

November 30, 2011 – M. Perry’s Responses to SEC’s First Set of Interrogatories

You can access my formal response to the SEC’s first set of interrogatories by going to the SEC tab and scrolling down to the November 22, 2011, document entitled: “M. Perry’s Responses to SEC’s First Set of Interrogatories”. There are some portions of this document and one entire exhibit that had to be redacted (“blacked out”), because the information is “attorney-client privileged” (being claimed by the FDIC and the bankruptcy trustee of the holding company). This so-called privileged information is subject to a court-ordered, confidentiality provision that basically says I can use these materials (primarily legal advice and opinions of Indymac’s outside counsel regarding various matters) in my legal defense, but I cannot disclose them publicly without the FDIC and the bankruptcy trustee’s consent. Clearly, I would have preferred to do so, as my goal is the full disclosure of all of the facts, and these facts only serve to strengthen my case and weaken the SEC’s allegations against me.

Please take the time to read my detailed response to these SEC questions. I think my response speaks for itself and continues to show that the SEC’s allegations (against me and one of Indymac’s CFOs) are without merit.

With that said, I would like to make a few key points:

1. Compare and contrast my responses to the SEC’s questions (November 22, 2011), with the SEC’s responses to my questions (October 31, 2011). While we raised legal objections (for my protection), we answered their questions in significant detail with facts and documents. The SEC provided almost nothing but legalese in their responses and certainly provided no important evidence to support their allegations. This, to me, speaks volumes about the lack of merit of their complaint.
2. Several of the documents cited in my interrogatory response directly refute the SEC’s allegations in their complaint and/or show that we prudently sought legal advice about disclosure matters and capital raising through the DSPP, thus seriously weakening the SEC’s claims against me.
3. In my response, we cite information from two analysts in my defense. The reason that we specifically highlighted these two analysts is that the SEC sought out and received very weak “declarations” from each of them regarding the SEC’s allegations. Each of these “declarations” is only two pages long, and they are remarkable for what they fail to say -- even after the SEC, a federal regulator with oversight and enforcement authority over these securities analysts seeks them out and presumably “asks” them if they are willing to submit these declarations. We have not had an opportunity to conduct discovery and depose these two analysts as yet (as we found out about these declarations on October 31, 2011), but we wanted to show the SEC that much of what these analysts had publicly written about Indymac, at the time, contradicts or disproves the SEC’s own allegations and even the written declarations they made. Once we obtain the analysts’ contemporary documents and take their depositions, I plan to discuss these declarations in further detail on the blog. Suffice it to say, for now, that both of these analysts had “Sell” ratings on Indymac, during the entire time in question (and both disclosed in their reports that their

firms had “Sell” recommendations on a very small percentage of firms they covered). Thus, the entire mix of our disclosures clearly was sufficient to enable these analysts to make the “right call” on Indymac. Moreover, the KBW analyst’s reports clearly were designed to support those speculators “short selling” our stock. Just take a look at the “risk factors” in his report. These “risk factors” weren’t negative characteristics about Indymac. To the contrary, the KBW analyst stated: “Risks to our price target include a sharp improvement in market conditions in the MBS market, as well as a firming of housing prices, particularly in California.” Because the analyst had a “Sell” rating for Indymac, he regarded as “risks” those things that would be positive to Indymac.

4. The SEC does not have a single, major institutional shareholder of Indymac who will support their allegations. Instead the SEC was only able to obtain two very weak, “two-page” analyst declarations, both from analysts who were recommending -- as a result of our publicly disclosed information and the general, well-known market conditions -- to “Sell” Indymac! That is a huge flaw/weakness in the SEC’s case. In the interest of full disclosure, I should add that the SEC hints in their interrogatory response to me that they may have one or more of the DSPP “investors” willing to take their side, but who those “investors” are and what they actually will say remains to be seen. Remember, as I said on the SEC tab in my full statement, these DSPP “investors” were generally arbitrage players who were shorting Indymac’s stock in a roughly equal amount to what they were buying to earn the “DSPP discount” without taking on any material market risk. I doubt these arbitrage players were doing anything more than skimming our public filings, and I suspect most were not even doing that.
5. There has been a lot of discussion regarding the \$18 million intercompany receivable booked at the bank as of March 31, 2008 and approved by the OTS. There is extensive discussion of this issue in my response to the SEC’s interrogatories that I suggest you read. In short, this receivable was approved by the OTS; signed off by E&Y, outside counsel, and our board; and booked in accordance with Generally Accepted Accounting Principles (GAAP).

