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JPM (E Goldstein) Letter to Gary Cohen re Disclosure of Confidential Material

Eric Goldstein

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*NOT ADMITTED TO THE NEW YORK BAR

November 22, 2010

By Email and Federal Express

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

Publication of JPMorgan and Bear Stearns Confidential Interview Materials

Dear Gary:

On behalf of JPMorgan Chase & Co. (with its subsidiaries, "JPMorgan"), I write in response to the Commission's notices regarding the potential wholesale disclosure of confidential summaries, transcripts and/or audio files of Commission interviews of current and former employees of JPMorgan and Bear Stearns (the "Interview Materials") on the Commission's website as part of its "oral history" project. Respectfully, we object to the proposed disclosure of the Interview Materials, which is contrary to repeated express assurances regarding confidentiality provided by the Commission staff, unfairly prejudices JPMorgan and/or the individuals in question, and is unnecessary in light of the already-established procedure for the dissemination of the Commission's investigative materials through the National Archives.

During our many interactions with Commission staff members over the past year, we were never informed that any tape-recording, transcript or summary of any

Commission interview might be published in its entirety. To the contrary, we and the witnesses were assured that the purpose of the interviews was to aid the Commission in drafting its Report and/or to provide relevant information to the Commissioners in advance of public hearings. We understood, through our discussions with you, that each of the interviews would be afforded confidential treatment, subject to the Commission's archiving requirements. We were explicitly told, in connection with the tape-recording of certain interviews, that the tape-recordings were being made to ensure that the Report contained accurate references or quotations. And, with respect to the many interviews that were not tape-recorded, we were led to believe that staff interview memoranda would be used solely for purposes of briefing the Commissioners and potentially contributing to the Report, and were not for public dissemination.

Had we been informed that the Interview Materials potentially would be published on the Commission's website, we may have objected to the Commission's interview requests and sought additional time to prepare witnesses. As you are aware, we provided extraordinary levels of cooperation to the Commission, often making witnesses available for interviews on extremely short notice. Frequently, in advance of the interviews the Commission provided only a vague idea of the topics to be covered, many of which concerned events from years earlier, and never identified prior to the interviews which of the hundreds of thousands of documents produced by JPMorgan it intended to show the witnesses. In addition, Commission investigators frequently asked witnesses questions that could create a misleading or inaccurate record. For example, many witnesses were asked questions outside their areas of expertise, or questions that sought the official position of the firm, which non-executive witnesses lacked the authority to answer. Commission interviewers also frequently urged witnesses to speculate. Given these circumstances, publication of the Interview Materials would be unfair and flatly inconsistent with the Commission's representations to us regarding the treatment of confidential information obtained at the interviews.

In addition to the concerns highlighted above, we object to the publication of the Interview Materials in light of ongoing litigation against JPMorgan and Bear Stearns involving many of the topics covered during the Commission's interviews. In several instances, it was obvious that Commission document requests, interrogatories, and interview questions were based on allegations in civil action complaints filed against JPMorgan, Bear Stearns, and/or the individual witnesses. In fact, we were told more than once by Commission investigators that civil action complaints were among the primary materials being reviewed by Commission staff in advance of certain interviews. An overlap between shareholder litigation and the Commission's investigation was evident, for example, in the Commission's April 2010 interviews of Bear Stearns witnesses.¹

¹ It is important to note that, pursuant to the Private Securities Litigation Reform Act, discovery in the consolidated securities fraud action against Bear Stearns has been

Similarly, an entire interview with a JPMorgan witness substantially overlapped with litigation against JPMorgan related to its role as the triparty repo agent for Lehman Brothers Inc. The Commission can avoid providing free discovery to plaintiffs and still provide the public with an oral history of the financial crisis by allowing the National Archives to handle the release of the Interview Materials after the expiration of a waiting period.² This solution is similar to the one adopted by the 9/11 Commission, which we understand released its interview materials exclusively through the National Archives.

We also object to the publication of summaries or “memoranda for the record” of the thirteen interviews for which no contemporaneous tape-recording of the interview was made.³ Inherent in the drafting of an interview summary is the inclusion of the author’s or note-taker’s impressions and interpretations of the statements of the interviewee. Aside from the real risk of inaccurate or incomplete transcription, particularly given the complicated and often technical subject matter of certain of the interviews, publication of the Commission’s interview impressions and interpretations almost certainly will result in inaccurate and misleading information being provided to the public. To guard against this possibility, we ask that interview summaries not be released publicly, or, if they must be, that they be released only through the National Archives, after a minimum of five years. If the Commission believes that information from these interview summaries is relevant to the causes of the financial crisis, then we assume such information will be referenced or quoted in the Commission’s Report (subject to any objections we may make upon reviewing such references in the draft Report).

