

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

<i>In re</i>	:	
	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
	:	

**OBJECTION OF FDIC-CORPORATE TO THE DEBTORS’ MOTION
FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL
BANKRUPTCY RULE 2004-1 DIRECTING THE EXAMINATION OF WITNESSES
AND PRODUCTION OF DOCUMENTS FROM KNOWLEDGIABLE PARTIES**

The Federal Deposit Insurance Corporation, acting in its corporate capacity (FDIC-Corporate), submits the following objection to the Debtors’ Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of Witnesses and Production of Documents from Knowledgeable Parties [D.I. 1997] (Debtors’ Motion).

The Debtors’ Motion unnecessarily and inappropriately burdens this Court, interferes with the existing administrative processes of federal banking regulatory agencies, and interferes with FDIC-Corporate’s ongoing document production in response to a broad Congressional subpoena. Therefore, the Debtors’ Motion should be denied.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



SUMMARY OF OBJECTION

1. FDIC-Corporate adopts by reference the arguments set forth in the Objection of the FDIC-Receiver to the Debtors' Motion. *Cf.* Fed. R. Civ. P. 10(c).

2. FDIC-Corporate is currently processing document requests, submitted by the Debtors pursuant to the Freedom of Information Act (FOIA) and Part 309 of Title 12 of the Code of Federal Regulations (Part 309) that include documents sought by the document request attached to the Debtors' Motion. FDIC-Corporate has begun negotiating with the Debtors regarding narrowing the over-broad scope of their document requests and expects to make future progress. In the absence of final agency action, there is no need to burden this Court with discovery disputes. At present, FDIC-C is also engaged in responding to a massive document request from Congress regarding the resolution of Washington Mutual Bank (WMB). Once that production is completed, FDIC-C expects to be in a position to commence an appropriate production of documents to the Debtors pursuant to its administrative processes.

3. The Office of the Comptroller of the Currency (OCC), which is also currently processing documents requests from the Debtors under its own regulations, joins in this Objection.

OBJECTION

RELEVANT FACTUAL AND LEGAL BACKGROUND

I. Factual Background

The Debtors have served FDIC-Corporate with three information requests:

(1) the “Request for Production of Documents” that is, together with a subpoena, attached to the Debtors’ Motion (Exhibit A);

(2) a Freedom of Information Act (FOIA) request (Exhibit B); and

(3) a request for FDIC Exempt Records and Information (Exhibit C), pursuant to Part 309 of Title 12 of the Code of Federal Regulations (Part 309 Request).² The stated purpose of all three document requests is the same: to find evidence as to whether JPMC committed “business torts” in connection with its 2008 purchase of assets from the WMB receivership. Debtors’ Motion at 3, ¶ 2; Exhibit B at 1; Exhibit C at 1.³

All three information requests go beyond the scope of their stated purpose. For example, in their Part 309 Request and their FOIA Request the Debtors ask for “[a]ll [FDIC] documents concerning, or communications with, [WMB]” (Exhibit B at ¶ 2; Exhibit C at 16, ¶ 2), which potentially covers a twenty-year time span.⁴ Yet Debtors’ Motion does not allege that FDIC communicated with JPMP (or other prospective bidders, for that matter) regarding the upcoming

² In actuality, the Debtors’ Request for FDIC Exempt Records and Information “formally request[s] documents pursuant to 12 C.F.R. § 4.33 et seq.” (Exhibit C at 1.) That regulation is part of the regulations of the Office of the Comptroller of the Currency, not the regulations of the FDIC. However, FDIC-Corporate is voluntarily treating the Debtors’ request as one made pursuant to Part 309.

³ As served, the Debtors’ discovery requests were not paginated. Page numbers have been added to Exhibits A-C for ease of reference.

⁴ WaMu has been in existence since December 27, 1988 and has been insured by the FDIC since the abolition of the Federal Savings & Loan Insurance Corporation (FSLIC) on August 9, 1989. http://www2.fdic.gov/idasp/confirmation_outside.asp?inCert1=32633 (visited Jan. 12, 2010).

WMB bid process until “early September [2008], three weeks before WMB was seized.” Debtors’ Motion at 9, ¶ 16. The proposed document request submitted to this Court seeks, e.g., “[a]ll documents concerning, or communications with, [WMB] with respect to any entity’s efforts to acquire all or part of [WMB], and/or any of its substantial assets.” Exhibit A at 14, ¶ 1. Even though the suspected business torts did not allegedly take place until the early fall of 2008, Debtors’ Motion at 9, ¶ 16, this request covers the time period from January 1, 2007 to the present. Exhibit A at 13, ¶ 12.

FDIC-Corporate is currently responding to other requests for WMB-related records. In particular, the Senate Permanent Subcommittee on Investigations (PSI), a subcommittee of the Senate Committee on Homeland Security & Governmental Affairs, has served FDIC-Corporate with a comprehensive subpoena. The jurisdiction of the PSI is wide-ranging: it covers, among other things, the study or investigation of the compliance or noncompliance of corporations, companies, or individual or other entities with the rules, regulations, and laws governing the various governmental agencies and their relationships with the public.⁵ The universe of documents sought by the PSI subpoena is correspondingly broad.

II. Legal Background

Pursuant to the general federal “housekeeping” statute, 5 U.S. C. § 301, and the Federal Deposit Insurance Act (FDI Act), FDIC-Corporate has adopted regulations for responding to requests for information. Those regulations are set forth in Part 309 (“Disclosure of Information”) of Title 12 of the Code of Federal Regulations. Within Part 309, Section 309.5 implements the Freedom of Information Act (FOIA) and the Privacy Act, while Section 309.6 governs the discretionary disclosure of exempt records under certain limited circumstances. 12

⁵ http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=f8419c11-8b63-4512-95cf-dfe2c898e346 (visited Jan. 12, 2010).

C.F.R. § 309.5, 309.6. “Exempt records” are records exempt from disclosure under FOIA, the exemptions to which consist of not only the privileges typically asserted in legal proceedings (e.g., attorney-client privilege), 5 U.S.C. § 522(b)(5), but also other categories of sensitive information (e.g., private personal information). 5 U.S.C. § 522(b)(6), 7(C).

Requests for federal agency records are also often referred to as *Touhy* requests, after the case of that name. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). That term is used here to refer collectively to the Debtors’ FOIA request and its Part 309 request to FDIC-C.

ARGUMENT

I. FDIC’s *Touhey* Regulations Are Valid

As a federal government agency, FDIC-Corporate has the power to create procedures for responding to discovery requests like those of the Debtors at issue here. *Brobeski v. EPA*, 284 F.Supp.2d 67, 73 (D.D.C. 2003); *see also Touhy*, 340 U.S. 462 at 468. Section 301 of Title 5 of the U.S. Code authorizes an agency to “prescribe regulations for . . . the custody, use, and preservation of its records, papers and property.” *Brobreski*, 284 F. Supp. 2d at 73 (*quoting* 5 U.S.C. § 301). Such regulations serve the government’s need to make a “centraliz[ed] determination as to whether subpoenas duces tecum will be willingly obeyed or challenged.” *Touhy*, 340 U.S. at 468.

II. The Debtors’ Motion Unnecessarily Burdens This Court

FDIC-Corporate is not a party to this bankruptcy proceeding or the associated adversary proceedings. Moreover, unlike private third parties, however, FDIC-Corporate has already legal obligations to produce documents without a court directive. *Touhy* regulations are the vehicles through which a federal agency responds to a legal process to obtain information. *Yousuf v.*

Samantar, 451 F.3d 249, 257 (D.C. Cir. 2006), *citing Touhy*, 340 U.S. at 464; *see also In re Subpoenas in SEC v. Selden*, 445 F.Supp.2d 11, 14 n. 6 (D.D.C. 2006).

Given the Debtors' *Touhy* requests, and FDIC-Corporate's existing obligations, statutory and regulatory, to process them, the Debtor's Motion is decidedly premature and probably superfluous. The Debtors' attempt to use the litigation discovery process to bypass FDIC-Corporate's administrative processes unnecessarily and inappropriately burdens this Court. At this stage, before FDIC-C's administrative processes have been completed, and before the extent of FDIC-C's voluntary document production to the Debtors is known, this Court cannot know whether or to what extent the Debtors might seek further production, and has no evidentiary basis for determining to what extent such further would be either appropriate or unduly burdensome. *See In re Subpoenas*, 445 F.Supp.2d at 14; *see also In re Darrow's Ridge, LLC*, 2009 WL 3254479, *2 (Bankr. D. Conn. 2009)(final agency action under *Touhy* regulations required for judicial action).

FDIC-Corporate has begun and will continue its negotiations with the Debtors regarding the scope of their document production requests, as well as with regard to any future requests for the examination of witnesses.⁶ Moreover, in the interests of efficiency, FDIC-Corporate will respond to those requests jointly rather than separately, and will do so as expeditiously as

⁶ Debtors' Motion also seeks an order directing the examination of witnesses "who are most knowledgeable about the subjects described in the document request." Debtors' Motion at 15-16, ¶¶ 30, 32-33. FDIC-Corporate's regulations cover attendance of agency representatives as a witness, 12 C.F.R. § 309.7(b), and require written pre-authorization. Given that the Debtors have not identified either categories of or specific witnesses, this Court has not been presented with an evidentiary basis for deciding whether examinations are warranted. *Cf. Davis Enterprises v. US EPA*, 877 F.2d 1181, 1186-118 (3rd Cir. 1989)(upholding EPA's decision to preclude employee from "using Agency time to give deposition testimony on [a party's] behalf in private litigation").

possible.⁷ FDIC-Corporate's regulations provide for an administrative appeal of decisions made on FOIA requests. 12 U.S.C. § 309.5(h). Only if and when differences arise that the Debtors and FDIC-Corporate cannot resolve via ordinary administrative processes will the Debtors be justified in seeking judicial intervention. *In re Subpoenas*, 445 F.Supp.2d at 14 n.6 (requiring exhaustion of administrative remedies).

III. The OCC Joins in This Objection

The Office of the Comptroller of the Currency (OCC) has authorized FDIC-Corporate to state that the Debtors' Motion should also be denied as to the OCC, because granting the motion would interfere with the OCC's administrative review of Debtors' requests for documents.

On December 15, 2009, Debtors filed a request with the OCC under FOIA and a separate submission pursuant to OCC's *Touhy* regulations governing access to non-public documents and testimony. *See* 12 C.F.R. § 4.31 et seq. These regulations (i) provide for the issuance of a decision by the OCC as to what documents the agency will produce and (ii) allow for judicial review of that decision, if necessary. *See* 12 C.F.R. § 4.37(b)(1)(i)(A)–(B).

The OCC's review of Debtors' requests for documents is well underway: As the OCC has communicated to the Debtors, it has already identified some documents that it will disclose to the Debtors (including portions of JPMC's application under the Bank Merger Act to acquire Washington Mutual) and is evaluating the remainder of the Debtors' requests. Granting the Debtors' Motion would unnecessarily disrupt this established administrative process.

Moreover, the instant motion is premature, because OCC regulations demand that a party requesting documents exhaust the administrative process—*i.e.*, the process prescribed by the

⁷ Disclosure by FDIC-Corporate of exempt records is to be made pursuant to a protective order. 12 C.F.R. §§ 309.6(b)(6), 309.6(b)(8)(ii), 309.6(b)(10). The existing protective order in this proceeding requires modification as applied to the records of FDIC-Corporate.

regulations cited here—before requesting documents through a judicial proceeding. *Id.*; *see also In re Countrywide Fin. Corp. Sec. Litig.*, 2009 U.S. Dist. LEXIS 120590 (C.D. Cal. Dec. 28, 2009) (“The Court holds that Plaintiffs must first exhaust all administrative procedures and submit requests to use the documents in this litigation to the . . . OCC, pursuant to federal regulations. If the . . . OCC do[es] not authorize disclosure of the information that is relevant to this litigation, then the parties can seek the appropriate relief from this Court regarding document production.”).

CONCLUSION

For all of the foregoing reasons, the Motion should be denied.