Here are a few other key excerpts from my interrogatory responses: *(Please note: I personally “verified under penalty of perjury that my interrogatory responses are true and correct to the best of my knowledge, information, and belief.”)*

- “...the advice provided by Indymac’s counsel regarding Indymac’s disclosure obligations, as well as certifications provided by other Indymac employees during the disclosure process, will prevent the Commission from meeting its burden of proving that Mr. Perry acted with scienter.”
- “Mr. Perry’s actions were at all times consistent with the input and advice provided by legal counsel and other professional advisors.”
- “These professionals were kept apprised on an ongoing basis of Indymac’s financial condition, including its risk-based capital ratio forecasts, liquidity, capital-raising efforts, and

discussions with the Bank's primary federal regulator, the Office of Thrift Supervision ("OTS"), and Mr. Perry relied on their opinions and judgment regarding the content of Indymac's disclosures."

- "...the auditors never advised Indymac or Mr. Perry to revise the statements alleged by the Commission's complaint to be false or misleading, or to include any of the additional information that the Commission claims should have been disclosed. Nor did Ernst & Young identify any material audit differences. To the contrary, Ernst & Young issued an unqualified opinion on the 2007 10-K....and an unqualified review opinion on the Q1 2008 10-Q."
- "Mr. Perry relied on the opinions and certifications provided to him by Indymac officers, directors, and employees regarding the disclosures contained in Indymac filings. This included reliance on formal certifications...."
- "None of the Disclosure Committee members (24 top managers at Indymac) advised Mr. Perry that Indymac should revise the statements alleged by the Commission to be false and misleading, or to include any of the additional details that the Commission now claims should have been disclosed."
- "Mr. Perry also relied on the opinions and approvals provided by members of the Audit Committee of the Board of Directors."
- "As all these facts and others demonstrate, the Indymac disclosures challenged in the Commission's Complaint were the product of a rigorous, good-faith effort by dozens of Indymac officers and directors, including Mr. Perry, along with their outside professional advisors, aimed at providing Indymac investors with timely, accurate, and comprehensive disclosures on all material issues. None (of them)....ever advised Mr. Perry that Indymac should revise the statements alleged by the Commission to be false and misleading, or to include any of the additional details that the Commission now claims should have been disclosed."
- "The alleged false and misleading disclosures and omissions cited in the SEC's complaint are immaterial because they add nothing of significance to the total mix of publicly available information."
- "The SEC alleges that the May 2 DSPP prospectus "failed to disclose that the DSPP offering's specific purpose was to raise capital to protect Indymac Bank's capital ratio". Yet, in an 8-K filed by Indymac one day earlier, on May 1, 2008, a filing incorporated by reference into the May 2 DSPP prospectus....Mr. Perry specifically disclosed the extent of Indymac's reliance on the DSPP "to sustain sufficient capital levels to keep Indymac Bank

safe and sound through this crisis period.” Mr. Perry stated that “we continue raising capital every day through the Direct Stock Purchase Plan (DSPP). Since recommencing the DSPP on February 26, we have raised \$84 million in new capital through today, including \$45 million in the first month of Q208 alone.” Note: This is but one specific example of the lack of merit of the SEC’s disclosure allegations against me.

In sum, the SEC’s alleged case against me was weak when it was filed. As the litigation progresses and my legal team is able to engage in additional discovery, the flaws in the SEC’s case will become even more apparent.