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December 22, 2010

By Federal Express and Email

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

**Re: FCIC Interview of Kenneth D. Lewis**

Dear Mr. Cohen:

Thank you for your letter of December 15, 2010 concerning the anticipated use by the Financial Crisis Inquiry Commission ("FCIC") of certain excerpts from its interview of Kenneth D. Lewis in the FCIC's forthcoming Report. I appreciate the opportunity to comment on the quotations discussed in your letter.

The first quotation contains ellipses that exclude a significant statement made by Mr. Lewis concerning Bank of America Corp.'s ("Bank of America") consideration of whether to invoke the material adverse change ("MAC") clause in its Merger Agreement with Merrill Lynch & Co., Inc. ("Merrill"). We believe that the quotation would be more accurate if it included Mr. Lewis's statement (which he made in the portion you have excised) that, in mid-December 2008, "[w]e thought the pace of deterioration was more alarming that it had been previously." The reference to the "alarming" nature of the acceleration is important to placing Mr. Lewis's comments in context. Mr. Lewis also noted that he consulted with counsel, and counsel agreed there was a potential MAC, which was an additional factor in his thinking.

Regarding the second quotation, your reference to Mr. Lewis's statement about the "adversarial relationship" occurring in the context of "the situation" is vague. We assume that your reference to the "situation" is meant to describe Bank of America's consideration of whether there was a MAC, and ask that you ensure that this reference is

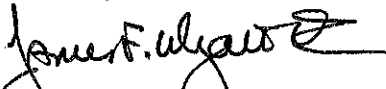
clear in the text of the report. In addition, we think it is clear from Mr. Lewis's interview that in addition to his concern about creating an adversarial relationship with Merrill, it also would not have been appropriate to alert Merrill to Bank of America's consideration of invoking the MAC clause because Merrill was a counterparty to the merger, and therefore they should not have been alerted to the potential MAC until Bank of America had decided to invoke it.

Your description of the third quotation also contains the vague term "the situation." Again, we have no objection to the use of the quotation if the Report makes clear that the context was Bank of America's consideration of whether to invoke the MAC clause in the merger agreement.

We have no comments concerning the use of the fourth quotation discussed in your letter.

Please contact me at (704) 331-0767 or at [jfw@wyattlaw.net](mailto:jfw@wyattlaw.net) should you have any further questions.

Cordially,



James F. Wyatt, III

cc: Mr. Reginald J. Brown  
Mr. Andrew Ceresney  
Mrs. Mary Jo White