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J Hershman Letter to Gary Cohen re D Bisenius Quotes

Jordan D. Hershman

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December 20, 2010

By Email And Federal Express

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

Re: Potential Use of Quotes From Interview of Don Bisenius

Dear Mr. Cohen:

We write in response to your letter dated December 15, 2010, to Mr. Don Bisenius, care of Mr. Robert Kelner of Covington & Burling LLP (the "December 15 Letter"). In that letter, you explain that the Financial Crisis Inquiry Commission ("FCIC") is "considering using in [its] Report to Congress, the President and the American public quotes from [Mr. Bisenius] which were given in an interview conducted under a confidentiality understanding."

For the reasons discussed below, Freddie Mac and Mr. Bisenius respectfully object to the FCIC's use in its report of the following statements quoted in the December 15 Letter regarding Freddie Mac's decision not to raise capital in March 2008:

Donald Bisenius, a Freddie executive vice president, offered two reasons for backing out. The first was protecting the assets of existing shareholders. "I'm sure [Fannie's] investors are not very happy," Bisenius told the FCIC. "Part two is . . . if you actually fundamentally believe you have enough capital to withstand even a fairly significant downturn in house prices, you wouldn't raise capital."

See December 15 Letter at 1.

It appears that the FCIC is considering stating in its Report that Mr. Bisenius provided to the FCIC two reasons for Freddie Mac's decision not to raise additional capital in March 2008. The statements above, however, appear to be quoted out of context and do not pertain to the reasons for Freddie Mac's decision. Mr. Bisenius did not state in his FCIC interview that he was involved in Freddie Mac's decision not to raise additional capital in

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March 2008.¹ He also never stated in his interview that he was describing the actual reasons that Freddie Mac did not raise additional capital in March 2008.

Rather, in the section of his interview quoted in the December 15 Letter, Mr. Bisenius offered “two thoughts,” with the benefit of “hindsight,” regarding Fannie Mae’s decision to raise capital in 2008 and the fact that Freddie Mac did not ultimately do so as well.

The entirety of the exchange in which Mr. Bisenius shares these two thoughts reads as follows:

MS. SIMENDINGER: But do you feel that [Freddie Mac] could have ridden [the financial crisis] out?

MR. BISENIUS: I don't know. It's not out of the realm of possibility for me. I mean one of the things I look at in this space is \$1.8 trillion portfolio and yet it's got the best serious delinquency rate of anybody in the country. All right? Now again, it's four percent, that's big, that's reflective of the market that's just tanked.

MR. STANTON: But that's why I asked the question about the March, 2008 decision not to increase capital.

MR. BISENIUS: Yeah.

MR. STANTON: Freddie had significant leverage compared to other players in the market, including Fannie Mae which went out with a \$7 billion offering in 2008.

MR. BISENIUS: Yeah.

¹ The pertinent question and answer during his interview are as follows:

MS. SIMENDINGER: Can I ask you, did you -- were you invited to offer your advice before the decision [not to raise capital in March 2008] was reached?

MR. BISENIUS: I don't recall being asked for my opinion on it.

MR. STANTON: That's precisely why I was trying to juxtapose the question of capital, which is the ability to withstand this kind of shock, including incidentally, the perception of susceptibility.

MR. BIENIUS: Right. Tom, I have two thoughts around that one. Thought one would be, again, in hindsight it's not clear it was the best move on the part of Fannie Mae to go out and raise 7 billion. I'm sure their investors aren't very happy. Part two is, no one, at that point I don't think, was predicting 20 - 25 percent declines in house prices. So when we were doing our analysis internally and asking ourselves, "Do we have sufficient capital -- " because the only thing that would have made the capital rates dilutive is if you had plenty of capital and you bought and raised more, then you got to deploy it somewhere. If you actually fundamentally believe you have enough capital to withstand even a fairly significant downturn in the house prices, you wouldn't raise capital. So when we raised those points it was because we had evaluated our portfolio, we had done stress scenarios around that. Not to the level we experienced, but again I almost challenge anyone to say this was like high probability event, and we did not think that the losses we would experience in our portfolio, despite the types of products and things like that that we had, would be sufficient to wipe out the capital that we had.

Furthermore, documents in the record before the FCIC directly address the reasons that Freddie Mac did not raise additional capital in 2008. Freddie Mac did not believe that it was prudent to engage in a capital-raising securities transaction until it completed its registration with the SEC. For example, Freddie Mac's Information Statement Supplement, dated May 14, 2008 ("Information Statement"), disclosed to the public, the factors that Freddie Mac was then evaluating in connection with the decision whether to raise additional capital through a securities offering. That Information Statement disclosed: "The timing, amount and mix of securities to be offered will depend on a variety of factors, including near-term prevailing market conditions and our SEC registration process, and is subject to approval by our Board of Directors." See Information Statement dated May 14, 2008 at 6 (emphasis added).

Further, Freddie Mac's former CEO, Richard Syron, explained to the FCIC Staff in his interview the reason that Freddie Mac decided that it was unable to engage in a capital raise in March 2008, stating:

MR. SYRON: And we were planning on doing another [capital raise], because we had an agreement with the Secretary of the Treasury that we would go out and raise some more capital, and we fully planned on doing that, but we couldn't do it while we were registering with the SEC, because all the lawyers all said, my God, you're going to get -- what

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happens if someone sends -- from the SEC -- something over that says that you have to change something, and you've got [a potential problem with ISS, a shareholder organization].

Later in his interview, an additional question and answer further explained Mr. Syron's view on why Freddie Mac decided not to raise capital in March 2008. As Mr. Syron further explained in his interview:

UNIDENTIFIED SPEAKER: We're just trying to understand the context and I greatly appreciate the way you're providing. Let's go to the one that I talked about earlier, Page 7, Raising Capital. And this, I guess --

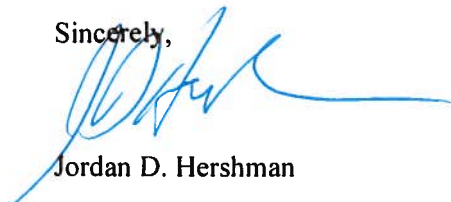
MR. SYRON: Yeah, I'm a little ticked off at this because, you know, we were in a box -- I should read it first, before saying what I'm saying. We were in a box on this. We were being advised by counsel that if you're in a registration process, the last thing you want to do is be out raising capital at the same time.

Mr. Syron, unlike Mr. Bisenius, was among the decision-makers regarding this issue.

In sum, as the record demonstrates, Mr. Bisenius did not purport to provide to the FCIC the actual reasons that Freddie Mac did not raise additional capital in March 2008, and it would be inaccurate were the FCIC's report to suggest that he did. Both documents issued by Freddie Mac and Mr. Syron's statements to the FCIC address the actual reasons for that decision.

We thank the Commission for the opportunity to submit these comments, and would be happy to provide additional information at the Commission's request.

Sincerely,



Jordan D. Hershman

Counsel for Freddie Mac

cc: Christopher P. Sefer (via email)