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W Ricciardi Letter to Cassidy Waskowicz re Release of Deutsche Bank interviews

Walter Ricciardi

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January 24, 2011

Via Email and Federal Express

Cassidy Waskowicz, Esq.
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, DC 20006-4614

Re: *Deutsche Bank AG*

Dear Cassidy:

I write in response to your January 19, 2011 email, and to supplement the objections set forth in our letter dated December 13, 2010, regarding the possible public disclosure by the Financial Crisis Inquiry Commission ("FCIC") of audio files associated with the interviews of current and former employees of Deutsche Bank AG.¹ As stated in our December 13 letter, which is enclosed for your reference, we believe that such a course of action would be contrary to the assurances of confidentiality provided by FCIC staff. Specifically, Bradley J. Bondi, former Assistant Director and Deputy General Counsel to the FCIC, explicitly assured us that the audio recordings of each of these

¹ The interviewees are: Michael Lamont, Greg Lippmann, Patrick McKenna, Eugene Xu, Michael Commaroto, Tom Devine, David Rosenblum, Richard Rizzo, Neil Schneider, Vaughn Smith, and Joseph Swartz.

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Cassidy Waskowicz, Esq.

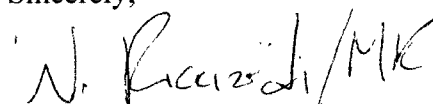
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interviews would be afforded confidential treatment.² As such, and for the reasons set forth in our December 13 letter, it is our view that such disclosure would be unfair and inappropriate.

Please be advised that Deutsche Bank AG and the individual interviewees reserve any and all rights they may have in connection with the publication of the audio files.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Handwritten signature of Walter Ricciardi in black ink, appearing as 'W. Ricciardi/MK'.

Walter Ricciardi

Enclosure

cc: Richard Owens, Esq.
Latham & Watkins LLP
Dan Gallagher, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
Charlie Gambino, Esq.
Director and Counsel
Deutsche Bank AG New York

² In connection with the interview of Patrick McKenna, Mr. Bondi stated in an email to us dated July 20, 2010 that “[a]s with all FCIC interviews, it will be audio-taped but treated as non-public in accordance with our protocol.”

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December 13, 2010

Via Email and Federal Express

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

Re: *Treatment of Confidential Materials*

Dear Gary:

The law firms of Paul, Weiss, Rifkind, Wharton & Garrison LLP, Latham & Watkins LLP, and Wilmer Cutler Pickering Hale and Dorr LLP have each represented Deutsche Bank AG ("Deutsche Bank") in connection with interviews of current and former Deutsche Bank employees conducted by, or document productions made to, the Financial Crisis Inquiry Commission ("FCIC"). We understand that the FCIC is beginning to finalize its written report, which could contain portions of these interviews, and also is considering the wholesale disclosure on the FCIC's website of summaries, transcripts and/or audio files of these interviews, as well as other documents and data produced by Deutsche Bank. For the reasons stated below, we object to the disclosure of any of these materials at this time.

To date, we have received letters from the FCIC indicating that it may seek to disclose portions, if not all, of the contents of the confidential interviews of Michael

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Lamont, Greg Lippmann, Patrick McKenna, and Eugene Xu. The FCIC conducted additional confidential interviews with Deutsche Bank personnel, regarding which we have not received such letters, namely: Michael Commaroto, Tom Devine, David Rosenblum, Richard Rizzo, Neil Schneider, Vaughn Smith, and Joseph Swartz. It is our understanding that the FCIC does not presently intend to use any portion of these additional interviews.

With respect to the interviews in connection with which we received letters, we understand that, among other things, the FCIC is considering including quotations or other excerpts from the interviews in its final written report. We contacted the FCIC staff in an effort to gain a more precise understanding of the FCIC's intentions, and the staff indicated that it was not yet in a position to confirm for us whether it intended to include in its final written report any such excerpts from these or any other interviews of Deutsche Bank personnel. The staff committed to us in that call that, insofar as the FCIC does seek to include any such excerpts, it will identify the relevant excerpts for us in advance of publication so that we have a reasonable opportunity to provide additional arguments in favor of confidentiality.

We look forward to that opportunity. Indeed, there is a particular risk that the release of the content of interviews without sufficient context or appropriate caveats could cause unfair prejudice — particularly in light of the fact that interviewees typically did not review records or other materials in advance of the interviews and relied instead on their personal recollections and were often pressed to supply their subjective, personal views.

Although we welcome and appreciate the staff's commitment to allow us an opportunity to provide more detailed objections, we think it nevertheless important to outline at this time our overall objection to the release or disclosure of the interviews of current or former Deutsche Bank personnel — whether in the FCIC's report or on its website. We believe any such release or disclosure would be contrary to the assurances of confidentiality provided by FCIC staff with respect to these interviews, would unfairly prejudice Deutsche Bank and the individual interviewees, and is unnecessary in light of the existing procedure for dissemination of the FCIC's investigative materials through the National Archives.

During our interactions over the past year, FCIC staff explicitly assured us that the tape recordings of interviews would be afforded confidential treatment subject only to the FCIC's confidentiality protocol. Had we been informed that the FCIC intended to publicly disclose the content of these interviews, we would have tailored our approach to the interviews accordingly, and may well have insisted that additional procedures be put in place. In sum, publication of any tape recordings, transcripts or summaries from these interviews would be unfair and inconsistent with the FCIC's past representations.

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We do not object, however, to the National Archives' release of tape recordings, transcripts or summaries of the FCIC's interviews with Deutsche Bank personnel after 12 years, which would be consistent with the treatment of Executive Branch records stored under the Presidential Records Act. At the very least, we believe that these materials should not be released within the next 5 years, which is the length of time the FCIC has indicated as the presumptive minimum period for protection of confidential materials, absent an overriding public interest as determined by a majority vote of Commissioners or by joint agreement of the Chairman and Vice Chairman.

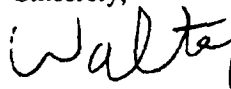
We do not at this time have reason to believe there is any such overriding public interest in the immediate disclosure of any of the interview tape recordings, transcripts or summaries. To the contrary, Deutsche Bank and the individual interviewees have legitimate overlapping and distinct privacy interests weighing against immediate publication: the interviews contain confidential information relating to the interviewees themselves, Deutsche Bank, and third parties.¹ Moreover, much of this information relates to, and could unfairly prejudice Deutsche Bank with respect to, pending or likely investigations and litigation.

* * *

For all of the reasons set forth above, prior to any final decision being made regarding the release of the tape recordings, transcripts, summaries or excerpts of interviews with any Deutsche Bank personnel, or any other Deutsche Bank materials provided to the FCIC, we request an opportunity to discuss our concerns with you further.

Please contact Walter Ricciardi at Paul Weiss at 212-373-3350 with any questions.

Sincerely,



Walter Ricciardi

¹ Similarly, much of the data and documents provided to the FCIC — both within the context of witness interviews and without — is highly sensitive and proprietary, and includes confidential business information that could cause unwarranted competitive harm to Deutsche Bank and its shareholders.

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