Respectfully submitted,

CHARLES L. COPE
Senior Counsel

/s/ Ashley Doherty
Ashley Doherty (DC 336073)
Counsel
FEDERAL DEPOSIT INSURANCE
CORPORATION
3501 Fairfax Drive, VS-D7022
Arlington, VA 22226
Tel.: (703) 562-2377
Fax.: (703) 562-2477
E-mail: adoherty@fdic.gov

January 15, 2010

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

for the District of Columbia

In re: Washington Mutual, Inc., et. al.
Debtor

SUBPOENA FOR RULE 2004 EXAMINATION

Case No.* 08-12229 (MFW) U.S. Bankruptcy Court for the District of Delaware

To: Federal Deposit Insurance Corporation
Mr. Michael Bradfield, General Counsel
Legal Division
550 17th Street, NW
Washington, DC 20429

Chapter Chapter 11

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE Weil, Gotshal & Manges, LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005

DATE AND TIME

_____, 2010 5:00 p.m.

ISSUING OFFICER SIGNATURE AND TITLE

DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Neil R. Lapinski, Esq.
Elliott Greenleaf

1105 North Market Street, Suite 1700
Wilmington, DE 19801
(302) 384-9400

* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

PROOF OF SERVICE

SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

(c) Protecting a Person Subject to a Subpoena.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

Exhibit A

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

DEFINITIONS

The following terms (whether or not capitalized) shall have the meanings set forth below:

1. "Adversary Proceedings" means or refers to the JPMC Adversary Proceeding and the Turnover Proceeding.
2. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
3. "Any," "all" and "each" shall be construed broadly, and shall mean any, all, and each as necessary to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.
4. "Banco Santander" means Banco Santander, S.A., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
5. "Blackstone" means the Blackstone Group, L.P., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
6. "Carlyle" means Carlyle Group LLC, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
7. "Cerberus" means Cerberus Capital Management, L.P., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any

of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

8. "Chapter 11 case" means or refers to *In re Washington Mutual, Inc.*, No. 08-12229 (Bankr. D. Del).

9. "Citigroup" means Citigroup, Inc. and Citibank, N.A., and all of their predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

10. "Communication" means any oral, written or electronic transmission of information, fact, opinion, belief, idea, statement, inquiry or otherwise, including without limitation any letter, correspondence, memorandum, electronic-mail message, note or meeting log, conversation, meeting, discussion, telephone call, facsimile, telegram, telex, conference or message.

11. "Concerning" means comprising, consisting of, concerning, referring to, reflecting, regarding, supporting, evidencing, relating to, prepared in connection with, used in preparation for, or being in any way legally, logically or factually concerned with the matter or document described, referred to or discussed.

12. "DC Action" refers to *Washington Mutual, Inc. and WMI Investment Corp. v. Federal Deposit Insurance Corporation*, No. 1:09-cv-00533 (D.D.C.).

13. "Document" is used in its broadest sense and mean and include any written or graphic matter or other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copy or otherwise, including but not limited to, correspondence, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins, meetings or other communications, interoffice and intraoffice telephone calls, diaries, chronological data, minutes, books, reports, studies, summaries, pamphlets, bulletins, printed matter, charts, ledgers, invoices, worksheets, receipts,

returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, cancelled checks, statements, transcripts, statistics, surveys, magazine or newspaper articles, releases (and any and all drafts, alterations and modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, microfiche, microfilm, videotape, records and motion pictures) and electronic, mechanical or electric records or representations of any kind (including without limitation tapes, cassettes, discs and records).

14. "FDIC" means or refers to the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank, Henderson Nevada and in its corporate capacity.

15. "Federal Reserve" means the Board of Governors of the Federal Reserve System and the twelve Federal Banks; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

16. "Fitch" means Fitch Inc., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

17. "Goldman Sachs" means The Goldman Sachs Group, Inc., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

18. "Governmental Unit" has the meaning set forth at 11 U.S.C. § 101(27).

19. "Including" means including but not limited to the referenced subject.

20. "JPMC" means JPMorgan Chase Bank, National Association and JPMorgan Chase & Co., and any of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

21. "JPMC Adversary Proceeding" refers to *JPMorgan Chase Bank, National Association v. Washington Mutual, Inc., et al.*, Adversary Proceeding No. 09-50551 (Bankr. D. Del.).
22. "Lehman Brothers" means Lehman Brothers Holdings, Inc., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
23. "Morgan Stanley" means Morgan Stanley, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
24. "Moody's" means Moody's Investors Service, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
25. "Oak Hill" means Oak Hill Capital Partners, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
26. "OCC" means the Office of the Comptroller of the Currency, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
27. "OTS" means the Office of Thrift Supervision, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

28. "RTC" means the Resolution Trust Corporation, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

29. "P&A Agreement" means or refers to the Purchase and Assumption Agreement, Whole Bank, among the Federal Deposit Insurance Corporation, as receiver of Washington Mutual Bank, Henderson, Nevada, the Federal Deposit Insurance Corporation and JPM, dated as of September 25, 2008.

30. "SEC" means the U.S. Securities and Exchange Commission and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

31. "S&P" means Standard and Poor's Corporation and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

32. "TD Bank" means TD Bank, N.A., and all of its predecessors and successors in interest, as well as all of its partners, parents, subsidiaries, divisions, and affiliates; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

33. "Texas Action" refers to *American Nat'l Ins. Co., et al., v. JPMorgan Chase & Co., et al.*, Case No. 3:09-cv-00044 (S.D. Tex.), which has been transferred to the United States District Court for the District of Columbia.

34. "TPG" means TPG Capital (formerly Texas Pacific Group), and all of its predecessors and successors in interest, as well as all of its partners, parents, subsidiaries, divisions, and affiliates; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

35. "Transaction" means or refers to any means by which JPMorgan Chase might obtain, receive or succeed to Washington Mutual's businesses or properties, or any portion

thereof, or any transaction preliminary, preparatory or incident thereto, including any stock tender, stock purchase, asset purchase, assumption of deposit or other liabilities, merger, joint venture or partnership.

36. "Turnover Proceeding" means *WMI and WMI Investment Corp. v. JPMC*, No. 09-50934 (Bankr. D. Del.).

37. "U.S. Department of the Treasury" means or refers to the U.S. Department of the Treasury and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

38. "Washington Mutual" means or refers to WMI and WMB, and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

39. "Wells Fargo" means Wells Fargo, N.A., and all of its predecessors and successors in interest, as well as all of its partners, parents, subsidiaries, divisions, and affiliates; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

40. "WMB" means or refers to Washington Mutual Bank, Henderson, Nevada, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

41. "WMB fsb" means or refers to Washington Mutual Bank, fsb, Utah, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

42. "WMI" means or refers to Washington Mutual, Inc. and WMI Investment Corp. (collectively, the "Debtors") and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

43. "You" or "Your" means or refers to the FDIC, individually or collectively, to whom this subpoena is addressed, and any owner, director, officer, employee, agent, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, and other Persons purporting to act on your behalf.

44. Any ambiguity in a discovery request shall be construed to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

INSTRUCTIONS

Each response must be made in accordance with the following instructions:

1. The responsive documents should be produced in the manner prescribed by the Federal Rules of Civil Procedure, as made applicable herein by the Federal Rules of Bankruptcy Procedure, including producing the requested documents as they are kept in the usual course of business or organized and labeled to correspond with the categories in the requests, and identifying the name of the person from whose files the documents were produced.

2. You are to produce the original and all non-identical copies, including all drafts, of each document requested. If you are not able to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts.

3. Each request herein extends to all documents and communications in the possession, custody or control of you or anyone acting on your behalf. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (1) own such document in whole or in part; (2)

have a right, by contract, statute or otherwise, to use, inspect, examine or copy such document on any terms; (3) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (4) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

4. Any reference in these document requests to an individual or person include any and all agents, advisors, employees, representatives, attorneys, successors-in-interest, and all other persons or entities acting in his, her, or its behalf or under his, her or its control.

5. If any document is withheld under any claim of privilege, including without limitation, attorney-client privilege and attorney work product, you should provide the following information with respect to such document:

- (1) The date of the document;
- (2) The title of the document;
- (3) The name of its author(s) or preparer(s) and an identification by employment and title of each such person;
- (4) The name of each person who was sent or furnished with, received, viewed or has custody of the document or a copy thereof together with an identification by employment and title of each such person;
- (5) The request to which the document relates;
- (6) The title and description of the document sufficient to identify it without revealing the information for which privilege is claimed;
- (7) The claim of privilege under which it is withheld; and
- (8) A description of the subject matter of the document in sufficient detail to support your contention that the document is privileged;

6. If, after exercising due diligence to secure them, you cannot provide some or any of the requested documents, so state and provide all documents to the extent possible, specifying

the reason for your inability to produce the remainder of the documents, and stating whatever information or knowledge you have concerning each document not produced.

7. If any requested document or other document potentially relevant to this action is subject to destruction under any document retention or destruction program, the document(s) should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this action or unless otherwise permitted by the Court.

8. If any document responsive to these requests is known to have existed and cannot now be located, or has been destroyed or discarded, set forth a complete statement of the circumstances surrounding such loss or destruction, including:

- (1) a description of the document, including the date, a summary of its contents and the identity of its author and the person(s) to whom it was sent or shown;
- (2) the last known custodian;
- (3) whether the document is missing or lost or was destroyed or discarded;
- (4) the date of loss, destruction or discard;
- (5) the manner of destruction or discard;
- (6) the reason(s) for destruction or discard;
- (7) the person(s) authorizing or carrying out such destruction or discard; and
- (8) the efforts made to locate lost or misplaced documents.

9. If an objection is made to any request, state your objection and the ground or grounds with particularity in your written response. If an objection is made only to part of the request, identify that part in your written response and state your objection and the ground(s) therefor.

10. Each request shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. Any request propounded in the singular shall

also be read as if propounded in the plural and vice versa. Any request propounded in the present tense shall also be read as if propounded in the past tense and vice versa.

11. This request is a continuing one. If, after producing the requested documents, you obtain or become aware of any further documents responsive to this request, you are required to produce such additional documents. Supplemental responses should be served within thirty (30) days after such information or documents become known to you.

12. Unless otherwise specified, the time period covered by these requests is from January 1, 2007 to the present and shall encompass all documents and information relating in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior to that date.

REQUESTS FOR PRODUCTION OF DOCUMENTS

The Debtors request that FDIC produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.
2. All documents concerning communications with or among JPMC, any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.
3. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008, and/or (c) any communications with or among U.S. Treasury Secretary Hank Paulson and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jamie Dimon regarding Washington Mutual.
4. All documents concerning any potential or actual regulatory and/or supervisory actions, ratings, or examinations directed toward or taken with respect to Washington Mutual by any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and SEC, including but not limited to (a) OTS's decision to initiate discussions about Memorandums of Understanding with WMI and WMB, (b) the Memorandums of Understanding OTS issued to WMI and WMB on or about September 7, 2008, (c) any regulatory

classification of Washington Mutual by the OTS, including without limitation any decision by OTS to classify WMB as a "problem institution," and/or (d) U.S. Treasury Secretary Henry Paulson's "RTC plan" concerning Washington Mutual.

5. All documents concerning Washington Mutual's responses or potential responses to any regulatory and/or supervisory actions, ratings, or examinations by any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC.

6. All documents concerning Washington Mutual's efforts to raise capital and/or locate a potential merger partner or acquiror, including without limitation (a) any actual or possible acquisition or investment by any entity of any stake in Washington Mutual, including any communications with or among Banco Santander, Bankers Trust, Blackstone, Carlyle, Cerberus, Citigroup, JPMC, Oak Hill, TPG, TD Bank, and/or Wells Fargo and their affiliates; (b) any efforts to raise capital through the issuance of debt securities in December 2007 (including the issuance of approximately \$3 billion of debt securities on or about December 17, 2007); (c) any actual, potential, or contemplated bids for Washington Mutual and/or the bidding process for Washington Mutual; (d) any efforts to raise capital and/or locate a potential merger partner or acquiror during the first quarter of 2008; (e) TPG's investment of about \$7.2 billion into Washington Mutual on or about April 7, 2008; and/or (f) any efforts to raise capital and/or locate a potential merger partner or acquiror in September 2008, including any efforts by Goldman Sachs and/or Morgan Stanley on Washington Mutual's behalf.

7. All documents concerning any meetings and/or communications between JPMC and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, concerning Washington Mutual including (a) any meetings on or

about March 28, 2008, (b) any meetings between JPMC and the U.S. Department of the Treasury in April 2008, and/or (c) any meetings on or about July 18, 2008.

8. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

9. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to any Governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

10. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

11. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" at Washington Mutual for the purpose of obtaining confidential Washington Mutual information, which JPMC used "to bargain and work with federal regulators for the seizure and sale of Washington Mutual's assets," *see* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.* at ¶ 38.

