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B Karp Letter re Use of Citigroup interview materials

Brad S. Karp

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December 14, 2010

By Federal Express

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Financial Crisis Inquiry Commission ("FCIC" or "Commission")

Dear Gary:

We represent Citigroup Inc. ("Citi" or the "Company") in connection with the Commission's inquiry. In our November 17, 2010 letter (the "November 17 Letter") to the Commission, we objected to the publication of certain Citi-related confidential documents and the public release of recorded Citi witness interviews. We emphasized that these materials contain highly confidential non-public information, and that the Commission had represented to us that it intended to tape record its interviews of Citi witnesses solely as an aid in drafting its final report.

The Commission has since made available to us the Citi witness interview materials it plans to release to the public. These materials include Citi witness interview summaries, audio files, and transcripts. We have had an opportunity preliminarily to review these materials and, as an initial matter, reaffirm the objections made in the November 17 letter. Further, we now object to the publication of any FCIC interview

“summaries” and, to the extent these summaries are published, to the publication of any confidential information contained within these summaries along with confidential information contained within FCIC interview transcripts and interview tape recordings for any Citi witnesses.

Aside from accurate information or quotes that the Commission relies on and references in its final report, none of these materials are appropriate for disclosure by the FCIC to the public. As the Commission is undoubtedly aware, the Company faces significant shareholder and related litigation concerning many of the issues explored during the interviews. There is no apparent purpose for the disclosure of interview summaries, transcripts, or tape recordings other than to assist the plaintiffs’ bar in litigation against Citigroup. In particular, the Commission’s plan to release its interview summaries—which have been drafted misleadingly to resemble transcripts even though they are derived from the notes of the overworked Commission staff and are replete with inaccuracies and mistakes—is irresponsible, prejudicial, unfair, and indeed unprofessional.

Release of Tape-Recorded Interviews. As stated in our November 17 letter, the Commission represented to us, prior to tape recording the witness interviews, that it was tape recording these interviews solely to aid the Commission in drafting its report. Had we been made aware that the Commission intended to release the tape recordings to the public, we would have objected and demanded a revised interview schedule.

The FCIC repeatedly assured witnesses of the confidential nature of its interviews. For instance:

- In the FCIC’s March 18, 2010 interview of Citi witness Jeffrey Perlowitz, Mr. Perlowitz was confused about the Commission’s apparent policy to require him to keep the interview confidential even though the Commission could use statements made by him in its final report. Donna Norman responded to Mr. Perlowitz’s concerns by stating that “[i]n general, federal agencies, such as ourselves and other regulators, *do conduct their investigations on a confidential basis to protect those that we are speaking to as well as others.* So I think you’ll find there’s no hidden agenda here.” (Audio File of Jeffrey Perlowitz’s Interview at 3:20–4:55.) Ms. Norman reiterated these representations at the end of Mr. Perlowitz’s interview. (*Id.* at 1:42:04–1:42:27.)
- In the FCIC’s March 16, 2010 interview of Mickey Bhatia, Ms. Norman stated that “while one of our missions is to hopefully make public *some* views on . . . the underlying causes of the financial crisis, our investigation work is confidential, so we would ask that you not share the fact of or

substance of this interview with anyone other than your counsel.” (Audio File of Mickey Bhatia’s Interview at 2:08:24–2:08:46.)

These representations are consistent with the Commission’s representations—made prior to the tape recording of Citi witness interviews— that it would keep the recordings confidential and release only those statements that it published in its final report. The Commission did not disclose that it intended to release publicly all of the tapes that it created as part of a purported effort to create an “oral history” of the financial crisis. We respectfully request that the Commission honor its representations made prior to, and during, the interviews and treat as confidential all recordings of Citi interviews.

Release of FCIC Interview Summaries. As of November 17, we were unaware that the Commission planned to publish interview summaries for those interviews that were not otherwise recorded. We now understand that the Commission plans to publish such summaries; we vigorously object to their planned release.

It would be inappropriate for the Commission to publish its interview summaries for several reasons. As an initial matter, the Commission staff drafted the summaries in such a manner as to mimic the form of a transcript. Indeed, the vast majority of the summaries are written in the first person, which makes it appear as if the witnesses actually made the comments reflected in the summaries. The summaries, however, are manifestly sloppy and riddled with inaccuracies and misstatements. They are far from a verbatim report of the questions and answers stated during the interviews; to suggest otherwise is affirmatively misleading. We further note that only a handful of the summaries contain a disclaimer expressly stating that the summary is not a verbatim transcript of the interview. This approach is all the more objectionable because the summaries contain numerous inaccuracies, both as to the facts and because they often omit nuances, important complexities or the relevant context that formed part of each witness’s responses to the Commission’s questions.

