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Letter from Thomas Krebs to Dorado Re: Treatment of Non-Public Info BNYMellon

Tom Krebs

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February 18, 2010

Via Electronic Mail

Mr. Raymond Dorado, Esq.
Mr. Jason Sabot, Esq.
Bank of New York/ Mellon
1 Wall Street
New York, NY 10286

Phil Angelides
Chairman

Re: Treatment of Non-Public Information

Hon. Bill Thomas
Vice Chairman

Dear Mr. Dorado and Mr. Sabot:

Brooksley Born
Commissioner

On behalf of the Financial Crisis Inquiry Commission (“the Commission”), I write to confirm our conversations and memorialize our position with respect to the treatment of non-public information¹ provided by Bank of New York/ Mellon and its agents (collectively “BNY Mellon”) to the Commission and its staff.

Byron S. Georgiou
Commissioner

Any non-public information that is obtained from BNY Mellon will be shared only with employees and agents of the Commission who have a need to know the information in the performance of their official work duties consistent with applicable law. All employees and agents of the Commission with whom non-public information is shared will be advised of and, as condition of receiving non-public information, be bound to comply with the understanding in this letter.

Senator Bob Graham
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 BNY Mellon as part of any interim or final report to the President and Congress, or in 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.

Keith Hennessey
Commissioner

Douglas Holtz-Eakin
Commissioner

You should also note the FAQs posted on our website:

Heather H. Murren, CFA
Commissioner

Will the Commission make the documents it gathers available to the general public?

John W. Thompson
Commissioner

It is important to the Commission that the American people are able to follow what the Commission is doing. If and when it is appropriate and in the public interest, and when making documents public will not hinder its ongoing investigation, the Commission will make them public. Information important to our conclusions will be referenced in our report and will become part of the Commission's records in accordance with federal archives requirements.

Peter J. Wallison
Commissioner

What about the requests for follow-up information that were referenced in the public hearing?

Thomas Greene
Executive Director

1717 Pennsylvania Avenue, NW, Suite 800 • Washington, DC 20006-4614
202.292.2799 • 202.632.1604 Fax

We consider these questions to be similar to requests that are made by the Commission or its staff in the conduct of its investigation. The information that is received in response to these questions may include both confidential and non-confidential information. If and when it is appropriate and in the public interest, and when making documents public will not hinder its ongoing investigation, the Commission will make them public.

Nothing as described in this letter will prevent the Commission or its staff from complying with the terms of Section 5 of the Fraud Enforcement and Recovery Act of 2009 ("FERA"), including the ability to refer to the Attorney General of the United States and any appropriate state attorney general any person that the Commission finds may have violated the laws of the United States in relation to the financial and economic crisis. In addition, nothing 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, as we discussed, all information obtained from BNY Mellon or relating to BNY Mellon 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 non-public information for an appropriate length of time, likely five years or more. If you have a legal basis to believe that the Commission is not required by law to provide certain BNY Mellon information to NARA, please let us know.

If you have any questions or concerns, please do not hesitate to contact me at 202-292-1349 or TKrebs@fcic.gov. Thank you for your continued cooperation.

Sincerely,



Thomas Krebs

Assistant Director and Deputy General Counsel

cc: Gary J. Cohen

¹ For purposes of this letter, "non-public information" means information that Citigroup has not made, and is not required by law to make, public and which BNY Mellon treats as non-public. Non-public information includes both the information itself, in any form (including oral), and any document, written transcript, audiotape, videotape, or other type of transcription, replication, reproduction, or recreation which contains or is derived from such information.