12. All documents concerning JPMC's interest in any potential Transaction and any attempt by JPMC to engage in any potential Transaction, including but not limited to any actual, potential, or contemplated bid or offer by JPMC to merge with, invest in, or purchase

Washington Mutual, including but not limited to (a) Washington Mutual's rejection of JPMC's offer to merge with, invest in, or acquire Washington Mutual in or about April 2008, (b) capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008, and/or (c) any agreement or arrangement between JPMC and any Government Unit, including but not limited to the FDIC, OTS, OCC, Federal Reserve, SEC and/or the U.S. Department of the Treasury, concerning any potential transaction in which JPMC might or did acquire WMB, or any stake or portion of WMB.

13. All documents concerning the potential for WMB to be seized by OTS and the decision to seize WMB, as well as the potential for the FDIC to be appointed receiver of WMB and the decision to place WMB into receivership with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that "the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely" and that the FDIC "would want to immediately auction off [WMB's] assets." See Heidi N. Moore, *Deal Journal*, Wall St. J., Sept. 30, 2008, at C7.

14. All documents concerning the FDIC's efforts in September 2008 to restore JPMC's access to Washington Mutual data.

15. All documents concerning the bid process established by the FDIC for the purchase of WMB, including but not limited to (a) all documents concerning any communication with or among JPMC, any Government Unit and/or any third party about the bid process and (b) all documents concerning bids or indications of interest received by the FDIC, including copies of bids or indications of interest from JPMC and Citigroup.

16. All documents concerning the following statement, in form or in substance, from Citigroup to the FDIC: "We recognize that our approach does not conform to the bidding

instructions for Washington Mutual. We believe, however, that our suggested approach will in fact provide greater systemic ability and lower losses than would any conforming bid. . . . [W]e would expect that, consistent with the FDIC's statutory obligation under the 'least-cost' test, this construct would be offered to all potential bidders in a new round of bidding." *See Citigroup Bid Letter to FDIC*, at 4.

17. All documents concerning the FDIC's consideration of and decision to "modify the standard indemnification to include a limited indemnity in favor of JPMorgan Chase in an amount not to exceed \$500 million for any damages JPMorgan Chase may sustain as a result of litigation brought by WMI against JPMorgan Chase for violation of the agreement between WMI and JPMorgan Chase dated March 11, 2008," including all documents concerning JPMC's request for such an indemnification provision. *See 9/24/08 Memorandum from James Wigand and Herbert Held to FDIC Board of Directors and FDIC Board of Directors Resolution Approving P&A Transaction.*

18. All documents concerning any OCC indication to OTS, FDIC, and/or JPMC that "as the federal regulator of JPMorgan Chase . . . it will provide its approval of the transfer of assets and liabilities [of WMB to JPMC] on September 25, 2008." *See FDIC Board of Directors Resolution Board of Directors Approving JPMC's Bid for WMB*, at 4.

19. All documents concerning OTS's determination that "WMB met the well-capitalized standards through the date of receivership." *See OTS Fact Sheet*, Sept. 25, 2008.

20. All documents concerning OTS's determination that "adverse publicity" caused WMB to "suffer[] significant cash outflows." *See OTS Order 2008-36*, dated September 25, 2008.

EXHIBIT B

quinn emanuel trial lawyers | los angeles

865 South Figueroa Street, 10th Floor, Los Angeles, California 90017 | TEL 213-443-3000 FAX 213-443-3100

09-2053

December 15, 2009

Federal Deposit Insurance Corporation, Legal Division
FOIA/PA Group
550 17th Street, N.W.
Washington, D.C. 20429
Fax: (202) 898-6910

RECEIVED FDIC
2009 DEC 16 A 10: 31
LEGAL DIVISION
FOIA/PA GROUP

Re: FREEDOM OF INFORMATION ACT REQUEST

Dear Sir/Madam:

Our law firm represents Washington Mutual Inc. and Washington Mutual Investment Corp. (collectively "Debtors") in *In re Washington Mutual, Inc.*, et al., No. 08-12229 (MFW) (Bankr. D. Del.), *In re Washington Mutual, Inc.*, et al., Adv. Proc. No. 09-50551 (Bankr. D. Del.) and *In re Washington Mutual, Inc.*, et al., Adv. Proc. No. 09-50934 (Bankr. D. Del). We write to formally request documents pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.* (subject to a complete reservation of rights to also pursue the requested information by additional means as well). A list of the categories of documents requested is attached hereto as Exhibit A.

The documents requested relate to an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and adversary proceedings in the Delaware bankruptcy Court. (A copy of the Rule 2004 orders and requests granted thereby, as well pleadings from the adversary proceedings, are attached as Exhibits B, C, D, E, and F.) The Rule 2004 examination, which the Court approved, is an inquiry into whether business torts may have been committed by JPMorgan Chase Bank, N.A. ("JPMC") in connection with its purchase of Washington Mutual assets from receivership in September 2008. More specifically, Debtors' motion for a Rule 2004 examination, which the Court granted, sought an examination pursuant to Bankruptcy Rule 2004 to investigate potential claims against JPMC based on alleged misconduct that is the subject of a recently filed lawsuit then pending in Texas federal court, captioned *American Nat'l Ins. Co. et al. v. JPMorgan Chase & Co.*, et. al. 3:09cv-0044, (S.D. Tex. Feb. 16, 2009) (the "American National Action"). Ex. G, hereto, Motion for Order ¶ 1. The *American National* Complaint alleges that as part of its scheme to acquire Washington Mutual Bank, JPMC "gathered non-public information" about Washington Mutual from the OCC, OTS, FDIC,

quinn emanuel urquhart oliver & hedges, llp

NEW YORK | 51 Madison Avenue, 22nd Floor, New York, New York 10010 | TEL 212-849-7000 FAX 212-849-7100
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111 | TEL 415-875-6600 FAX 415-875-6700
SILICON VALLEY | 555 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL 650-801-5000 FAX 650-801-5100
TOKYO | Akasaka Twin Tower Main Building, 6th Floor, 17-22 Akasaka 2-Chome, Minato-ku, Tokyo 107-0052, Japan | TEL +81-3-5561-1711 FAX +81-3-5561-1712

and the Federal Reserve. *Id.* at ¶ 40 That Complaint also contains allegations that JPMC misused its insider status and access to regulators to leak confidential WMI information and wrongfully influence government policy and actions. Additionally, the two adversary complaints concern ownership rights to various assets.

We understand that the FDIC has documents relevant to these issues, which may include documents regarding the following categories:

- The FDIC was in communication with WMI concerning regulatory issues and established the bid process for WMB.
- The FDIC's analysis of the value of WMB assets that it sold to JPMC.
- The FDIC's communications with Washington Mutual and the OTS regarding WMB's ability to meet its liquidity obligations. In particular, members of WMB including former CEO Kerry Killinger met with regulators from the OTS and FDIC Charwoman Sheila Bair in July. At that meeting, Bair expressed concern over WMI's financial status and disagreed with OTS representatives over various actions with respect to WMI, including the appropriate CAMELS rating.¹
- FDIC meetings regarding WMI and its liquidity, as well as FDIC internal communications regarding FDIC. For example, public sources have reported that "Bair alone sent more than 40 emails with WaMu as the subject during" the time between the July meeting and the receivership. *See Grind, supra.*
- JPMC's communications with the FDIC regarding the potential acquisition of WMB. Prior to JPMC submitting its March 31, 2008 bid to acquire WMI's business, JPMC discussed the potential acquisition with regulators and sought government assistance in a deal. After WMI rejected JPMC's March 2008 bid in favor of a \$7.2 billion investment from private equity firms, JPMC continued to meet with regulators to discuss a potential acquisition of WaMu.
- The extent to which JPMC and the FDIC worked together in advance of the placement of WMB into receivership to arrange a deal for JPMC to acquire WMB. In early September, three weeks before WMB was seized, FDIC officials informed JPMC that "the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely" and that the FDIC "would want to immediately auction off [WMB's] assets."²
- The extent to which, in the days leading up to JPMC's acquisition of WMB from the FDIC, the FDIC worked with JPMC to consummate a deal on terms acceptable to JPMC.

¹ Kirsten Grind, *Why did regulators abruptly close Washington Mutual when it had the cash to operate? Help was coming in six days*, PUGET SOUND BUS. J., Dec. 4, 2009, at <http://seattle.bizjournals.com/seattle/stories/2009/12/07/story1.htm>.

² *See* Heidi N. Moore, Deal Journal, Wall St. J., Sept. 30, 2008, at C7.

To the extent that this information reflects internal agency deliberations that another agency does not have, this information can only be obtained from the FDIC. Moreover, it is possible that the FDIC has communications with others that are not or no longer available elsewhere. Thus, there are no other available means for WMI to obtain these documents.

Given the importance of this litigation, WMI respectfully submits that its need for this information outweighs public interest in confidentiality and the FDIC's burden.

All of the requested documents/information are believed to be within the custody or control of the FDIC, and are subject to disclosure under FOIA. Thus, we request that you provide the requested information within 20 days pursuant to 5 U.S.C. § 552(a)(6). However, we request that, should you determine that some portions of any of the requested documents are purportedly exempt from disclosure, you produce the documents in part while redacting the assertedly exempt portions of the documents, and provide an index describing the redacted materials in detail and specifying the asserted basis for any redaction. If any of the requested information is in published form and currently available to the general public without a request, ask that you provide the citation.

We are prepared to arrange for payment of reasonable costs for producing the requested information, provided that you contact us in advance to discuss the estimated costs. (The requester is a commercial user for fee purposes.)

We have also been in contact with Ashley Doherty, representing the FDIC in its corporate capacity in the case, and with John J. Clarke of DLA Piper, representing the FDIC as receiver, in order to try and reach agreement on the scope and timing of discovery. While we hope to reach resolution on these issues through that process, we are following these procedures as well out of an abundance of caution and without waiving our rights to any other forms or means of discovery. We also plan to seek information by way of subpoena in the adversary proceeding.

Please do not hesitate to contact me with any questions at 212-849-7250. Thank you for your assistance with this request.

Very truly yours,



David Elsberg
03935.61559/3226018.2

Counsel for Debtors in *In re Washington Mutual, Inc., et al.*, No. 08-12229, Adv. Proc. No. 09-50551 (Bankr. D. Del.)

cc: Ashley Doherty, representing the FDIC in its corporate capacity; John J. Clarke of DLA Piper, representing the FDIC as receiver

EXHIBIT A

REQUESTS

DEFINITIONS

The following terms (whether or not capitalized) have the meanings set forth below:

1. "Additional Intercompany Receivables" means or refers to any intercompany receivables in addition to the Intercompany Receivables accrued payable from WMB to WMI pursuant to service agreements which would fall under the Administrative Services Agreement that operated to benefit WMB or one of its subsidiaries prior to the Petition Date.
2. "Adversary Proceedings" means or refers to the JPMC Adversary Proceeding and the Turnover Proceeding.
3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
4. "Any," "all" and "each" shall be construed broadly, and shall mean any, all, and each as necessary to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.
5. "Banco Santander" means Banco Santander, S.A., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
6. "Blackstone" means the Blackstone Group, L.P., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
7. "BOLI-COLI Policies" means or refers to certain bank-owned and corporation-owned life insurance policies reflected on WMI's books and records, as well as such policies reflected on

WMB's books and records, including (1) BOLI policies issued by Pacific Life, bearing list bills 7675A and 7729A and (2) ING Security Life List Bills E208090000 and E208090001.

8. "Capital Contributions" means any capital contributions that WMI made to WMB or WMB fsb from November 1, 2007 through September 2008, including the \$6.5 billion in capital contributions that WMI made to WMB from December 2007 through September 2008.

9. "Carlyle" means Carlyle Group LLC, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

10. "Cerberus" means Cerberus Capital Management, L.P., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

11. "Chapter 11 case" means or refers to *In re Washington Mutual, Inc.*, No. 08-12229 (Bankr. D. Del).

12. "Citigroup" means Citigroup, Inc. and Citibank, N.A., and all of their predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

13. "Communication" means any oral, written or electronic transmission of information, fact, opinion, belief, idea, statement, inquiry or otherwise, including without limitation any letter, correspondence, memorandum, electronic-mail message, note or meeting log, conversation, meeting, discussion, telephone call, facsimile, telegram, telex, conference or message.

14. "Concerning" means comprising, consisting of, concerning, referring to, reflecting, regarding, supporting, evidencing, relating to, prepared in connection with, used in preparation

for, or being in any way legally, logically or factually concerned with the matter or document described, referred to or discussed.

