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5-13-2010

Gary Cohen Letter to ACA (N Erickson) re Treatment of Non Public Info

Gary Cohen

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May 13, 2010

Via Email & Mail

Ms. Nathan M. Erickson
Fried, Frank, Harris, Shriver & Jacobson LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Phil Angelides
Chairman

Re: Treatment of ACA Non-Public Information

Hon. Bill Thomas
Vice Chairman

Dear Mr. Erickson:

Brooksley Born
Commissioner

On behalf of the Financial Crisis Inquiry Commission ("the Commission"), I write to memorialize our understanding with respect to the treatment of non-public information provided by ACA Financial Guaranty Corporation and its affiliates ("ACA") to the Commission and its staff.

Byron S. Georgiou
Commissioner

When submitting information to the Commission please indicate what is truly "non-public" to allow the Commission to track ACA's submissions appropriately. Please avoid categorizing everything as non-public, as to do so will make the Commission's work more difficult and may lead to inadvertent public disclosure outside of the terms of this letter.

Senator Bob Graham
Commissioner

Keith Hennessey
Commissioner

Any non-public information that is obtained from ACA (please note that it is likely that some of the information we receive from ACA we may also receive from other sources without restriction) will be used only by employees and agents of the Commission who have a need to know and use the information in the performance of their official work duties in a manner consistent with its non-public status and applicable law. All persons with whom non-public information is shared will be advised of and, as condition of receiving non-public information, will agree to comply with the understanding in this letter.

Douglas Holtz-Eakin
Commissioner

Heather H. Murren, CFA
Commissioner

John W. Thompson
Commissioner

In accordance with its statutory mandate and its duty to the American public, the Commission, if it determines it is in the public interest, may release to the public non-public information obtained from ACA as part of any interim or final report to the President and Congress, or in connection with any public hearings, if the Commission determines to do so by a majority vote, or by the decision of the Chairman and Vice Chairman acting together on behalf of the Commission.

Peter J. Wallison
Commissioner

Prior to any release of non-public information under the above paragraph, the Commission will give written notice to ACA, and allow ACA to consult with the Commission before the Commission uses any of the ACA's non-public information in any interim or final report to the President and Congress, or in any public hearing.

Thomas Greene
Executive Director

Nothing as described in this letter will prevent the Commission or its staff from complying with a request or demand from a duly authorized Committee of the United States Congress with authority to require and receive the non-public information, or a legally valid and enforceable subpoena or order by a court of competent jurisdiction for the non-public information or testimony related thereto.

Finally, all information obtained from ACA or relating to ACA will be transmitted to the National Archives and Records Administration (NARA) following the completion of the Commission's work. To the extent permitted by law, the Commission will request that NARA not release to the public the ACA non-public information for an appropriate length of time. If you have a legal basis to believe that the Commission is not required by law to provide certain ACA information to NARA, please let us know.

If you have any questions or concerns, please do not hesitate to contact me at 202-292-1339 or GCohen@fcic.gov.

Thank you very much for ACA's continued cooperation.

Very truly yours,



Gary J. Cohen
General Counsel
Financial Crisis Inquiry Commission

Cc: Wendy Edelberg
Executive Director
Chris Seefer
Assistant Director & Deputy General Counsel