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### J Wareham Letter re Use of Dan Mudd quotes

James D. Wareham

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December 8, 2010

## FOIA CONFIDENTIAL TREATMENT REQUESTED

### VIA EMAIL

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

Re: Potential Use of Quotes

Dear Mr. Cohen:

Thank you for your letter of December 2, 2010 informing us of the statements from the Financial Crisis Inquiry Commission's (FCIC) interview of Daniel Mudd that you may decide to use in the FCIC's Report to Congress. We represent Mr. Mudd in this matter. In response to your correspondence, our views are set forth below.

As a general matter, we are a bit concerned that it appears that the FCIC intends to quote, rather than paraphrase, the statements referenced in your letter. These statements are not taken from a transcript prepared during the interview by a court reporter. Moreover, nine months have passed since the interview, so it is not possible for anyone to adequately review at this late date the accuracy of the quoted language. We believe that presenting these statements as quotations could create the impression of complete accuracy when, in fact, due to the passage of time, we cannot assure the accuracy of the statements with certainty. Indeed, our view coincides with the introductory sentence to the FCIC's memorandum, which states, "This is a paraphrasing of the interview dialogue and is not a transcript and should not be quoted as such." (emphasis original). Thus, in our view, quotation marks should not be used to represent paraphrased statements.

The FCIC memorandum also does not attempt to quote the questions that led to the quoted responses from Mr. Mudd. Thus, the complete context of Mr. Mudd's statements is not presented in the memorandum. In addition, at times, lengthy quotes attributed to Mr. Mudd in the memorandum are actually combinations of Mr. Mudd's responses to a series of questions. For all of these reasons, we do not think that it is advisable for any of the statements to be presented as verbatim quotations.

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We have the following specific comments regarding the statements included in the FCIC's correspondence:

1. Statement: Former CEO Dan Mudd told the FCIC: "Well, if you're not relevant, you're unprofitable, and you're not serving the mission. And there was danger to profitability. I'm speaking more long-term than in any given quarter or any given year. So this was a real strategic rethinking."

Comments: This quote is taken out of context because it does not refer to the question that prompted this answer. It is presented as a single quote, but is in fact a series of answers to a series of omitted questions. Further, our notes do not contain the phrase that there was a "danger to profitability." Rather, our notes reveal that Mr. Seefer asked whether the company was profitable and Mr. Mudd responded that it was more long-term than in any given quarter.

2. Statement: When interviewed by the FCIC, Mudd said that the regulator had never previously communicated the kind of criticisms levied in the September 4 letter. He said that the regulator's "chronicling of the situation" at Fannie and Freddie on September 4 was "inconsistent with what you would consider better regulatory practice to be—like first warning: fix it; second warning: fix it; third warning: you're out of here. Instead, they went from zero to three with no warning in between."

Comments: Presenting Mr. Mudd's statements divorced from the prior discussion in his interview could lead to a misleading impression. Mr. Mudd made these types of remarks only after a discussion about the fact that the Company's regulator, OFHEO/FHFA, had repeatedly communicated to Fannie Mae that Fannie Mae fully met the criteria for safe and sound operations, including as recently as approximately two weeks before FHFA for the first time advanced a statement to the contrary in its September 4 draft.

3. Statement: Interviewed in 2010, Mudd said. "I did not think in any way it was fair for the government to have been in a position of being in the chorus for the company to add capital," he said, "and then to inject itself in the capital structure."

Comments: The use of this language, without placing it in context with Mr. Mudd's complete explanation, could potentially lead to confusion. During his interview, Mr. Mudd explained that it was particularly surprising to hear complaints about the capital structure from government agencies in view of the repeated communications by OFHEO/FHFA that Fannie Mae had met the criteria for safe and sound operations in accordance with OFHEO's regular and extensive quarterly reviews.

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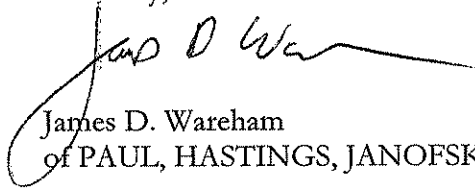
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4. Statement: Mudd told the FCIC that OFHEO's skill levels were "developing but below average."

Comments: Mr. Mudd made a statement of this general nature in the broader context of his understanding of the views of various members of the financial and regulatory communities. The use of this statement without that context could be read by some to imply that Mr. Mudd held a certain view in isolation from views held by the broader regulatory community. We believe it would be more appropriate to make it clear that it was Mr. Mudd's understanding that in 2008 individuals holding positions of significant responsibility in the Treasury Department and on the staff at the Federal Reserve held similar views to those expressed by Mr. Mudd during his interview.

We appreciate having the opportunity to provide you with our perspective on these matters. Please contact me if you have any further inquiries related to these issues.

Sincerely,



James D. Wareham  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Cassidy Waskowicz  
Sarah Zuckerman  
Sarah Knaus