15. "DC Action" refers to *Washington Mutual, Inc. and WMI Investment Corp. v. Federal Deposit Insurance Corporation*, No. 1:09-cv-00533 (D.D.C.).

16. "Deposit Accounts" means or refers to approximately \$4 billion that Debtors held in five demand deposit accounts with WMB bearing account numbers 179-165066-7, 177-891120-6, 181-252962-6, 314-197966-3, 314-197470-4, and a sixth demand deposit account in WMB fsb bearing account number 441-006423-4, in addition to the accounts themselves and related deposit liabilities, that were transferred to, and now held and maintained by JPMC.

17. "Disputed Assets" means or refers to those assets which JPMC has asserted an ownership right to in the JPMC Adversary Proceeding, including but not limited to the Trust Securities, Tax Refunds, Deposit Accounts, Goodwill Litigation Judgments, Legacy Rabbi Trusts, BOLI-COLI Policies, Split-Dollar Policies, Visa Shares, WaMu Pension Plan, Intangible Assets, Vendor Contracts, WaMu Marks, Secondary Marks, and the '985 patent.

18. "Document" is used in its broadest sense and mean and include any written or graphic matter or other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copy or otherwise, including but not limited to, correspondence, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins, meetings or other communications, interoffice and intraoffice telephone calls, diaries, chronological data, minutes, books, reports, studies, summaries, pamphlets, bulletins, printed matter, charts, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, cancelled checks, statements, transcripts, statistics, surveys, magazine or newspaper articles, releases (and any and all drafts, alterations and modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, microfiche, microfilm, videotape, records and motion pictures) and electronic,

mechanical or electric records or representations of any kind (including without limitation tapes, cassettes, discs and records).

19. "Exchange Event" means or refers to a conditional exchange feature that operated to exchange the Trust Securities into related classes of WMI preferred stock, or depository shares representing WMI preferred stock, upon the occurrence of certain events as directed by the OTS under certain circumstances (*i.e.*, WMB becoming undercapitalized, WMB being placed into receivership, or the OTS anticipating WMB becoming undercapitalized in the near future).

20. "FDIC" means or refers to the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank, Henderson Nevada and in its corporate capacity.

21. "Federal Reserve" means the Board of Governors of the Federal Reserve System and the twelve Federal Banks; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

22. "Fitch" means Fitch Inc., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

23. "Goldman Sachs" means The Goldman Sachs Group, Inc., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

24. "Goodwill Litigation Judgments" means or refers to the \$356,454,911 judgment entered in *Anchor Savings Bank, FSB v. United States*, No. 95-872C (Fed. Cl.), and the \$55,028,000 partial judgment entered in *American Savings Bank, F.A. v. United States*, No. 92-872C (Fed. Cl.).

25. "Governmental Unit" has the meaning set forth at 11 U.S.C. § 101(27).

26. "Including" means including but not limited to the referenced subject.

27. "Intercompany Amounts Due" means the Non-Debtor Subsidiary Promissory Notes, the Intercompany Receivables, and the Additional Intercompany Receivables.

28. "Intercompany Receivables;" means those certain intercompany receivables, with account numbers 28101,28120, 28025, initially owed WMI by WMB or its subsidiary WaMu Capital Corp. in the approximate amount of \$22.5 million.

29. "JPMC" means JPMorgan Chase Bank, National Association and JPMorgan Chase & Co., and any of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

30. "JPMC Adversary Proceeding" refers to *JPMorgan Chase Bank, National Association v. Washington Mutual, Inc., et al.*, Adversary Proceeding No. 09-50551 (Bankr. D. Del.).

31. "Legacy Rabbi Trusts" means or refers to the trusts that, in the aggregate, are valued at over \$550 million that were established to fund benefits promised under various non-qualified deferred compensation and retirement plans of predecessor institutions that were acquired by certain Washington Mutual entities, including (1) The Dime Benefit Protection Trust; (2) Umbrella Trust with respect to the Covered Arrangements for Outside Directors of The Dime Savings Bank of New York, FSB and Related Entities; (3) Umbrella Trust with respect to the Covered Arrangements of The Dime Savings Bank of New York, FSB and Related Entities; (4) Umbrella Trust with respect to Designated Arrangements of The Dime Savings Bank of New York, FSB and Related Entities; (5) the Great Western Financial Corporation Umbrella Trust for Senior Officers; (6) the Great Western Financial Corporation Umbrella Trust for Directors; and (7) Providian Financial Corporation Deferred Compensation and Benefits Trust). "Lehman Brothers" means Lehman Brothers Holdings, Inc., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and

former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

32. "Morgan Stanley" means Morgan Stanley, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

33. "Moody's" means Moody's Investors Service, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

34. "Non-Debtor Subsidiary Promissory Notes" means those certain notes issued by WMB and held by certain of WMI's non-bank, non-Debtor subsidiaries, H.S. Loan Corporation, H.S. Loan Partners, WMHFA Delaware Holdings LLC, and WMRP Delaware Holdings LLC, as predecessor in interest to PCA Asset Holdings LLC, in an approximate amount of \$177 million.

35. "Oak Hill" means Oak Hill Capital Partners, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

36. "OCC" means the Office of the Comptroller of the Currency, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

37. "OTS" means the Office of Thrift Supervision, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

38. "P&A Agreement" means or refers to the Purchase and Assumption Agreement, Whole Bank, among the Federal Deposit Insurance Corporation, as receiver of Washington

Mutual Bank, Henderson, Nevada, the Federal Deposit Insurance Corporation and JPM, dated as of September 25, 2008.

39. "Petition Date" means or refers to September 26, 2008.

40. "Purchase Price" means the approximately \$1.9 billion JPMC paid to the FDIC for the assets of WMB.

41. "RTC" means the Resolution Trust Corporation, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

42. "P&A Agreement" means or refers to the Purchase and Assumption Agreement, Whole Bank, among the Federal Deposit Insurance Corporation, as receiver of Washington Mutual Bank, Henderson, Nevada, the Federal Deposit Insurance Corporation and JPM, dated as of September 25, 2008.

43. "SEC" means the U.S. Securities and Exchange Commission and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

44. "S&P" means Standard and Poor's Corporation and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

45. "Secondary Marks" means or refers to the approximately 140 trademark and service mark registrations owned by WMI, each in connection with various lines of business of the WaMu corporate family.

46. "Split-Dollar Policies" means or refers to BOLI policies originally acquired by predecessor institutions that were later acquired by certain Washington Mutual entities, in which the company and the insured employees' designated beneficiary split the insurance proceeds, including the 955 Split Dollar Policies that formerly belonged to Commercial Capital Bancorp Inc. when it merged into WMB in April 2006.

47. "Tax Refunds" means or refers to local, state, and/or federal tax refunds owed to Washington Mutual for the tax years 1990 through 2008, including taxes payable to WMI from any tax agency, regardless of whether such refunds are at all attributable to taxes paid by WMI in respect of WMB or its subsidiaries or any of WMI's other subsidiaries.

48. "Tax Sharing Agreement" means or refers to that certain agreement dated August 31, 1999 between WMI, WMB, WMB fsb, and certain other direct and indirect subsidiaries of WMI and WMB, pursuant to which taxes were paid directly by WMI on behalf of the consolidated tax group, which includes WMB and its subsidiaries.

49. "TD Bank" means TD Bank, N.A., and all of its predecessors and successors in interest, as well as all of its partners, parents, subsidiaries, divisions, and affiliates; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

50. "Texas Action" refers to *American Nat'l Ins. Co., et al., v. JPMorgan Chase & Co., et al.*, Case No. 3:09-cv-00044 (S.D. Tex.), which has been transferred to the United States District Court for the District of Columbia.

51. "TPG" means TPG Capital (formerly Texas Pacific Group), and all of its predecessors and successors in interest, as well as all of its partners, parents, subsidiaries, divisions, and affiliates; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

52. "Transaction" means or refers to any means by which JPMorgan Chase might obtain, receive or succeed to Washington Mutual's businesses or properties, or any portion thereof, or any transaction preliminary, preparatory or incident thereto, including any stock tender, stock purchase, asset purchase, assumption of deposit or other liabilities, merger, joint venture or partnership.

53. "Trust Securities" means or refers to the two series of fixed-rate preferred securities, each issued by Washington Mutual Preferred Funding (Cayman) Ltd., and four series of fixed-to-

floating preferred trust securities, each issued by Delaware trusts, between March 2006 and October 2007.

54. "Turnover Proceeding" means *WMI and WMI Investment Corp. v. JPMC*, No. 09-50934 (Bankr. D. Del.).

55. "U.S. Department of the Treasury" means or refers to the U.S. Department of the Treasury and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

56. "Vendor Contracts" means or refers to WMI's numerous agreements with vendors who lease property, perform services, deliver goods, or license software that provide benefit to the banking operations formerly owned by WMB.

57. "Visa Shares" means or refers to the 3,147,059 Class B common shares in Visa, Inc. issued as part of Visa's restructuring and initial public offering, which occurred in or about March 2008, that were allocated to Washington Mutual.

58. "WaMu Domain Names" means or refers to approximately 1350 domain names owned by WMI, some of which contain the WaMu Marks and/or Secondary Marks, including, but not limited to wamu.com, washingtonmutual.com, and wamubank.com, and numerous other domain names related to advertising.

59. "WaMu Marks" means or refers to the more than 80 federal trademark registrations and applications comprising a family of Washington Mutual trademarks owned by WMI, including but not limited to the marks "WAMU," "WASHINGTON MUTUAL," and the "W Logo" for a variety of services including but not limited to banking, credit card, lending, investment and other financial services as well as community, education and philanthropic oriented services.

60. "WaMu Pension Plan" means or refers to the WMI-sponsored tax qualified cash balance pension plan.

61. "Washington Mutual" means or refers to WMI and WMB, and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys,

accountants, outside consultants, representatives and other persons acting or purporting to act on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

62. "Wells Fargo" means Wells Fargo, N.A., and all of its predecessors and successors in interest, as well as all of its partners, parents, subsidiaries, divisions, and affiliates; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

63. "WMB" means or refers to Washington Mutual Bank, Henderson, Nevada, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

64. "WMB fsb" means or refers to Washington Mutual Bank, fsb, Utah, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

65. "WMI" means or refers to Washington Mutual, Inc. and WMI Investment Corp. (collectively, the "Debtors") and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

66. "You" or "Your" means or refers to the Office of Thrift Supervision, individually or collectively, to whom this subpoena is addressed, and any owner, director, officer, employee, agent, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, and other Persons purporting to act on your behalf.

67. The "3.67 Billion Transfer" means the transfer of approximately \$3.67 billion of deposit liabilities owed to WMI from WMB to WMB fsb that occurred on or about September 19, 2008 and was recorded on or about September 24, 2008.

68. The "'985 patent" means or refers to United States Patent No. 6,681,985, entitled "System For Providing Enhanced Systems Management, Such As in Branch Banking," which WMI owns by assignment.

69. Any ambiguity in a discovery request shall be construed to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

REQUESTS

The Debtors request the following documents:

1. Your file on JPMC's acquisition of the assets of Washington Mutual Bank and Washington Mutual Bank fsb, as well as other former subsidiaries of Washington Mutual, Inc.
2. All documents concerning, or communications with, Washington Mutual.
3. All documents concerning communications with or among JPMC, any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.
4. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008, and/or (c) any communications with or among U.S. Treasury Secretary Hank Paulson and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jamie Dimon regarding Washington Mutual.
5. All documents concerning any potential or actual regulatory and/or supervisory actions, ratings, or examinations directed toward or taken with respect to Washington Mutual by any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and SEC, including but not limited to (a) OTS's decision to initiate discussions about Memorandums of Understanding with WMI and WMB, (b) the Memorandums of Understanding OTS issued to WMI and WMB on or about September 7, 2008, (c) any regulatory classification of Washington Mutual by the OTS, including without limitation any decision by

OTS to classify WMB as a "problem institution," and/or (d) U.S. Treasury Secretary Henry Paulson's "RTC plan" concerning Washington Mutual.

6. All documents concerning Washington Mutual's responses or potential responses to any regulatory and/or supervisory actions, ratings, or examinations by any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC.