If, notwithstanding our objections, the Commission decides to publish Interview Materials on its website, we respectfully request that the Commission limit the publication of such materials to senior executives of JPMorgan and Bear Stearns. First, the interviews of non-executive witnesses, who are largely unknown to the general public, will be of significantly less interest to the public than the interviews of senior executives. Second, non-executive employees generally do not speak on behalf of their employers, and may not ordinarily share details of their employment background and

stayed. Thus, disclosure of the Interview Materials on the Commission’s website would provide plaintiffs with discovery to which it currently is not entitled.

² We request that the Interview Materials be released by the National Archives after a minimum waiting period of five years.

³ The interviews of Michael Alix, James Cayne, John Chrin, Wendy de Monchaux, Paul Friedman, Thomas Marano, Samuel Molinaro, Sandra O’Connor, Howie Rubin, Alan Schwartz, Warren Spector, and Robert Upton were not recorded. We assume the interview of Ira Wagner also was not recorded.

compensation publicly. Releasing materials to the public pertaining to these interviews would be inappropriate and unfair — particularly because the witnesses were not notified in advance of being interviewed that their interviews might be posted on the Commission’s website. Accordingly, we respectfully request that the Commission not release the interviews of the following current and former JPMorgan or Bear Stearns employees:

- Michael Alix
- William Buell
- John Chrin
- Ralph Cioffi
- Wendy de Monchaux
- Scott Eichel
- Mark Feldman
- Paul Friedman
- Mary Haggerty
- Thomas Marano
- Blythe Masters
- Steven Meyer
- John Mongelluzzo
- Stephanie Mudick
- Sandra O’Connor
- Howie Rubin
- Robert Upton
- Ira Wagner
- Lela Wingard

Should the Commission nevertheless determine to publish all Interview Materials on its website over the objections articulated in this letter, we ask that (i) the Commission redact the particular confidential portions of the Interview Materials we identify, and (ii) the Commission redact the following confidential subject matter from all Interview Materials: personal compensation, employment, and health information; competitively sensitive information involving JPMorgan business operations; and potentially embarrassing personal commentary on particular individuals. For example:

- (1) The interviews of Paul Friedman, Louis Lebedin, Thomas Marano, and Robert Upton address their personal compensation;
- (2) The interviews of Sandra O’Connor and Barry Zubrow contain sensitive, non-public information concerning JPMorgan’s business operations; and

Gary J. Cohen, Esq.

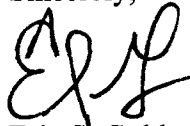
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- (3) The interviews of Thomas Marano, Paul Friedman, Samuel Molinaro, Alan Schwartz, Wendy de Monchaux, and Steven Meyer contain their personal reflections on other Bear Stearns employees, which are irrelevant to the causes of the financial crisis but potentially embarrassing to these witnesses.

Finally, further to our November 10 and November 17 conversations, we write to confirm the list of confidential documents produced by JPMorgan that the Commission potentially may disclose publicly. We understand that the attached list (Exhibit A), which was sent to us the day before the May 5, 2010 Bear Stearns hearing, comprises the bulk of the documents the Commission may release. We also understand that the Commission may seek to disclose a small selection of additional confidential documents from JPMorgan, and shortly will provide us with a list of those documents. Once we have received the Commission's final list of those confidential documents from JPMorgan that it may potentially publish, we will provide any objections to such disclosure.

Thank you for your attention to these matters, and please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Goldstein", written in a cursive style.

Eric S. Goldstein

EXHIBIT A

From "Sarah Zuckerman" <szuckerman@fcic.gov>
To Brad S Karp/PaulWeiss@PaulWeiss
Cc Jessica Carey/PaulWeiss@PaulWeiss, Eric S Goldstein/PaulWeiss@PaulWeiss,
"Gary Cohen" <gcohen@fcic.gov>, "Mina Simhai" <msimhai@fcic.gov>
Date 05/04/2010 01:02 PM
Subject List of FCIC Documents for 5/5/10-5/6/10 Hearing

Mr. Karp,

Below please find our final list of documents that we may reference or disclose in connection with our hearings tomorrow or Thursday.

The first two documents are the only ones that we are adding to the list that we had previously provided to you. Please let me know if you have any questions.

Best,

Sarah Zuckerman
Financial Crisis Inquiry Commission
szuckerman@fcic.gov
202-292-1388

