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Brodsky Letter re Use of Forster Quote

David M. Brodsky

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December 20, 2010

VIA EMAIL

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

Re: Financial Crisis Inquiry Commission Interview of Andrew Forster

Dear Mr. Cohen:

Thank you for the opportunity to respond to your letter of December 15, 2010, in which you state that the Financial Crisis Inquiry Commission (“FCIC”) is considering using a quotation from our client Andrew Forster (the “Statement”) in its Final Report (the “Final Report”). While we recognize that the FCIC has a mandate to “examine the causes, domestic and global, of the current financial and economic crisis in the United States,” and release a public report concerning its findings,¹ we object to the use of the Statement in its current form without adding the context necessary to make the Statement fully accurate. Since the Final Report will serve as a permanent record of the events surrounding the financial crisis, I know you will agree that it is critical that the statements contained therein be as complete and accurate as possible.

Specifically, your letter states that the FCIC may include or paraphrase the following statement in the Report:

According to Forster, after Sullivan reacted to the potential of a \$5 billion valuation loss, Cassano said, “Obviously, that needs to be adjusted ... everyone then is much calmer and understands that, okay, well then that completely changes the magnitude of the number.”

For the reasons set out below, we would ask that you instead use the statement:

¹ Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-10 § 5 (2009).

According to Forster, after Sullivan reacted to the potential of a multi-billion dollar loss implied by the Goldman Sachs valuation model, “Mr. Cassano articulated ... [words to the effect that] ‘Obviously, that needs to be adjusted’ ... I think he talks about how that could be up to 10% and then everyone then is much calmer and understands that, okay, well then that completely changes the magnitude of the number.”

First, by using the phrase “[a]ccording to Forster, after Sullivan reacted to the potential of a \$5 billion valuation loss,” you imply that Mr. Forster specifically recalled that a \$5 billion valuation loss number was given at the November 29, 2007 meeting. As Mr. Forster made clear in his interview, that is not his recollection. In the interview, Mr. Forster stated that he was in fact not sure whether he recalled a \$5 billion potential valuation loss number or a \$3.5 billion potential valuation loss number being given at the meeting. Forster Interview Audio at 1:58:31.² To create an accurate record, we request that if you must include the Statement in the Final Report, you do not state or imply that Mr. Forster recalled a \$5 billion loss number being given.

Second, the Statement fails to explain the source of the \$5 billion (or \$3.5 billion) potential valuation loss number. Without that context, there is a strong danger that readers of the Report will assume that such a number was derived from the BET model using either manager prices or the J.P. Morgan spread data. As Mr. Forster clearly explained in his interview, he recalled that the multi-billion dollar loss number was calculated by extrapolating the Goldman Sachs valuation methodology (which used CDO net asset value data) across the entire multi-sector SSCDS portfolio. Forster Interview Audio at 1:54:38. Again, we request that if you decide to include the Statement in your Final Report, you make it clear how the potential valuation loss number was derived on November 29, 2007. We suggest the following phrase be included in the Statement to make the point clearer: “the potential of a multi-billion dollar loss implied by the Goldman Sachs valuation model.”

Third, as presented in your letter, the quotation of Mr. Cassano within Mr. Forster’s remarks is too long and therefore inaccurate. Mr. Cassano did not say, “everyone then is much calmer and understands that, okay, well then that completely changes the magnitude of the number.” Forster Interview Audio at 1:55:09. That is Mr. Forster’s recollection of the meeting which he expressed during the interview. Therefore the quotation marks should be adjusted. Further we would request that you add in the phrase “articulated ... [words to the effect that]” before the phrase “Obviously, that needs to be adjusted,” because Mr. Forster did not recall that Mr. Cassano used this exact language and the Statement currently gives that impression.

Fourth, the quotation attributed to Mr. Forster in the Statement is not complete. The complete quote from Mr. Forster’s interview is as follows: “Obviously, that needs to be adjusted – negative basis adjustment. I think he talks about how that could be up to 10% and then everyone then is much calmer and understands that, okay, well then that completely changes the magnitude of the number.”³ Forster Interview Audio at 1:54:58. In your quoted language, you

² The citations to the audio file of Mr. Forster’s Interview are approximate times.

³ This quotation is based on our unofficial transcription of the audio file.

have omitted that Mr. Forster used the phrases “negative basis adjustment” and “I think he talks about how that could be up to 10%,” following the phrase “[o]bviously, that needs to be adjusted.”

At the same time, if you add back in the phrase “negative basis adjustment” that could potentially imply that Mr. Forster recalled Mr. Cassano having used that exact terminology during the meeting on November 29, 2007. That would not be correct. Later in the interview, Mr. Forster clarified that, at the meeting, he recalled Mr. Cassano using “words to that effect,” but he was not certain about the exact terminology used to describe what Mr. Forster interpreted as the negative basis adjustment. See Forster Interview Audio at 1:56:30. We would therefore request that if you must include the Statement in your Report, you include the language clarifying that the adjustment could be up to 10%, but do not include the phrase “negative basis adjustment,” lest it mislead readers as to Mr. Forster’s actual recollection of Mr. Cassano’s remarks during the meeting.

We understand and appreciate that in drafting the Final Report you are seeking to provide an accurate and unambiguous record of the events leading to this country’s financial crisis. We hope that our comments assist you in preparing such a record. Please feel free to reach out to me to discuss this and let me know as soon as possible whether you will accommodate our requests. I can be reached by phone at (212) 906-1628 or by email at david.brodsky@lw.com.

Cordially,

A handwritten signature in black ink that reads "David Brodsky". The signature is written in a cursive, flowing style.

David M. Brodsky
of LATHAM & WATKINS LLP

cc: Andrew Forster
Richard Owens