7. All documents concerning Washington Mutual's efforts to raise capital and/or locate a potential merger partner or acquiror, including without limitation (a) any actual or possible acquisition or investment by any entity of any stake in Washington Mutual, including any communications with or among Banco Santander, Bankers Trust, Blackstone, Carlyle, Cerberus, Citigroup, JPMC, Oak Hill, TPG, TD Bank, and/or Wells Fargo and their affiliates; (b) any efforts to raise capital through the issuance of debt securities in December 2007 (including the issuance of approximately \$3 billion of debt securities on or about December 17, 2007); (c) any actual, potential, or contemplated bids for Washington Mutual and/or the bidding process for Washington Mutual; (d) any efforts to raise capital and/or locate a potential merger partner or acquiror during the first quarter of 2008; (e) TPG's investment of about \$7.2 billion into Washington Mutual on or about April 7, 2008; and/or (f) any efforts to raise capital and/or locate a potential merger partner or acquiror in September 2008, including any efforts by Goldman Sachs and/or Morgan Stanley on Washington Mutual's behalf.

8. All documents concerning any meetings and/or communications between JPMC and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, concerning Washington Mutual including (a) any meetings on or

6. All documents concerning the Pro Forma Statement of Condition filed with the FDIC by JPMC, including any internal communications or communications between the FDIC and JPMC related to the Pro Forma Statement of Condition.

7. All documents related to the Electronic Database, including any internal communications or communications between the FDIC and JPMC related to the Electronic Database.

8. All documents concerning Section 3.5 of the P&A Agreement entitled "Assets Not Purchased by Assuming Bank" and Schedule 3.5 of the P&A Agreement entitled "Certain Assets Not Purchased," including any internal communications or communications between JPMC and any third party related to Section 3.5 and/or Schedule 3.5.

9. All documents concerning Section 2.1 of the P&A Agreement, under which JPMC "expressly assumes . . . all of the liabilities of [WMB] which are reflected on the Books and Records of [WMB]," and Schedule 2.1 of the P&A Agreement entitled "Certain Liabilities Not Purchased," including any internal communications or communications between JPMC and any third party related to Section 2.1 and/or Schedule 2.1.

10. All documents concerning any of the Disputed Assets, including:

(a) any internal communications or communications between FDIC and JPMC or any third party related to the Disputed Assets,

(b) all documents concerning ownership of the Disputed Assets, including whether any of the Disputed Assets were owned by the Debtors, WMB, or WMB fsb,

(c) all documents concerning the FDIC's knowledge or consideration of the potential voidability of any transfer of any of the Disputed Assets, and

(d) all documents concerning the FDIC's accounting treatment of the Disputed Assets.

about March 28, 2008, (b) any meetings between JPMC and the U.S. Department of the Treasury in April 2008, and/or (c) any meetings on or about July 18, 2008.

9. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

10. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to any Governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

11. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

12. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" at Washington Mutual for the purpose of obtaining confidential Washington Mutual information, which JPMC used "to bargain and work with federal regulators for the seizure and sale of Washington Mutual's assets," *see* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.* at ¶ 38.

13. All documents concerning JPMC's interest in any potential Transaction and any attempt by JPMC to engage in any potential Transaction, including but not limited to any actual, potential, or contemplated bid or offer by JPMC to merge with, invest in, or purchase

Washington Mutual, including but not limited to (a) Washington Mutual's rejection of JPMC's offer to merge with, invest in, or acquire Washington Mutual in or about April 2008, (b) capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008, and/or (c) any agreement or arrangement between JPMC and any Government Unit, including but not limited to the FDIC, OTS, OCC, Federal Reserve, SEC and/or the U.S. Department of the Treasury, concerning any potential transaction in which JPMC might or did acquire WMB, or any stake or portion of WMB.

14. All documents concerning the potential for WMB to be seized by OTS and the decision to seize WMB, as well as the potential for the FDIC to be appointed receiver of WMB and the decision to place WMB into receivership with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that "the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely" and that the FDIC "would want to immediately auction off [WMB's] assets." *See Heidi N. Moore, Deal Journal, Wall St. J., Sept. 30, 2008, at C7.*

15. All documents concerning the FDIC's efforts in September 2008 to restore JPMC's access to Washington Mutual data.

16. All documents concerning the bid process established by the FDIC for the purchase of WMB, including but not limited to (a) all documents concerning any communication with or among JPMC, any Government Unit and/or any third party about the bid process and (b) all documents concerning bids or indications of interest received by the FDIC, including copies of bids or indications of interest from JPMC and Citigroup.

17. All documents concerning the following statement, in form or in substance, from Citigroup to the FDIC: "We recognize that our approach does not conform to the bidding

11. All documents concerning whether or not WMI was insolvent at any time.
12. All documents concerning the Deposit Accounts, including any internal communication or communication with any third party regarding the nature of the funds in the Deposit Accounts.
13. All documents concerning any transfer of the Deposit Accounts to JPMC pursuant to the P&A, including documents concerning JPMC's assumption of the liability of the Deposit Accounts through the P&A Agreement.
14. All documents concerning Section 9.5 of the P&A Agreement, including all documents and communications regarding any drafting, interpretation or application of Section 9.5.
15. All documents concerning communications with JPMC regarding Section 9.5 of the P&A Agreement.
16. All documents concerning the meaning, understanding, interpretation, or enforcement of language in Section 9.5 of the P&A Agreement.
17. All documents concerning the FDIC's rights regarding Section 9.5 of the P&A Agreement, including correspondence with third parties other than JPMC regarding that provision as it exists in this or other similar agreements with the FDIC.
18. All documents concerning the Capital Contributions, including WMI's transfer of the Capital Contributions to WMB and the FDIC's knowledge or consideration of the financial position of both WMI and WMB at the times of each Capital Contribution respectively.
19. All documents concerning the potential seizure of WMB's assets when WMI made each of the Capital Contributions to WMB.

instructions for Washington Mutual. We believe, however, that our suggested approach will in fact provide greater systemic ability and lower losses than would any conforming bid. . . . [W]e would expect that, consistent with the FDIC's statutory obligation under the 'least-cost' test, this construct would be offered to all potential bidders in a new round of bidding." *See* Citigroup Bid Letter to FDIC, at 4.

18. All documents concerning the FDIC's analysis, evaluation, and/or consideration of any bids concerning Washington Mutual (including Citigroup's bid), including whether or not to open a new round of bidding.

19. All documents concerning the FDIC's consideration of and decision to "modify the standard indemnification to include a limited indemnity in favor of JPMorgan Chase in an amount not to exceed \$500 million for any damages JPMorgan Chase may sustain as a result of litigation brought by WMI against JPMorgan Chase for violation of the agreement between WMI and JPMorgan Chase dated March 11, 2008," including all documents concerning JPMC's request for such an indemnification provision. *See* 9/24/08 Memorandum from James Wigand and Herbert Held to FDIC Board of Directors and FDIC Board of Directors Resolution Approving P&A Transaction.

20. All documents concerning the FDIC's decision to enter into the P&A Agreement with JPMC, as opposed to a straight liquidation of WMB's assets and liabilities.

21. Documents sufficient to identify Resolution No. 062393, dated May 6, 1997, as amended (the "Robinson Resolution (Third)"), including a copy of Robinson Resolution (Third).

22. All documents concerning the FDIC's consideration of and decision to "waive[] the restriction on application of the Robinson Resolution (Third) to institutions with assets less than \$1 billion and invoke[] application of the Robinson Resolution (Third) with respect to

[WMB]." *See* FDIC Board of Directors Resolution Board of Directors Approving JPMC's Bid for WMB, at 6.

23. All documents concerning any OCC indication to OTS, FDIC, and/or JPMC that "as the federal regulator of JPMorgan Chase . . . it will provide its approval of the transfer of assets and liabilities [of WMB to JPMC] on September 25, 2008." *See* FDIC Board of Directors Resolution Board of Directors Approving JPMC's Bid for WMB, at 4.

24. All documents concerning OTS's determination that "WMB met the well-capitalized standards through the date of receivership." *See* OTS Fact Sheet, Sept. 25, 2008.

25. All documents concerning OTS's determination that "adverse publicity" caused WMB to "suffer[] significant cash outflows." *See* OTS Order 2008-36, dated September 25, 2008.

1. All documents concerning FDIC's decision to enter into the P&A Agreement with JPMC, including any internal communications or communications with JPMC or any third party regarding the P&A Agreement.

2. All documents concerning the P&A Agreement, including any drafts or revisions.

3. All documents concerning any valuation of WMB's assets and liabilities that JPMC acquired pursuant to the P&A Agreement.

4. All documents concerning any assessment, evaluation, or analysis of the consideration provided by JPMC under the P&A Agreement, including but not limited to the assumption of any liabilities.

5. All documents concerning any assessment, evaluation, or analysis of the Purchase Price, including any communications between the FDIC and JPMC or any third party, including the OTS, concerning the Purchase Price.

20. All documents concerning any transfer of the Capital Contributions to JPMC through the P&A Agreement.

21. All documents concerning whether or not WMI received a direct and/or indirect benefit from any transfer of the Capital Contributions to WMB, including any documents concerning whether WMB was insolvent at the time of any such transfer and whether WMI's shares in WMB were valueless.

22. All documents concerning the Preferential Transfers, including WMI's transfer of the Preferential Transfers to WMB and FDIC's knowledge or consideration of the financial condition of WMI at the times of each Preferential Transfer, respectively.

23. All documents concerning whether or not at the time of the Preferential Transfers, WMB and WMB fsb were both "insiders" of WMI and "creditors" of WMI as those terms are defined in the Bankruptcy Code or under applicable non-bankruptcy law.

24. All documents concerning the Trust Securities, including whether the Trust Securities were transferred to WMB or JPMC pursuant to the Assignment Agreement and/or in satisfaction of the Downstream Undertakings.

25. All documents concerning whether or not WMI received a direct and/or indirect benefit in exchange for any transfer of the Trust Securities, including any documents concerning whether WMB was insolvent at the time of any transfer and whether WMI's shares in WMB were valueless.

26. All documents concerning whether or not the Trust Securities were transferred to JPMC under the P&A Agreement.

27. All documents concerning record title to the Trust Securities, including as reflected at the Depository Trust Corporation or elsewhere, and whether or not there are transfer notations registering the Trust Securities to WMB.

28. All documents concerning JPMC's decision to not submit a bid for the Trust Securities pursuant to Section 3.2(b) of the P&A Agreement.

29. All documents concerning the Tax Refunds, including all documents concerning JPMC's interest in or rights to the Tax Refunds, including but not limited to, whether or not JPMC acquired any interest in or rights to the Tax Refunds arising from the sale of assets to JPMC by the FDIC.

30. All documents concerning the Tax Sharing Agreement.

31. All documents concerning the Intercompany Amounts Due, including JPMC's assumption of the Intercompany Amounts Due under the P&A.

32. All documents concerning the Goodwill Litigation Judgments and any interest in or right to any portion of such Goodwill Litigation Judgments.

33. All documents concerning the Legacy Rabbi Trusts and any interest in or right to such Legacy Rabbi Trusts.

34. All documents concerning the WaMu Pension Plan and any interest in or right therein, including whether or not the WaMu Pension Plan was purchased by JPMC under the terms of the P&A Agreement.

35. All documents concerning the BOLI-COLI Policies and the Split-Dollar Policies and any interest in or right to such Policies, including all documents concerning whether or not those Policies were purchased by JPMC under the terms of the P&A Agreement.

36. All documents concerning the Visa Shares and any interest in or right therein, including all documents concerning the issuance of the shares in the name of WMI and JPMC's allegation in Paragraph 171 of its Complaint in the JPMC Adversary Proceeding that the Visa Shares were "owned by WMB," and all documents concerning whether or not the Visa Shares were purchased by JPMC under the terms of the P&A Agreement.

37. All documents concerning the Intangible Assets and any interest in or right therein, and all documents concerning whether or not the Intangible Assets were purchased by JPMC under the terms of the P&A Agreement.

38. All documents concerning the WaMu Marks, Secondary Marks, and WaMu Domain Names and any interest in or right therein, as well as all documents concerning JPMC's use of the WaMu Marks, Secondary Marks, and WaMu Domain Names.

39. All documents concerning whether or not the WaMu Marks, Secondary Marks, and/or WaMu Domain Names were purchased by JPMC under the terms of the P&A Agreement.

40. All documents concerning whether or not the '985 patent was purchased by JPMC under the terms of the P&A Agreement.

41. All documents concerning the Vendor Contracts, including all documents concerning the Vendor Stipulation, all documents concerning any of JPMC's and WMB's unpaid obligations in connection with certain of the Vendor Contracts, and all documents concerning whether the Vendor Contracts were transferred to JPMC under the terms of the P&A Agreement.

