonan, who was truly a pleasure to deal with. We seek from you the same understanding and flexibility she exhibited, when, for example, she came to New York for the convenience of two of our clients.

We understood that the interviews were being recorded, based on Ms. Noonan's explanation, as an efficient means to prepare the Commission for imminent hearings. We had no idea that the FCIC was actually assembling a "remarkable oral history" comprised of the 1,200 to 1,300 interviews that the staff was taking and recording, as Chairman Angelides referred to it in an interview with Tavis Smiley on June 17, 2010, three days after Mr. Micottis's informal interview. Rather, we believed that Ms. Noonan was taping solely to help her carry out the FCIC's statutory mandate, namely to examine the causes of the financial and economic crisis (including the cause of the "collapse" of AIG and other financial institutions that received TARP monies) and to submit a report to President Obama and to the Congress containing the FCIC's findings and conclusions of these causes. *Fraud Enforcement and Recovery Act of 2009*, Sections 5(c)(1) and (2) and 5(h).

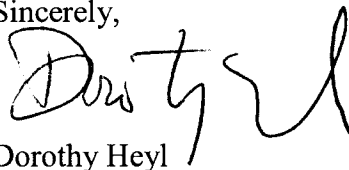
As you will hear in the recordings, Ms. Noonan's openness, as well as her eagerness to master a complicated, new subject—credit default swaps on collateralized debt obligations comprised of residential mortgage-backed securities—led to an easy exchange among our clients, their lawyers, and the FCIC staff. Milbank lawyers Andy Tomback, Tom Santoro and myself, who have become experts in this area over the past few years, helped Ms. Noonan elicit the information that the FCIC needed to compile its report. We volunteered questions, and, it is fair to say, testimony, where we felt it would speed along the brief two-hour sessions. We would have conducted ourselves very differently and not have offered our own “testimony” had we known that the tapes would be posted on the Internet. Further, we would have advised our clients differently had we known that the interviews were to be made public as an “oral history.” For example, we would not have agreed to let Mr. Micottis be interviewed without any lawyers at his side to prevent him from speculating and answering questions on which he had no firsthand information.

The statements made by attorneys and speculative discussions were offered in the collaborative spirit of our conversations to aid Ms. Noonan in developing her understanding of difficult material. However, we respectfully submit that such informal discussion, including by attorneys without any firsthand factual knowledge, is not the stuff of an accurate factual record. We believe that if these statements are made public, it will be difficult for those less familiar with these complicated issues to distinguish fact from speculation. Such confusion would undermine the FCIC's mandate, rather than support it. Perhaps our greatest concern is that the release of the interviews of Messrs. Gorton, Frost and Micottis would be directly contrary to their expectation of privacy. We are in no way contending that the FCIC intentionally deceived our clients or us—but the violation of our clients' privacy and the disregard of their expectations would do them a grave injustice.

In light of these circumstances, we urge you not release the audio transcripts but rather to sift the grain from the chaff, and include in your report only the relevant information learned from the interviews. We would be happy to help you identify documents that bear on the points that you will include in the report, as we have previously done with respect to Mr. Frost's understanding of the history of AIFGP's CDSs on CDOs.

Please let us continue this discussion before you make any final decision with respect to these three recordings. I look forward to hearing from you.

Sincerely,



Dorothy Heyl