

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

:
: Chapter 11

WASHINGTON MUTUAL, INC., et al.,¹

: Case No. 08-12229 (MFW)

Debtors.

: Jointly Administered
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:
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**BANK BONDHOLDERS' RESPONSE TO
DEBTORS' SEVENTH OMNIBUS OBJECTION TO CLAIMS**

The holders of senior notes ("Senior Notes") issued by Washington Mutual Bank ("WMB") listed below (the "Bank Bondholders")² submit this response to Debtors' Seventh Omnibus (Non-Substantive) Objection to Claims ("Seventh Objection").

Background

The Bank Bondholders hold, in the aggregate, approximately \$1.8 billion in outstanding principal amount of the Senior Notes of WMB, a no-longer-operating, federally chartered savings association owned by Debtor Washington Mutual, Inc. ("WMI"). WMI is the direct parent of Debtor WMI Investment Corp. ("WMI Investment"). On September 25, 2008, WMB was closed by the Office of Thrift Supervision, and the FDIC was appointed as receiver of

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395).

² The Bank Bondholders are Altma Fund Sicav P.L.C. In Respect of Russell Sub-Fund; Anchorage Capital Master Offshore, Ltd.; Bank of Scotland plc; Cetus Capital, LLC; Corporate Debt Opportunities Fund, Ltd.; Fir Tree Capital Opportunity Master Fund, L.P.; Fir Tree Mortgage Opportunity Master Fund, L.P.; Fir Tree Value Master Fund, L.P.; HFR ED Select Fund IV Master Trust; Juggernaut Fund, L.P.; Lyxor/York Fund Limited; Marathon Credit Opportunity Master Fund, Ltd.; Marathon Credit Master Fund, Ltd.; Marathon Special Opportunity Master Fund, Ltd.; Permal York Ltd.; Quintessence Fund L.P.; QVT Fund LP; The Governor and Company of the Bank of Ireland; The Värde Fund, L.P.; The Värde Fund VI-A, L.P.; The Värde Fund VII-B, L.P.; The Värde Fund VIII, L.P.; The Värde Fund IX, L.P.; The Värde Fund IX-A, L.P.; Värde Investment Partners (Offshore), Ltd.; Värde Investment Partners, L.P.; Windmill Master Fund, L.P.; York Capital Management, L.P.; York Credit Opportunities Fund, L.P.; York Credit Opportunities Master Fund, L.P.; York Investment Master Fund, L.P.; York Select, L.P.; and York Select Master Fund, L.P.



WMB. Immediately after its appointment as Receiver, the FDIC sold substantially all of the assets of WMB, including the stock of its bank subsidiary, WMBfsb, to JPMorgan Chase Bank (“JPMC”). The following day, on September 26, 2008, Debtors filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in this Court.

Following the commencement of these bankruptcy cases, the Court entered an order setting March 31, 2009, as the bar date for filing proofs of claims. *See* Dkt. 632. In compliance with that order, the Bank Bondholders filed Claim No. 3071 (attached as Exhibit A to this Response) in the WMI bankruptcy case on March 31, 2009.³ In Claim No. 3071, the Bondholders specifically reserved their rights to “amend, modify or supplement” the Claim. Exhibit A, ¶ 20. On June 2, 2009, the Bank Bondholders filed an amended claim in the WMI bankruptcy case, which was assigned Claim No. 3711 (the “Amended Claim”)(attached as Exhibit B to this Response). The Amended Claim asserts claims identical to those in Claim No. 3071. The only difference between Claim No. 3071 and the Amended Claim is in the identification of the holders of Senior Notes of WMB participating in the claim and the amount of their aggregate holdings. The Amended Claim specifically states that it “amends and replaces” Claim No. 3071.

Debtors’ Seventh Objection seeks the disallowance of the Bank Bondholders’ Claim No. 3071 on the grounds that it is amended and superseded by the Amended Claim (Claim No. 3711). *See* Seventh Objection, ¶ 13 and Exh. B. Although the Debtors do not in the Seventh Objection object to the validity of the Amended Claim, they expressly reserve the right to object to the claim “on any grounds whatsoever at a later time.” *Id.* ¶ 13.

³ The Bank Bondholders also filed a claim in the WMI Investment bankruptcy case. That claim is not at issue in the Seventh Objection.

Response to Objection

The Bank Bondholders do not dispute that the Amended Claim amends and supersedes the claims set forth in Claim No. 3071. It was their intent that it do so. To the extent, however, that Debtors should challenge the Amended Claim on timeliness or other procedural grounds that were not available to the Debtor with respect to Claim No. 3071, the Amended Claim would no longer supersede Claim No. 3071. Thus, the relief that Debtors seek—disallowance of Claim No. 3071—should be granted only subject to an order that also provides either (1) that neither Debtors nor any other party in interest shall be permitted to challenge the Amended Claim on such grounds, or (2) that should the Amended Claim be disallowed on such grounds (and not also on the merits), then Claim No. 3071 will be reinstated. Neither Debtors nor any other party in interest should be permitted to obtain disallowance of Claim No. 3071 on the ground that it is superseded, and then argue later that the proof of claim by which it is superseded is barred as untimely or on other procedural grounds.

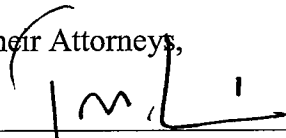
Conclusion

For the reasons stated above, should the Court disallow Claim No. 3071, it should do so only subject to an order either (1) barring Debtors or any other party in interest from challenging the Amended Claim on timeliness or other procedural grounds not available for Claim No. 3071, or (2) providing that should the Amended Claim be disallowed on such grounds, Claim No. 3071 will be reinstated.

DATED: July 16, 2009

Respectfully submitted,

By their Attorneys,



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