42. All documents concerning furniture, fixtures, and equipment owned by Debtors, including documents reflecting whether or not the FDIC transferred Debtors' ownership interest in such assets to JPMC under the terms of the P&A Agreement.

43. All documents concerning the Proof of Claim submitted by WMI to the FDIC on December 30, 2008, including any internal communication or communication with any third party regarding that Proof of Claim.

44. All documents concerning the FDIC's January 23, 2009 decision to disallow the Proof of Claim submitted by WMI on December 30, 2008, including any internal communication or communication with any third party regarding the FDIC's disallowance of WMI's Proof of Claim.

45. All documents concerning any assessment, evaluation, consideration or analysis of Washington Mutual's financial condition from January 1, 2007 through September 26, 2008, including but not limited to Washington Mutual's debts, assets (including, but not limited to, any assets not acquired by JPMC), liabilities, financial resources and capital, business reputation, and/or credit rating.

46. All documents, including communications, between Sheila Bair, James Wigand, or David Gearin and anyone at JPMC concerning the P&A Agreement, WMI, or WMB.

47. All documents regarding communications between FDIC and the Federal Deposit Insurance Corporation in its corporate capacity regarding JPMC, WMI, WMB, or the P&A Agreement.

48. All documents that refer or relate to FDIC's defenses as asserted in the Answer of Defendant Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank.

EXHIBIT C

quinn emanuel trial lawyers | los angeles

865 South Figueroa Street, 10th Floor, Los Angeles, California 90017 | TEL 213-443-3000 FAX 213-443-3100

December 15, 2009

Executive Secretary
FDIC
550 17th Street NW
Washington, DC 20439

Re: Expedited Request for FDIC Exempt Records and Information

Dear Sir/Madam:

Our law firm represents Washington Mutual Inc. and Washington Mutual Investment Corp. (collectively "Debtors") in *In re Washington Mutual, Inc.*, et al., No. 08-12229 (MFW) (Bankr. D. Del.), *In re Washington Mutual, Inc.*, et al., Adv. Proc. No. 09-50551 (Bankr. D. Del.) and *In re Washington Mutual, Inc.*, et al., Adv. Proc. No. 09-50934 (Bankr. D. Del.). We write to formally request documents pursuant to 12 C.F.R. § 4.33 *et seq.* (subject to a complete reservation of rights to also pursue the requested information by additional means as well). A list of the categories of documents requested is attached hereto as Exhibit A.

The documents requested relate to an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and adversary proceedings in the Delaware bankruptcy Court. (A copy of the Rule 2004 orders and requests granted thereby, as well pleadings from the adversary proceedings, are attached as Exhibits B, C, D, E, and F.) The Rule 2004 examination, which the Court approved, is an inquiry into whether business torts may have been committed by JPMorgan Chase Bank, N.A. ("JPMC") in connection with its purchase of Washington Mutual assets from receivership in September 2008. More specifically, Debtors' motion for a Rule 2004 examination, which the Court granted, sought an examination pursuant to Bankruptcy Rule 2004 to investigate potential claims against JPMC based on alleged misconduct that is the subject of a recently filed lawsuit then pending in Texas federal court, captioned *American Nat'l Ins. Co. et al. v. JPMorgan Chase & Co.*, et. al. 3:09cv-0044, (S.D. Tex. Feb. 16, 2009) (the "American National Action"). Ex. G, hereto, Motion for Order ¶ 1. The *American National* Complaint alleges that as part of its scheme to acquire Washington Mutual Bank, JPMC "gathered non-public information" about Washington Mutual from the OCC, OTS, FDIC, and the Federal Reserve. *Id.* at ¶ 40 That Complaint also contains allegations that JPMC misused its insider status and access to regulators to leak confidential WMI information

quinn emanuel urquhart oliver & hedges, llp

NEW YORK | 51 Madison Avenue, 22nd Floor, New York, New York 10010 | TEL 212-849-7000 FAX 212-849-7100

SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111 | TEL 415-875-6600 FAX 415-875-6700

SILICON VALLEY | 555 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL 650-801-5000 FAX 650-801-5100

TOKYO | Akasaka Twin Tower Main Building, 6th Floor, 17-22 Akasaka 2-Chome, Minato-ku, Tokyo 107-0052, Japan | TEL +81-3-5561-1711 FAX +81-3-5561-1712

and wrongfully influence government policy and actions. Additionally, the two adversary complaints concern ownership rights to various assets.

We understand that the FDIC has documents relevant to these issues, which may include documents regarding the following categories:

- The FDIC was in communication with WMI concerning regulatory issues and established the bid process for WMB.
- The FDIC's analysis of the value of WMB assets that it sold to JPMC.
- The FDIC's communications with Washington Mutual and the OTS regarding WMB's ability to meet its liquidity obligations. In particular, members of WMB including former CEO Kerry Killinger met with regulators from the OTS and FDIC Chairwoman Sheila Bair in July. At that meeting, Bair expressed concern over WMI's financial status and disagreed with OTS representatives over various actions with respect to WMI, including the appropriate CAMELS rating.¹
- FDIC meetings regarding WMI and its liquidity, as well as FDIC internal communications regarding FDIC. For example, public sources have reported that "Bair alone sent more than 40 emails with WaMu as the subject during" the time between the July meeting and the receivership. *See Grind, supra.*
- JPMC's communications with the FDIC regarding the potential acquisition of WMB. Prior to JPMC submitting its March 31, 2008 bid to acquire WMI's business, JPMC discussed the potential acquisition with regulators and sought government assistance in a deal. After WMI rejected JPMC's March 2008 bid in favor of a \$7.2 billion investment from private equity firms, JPMC continued to meet with regulators to discuss a potential acquisition of WaMu.
- The extent to which JPMC and the FDIC worked together in advance of the placement of WMB into receivership to arrange a deal for JPMC to acquire WMB. In early September, three weeks before WMB was seized, FDIC officials informed JPMC that "the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely" and that the FDIC "would want to immediately auction off [WMB's] assets."²

¹ Kirsten Grind, *Why did regulators abruptly close Washington Mutual when it had the cash to operate? Help was coming in six days*, PUGET SOUND BUS. J., Dec. 4, 2009, at <http://seattle.bizjournals.com/seattle/stories/2009/12/07/story1.htm>.

² *See* Heidi N. Moore, Deal Journal, Wall St. J., Sept. 30, 2008, at C7.

- The extent to which, in the days leading up to JPMC's acquisition of WMB from the FDIC, the FDIC worked with JPMC to consummate a deal on terms acceptable to JPMC.

To the extent that this information reflects internal agency deliberations that another agency does not have, this information can only be obtained from the FDIC. Moreover, it is possible that the FDIC has communications with others that are not or no longer available elsewhere. Thus, there are no other available means for WMI to obtain these documents.

Given the importance of this litigation, WMI respectfully submits that its need for this information outweighs public interest in confidentiality and the FDIC's burden. We are willing, however, to ensure that an appropriate confidentiality agreement is in place to limit disclosure of these documents.

This is an expedited request. The litigation is proceeding quickly and the information requested is required for prompt and fair adjudication of the parties' rights. Under the schedule currently subject to negotiation, discovery is anticipated to end by approximately May 2009. WMI is prepared to work with the FDIC to alleviate any burdens and to expedite the process.

We also request that, should you determine that some portions of any of the requested documents are purportedly exempt from disclosure, you produce the documents in part while redacting the assertedly exempt portions of the documents, and provide an index describing the redacted materials in detail and specifying the asserted basis for any redaction. If any of the requested information is in published form and currently available to the general public without a request, ask that you provide the citation.

We are prepared to arrange for payment of reasonable costs for producing the requested information, provided that you contact us in advance to discuss the estimated costs. (The requester is a commercial user for fee purposes).

We have also been in contact with Ashley Doherty, representing the FDIC in its corporate capacity in the case, and with John J. Clarke of DLA Piper, representing the FDIC as receiver, in order to try and reach agreement on the scope and timing of discovery. While we hope to reach resolution on these issues through that process, we are following these procedures as well out of an abundance of caution and without waiving our rights to any other forms or means of discovery. We also plan to seek information by way of subpoena in the adversary proceeding.

Please do not hesitate to contact me with any questions at 212-849-7250. Thank you for your assistance with this request. In addition, the contact information for counsel to each party in the bankruptcy proceeding is attached hereto in Exhibit H.

Very truly yours,

A handwritten signature in cursive script that reads "David Elsberg".

David Elsberg
03935.61559/3237226.1

Counsel for Debtors in *In re Washington Mutual, Inc.*, et al., No. 08-12229 (MFW) (Bankr. D. Del.), *In re Washington Mutual, Inc., et al.*, Adv. Proc. No. 09-50551 (Bankr. D. Del.) and *In re Washington Mutual, Inc., et al.*, Adv. Proc. No. 09-50934 (Bankr. D. Del)

cc: Ashley Doherty, representing the FDIC in its corporate capacity; John J. Clarke of DLA Piper, representing the FDIC as receiver

EXHIBIT A

REQUESTS

DEFINITIONS

The following terms (whether or not capitalized) have the meanings set forth below:

1. "Additional Intercompany Receivables" means or refers to any intercompany receivables in addition to the Intercompany Receivables accrued payable from WMB to WMI pursuant to service agreements which would fall under the Administrative Services Agreement that operated to benefit WMB or one of its subsidiaries prior to the Petition Date.
2. "Adversary Proceedings" means or refers to the JPMC Adversary Proceeding and the Turnover Proceeding.
3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
4. "Any," "all" and "each" shall be construed broadly, and shall mean any, all, and each as necessary to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.
5. "Banco Santander" means Banco Santander, S.A., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
6. "Blackstone" means the Blackstone Group, L.P., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.
7. "BOLI-COLI Policies" means or refers to certain bank-owned and corporation-owned life insurance policies reflected on WMI's books and records, as well as such polices reflected on

WMB's books and records, including (1) BOLI policies issued by Pacific Life, bearing list bills 7675A and 7729A and (2) ING Security Life List Bills E208090000 and E208090001.

8. "Capital Contributions" means any capital contributions that WMI made to WMB or WMB fsb from November 1, 2007 through September 2008, including the \$6.5 billion in capital contributions that WMI made to WMB from December 2007 through September 2008.

9. "Carlyle" means Carlyle Group LLC, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

10. "Cerberus" means Cerberus Capital Management, L.P., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

11. "Chapter 11 case" means or refers to *In re Washington Mutual, Inc.*, No. 08-12229 (Bankr. D. Del).

12. "Citigroup" means Citigroup, Inc. and Citibank, N.A., and all of their predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

13. "Communication" means any oral, written or electronic transmission of information, fact, opinion, belief, idea, statement, inquiry or otherwise, including without limitation any letter, correspondence, memorandum, electronic-mail message, note or meeting log, conversation, meeting, discussion, telephone call, facsimile, telegram, telex, conference or message.

14. "Concerning" means comprising, consisting of, concerning, referring to, reflecting, regarding, supporting, evidencing, relating to, prepared in connection with, used in preparation

for, or being in any way legally, logically or factually concerned with the matter or document described, referred to or discussed.

15. "DC Action" refers to *Washington Mutual, Inc. and WMI Investment Corp. v. Federal Deposit Insurance Corporation*, No. 1:09-cv-00533 (D.D.C.).

16. "Deposit Accounts" means or refers to approximately \$4 billion that Debtors held in five demand deposit accounts with WMB bearing account numbers 179-165066-7, 177-891120-6, 181-252962-6, 314-197966-3, 314-197470-4, and a sixth demand deposit account in WMB fsb bearing account number 441-006423-4, in addition to the accounts themselves and related deposit liabilities, that were transferred to, and now held and maintained by JPMC.

17. "Disputed Assets" means or refers to those assets which JPMC has asserted an ownership right to in the JPMC Adversary Proceeding, including but not limited to the Trust Securities, Tax Refunds, Deposit Accounts, Goodwill Litigation Judgments, Legacy Rabbi Trusts, BOLI-COLI Policies, Split-Dollar Policies, Visa Shares, WaMu Pension Plan, Intangible Assets, Vendor Contracts, WaMu Marks, Secondary Marks, and the '985 patent.

18. "Document" is used in its broadest sense and mean and include any written or graphic matter or other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copy or otherwise, including but not limited to, correspondence, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins, meetings or other communications, interoffice and intraoffice telephone calls, diaries, chronological data, minutes, books, reports, studies, summaries, pamphlets, bulletins, printed matter, charts, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, cancelled checks, statements, transcripts, statistics, surveys, magazine or newspaper articles, releases (and any and all drafts, alterations and modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, microfiche, microfilm, videotape, records and motion pictures) and electronic,

mechanical or electric records or representations of any kind (including without limitation tapes, cassettes, discs and records).