For example, and solely by way of illustration:

- The summary of Janice Warne’s interview indicates that she answered “no” to the question of whether a disclosure was made to investors about the decision to structure additional CDOs after February 2007, whereas Ms. Warne said she did not recall if such a disclosure was made. (Interview Summary of Janice Warne at 9.)
- The summary of James Ryan’s and John Schachtel’s interview indicates that Mr. Ryan said that CitiFinancial’s goal was to “grow the business, but focused on a particular segment of customers,” whereas Mr. Ryan in fact stated that the goal was *not focused* on a particular segment of customers. (Interview Summary of James Ryan & John Schachtel at 14.)

- The summary of Lloyd Brown’s interview indicates that Mr. Brown stated that HMDA “will indicate the rate of the borrower and the location of the mortgage,” whereas Mr. Brown said that it would indicate the *race* of the borrower. (Interview Summary of Lloyd Brown at 13.)
- The summary of Ed Abufaris’s and Tony Tenore’s interview indicates that Mr. Bondi asked Mr. Tenore whether there were “reports or documents from 2000 to 2006 that would break down the prime, subprime, and Alt-A,” and that Mr. Tenore replied “[n]o, not that I’m aware of,” whereas Mr. Tenore in fact explained, in response to the question, that loans, though not categorized, were viewed as a full credit package. (Interview Summary of Ed Abufaris & Tony Tenore at 7.)

In addition, the summary indicates that Mr. Bondi asked the question, “Did you blacklist Morgan Dean or First Franklin?” (*Id.* at 6.) We believe Mr. Bondi’s question, and Mr. Tenore’s answer, concerned a mortgage originator named Taylor, Bean & Whitaker (commonly known as Taylor Bean), not “Morgan Dean.”

- The summary of Matthew Bollo’s interview indicates that Peter Steinmetz attended that interview, which he did not. (Interview Summary of Matt Bollo at 1.)

In addition, the summary indicates that Mr. Bollo said, “For example, a co-borrower’s missing signature is not material.” (*Id.* at 4.) This sentence does not accurately reflect Mr. Bollo’s answer. Mr. Bollo did not say that missing the signature of a co-borrower is immaterial as a rule. Instead, he gave a detailed answer about the range of issues that could be encountered during due diligence, and he suggested that a missing signature on one document among dozens might not cause Citi to reject a loan, depending on the context.

Similarly, in connection with a discussion of a “client profile” requested by one of Citi’s due diligence vendors, the summary indicates that Mr. Bollo said, “It [the client profile] told front-line underwriters that Citi doesn’t care as much about a minor document.” (*Id.* at 7.) Mr. Bollo did not make this statement or any similar statement. Instead, he discussed how the client profile provided guidance to the vendor about areas of focus for their due diligence reviews.

Finally, the summary indicates that Mr. Bollo said, “We knew that they were securitizing credit cards—it was bad.” (*Id.* at 14.) This does not accurately reflect anything Mr. Bollo said during his interview.

Beyond the specific inaccuracies in the summaries, we believe the summaries generally are so disjointed and factually thin as to be manifestly misleading and prejudicial and unhelpful for any reader who did not actually attend the interviews. In reviewing the interview summaries, we noted numerous instances in which a summary indicates a witness answered “no” to a particular question, whereas our notes indicate that the witness actually answered that he or she does not recall—a significantly different response than a categorical “no.”

The following exchange from the summary of Peter Steinmetz’s interview vividly illustrates the unfairness of releasing the summaries:

STEINMETZ: For third party underwriting, if CitiMortgage did issuances off of the CMSI shelf, we’d do third party underwriting for them. They would issue off of their shelf, and we would underwrite. These are investment bank (ICG) statistics in this paper.

KREBS: For purposes of this interview, we are agents of the fed government. There are penalties for not telling the truth.

Where would you get your loans?

STEINMETZ: If you take a look at this from a timeline perspective. You see the dollar amounts of whole loans that were bought in 2005 through 2007 to be fairly stable. There was a very big group of loans that were sold on a regular basis. A big package would come out to most of the Street. We would principal them and securitize them.

(Interview Summary of Peter Steinmetz at 2.) This exchange, as memorialized in the Staff’s summary, suggests that Mr. Krebs admonished Mr. Steinmetz to be truthful in reaction to Mr. Steinmetz’s comments about underwriting. This is not an accurate recounting of the event. In point of fact, Mr. Krebs mentioned the staff’s role and the importance of being truthful at this point in the interview because he forgot to do so at the outset of the interview. This is but one example of the errors, omissions and misleading characteristics of the summaries. We respectfully request that the FCIC refrain from releasing the summaries publicly in their current form.