Bear	<u>2007-01-10 Bear Stearns Minutes of a Regular Meeting of the Board of Directors</u>	BSC-FCIC 099727958
Bear	<u>2008-03-12 Bear Stearns Weekly Mortgage Risk</u>	BSC-FCIC-e00858753
Bear	<u>2007-03-22 Bear Stearns Minutes of a Regular Meeting of the Board of Directors</u>	BSC-FCIC 00000109
Bear	<u>2007-03-22 The Bear Stearns Companies Inc. Finance and Risk Committee of the Board of Directors Charter, approved by the Board of Directors</u>	BSC-FCIC 00000136
Bear	<u>2007-03-29 Jeff Mayer and Thomas Marano, Fixed Income Overview</u>	
Bear	<u>2007-04-21 Email from Ralph Cioffi to Gerald Cummins, Matthew Tannin and John Gessinger</u>	BSC-FCIC-e00482200
Bear	<u>2007-05 Funding and Liquidity Package</u>	BSC-FCIC-e00917585
Bear	<u>2007-06-16 Email from Paul Friedman re Old Lane</u>	BSC-FCIC-e00606910
Bear	<u>2007-06-24 Email from Tom Marano to Warren Spector</u>	BSC-FCIC-e00118978
Bear	<u>2007-07-23 Memo from Bob Upton and Pat Lewis re: Funding & Liquidity Packaged</u>	BSC-FCIC-e00941555
Bear	<u>2007-08 Fitch Presentation</u>	BSC-FCIC-e00955625
Bear	<u>2007-08-15 Email from Paul Friedman re Thornburg</u>	BSC-FCIC-e01001190
Bear	<u>2007-08-15 Email 2 from Paul Friedman re Thornburg</u>	BSC-FCIC-e01001198
Bear	<u>2007-08-15 Email from Tom Morano to Lisa Anzalone</u>	BSC-FCIC-e01002000
Bear	<u>2007-09-18 Bear Stearns Minutes of a Regular Meeting of the Board of Directors</u>	BSC-FCIC 00000045
Bear	<u>2007-12-12 The Bear Stearns Companies Inc. Minutes of Special Meeting of Board of Directors</u>	BSC-FCIC 00000016
Bear	<u>2008-01-08 Bear Stearns Breakdown of Revenue from John Paulson</u>	BSC-FCIC-e00773780
Bear	<u>2008-01-09 Email from David Rawlings re Paulson Partners follow up</u>	BSC-FCIC-e00773779
Bear	<u>2008-01-15 Recession</u>	BSC-FCIC-e00718676

	<u>Scenario Presentation Prepared for Risk Policy Committee</u>	
Bear	<u>2008-01-17 Bear Stearns Price Verification Quarterly Update</u>	BSC-FCIC-e00716408
Bear	<u>2008-01-30 Memo from Dan Chen re Weekly Mortgage Risk</u>	BSC-FCIC-e00716408
Bear	<u>2008-02-05 Oliver Wyman, Risk Governance Diagnostic Recommendations and Case for Economic Capital Development</u>	BSC-FCIC-e00143268
Bear	<u>2008-02-06 Bear Stearns Weekly Mortgage Risk</u>	BSC-FCIC-e00827719
Bear	<u>2008-02-15 Email from Sam Molinaro to Alan Schwartz</u>	BSC-FCIC-e00145922
Bear	<u>2008-02-20 Mortgage Portfolio Update</u>	BSC-FCIC-e00739994
Bear	<u>2008-02-20 Memo from Dan Chen re Weekly Mortgage Risk</u>	BSC-FCIC-e00739921
Bear	<u>2008-02-27 Email from Paul Friedman re Non-Agency AAA Financing for Non-IG Clients</u>	BSC-FCIC-e00791437
Bear	<u>2008-02-28 Email from Mary Rose O'Kane to Mike Alix</u>	BSC-FCIC-e00745255
Bear	<u>2008-03-08 Email from Paul Friedman re Thornburg</u>	BSC-FCIC-e00854106
Bear	<u>2008-03-09 Email from Paul Friedman re Thornburg</u>	BSC-FCIC-e00795241
Bear	<u>2008-03-12 Memo from Tom Morano, Paul Friedman, Wayne Buchman re Thornburg Mortgage Forbearance</u>	BSC-FCIC-e00859743
Bear	<u>2008-03-12 Email from Paul Friedman to Tom Marano re: Fixed Income</u>	BSC-FCIC-e00859994
Bear	<u>2008-03-12 Email from David Rawlings to Alan Schwartz re Client Calls</u>	BSC-FCIC-e00152678
Bear	<u>2008-03-13 Email from Thomas Marano to Scott Eichel re: Bear Credit Concerns affecting abx, cdx, and ig cds Business with RBC</u>	BSC-FCIC-e00861545
Bear	<u>2008-03-13 Bear Stearns Minutes of a Special Meeting</u>	BSC-FCIC 00000368

	<u>of the Board of Directors</u>	
Bear	<u>2008-03-16 Bear Stearns Minutes of a Special Meeting of the Board of Directors</u>	BSC-FCIC 00000340
Bear	<u>2008-03-26 Email from Paul Friedman to Wayne Buchan, et al. re Thornburg Mortgage Deal Pricing</u>	BSC-FCIC-e00898310
Bear	<u>The Bear Stearns Companies Inc. 2007 Performance Compensation Plan requires approval from both the Board of Directors and the stockholders.</u>	BSC-FCIC 00000131
JPMorgan	<u>2010-04-26 JPMorgan Response to Interrogatories</u>	

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