19. "Exchange Event" means or refers to a conditional exchange feature that operated to exchange the Trust Securities into related classes of WMI preferred stock, or depository shares representing WMI preferred stock, upon the occurrence of certain events as directed by the OTS under certain circumstances (*i.e.*, WMB becoming undercapitalized, WMB being placed into receivership, or the OTS anticipating WMB becoming undercapitalized in the near future).

20. "FDIC" means or refers to the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank, Henderson Nevada and in its corporate capacity.

21. "Federal Reserve" means the Board of Governors of the Federal Reserve System and the twelve Federal Banks; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

22. "Fitch" means Fitch Inc., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

23. "Goldman Sachs" means The Goldman Sachs Group, Inc., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

24. "Goodwill Litigation Judgments" means or refers to the \$356,454,911 judgment entered in *Anchor Savings Bank, FSB v. United States*, No. 95-872C (Fed. Cl.), and the \$55,028,000 partial judgment entered in *American Savings Bank, F.A. v. United States*, No. 92-872C (Fed. Cl.).

25. "Governmental Unit" has the meaning set forth at 11 U.S.C. § 101(27).

26. "Including" means including but not limited to the referenced subject.

27. "Intercompany Amounts Due" means the Non-Debtor Subsidiary Promissory Notes, the Intercompany Receivables, and the Additional Intercompany Receivables.

28. "Intercompany Receivables" means those certain intercompany receivables, with account numbers 28101,28120, 28025, initially owed WMI by WMB or its subsidiary WaMu Capital Corp. in the approximate amount of \$22.5 million.

29. "JPMC" means JPMorgan Chase Bank, National Association and JPMorgan Chase & Co., and any of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

30. "JPMC Adversary Proceeding" refers to *JPMorgan Chase Bank, National Association v. Washington Mutual, Inc., et al.*, Adversary Proceeding No. 09-50551 (Bankr. D. Del.).

31. "Legacy Rabbi Trusts" means or refers to the trusts that, in the aggregate, are valued at over \$550 million that were established to fund benefits promised under various non-qualified deferred compensation and retirement plans of predecessor institutions that were acquired by certain Washington Mutual entities, including (1) The Dime Benefit Protection Trust; (2) Umbrella Trust with respect to the Covered Arrangements for Outside Directors of The Dime Savings Bank of New York, FSB and Related Entities; (3) Umbrella Trust with respect to the Covered Arrangements of The Dime Savings Bank of New York, FSB and Related Entities; (4) Umbrella Trust with respect to Designated Arrangements of The Dime Savings Bank of New York, FSB and Related Entities; (5) the Great Western Financial Corporation Umbrella Trust for Senior Officers; (6) the Great Western Financial Corporation Umbrella Trust for Directors; and (7) Providian Financial Corporation Deferred Compensation and Benefits Trust). "Lehman Brothers" means Lehman Brothers Holdings, Inc., and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and

former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

32. "Morgan Stanley" means Morgan Stanley, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

33. "Moody's" means Moody's Investors Service, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

34. "Non-Debtor Subsidiary Promissory Notes" means those certain notes issued by WMB and held by certain of WMI's non-bank, non-Debtor subsidiaries, H.S. Loan Corporation, H.S. Loan Partners, WMHFA Delaware Holdings LLC, and WMRP Delaware Holdings LLC, as predecessor in interest to PCA Asset Holdings LLC, in an approximate amount of \$177 million.

35. "Oak Hill" means Oak Hill Capital Partners, and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

36. "OCC" means the Office of the Comptroller of the Currency, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

37. "OTS" means the Office of Thrift Supervision, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

38. "P&A Agreement" means or refers to the Purchase and Assumption Agreement, Whole Bank, among the Federal Deposit Insurance Corporation, as receiver of Washington

Mutual Bank, Henderson, Nevada, the Federal Deposit Insurance Corporation and JPM, dated as of September 25, 2008.

39. "Petition Date" means or refers to September 26, 2008.

40. "Purchase Price" means the approximately \$1.9 billion JPMC paid to the FDIC for the assets of WMB.

41. "RTC" means the Resolution Trust Corporation, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

42. "P&A Agreement" means or refers to the Purchase and Assumption Agreement, Whole Bank, among the Federal Deposit Insurance Corporation, as receiver of Washington Mutual Bank, Henderson, Nevada, the Federal Deposit Insurance Corporation and JPM, dated as of September 25, 2008.

43. "SEC" means the U.S. Securities and Exchange Commission and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

44. "S&P" means Standard and Poor's Corporation and all of its predecessors and successors in interest, as well as all of its parents, subsidiaries, divisions, and affiliates; any of its present and former partners, officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

45. "Secondary Marks" means or refers to the approximately 140 trademark and service mark registrations owned by WMI, each in connection with various lines of business of the WaMu corporate family.

46. "Split-Dollar Policies" means or refers to BOLI policies originally acquired by predecessor institutions that were later acquired by certain Washington Mutual entities, in which the company and the insured employees' designated beneficiary split the insurance proceeds, including the 955 Split Dollar Policies that formerly belonged to Commercial Capital Bancorp Inc. when it merged into WMB in April 2006.

47. "Tax Refunds" means or refers to local, state, and/or federal tax refunds owed to Washington Mutual for the tax years 1990 through 2008, including taxes payable to WMI from any tax agency, regardless of whether such refunds are at all attributable to taxes paid by WMI in respect of WMB or its subsidiaries or any of WMI's other subsidiaries.

48. "Tax Sharing Agreement" means or refers to that certain agreement dated August 31, 1999 between WMI, WMB, WMB fsb, and certain other direct and indirect subsidiaries of WMI and WMB, pursuant to which taxes were paid directly by WMI on behalf of the consolidated tax group, which includes WMB and its subsidiaries.

49. "TD Bank" means TD Bank, N.A., and all of its predecessors and successors in interest, as well as all of its partners, parents, subsidiaries, divisions, and affiliates; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

50. "Texas Action" refers to *American Nat'l Ins. Co., et al., v. JPMorgan Chase & Co., et al.*, Case No. 3:09-cv-00044 (S.D. Tex.), which has been transferred to the United States District Court for the District of Columbia.

51. "TPG" means TPG Capital (formerly Texas Pacific Group), and all of its predecessors and successors in interest, as well as all of its partners, parents, subsidiaries, divisions, and affiliates; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

52. "Transaction" means or refers to any means by which JPMorgan Chase might obtain, receive or succeed to Washington Mutual's businesses or properties, or any portion thereof, or any transaction preliminary, preparatory or incident thereto, including any stock tender, stock purchase, asset purchase, assumption of deposit or other liabilities, merger, joint venture or partnership.

53. "Trust Securities" means or refers to the two series of fixed-rate preferred securities, each issued by Washington Mutual Preferred Funding (Cayman) Ltd., and four series of fixed-to-

floating preferred trust securities, each issued by Delaware trusts, between March 2006 and October 2007.

54. "Turnover Proceeding" means *WMI and WMI Investment Corp. v. JPMC*, No. 09-50934 (Bankr. D. Del.).

55. "U.S. Department of the Treasury" means or refers to the U.S. Department of the Treasury and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

56. "Vendor Contracts" means or refers to WMI's numerous agreements with vendors who lease property, perform services, deliver goods, or license software that provide benefit to the banking operations formerly owned by WMB.

57. "Visa Shares" means or refers to the 3,147,059 Class B common shares in Visa, Inc. issued as part of Visa's restructuring and initial public offering, which occurred in or about March 2008, that were allocated to Washington Mutual.

58. "WaMu Domain Names" means or refers to approximately 1350 domain names owned by WMI, some of which contain the WaMu Marks and/or Secondary Marks, including, but not limited to wamu.com, washingtonmutual.com, and wamubank.com, and numerous other domain names related to advertising.

59. "WaMu Marks" means or refers to the more than 80 federal trademark registrations and applications comprising a family of Washington Mutual trademarks owned by WMI, including but not limited to the marks "WAMU," "WASHINGTON MUTUAL," and the "W Logo" for a variety of services including but not limited to banking, credit card, lending, investment and other financial services as well as community, education and philanthropic oriented services.

60. "WaMu Pension Plan" means or refers to the WMI-sponsored tax qualified cash balance pension plan.

61. "Washington Mutual" means or refers to WMI and WMB, and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys,

accountants, outside consultants, representatives and other persons acting or purporting to act on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

62. "Wells Fargo" means Wells Fargo, N.A., and all of its predecessors and successors in interest, as well as all of its partners, parents, subsidiaries, divisions, and affiliates; any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

63. "WMB" means or refers to Washington Mutual Bank, Henderson, Nevada, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

64. "WMB fsb" means or refers to Washington Mutual Bank, fsb, Utah, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

65. "WMI" means or refers to Washington Mutual, Inc. and WMI Investment Corp. (collectively, the "Debtors") and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

66. "You" or "Your" means or refers to the Office of Thrift Supervision, individually or collectively, to whom this subpoena is addressed, and any owner, director, officer, employee, agent, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, and other Persons purporting to act on your behalf.

67. The "3.67 Billion Transfer" means the transfer of approximately \$3.67 billion of deposit liabilities owed to WMI from WMB to WMB fsb that occurred on or about September 19, 2008 and was recorded on or about September 24, 2008.

68. The "'985 patent" means or refers to United States Patent No. 6,681,985, entitled "System For Providing Enhanced Systems Management, Such As in Branch Banking," which WMI owns by assignment.

69. Any ambiguity in a discovery request shall be construed to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

REQUESTS

The Debtors request the following documents:

1. Your file on JPMC's acquisition of the assets of Washington Mutual Bank and Washington Mutual Bank fsb, as well as other former subsidiaries of Washington Mutual, Inc.
2. All documents concerning, or communications with, Washington Mutual.
3. All documents concerning communications with or among JPMC, any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.
4. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008, and/or (c) any communications with or among U.S. Treasury Secretary Hank Paulson and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jamie Dimon regarding Washington Mutual.
5. All documents concerning any potential or actual regulatory and/or supervisory actions, ratings, or examinations directed toward or taken with respect to Washington Mutual by any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and SEC, including but not limited to (a) OTS's decision to initiate discussions about Memorandums of Understanding with WMI and WMB, (b) the Memorandums of Understanding OTS issued to WMI and WMB on or about September 7, 2008, (c) any regulatory classification of Washington Mutual by the OTS, including without limitation any decision by

OTS to classify WMB as a "problem institution," and/or (d) U.S. Treasury Secretary Henry Paulson's "RTC plan" concerning Washington Mutual.

6. All documents concerning Washington Mutual's responses or potential responses to any regulatory and/or supervisory actions, ratings, or examinations by any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC.

7. All documents concerning Washington Mutual's efforts to raise capital and/or locate a potential merger partner or acquiror, including without limitation (a) any actual or possible acquisition or investment by any entity of any stake in Washington Mutual, including any communications with or among Banco Santander, Bankers Trust, Blackstone, Carlyle, Cerberus, Citigroup, JPMC, Oak Hill, TPG, TD Bank, and/or Wells Fargo and their affiliates; (b) any efforts to raise capital through the issuance of debt securities in December 2007 (including the issuance of approximately \$3 billion of debt securities on or about December 17, 2007); (c) any actual, potential, or contemplated bids for Washington Mutual and/or the bidding process for Washington Mutual; (d) any efforts to raise capital and/or locate a potential merger partner or acquiror during the first quarter of 2008; (e) TPG's investment of about \$7.2 billion into Washington Mutual on or about April 7, 2008; and/or (f) any efforts to raise capital and/or locate a potential merger partner or acquiror in September 2008, including any efforts by Goldman Sachs and/or Morgan Stanley on Washington Mutual's behalf.

8. All documents concerning any meetings and/or communications between JPMC and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, concerning Washington Mutual including (a) any meetings on or

about March 28, 2008, (b) any meetings between JPMC and the U.S. Department of the Treasury in April 2008, and/or (c) any meetings on or about July 18, 2008.

9. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

10. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to any Governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

11. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

12. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" at Washington Mutual for the purpose of obtaining confidential Washington Mutual information, which JPMC used "to bargain and work with federal regulators for the seizure and sale of Washington Mutual's assets," *see* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.* at ¶ 38.