Release of Confidential Information. In the 33 letters you sent to current and former employees of Citi, you requested that the employees identify portions of their interviews that they consider confidential or inappropriate for release. As noted in the November 17 Letter and above, we object to the release of all—or any portion of—these interviews to the extent that the information is not used in the Commission’s final report. We also identified in our November 17 Letter certain portions of interviews that we considered confidential or inappropriate for release. In addition to those portions, we

identify the following additional portions of interviews that we consider confidential or inappropriate for release at this time:

- The portion of Ellen Duke's interview discussing the process of preparing the 2007 Form 8-K. (Interview Summary of Ellen Duke at 2.)
- Any portion of any interview in which compensation was discussed, including such discussions in the interviews of Matthew Bollo (Interview Summary of Matthew Bollo at 14–15), Randy Barker (Interview Summary of Randy Barker at 21, 25), Mickey Bhatia (Audio File of Mickey Bhatia's Interview at 1:50:07–1:51:45), Michael Raynes (Interview Summary of Michael Raynes at 2), Murray Barnes (Interview Summary of Murray Barnes at 3, 25–26), Nestor Dominguez (Interview Summary of Nestor Dominguez at 20–21), Peter Steinmetz (Interview Summary of Peter Steinmetz at 13–14), Philip Seares (Interview Summary of Philip Seares at 8–9), and Janice Warne (Interview Summary of Janice Warne at 13).
- The portion of Randy Barker's interview summary disclosing his personal address. (Interview Summary of Randy Barker at 30.)
- The portion of Dan Hoffman's interview revealing proprietary information regarding achieving efficiencies in credit enhancement, deal structuring, and pricing. (Interview Summary of Dan Hoffman at 4, 5.)
- The portions of Thomas Fontana's interview involving (i) discussions that Citi had with Morgan Stanley and Merrill Lynch (Audio File of Thomas Fontana's Interview at 27:38–27:45); (ii) discussions that Citi had with other broker-dealer clients and the collateral deposits that Citi took from those clients (*id.* at 59:30–1:01:20); (iii) Fontana's worries about the health of Morgan Stanley (*id.* at 1:51:28–1:51:37); (iv) discussions of migrating Nomura out of Citi's CLS system (*id.* at 1:55:17–1:55:25) and the terms of Nomura's CLS usage (*id.* at 1:56:18–1:56:26); (v) discussions of taking collateral from Morgan Stanley and classifying the name (*id.* at 2:05:32–2:05:38); and (vi) discussions regarding Nomura, Dexia, and Morgan Stanley (*id.* at 2:06:07–2:06:16).
- The portions of Jeffrey Perlowitz's interview concerning (i) the relationships among various groups and business areas within Citi, including CitiMortgage and Global Securitized Markets (Audio File of Jeffrey Perlowitz's Interview at 8:19–8:40; 10:15–10:23; 14:10–14:20; 30:52–31:40); and (ii) "Scratch and Dent" loans (*id.* at 1:14:55–1:15:08; 1:15:10–1:15:20; 1:16:30–1:17:13; 1:31:50–1:33:18).

- The portions of Mickey Bhatia's interview regarding methodologies for valuation of illiquid products and risk management in 2007. (Audio File of Mickey Bhatia's Interview at 50:41- 53:07; 57:05-57:45.)
- The portion of Michael Raynes's interview regarding advice received from the Office of the Comptroller of the Currency. (Audio File of Michael Raynes's Interview at 47:35-49:35.)
- The portions of Philip Seares's interview concerning (i) hedging activities and strategies (Interview Summary of Philip Seares at 2- 3, 5 -7); (ii) the surveillance group and public side-private side walls (*id.* at 5); (iii) sales of whole loans or RMBS to Fannie Mac or Freddie Mac (*id.* at 7); (iv) profit and loss in 2006 (*id.* at 9); and (v) interactions with FINRA or other regulators (*id.*).
- The portion of Joseph Forlenza's and Kevin Murray's interview discussing their interactions with, and personal opinions of, Thomas Maheras and David Bushnell. (Interview Summary of Joseph Forlenza & Kevin Murray at 12-14.)
- The portions of Susan Mills's interview concerning (i) warehouse lines and interactions with New Century (Interview Summary of Susan Mills at 9-10); (ii) Citi's acquisition of assets from Argent and Ameriquest (*id.* at 10-11); and (iii) Ms. Mills's experience with a deposition in the mid-1990s and testimony before FINRA (*id.* at 12).
- The portion of Bill Arnold's interview regarding profits and losses from the SIV program. (Interview Summary of Bill Arnold at 4.)

Thank you for your attention to these matters. We look forward to continuing our discussion about these matters with you soon.

Respectfully submitted,

Brad S. Karp / A.I.K.

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