13. All documents concerning JPMC's interest in any potential Transaction and any attempt by JPMC to engage in any potential Transaction, including but not limited to any actual, potential, or contemplated bid or offer by JPMC to merge with, invest in, or purchase

Washington Mutual, including but not limited to (a) Washington Mutual's rejection of JPMC's offer to merge with, invest in, or acquire Washington Mutual in or about April 2008, (b) capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008, and/or (c) any agreement or arrangement between JPMC and any Government Unit, including but not limited to the FDIC, OTS, OCC, Federal Reserve, SEC and/or the U.S. Department of the Treasury, concerning any potential transaction in which JPMC might or did acquire WMB, or any stake or portion of WMB.

14. All documents concerning the potential for WMB to be seized by OTS and the decision to seize WMB, as well as the potential for the FDIC to be appointed receiver of WMB and the decision to place WMB into receivership with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that "the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely" and that the FDIC "would want to immediately auction off [WMB's] assets." *See Heidi N. Moore, Deal Journal, Wall St. J., Sept. 30, 2008, at C7.*

15. All documents concerning the FDIC's efforts in September 2008 to restore JPMC's access to Washington Mutual data.

16. All documents concerning the bid process established by the FDIC for the purchase of WMB, including but not limited to (a) all documents concerning any communication with or among JPMC, any Government Unit and/or any third party about the bid process and (b) all documents concerning bids or indications of interest received by the FDIC, including copies of bids or indications of interest from JPMC and Citigroup.

17. All documents concerning the following statement, in form or in substance, from Citigroup to the FDIC: "We recognize that our approach does not conform to the bidding

instructions for Washington Mutual. We believe, however, that our suggested approach will in fact provide greater systemic ability and lower losses than would any conforming bid. . . . [W]e would expect that, consistent with the FDIC's statutory obligation under the 'least-cost' test, this construct would be offered to all potential bidders in a new round of bidding." *See* Citigroup Bid Letter to FDIC, at 4.

18. All documents concerning the FDIC's analysis, evaluation, and/or consideration of any bids concerning Washington Mutual (including Citigroup's bid), including whether or not to open a new round of bidding.

19. All documents concerning the FDIC's consideration of and decision to "modify the standard indemnification to include a limited indemnity in favor of JPMorgan Chase in an amount not to exceed \$500 million for any damages JPMorgan Chase may sustain as a result of litigation brought by WMI against JPMorgan Chase for violation of the agreement between WMI and JPMorgan Chase dated March 11, 2008," including all documents concerning JPMC's request for such an indemnification provision. *See* 9/24/08 Memorandum from James Wigand and Herbert Held to FDIC Board of Directors and FDIC Board of Directors Resolution Approving P&A Transaction.

20. All documents concerning the FDIC's decision to enter into the P&A Agreement with JPMC, as opposed to a straight liquidation of WMB's assets and liabilities.

21. Documents sufficient to identify Resolution No. 062393, dated May 6, 1997, as amended (the "Robinson Resolution (Third)"), including a copy of Robinson Resolution (Third).

22. All documents concerning the FDIC's consideration of and decision to "waive[] the restriction on application of the Robinson Resolution (Third) to institutions with assets less than \$1 billion and invoke[] application of the Robinson Resolution (Third) with respect to

[WMB]." *See* FDIC Board of Directors Resolution Board of Directors Approving JPMC's Bid for WMB, at 6.

23. All documents concerning any OCC indication to OTS, FDIC, and/or JPMC that "as the federal regulator of JPMorgan Chase . . . it will provide its approval of the transfer of assets and liabilities [of WMB to JPMC] on September 25, 2008." *See* FDIC Board of Directors Resolution Board of Directors Approving JPMC's Bid for WMB, at 4.

24. All documents concerning OTS's determination that "WMB met the well-capitalized standards through the date of receivership." *See* OTS Fact Sheet, Sept. 25, 2008.

25. All documents concerning OTS's determination that "adverse publicity" caused WMB to "suffer[] significant cash outflows." *See* OTS Order 2008-36, dated September 25, 2008.

1. All documents concerning FDIC's decision to enter into the P&A Agreement with JPMC, including any internal communications or communications with JPMC or any third party regarding the P&A Agreement.

2. All documents concerning the P&A Agreement, including any drafts or revisions.

3. All documents concerning any valuation of WMB's assets and liabilities that JPMC acquired pursuant to the P&A Agreement.

4. All documents concerning any assessment, evaluation, or analysis of the consideration provided by JPMC under the P&A Agreement, including but not limited to the assumption of any liabilities.

5. All documents concerning any assessment, evaluation, or analysis of the Purchase Price, including any communications between the FDIC and JPMC or any third party, including the OTS, concerning the Purchase Price.

6. All documents concerning the Pro Forma Statement of Condition filed with the FDIC by JPMC, including any internal communications or communications between the FDIC and JPMC related to the Pro Forma Statement of Condition.

7. All documents related to the Electronic Database, including any internal communications or communications between the FDIC and JPMC related to the Electronic Database.

8. All documents concerning Section 3.5 of the P&A Agreement entitled "Assets Not Purchased by Assuming Bank" and Schedule 3.5 of the P&A Agreement entitled "Certain Assets Not Purchased," including any internal communications or communications between JPMC and any third party related to Section 3.5 and/or Schedule 3.5.

9. All documents concerning Section 2.1 of the P&A Agreement, under which JPMC "expressly assumes . . . all of the liabilities of [WMB] which are reflected on the Books and Records of [WMB]," and Schedule 2.1 of the P&A Agreement entitled "Certain Liabilities Not Purchased," including any internal communications or communications between JPMC and any third party related to Section 2.1 and/or Schedule 2.1.

10. All documents concerning any of the Disputed Assets, including:

(a) any internal communications or communications between FDIC and JPMC or any third party related to the Disputed Assets,

(b) all documents concerning ownership of the Disputed Assets, including whether any of the Disputed Assets were owned by the Debtors, WMB, or WMB fsb,

(c) all documents concerning the FDIC's knowledge or consideration of the potential voidability of any transfer of any of the Disputed Assets, and

(d) all documents concerning the FDIC's accounting treatment of the Disputed Assets.

11. All documents concerning whether or not WMI was insolvent at any time.
12. All documents concerning the Deposit Accounts, including any internal communication or communication with any third party regarding the nature of the funds in the Deposit Accounts.
13. All documents concerning any transfer of the Deposit Accounts to JPMC pursuant to the P&A, including documents concerning JPMC's assumption of the liability of the Deposit Accounts through the P&A Agreement.
14. All documents concerning Section 9.5 of the P&A Agreement, including all documents and communications regarding any drafting, interpretation or application of Section 9.5.
15. All documents concerning communications with JPMC regarding Section 9.5 of the P&A Agreement.
16. All documents concerning the meaning, understanding, interpretation, or enforcement of language in Section 9.5 of the P&A Agreement.
17. All documents concerning the FDIC's rights regarding Section 9.5 of the P&A Agreement, including correspondence with third parties other than JPMC regarding that provision as it exists in this or other similar agreements with the FDIC.
18. All documents concerning the Capital Contributions, including WMI's transfer of the Capital Contributions to WMB and the FDIC's knowledge or consideration of the financial position of both WMI and WMB at the times of each Capital Contribution respectively.
19. All documents concerning the potential seizure of WMB's assets when WMI made each of the Capital Contributions to WMB.

20. All documents concerning any transfer of the Capital Contributions to JPMC through the P&A Agreement.

21. All documents concerning whether or not WMI received a direct and/or indirect benefit from any transfer of the Capital Contributions to WMB, including any documents concerning whether WMB was insolvent at the time of any such transfer and whether WMI's shares in WMB were valueless.

22. All documents concerning the Preferential Transfers, including WMI's transfer of the Preferential Transfers to WMB and FDIC's knowledge or consideration of the financial condition of WMI at the times of each Preferential Transfer, respectively.

23. All documents concerning whether or not at the time of the Preferential Transfers, WMB and WMB fsb were both "insiders" of WMI and "creditors" of WMI as those terms are defined in the Bankruptcy Code or under applicable non-bankruptcy law.

24. All documents concerning the Trust Securities, including whether the Trust Securities were transferred to WMB or JPMC pursuant to the Assignment Agreement and/or in satisfaction of the Downstream Undertakings.

25. All documents concerning whether or not WMI received a direct and/or indirect benefit in exchange for any transfer of the Trust Securities, including any documents concerning whether WMB was insolvent at the time of any transfer and whether WMI's shares in WMB were valueless.

26. All documents concerning whether or not the Trust Securities were transferred to JPMC under the P&A Agreement.

27. All documents concerning record title to the Trust Securities, including as reflected at the Depository Trust Corporation or elsewhere, and whether or not there are transfer notations registering the Trust Securities to WMB.

28. All documents concerning JPMC's decision to not submit a bid for the Trust Securities pursuant to Section 3.2(b) of the P&A Agreement.

29. All documents concerning the Tax Refunds, including all documents concerning JPMC's interest in or rights to the Tax Refunds, including but not limited to, whether or not JPMC acquired any interest in or rights to the Tax Refunds arising from the sale of assets to JPMC by the FDIC.

30. All documents concerning the Tax Sharing Agreement.

31. All documents concerning the Intercompany Amounts Due, including JPMC's assumption of the Intercompany Amounts Due under the P&A.

32. All documents concerning the Goodwill Litigation Judgments and any interest in or right to any portion of such Goodwill Litigation Judgments.

33. All documents concerning the Legacy Rabbi Trusts and any interest in or right to such Legacy Rabbi Trusts.

34. All documents concerning the WaMu Pension Plan and any interest in or right therein, including whether or not the WaMu Pension Plan was purchased by JPMC under the terms of the P&A Agreement.

35. All documents concerning the BOLI-COLI Policies and the Split-Dollar Policies and any interest in or right to such Policies, including all documents concerning whether or not those Policies were purchased by JPMC under the terms of the P&A Agreement.

36. All documents concerning the Visa Shares and any interest in or right therein, including all documents concerning the issuance of the shares in the name of WMI and JPMC's allegation in Paragraph 171 of its Complaint in the JPMC Adversary Proceeding that the Visa Shares were "owned by WMB," and all documents concerning whether or not the Visa Shares were purchased by JPMC under the terms of the P&A Agreement.

37. All documents concerning the Intangible Assets and any interest in or right therein, and all documents concerning whether or not the Intangible Assets were purchased by JPMC under the terms of the P&A Agreement.

38. All documents concerning the WaMu Marks, Secondary Marks, and WaMu Domain Names and any interest in or right therein, as well as all documents concerning JPMC's use of the WaMu Marks, Secondary Marks, and WaMu Domain Names.

39. All documents concerning whether or not the WaMu Marks, Secondary Marks, and/or WaMu Domain Names were purchased by JPMC under the terms of the P&A Agreement.

40. All documents concerning whether or not the '985 patent was purchased by JPMC under the terms of the P&A Agreement.

41. All documents concerning the Vendor Contracts, including all documents concerning the Vendor Stipulation, all documents concerning any of JPMC's and WMB's unpaid obligations in connection with certain of the Vendor Contracts, and all documents concerning whether the Vendor Contracts were transferred to JPMC under the terms of the P&A Agreement.

42. All documents concerning furniture, fixtures, and equipment owned by Debtors, including documents reflecting whether or not the FDIC transferred Debtors' ownership interest in such assets to JPMC under the terms of the P&A Agreement.

43. All documents concerning the Proof of Claim submitted by WMI to the FDIC on December 30, 2008, including any internal communication or communication with any third party regarding that Proof of Claim.

44. All documents concerning the FDIC's January 23, 2009 decision to disallow the Proof of Claim submitted by WMI on December 30, 2008, including any internal communication or communication with any third party regarding the FDIC's disallowance of WMI's Proof of Claim.

45. All documents concerning any assessment, evaluation, consideration or analysis of Washington Mutual's financial condition from January 1, 2007 through September 26, 2008, including but not limited to Washington Mutual's debts, assets (including, but not limited to, any assets not acquired by JPMC), liabilities, financial resources and capital, business reputation, and/or credit rating.

46. All documents, including communications, between Sheila Bair, James Wigand, or David Gearin and anyone at JPMC concerning the P&A Agreement, WMI, or WMB.

47. All documents regarding communications between FDIC and the Federal Deposit Insurance Corporation in its corporate capacity regarding JPMC, WMI, WMB, or the P&A Agreement.

48. All documents that refer or relate to FDIC's defenses as asserted in the Answer of Defendant Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank.