UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re WASHINGTON MUTUAL, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 08-12229 (MFW) Jointly Administered **Hearing Date: May 5, 2010 at 10:30 a.m. (Requested)** **Objection Deadline: TBD**

MOTION AND SUPPORTING MEMORANDUM OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS FOR THE APPOINTMENT OF AN EXAMINER PURSUANT TO SECTION 1104(c) OF THE BANKRUPTCY CODE

The Official Committee of Equity Security Holders (the "Equity Committee") of Washington Mutual, Inc. ("WMI" and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the "Debtors") moves the Court for appointment of an examiner pursuant to Section 1104(c) of the bankruptcy code.

I. PRELIMINARY STATEMENT

Section 1104(c) of the bankruptcy code provides that in a case such as this one, with liquidated, unsecured debts exceeding $5,000,000, the Court "shall" appoint an examiner on the motion of any party in interest or the U.S. Trustee. 11 U.S.C. § 1104(c). Even if that mandatory standard did not exist, appointment of an examiner would still be in the best interests of the estate, particularly at this pivotal juncture in the course of the bankruptcy case.

Following commencement of this Chapter 11 proceeding, the Debtors themselves identified and asserted a variety of legal claims against JPMorgan Chase ("JPMC"), the

[1] Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.

Federal Deposit Insurance Corporation ("FDIC"), and others that, if successful, would add many billions of dollars of value to the estate. As recently as December 2009, and continuing through a hearing in this Court on January 28, 2010, the Debtors represented that they needed an extensive array of additional information from third parties through Rule 2004 in order to fully identify and assess the strength and worth of claims already asserted and also other potential claims.

And yet, although the Debtors have not obtained the information they told the Court they vitally needed, either through Federal Rule of Bankruptcy Procedure 2004 ("Rule 2004") or through discovery in pending litigation, they have recently proposed a Plan of Reorganization constructed around a proposed "Global Settlement Agreement" – still being negotiated – that in its current form would compromise and release known and unknown claims against JPMC, the FDIC, and others, without the benefit of further investigation.

While the Debtors rush forward in an effort to finish and implement that settlement, additional information highly relevant to the collapse of WMI and the seizure and sale of Washington Mutual Bank ("WMB") continues to become available with each passing week, including material information disclosed by the Senate Permanent Subcommittee on Investigations and the Inspectors General of the Treasury Department and the FDIC as recently as April 13 and 16, 2010.

In light of the Debtors' dramatic change of course over recent months and continuing disclosures of material information highly relevant to the collapse of WMI and to how and why WMB was seized and sold, now is the time for the kind of independent, disinterested, objective evaluation for which appointment of an examiner was designed.

II.
JURISDICTION AND VENUE

The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core bankruptcy proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

III.
BACKGROUND

Prior to commencing this Chapter 11 case, WMI was a savings and loan holding company that owned WMB and indirectly WMB's subsidiaries, including Washington Mutual Bank fsb ("FSB"). (DS 1)[2] It was the largest savings and loan holding company in the country, and WMB and its subsidiaries collectively constituted the seventh largest U.S.-based bank. (DS 22)

On September 25, 2008, the Office of Thrift Supervision (the "OTS") ordered the closure of WMB and appointed the FDIC as receiver for WMB. (DS 2) Immediately after its appointment as receiver, the FDIC took possession of WMB's assets and sold substantially all of them to JPMC for $1.88 billion and the assumption of WMB's deposit liabilities. (DS 2) That precipitated this bankruptcy. (DS 29)

Before those dramatic actions by the OTS and FDIC, WMI's financial condition had been adversely affected by significant disruptions during 2007 and 2008 in the U.S. residential mortgage market. (DS 28) And yet, WMI had weathered the storm, due in part to completion in April 2008 of a significant recapitalization that resulted in a $7.2 billion capital infusion by institutional investors. (DS 28) Moreover, although the OTS lowered WMB's supervisory rating in a way that made it ineligible to receive primary credit from the Federal Reserve Board's Discount Window, WMB was able to receive

[2] Except as otherwise noted, parenthetical citations in this memorandum with the "DS" prefix refer to the Debtor's proposed Disclosure Statement for the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (Docket #2623), filed in this case on March 26, 2010.

{00401011;v1}

secondary credit from the Discount Window of the Federal Reserve Bank of San Francisco, and was able to maintain borrowings up to the time of its seizure. (DS 29) Nevertheless, speculation began to circulate in the market that WMI's and WMB's operations and capital positions were unstable, and in the ten days prior to the FDIC receivership, WMB experienced significant deposit withdrawals of more than $16.7 billion. (DS 29)

During this ongoing process, WMI pursued a merger or sale transaction with another financial institution and investigated other strategic alternatives intended to increase WMI's capital and liquidity levels. (DS 29) WMI was continuing to pursue those alternatives when the OTS stepped in and appointed the FDIC as receiver for WMB.

In a nutshell, those are the events, as described by the Debtor in its proposed Disclosure Statement, that led to this bankruptcy. But a multitude of serious questions existed at the commencement date about how and why WMI failed, about the events that led to intervention by the OTS and the FDIC, about the events and communications that led to the sale of WMB's assets to JPMC, and about the role of JPMC and other third parties in the seizure of WMB and the immediate sale of its assets – and those questions remain unanswered today. In fact, today, the list of unanswered questions has grown longer as a result of the Debtors' negotiation of a proposed "Global Settlement Agreement" that is the cornerstone of its recently proposed Plan of Reorganization (Docket # 2622).[3] That settlement includes a complete release of claims against JPMC and the FDIC by the Debtors and by all of the Debtors' creditors and equity interest holders, and provides for cash payments to JPMC that in effect would reimburse it for the

[3] A copy of a draft of the settlement agreement is Exhibit I to the Debtors' proposed Disclosure Statement (*see* fn. 2 *supra*). The settlement agreement has not been approved by all parties to it and has not been executed.

money it paid to purchase WMB's assets in the first place.

The Debtors are fervent proponents of the settlement, and are now anxious to have it approved and to shut down permanently all of the legal proceedings that the Debtors themselves had instituted or joined in a supposed effort to get to the bottom of the questions identified above and to recover value for their legal claims. In fact, the Debtors' principal talking points in favor of the settlement are avoidance of the expense and time necessary to resolve issues presented in that pending litigation, and "the corresponding disruption to their efforts to make distributions for the benefit of their creditors." (DS 7)

However, the Debtors themselves have recognized the importance of the questions surrounding the seizure and sale of WMB's assets and the failure of WMI as the nation's largest savings and loan holding company, as well as the importance of answering those questions and fully identifying and assessing the value of the related legal claims that the Debtors own. And as the Debtors themselves recognize in their proposed Disclosure Statement, they are not the only ones who feel that way.

The Debtor's proposed Disclosure Statement (*see* fn. 1) identifies and summarizes the subject matter of the principal litigation spawned by the seizure of WMB and the collapse of WMI – almost all of which would come to an end under the Debtors' Settlement and Plan. A review of those proceedings and recent developments in this bankruptcy case demonstrates that the time has come for appointment of an examiner.

1. <u>The D.C. Action</u>

On December 30, 2008, the Debtors filed a proof of claim against the FDIC Receiver seeking compensation for the Debtors' equity interest in WMB, recognition of WMI's interest in WMI assets claimed by the FDIC, allowance of a protective claim for payment of the Debtors' deposits, payment of amounts owed to WMI by WMB, and the

{00401011;v1}

avoidance of certain transfers made by WMI to WMB as a preference or fraudulent transfer. (DS 3) (From December 2007 to September 2008, WMI made capital contributions to WMB amounting to $6.5 billion.) The FDIC summarily rejected those claims, and in March 2009 the Debtors filed a complaint against the FDIC in the U.S. District Court for the District of Columbia.

Significantly, the Debtors alleged "that the FDIC sold WMB's assets for less than they were worth, and as a result, the FDIC breached its statutory duty under the Federal Deposit Insurance Act to maximize the net present value of WMB's assets." (DS 3) The Debtors also alleged that the FDIC's actions constituted a taking of the Debtors' property without just compensation in violation of the Fifth Amendment to the U.S. Constitution and a conversion of the Debtors' property in violation of the Federal Tort Claims Act. (DS 3) JPMC was allowed to intervene in that suit.

On January 7, 2010, the D.C. District Court stayed the D.C. Action at the Debtors' request, in favor of pending adversary proceedings in this Court – but at the same time denied the FDIC's motion to dismiss the suit. (DS 3-4) The D.C. Action would be dismissed with prejudice under the terms of the Debtors' proposed settlement. It is not apparent that any discovery occurred in the DC Action before the court stayed it.

2. <u>The JPMC Adversary Litigation</u>

In March 2009, JPMC filed an adversary complaint in this Court against the Debtors and FDIC, seeking a declaratory judgment with respect to the ownership of disputed assets and interests that JPMC contends it acquired in the FDIC's auction sale of WMB. (DS 4) In May 2009, the Debtors filed counterclaims against JPMC, claiming ownership of disputed assets and seeking avoidance of prepetition transfers of assets to WMB, and subsequently to JPMC.

This Court denied JPMC's subsequent motion to dismiss the Debtors'

counterclaims, and JPMC appealed that decision to the District Court (DS 4), where it is now pending but recently has been stayed as a result of the pending proposed settlement. If approved, the proposed settlement would result in the dismissal of the Debtors' counterclaims with prejudice.

In its counterclaims, the Debtors asserted a right to anticipated federal and state tax refunds in the approximate amount of $5.4 to $5.8 billion. (DS 9) Under the proposed settlement, 70% of initial tax refunds, estimated at $2.7 to $3.0 billion, would be paid to JPMC, and almost 60% of additional tax refunds, estimated at $2.7 to $2.8 billion, would be allocated to the FDIC receiver. (DS 9)

Also at issue in the JPMC Adversary Litigation is a dispute over ownership of certain trust preferred securities with a liquidation preference of approximately $4 billion (backed by a $4 billion mortgage collateral pool). (DS 5) On September 25, 2008, employees of WMI and WMB executed an agreement purporting to assign ownership of those securities to WMB. In its counterclaims in the adversary suit, the Debtors assert that the transfer was ineffective or constituted a fraudulent transfer or voidable preference. (DS 6) The Debtors alleged that JPMC, as the subsequent recipient of those securities via the FDIC sale of WMB assets, was liable to WMI's estate because it knew or should have known of the financial condition of both WMI and WMB at the time of the transfer – and thus was not a good faith purchaser. (DS 6) Under the proposed settlement, JPMC will become the undisputed owner of those securities. (DS 10)

3. <u>The Turnover Action</u>

In April 2009, the Debtors filed a complaint against JPMC in this Court seeking turnover of approximately $4 billion of the Debtors' funds in disputed accounts at WMB. JPMC spuriously asserted in response that the funds on deposit in those accounts might be capital contributions rather than deposit liabilities. (DS 6) This Court denied JPMC's

motion to dismiss the turnover action. (DS 7) The Debtors' motion for summary judgment in the turnover action was argued in October 2009, and the matter is *sub judice*. (DS 7) Under the proposed settlement, nearly all of the funds in the disputed accounts would be paid over to the Debtors. (DS 9)

4. The American National Action

In February 2009, various insurance companies that hold bonds issued by WMB and WMI filed suit against JPMC in state district court in Galveston County, Texas. "Specifically, the plaintiffs asserted that there was a premeditated plan by JPMC designed to damage WMB and FSB, and thereby enable JPMC to acquire WMI's banking operations at a 'fire sale' price." (DS 34) The allegations in the complaint raised disturbing questions about the extent to which JPMC had been working with the FDIC behind the scenes for weeks before the seizure of WMB, and had withdrawn from negotiations for the purchase of WMB after concluding that government seizure of WMB would happen and that it could then acquire the assets more cheaply.

The FDIC intervened in the suit as a defendant and removed it to the U.S. District Court for the Southern District of Texas, which then transferred it to the District Court for the District of Columbia. (DS 34) On April 13, 2010, that court granted motions by JPMC and the FDIC to dismiss the suit for lack of subject matter jurisdiction and entered a final order dismissing the suit and closing the case. The court did not reach the merits, but rather held that the FDIC was a necessary party to the plaintiffs' claims and that plaintiffs were required to pursue their claims against the FDIC exclusively through an administrative claims process established by Congress in the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 83

(1989).[4] Prior to that dismissal, the Debtors' had proposed that the action would be dismissed on its merits, with prejudice, under the Debtors' proposed Plan of Reorganization.[5]

5. The Debtors' Rule 2004 Examination Requests

As a result of the American National Action, the Debtors filed a motion for Rule 2004 examination on May 1, 2009, seeking an order directing the examination of JPMC.[6] In that motion, the Debtors summarized the allegations in the American National Action and sought the authority to investigate the underlying merit of those claims, as well as other potential estate claims suggested by the American National allegations. The Debtors argued to the Court that the discovery they sought through Rule 2004 was broader than the issues raised in the JPMC Adversary Litigation and the Turnover Action. (May Rule 2004 Motion at 2)

This Court granted the Debtors' motion on June 24, 2009, over JPMC's opposition. (DS 34) In August and September 2009, JPMC began producing documents to the Debtors for their review.[7] There is no indication that the Debtors took any depositions.

As described in the proposed Disclosure Statement, "As a result of the review of certain of the documents produced by JPMC, the Debtors determined that additional fact investigation was necessary." (DS 34) Accordingly, on December 14, 2009, the Debtors

---

[4] *See Am. Nat'l Ins. Co. v. JPMorgan Chase & Co.*, 2010 U.S. Dist. LEXIS 36487, *10-12 (D.D.C. April 13, 2010).

[5] *See* Chapter 11 Plan of Reorganization (Docket # 2622), filed on March 26, 2010, §§ 1.182 (naming this action the "Texas Litigation"), 1.146 (including "Texas Litigation" in "Related Actions"), 2.1 (releasing "Related Actions").

[6] *See* Motion for 2004 Examination of JPMorgan Chase Bank, N.A. (Docket # 974) ("May Rule 2004 Motion").

[7] *See* 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 (Docket # 1997), filed on December 14, 2009 ("Dec. Rule 2004 Motion"), at 5.

moved for authority to conduct a further Rule 2004 examination of witnesses and to request production of documents from various third parties – including the FDIC, the OTS, the U.S. Department of the Treasury, and former U.S. Treasury Secretary Henry M. Paulson, Jr. (DS 34) The Debtors also sought to obtain testimony and documents from rating agencies, banks (including Goldman Sachs, the investment bank that WMI retained in September 2007 to assist it in finding a suitor), and third-party professionals that WMI had at one time used. (Dec. Rule 2004 Motion at 1, n. 2)

In that motion, the Debtors described the contents of certain documents they had obtained pursuant to the first Rule 2004 examination – documents that the Debtors themselves fairly characterized as warranting the need for further investigation from third parties who "are likely to have information currently unobtainable by Debtors relevant to potential estate claims sounding in business tort and tortious interference against JPMC, including information relevant to allegations made in [the American National Case]." (Dec. Rule 2004 Motion at 3)

The Debtors represented to the Court:

> As with the Rule 2004 Examination of JPMC, the Rule 2004 Examination of the Knowledgeable Parties will enable the Debtors – as estate fiduciaries – to determine the validity and ownership of these potentially significant claims. To the extent the Requested Examination demonstrates that the Debtors have viable claims against JPMC, such claims are assets of the Debtors' chapter 11 bankruptcy estates and, thus, any recovery resulting from the assertion of these claims will inure to the benefit of the Debtors and their creditors.

(Dec. Rule 2004 Motion at 4)

It is not necessary to repeat here in detail the information reported by the Debtors as a result of reviewing JPMC documents or the damning conclusions about JPMC, regulators, and other third parties that the Debtors set forth in this 2004 Motion. The Court is already quite familiar with the motion. Suffice it to say that what the Debtors had discovered to that point was disturbing. The Debtors explained in their reply brief:

> As detailed in Debtors' Motion, the discovery sought through the Requested Examination concerns possible misconduct by JPMC preceding the seizure and sale of WMB, including gaining access to WMI's confidential information in connection with JPMC's supposed interest in bidding for the company, improperly disclosing such information to third parties to cause market panic and foment a government seizure of the bank, destroying a 119-year-old institution that once had more than $50 billion in market capital.[8]

It was also apparent from the December Rule 2004 motion that the Debtors had not obtained the requested information through discovery in any of the lawsuits referred to above. Indeed, in their reply brief, the Debtors explained that discovery was no longer even available in the DC Action because it had been stayed. (Reply Br. Dec. Rule 2004 Motion at 3)

By order dated February 16, 2010, this Court denied the Debtors' motion on the grounds that the discovery the Debtors sought was not appropriate under the limited scope of the Rule 2004 examination that the Court had previously authorized and that permitting further examination under Rule 2004 would have allowed the Debtors to circumvent the Federal Rules of Civil Procedure applicable in the litigation the Debtors had already commenced against JPMC.[9]

Less than one month later, on March 12, 2010, the Debtors publicly announced the settlement and proposed release of the substantial claims they had told the Court as late as the January 28 hearing on their motion that they vitally needed to investigate further through Rule 2004.

6. Other Suits and Investigations

As described in the Debtors' proposed Disclosure Statement, consolidated class action suits brought under ERISA and the federal securities laws are proceeding in the U.S. District Court for the Western District of Washington as a result of transfer and

---

[8] *See* Reply of the Debtors to the Objections to Dec. 2004 Motion (Docket # 2212), filed on January 25, 2010 ("Reply Br. Dec. Rule 2004 Motion").

[9] Transcript of Hearing, Jan. 28, 2010 (Docket # 2312), at 88-90.

consolidation orders entered by the Judicial Panel on Multi-District Litigation. (DS 39-40) Former officers and directors of WMI are named as defendants in those suits, and discovery has begun. (DS 39-41)

Under the proposed settlement, WMI's present and former officers and directors and employees will be entitled to a priority recovery for all claims made against a blended insurance program obtained by WMI before bankruptcy, providing (among other things) directors and officers, bankers professional liability, and fiduciary liability insurance. (DS 56)

In addition, in October 2008, the U.S. Attorney for the Western District of Washington, together with other federal authorities including the FBI, the FDIC, the IRS, and the Department of Labor commenced a coordinated investigation into the failure of WMB. (DS 45) The Debtors have reported that WMI "has received several grand jury subpoenas and is producing documents responsive to those subpoenas." (DS 45) The Debtors further report that "[t]he government's investigation is pending and WMI does not know how much longer the investigation will continue or whether any charges will result against WMI or any individuals." (DS 45)

Further, the Debtors have disclosed that the sale of substantially all of the assets of WMB to JPMC has been "a point of interest" to the Financial Fraud Enforcement Task Force established by President Obama on November 17, 2009, by Executive Order No. 13519. (DS 45)

7. U.S. Senate Investigation and Hearings

Last but not least, the U.S. Senate's Homeland Security and Government Affairs Permanent Subcommittee on Investigations, has recently conducted hearings (on April 13 and April 16, 2010) about the collapse of WMB and has issued two investigative

reports.[10] Among other things, the hearings revealed the existence of disputes between the OTS and the FDIC over the financial condition of WMB and whether regulatory action was necessary. Former OTS director John M. Reich testified that WMB's seizure was not caused by the poor quality of its loans or by deficient capitalization, but by an asserted liquidity crisis prompted by a "run on deposits" at the bank by depositors in the 10-day period preceding OTS intervention.[11] Reich further testified that had the asserted liquidity crisis occurred two weeks later, there would have been no failure because of the FDIC's intervening decision to increase deposit insurance to $250,000 per depositor.

Reich's testimony, confirming that WMB's seizure and sale were not the result of inadequate regulatory capital, underscores the importance of allegations in the American National Action that JPMC helped orchestrate a run on the bank, which became the ostensible precipitating cause of the FDIC receivership, by engineering "a campaign involving adverse media 'leaks,' stock sales, and deposit withdrawals designed to distort the market and regulatory perception of Washington Mutual's financial health."[12]

The Committee investigation also led to the disclosure on April 19 of an e-mail from FDIC Chairman Shelia Blair to Reich dated August 6, 2008, in which she indicated

---

[10] The first report, contained in an April 13, 2009 Memorandum to the Permanent Subcommittee on Investigations, is available here and is also attached hereto as **Exhibit 2**: http://levin.senate.gov/newsroom/supporting/2010/PSI.LevinCoburnmemo.041310.pdf

The second report ("April 16 Subcommittee Report"), contained in an April 16, 2009 Memorandum to the Permanent Subcommittee on Investigations, is available here and is also attached hereto as **Exhibit 3**: http://levin.senate.gov/newsroom/supporting/2010/PSI.LevinCoburnmemo.041610.pdf

[11] *See* April 16, 2010 Statement of John M. Reich, Former Director, Office of Thrift Supervision, regarding Washington Mutual Bank, Before the U.S. Senate Permanent Subcommittee on Investigations United States Senate, available at http://tiny.cc/f0zly and attached hereto as **Exhibit 4**.

[12] *American National Insurance Company v. FDIC*, No. 09-1743, Complaint ¶ 46 (attached as Exhibits 1-3 of Docket #1) (D.D.C. March 25, 2009). As noted previously, this case was recently dismissed on non-merits grounds because Plaintiffs failed to exhaust their administrative remedies against a necessary party, the FDIC. *See Am. Nat'l Ins. Co. v. JPMorgan Chase & Co.*, 2010 U.S. Dist. LEXIS 36487, *10-12 (D.D.C. April 13, 2010). In reaching this decision, the Court did not gainsay any of the factual allegations in the complaint.

that the FDIC intended to make "discrete inquiries" to other banks about buying WMB in the event of an "emergency closing."[13] It is apparent that JPMC was one of those banks. Yet less than two weeks before the failure, Ms. Blair told WMI executives that she would stand aside while they sought a buyer. As the *Wall Street Journal* has reported, "J.P. Morgan lost interest in buying the thrift unless it failed, acknowledging in a slide presentation circulated internally on Sept. 19 that bank officials had been 'contacted by FDIC about interest in' Washington Mutual." *Id.*

In addition, the *Wall Street Journal* reported as follows in the same April 13, 2010 article:

> J.P. Morgan, now the second-largest U.S. bank in assets, unsuccessfully tried to buy Washington Mutual in early 2008. As the thrift's problems deepened, then-Treasury Secretary Henry Paulson told [then-WMI CEO Kerry Killinger] in a July phone call that "you should have sold the company to J.P. Morgan when you had the chance," according to four people familiar with the conversation.

The Senate Subcommittee's findings also identified "a pattern of errors, poor risk management and even fraud at Washington Mutual" relating to the bank's origination of billions in home equity loans with little or no supporting documentation of creditworthiness.[14]

A separate joint report of investigation released on April 16, 2010, by inspectors general of the Treasury Department and the FDIC corroborated many of the Senate Subcommittee's findings.[15] Department of the Treasury Inspector General Eric Thorson testified at the Senate hearings that OTS had identified weaknesses in WMB's relationship with mortgage brokers, with only 14 WMD employees overseeing the

---

[13] *See* Wall Street Journal, "Panel Tries to Unravel WaMu's Failure," April 13, 2010, attached hereto as **Exhibit 5**.

[14] *See* April 16 Subcommittee Report 8-9 (stating Subcommittee's findings), **Exhibit 3**.

[15] The report ("Inspectors General's Report") is available at http://www.fdicoig.gov/reports10%5C10-002EV.pdf and an excerpt of the report is attached as **Exhibit 6** hereto.

relationship with more than 34,000 third-party brokers.[16] According to the Inspectors General's Report, the Department of Treasury and FDIC intend "at a later date" to "assess FDIC's resolution process for WaMu to determine whether that process complied with applicable laws, regulations, policies and procedures."[17]

In connection with its hearings, the Senate Permanent Subcommittee also released e-mails gathered in its investigation that underscore the importance of investigating the relationship between Goldman Sachs, WMI, and WMB, particularly in light of the SEC's April 16, 2010 commencement of a major civil action against Goldman Sachs for defrauding investors in the sale of subprime residential mortgage-backed securities.[18]

Exhibits released by the Permanent Subcommittee on Investigations include e-mails that evidence extensive business relationships between WMI, WMB, and Goldman Sachs that existed for years prior to the seizure – but also a level of WMI distrust of Goldman that reached to the level of WMI's CEO.[19] In addition, at times during 2008, Goldman Sachs recommended short-selling of WMI shares and may have engaged in short sales of WMI securities for its own account – betting that the company's financial condition would deteriorate.[20] Nevertheless, based on press reports, WMI hired Goldman Sachs in mid-September 2008 to assist it in finding a buyer of WMB or its assets, and Goldman in turn communicated directly with JPMC.[21]

---

[16] *See* April 16, 2010 Statement of the Honorable Eric M. Thorson, Inspector General, Department of the Treasury, regarding Washington Mutual Bank Before the U.S. Senate Permanent Subcommittee on Investigations United States Senate, at 10, available at http://tiny.cc/bnkj2 and attached hereto as **Exhibit 7**.

[17] Inspectors General's Report at 2, **Exhibit 6**.

[18] *See* SEC Litigation Release No. 21489 (Apr. 16, 2010), available at: http://www.sec.gov/litigation/litreleases/2010/lr21489.htm

[19] *See* **Exhibits 8** and 9 hereto.

[20] WSJ Marketbeat, "Goldman: Short WaMu Stock, Buy the Bonds," Apr. 11, 2008 (available at: http://tinyurl.com/2f5ubs5), **Exhibit 10**.

[21] New York Times DealBook, "Washington Mutual Begins Efforts To Sell Itself," Sept. 17, 2008 (available at: http://tinyurl.com/3ncp7b), **Exhibit 11**.

*****

The events summarized above point to the following conclusions that are relevant to this Motion:

- Following commencement of the bankruptcy case, the Debtors themselves identified and asserted a variety of legal claims against JPMC, the FDIC, and others that, if successful, would add many billions of dollars of value to the estate.
- As recently as December 2009 and continuing through a hearing in this Court on January 29, 2010, the Debtors represented that they needed an extensive array of additional information from third parties in order to fully identify and assess the strength and worth of claims already asserted and also other potential claims.
- The Debtors have not obtained the information they told the Court they needed to conduct that investigation.
- Additional information highly relevant to the collapse of WMI and the seizure and sale of WMB continues to become available with each passing week, including material information disclosed by the Senate Permanent Subcommittee on Investigations and the inspectors general of the Department of Treasury and the FDIC.
- The Debtors have recently proposed a Plan of Reorganization constructed around a proposed Global Settlement Agreement that is still being negotiated but that in its current form would compromise and release the multi-billion dollar claims that the Debtors have identified to date, without the benefit of further investigation.
- It is not apparent that the Debtors have conducted any investigation of potential claims against their own officers, directors, and employees, or that they intend to investigate the existence of causes of action against other third parties who may have played material roles in WMI's failure.

III.
LEGAL STANDARD FOR THE APPOINTMENT OF AN EXAMINER

A bankruptcy court has the authority to appoint an independent examiner to investigate and identify potential assets of the estate. *See In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (Bkrtcy. S.D.N.Y. 1993). The examiner provides an objective, nonadversarial perspective on relevant transactions and events as guidance for interested parties to subsequently pursue relevant claims. *In re Fibermark, Inc.*, 339 B.R. 321, 325 (Bkrtcy. D. Vt. 2006). Congress provided for the appointment of an examiner in the bankruptcy code as an extra measure of protection for stockholders of public

corporations. *See In re Gilman Services, Inc.*, 46 B.R. 322, 327 (Bkrtcy. D. Mass. 1985) (discussing legislative history of the examiner statute); *In re Loral Space Communications*, 2004 WL 2979785, *4 (S.D.N.Y. 2004) (same).

Section 1104(c) of the bankruptcy code sets out the standard governing appointment of an examiner:

> If the court does not order the appointment of a trustee under this section, then at any time before the confirmation of the plan, on request of a party in interest or the United States Trustee, and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor if –
>
> (1) such appointment is in the interest of creditors, any equity security holders, and other interests of the estate; or
>
> (2) the debtor's fixed, liquidated, unsecured debts, other than debtors for goods, services or taxes, or owing to an insider, exceed $5,000,000.

11 U.S.C. § 1104(c).

In cases such as this one, with unsecured debts exceeding $5,000,000, the statute indicates that the court "shall" appoint an examiner on a motion by an interested party. *Id.* In light of that language, the courts have routinely held that appointment of an examiner is mandatory in such circumstances. *See, e.g., In re Revco D.S., Inc.*, 898 F.2d 498, 500-01 (6th Cir. 1990); *In re Walton*, 398 B.R. 77, 80-83 (Bkrtcy. N.D. Ga. 2008); *In re Vision Development Group of Broward County, LLC*, 2008 W.L. 2676827, *3 (Bkrtcy. S.D. Fla. 2008); *In re UAL Corp.*, 307 B.R. 80, 86 (N.D. Ill. 2004); *Loral*, 2004 WL 2979785 at *5..

The Sixth Circuit's opinion in *Revco* is particularly instructive. Two years before

the debtor filed for bankruptcy, it had been the subject of a leveraged buyout. *Revco*, 898 F.2d at 499. The United States Trustee sought the appointment of an examiner to investigate the LBO. *Id.* Both the debtor—presumably then controlled by the acquiring party—and the creditors opposed the appointment of the examiner. *Id.* Although the Bankruptcy Court denied the U.S. Trustee's motion, the Sixth Circuit reversed and held that an examiner must be appointed if requested by the U.S. Trustee or any other interested party. *Id.* at 500-01. As *Revco* suggests, an examiner can play an important role when the debtor lacks the incentive to conduct a thorough investigation into potential claims.

Only in exceptional cases have courts contravened the statutory mandate and declined to appoint an examiner. In a recent decision from this Court, Judge Carey denied a motion to appoint an examiner based on findings that all parties had had ample opportunity to conduct discovery into relevant matters; that the issues raised in the motion seeking appointment of an examiner did not require investigation, but were typical differences of opinion related to confirmation of a proposed plan; and that the motion had been filed so late in the process that it would do more harm than good to the estate. *In re Spansion, Inc.*, 2010 WL 1292837, *8 (Bkrtcy. D. Del. 2010).

Similarly, a party who waited until an investigation had already been conducted at significant expense to the Debtor waived its right to request an examiner because repeating the same investigation a second time would be "duplicative, needless, and wasteful." *In re Bradlees Stores, Inc.*, 209 B.R. 36, 39 (Bkrtcy. S.D.N.Y. 1997); *see also In re Schepps Food Stores, Inc.,* 148 B.R. 27 (S.D. Tex. 1992) (denying a request to appoint an examiner when the moving party's actions suggested its true motive was delay, the issues to be investigated were better addressed as objections to the proposed plan, and a date for the hearing on confirmation of the proposed plan had already been

established).

As discussed below, this case is a far cry from those described above in which courts have declined to appoint an examiner despite the mandatory language in Section 1104(c). To the contrary, it is exactly the kind of case in which appointment of an independent examiner would serve a vital function.

The Court has discretion to determine the scope and duration of the examiner's investigation. *In re Revco*, 898 F.2d at 501. As Section 1104(c) makes clear, the investigation may include a broad range of issues relevant to the debtor's business failure, including allegations of mismanagement, professional negligence, and fraud. 11 U.S.C. § 1104(c); *In re Gilman Services*, 46 B.R. at 327. The examiner's duties should be defined in order to minimize or avoid interference with the ongoing bankruptcy proceedings. *In re Loral Space*, 2004 WL 2979785 at *5. At the same time, as we discuss below, the fact that the reorganization process would be delayed or that an examiner's work would entail significant expense to the estate generally are not valid grounds for refusing to appoint an examiner, and certainly are not valid grounds under the current circumstances of this case.

IV.
ARGUMENT

A. Appointment of an Examiner Is Necessary and Appropriate

The question presented by this Motion is not whether an examiner should be appointed – the express statutory conditions for an appointment in Section 1104(c) are plainly satisfied, and if the statute is to be applied as written, appointment is mandatory. The question is whether any legitimate grounds exist <u>not</u> to appoint an examiner, assuming the Court retains some narrow band of discretion to decline such an appointment. Beyond that question, the Court must also consider the appropriate scope of the examination, the timetable for its completion, and whether artificial limits should

be placed on the estate resources the examiner may use in conducting the assigned work.

On the question whether any legitimate grounds exist not to appoint an examiner, the answer is plainly No. Appointment of an examiner in this case is necessary and wholly appropriate.

1. The Timing of This Motion

This bankruptcy case was prompted by one of the largest bank seizures in U.S. history, followed within hours by the FDIC's announcement of a sale of WMB's assets to JPMC. That striking sequence of events was initially shrouded in mystery, but as time passed following the seizure and sale, information slowly came to light that raised disturbing questions not only about how those actions were orchestrated and by whom, but also about whether the seizure of WMB and the collapse of WMI could and would have been avoided but for the machinations of third parties.

The Debtors themselves initially recognized the critical nature of those questions and the critical importance of answering them if the estate's assets were to be maximized for the benefit of creditors and other interested parties. As described in the Background section of this Motion, the Debtors filed claims and counterclaims in various legal proceedings against JPMC and the FDIC. Moreover, the Debtors sought to use Rule 2004 in an effort to obtain information from third parties – an effort that continued even after it appeared that discovery procedures in pending litigation would become (or had become) available to them.

Yet less than one month after this Court denied the Debtor's most recent effort to use Rule 2004 as an investigative tool, the Debtors announced a settlement (still incomplete) that would provide a broad release of multi-billion dollar claims for the benefit of JPMC and the FDIC – whose very actions were the centerpiece of the Debtors' litigation and investigative efforts. Certainly, the investigative steps that the Debtors

sought to pursue through their December Rule 2004 motion never happened. It also appears clear that after filing that motion the Debtors obtained little, if any, formal discovery through the then-pending litigation (the DC Action, the JPMC Adversary Litigation, and the Turnover Action). It is not apparent that the Debtors have taken any testimony through depositions, either before or after filing their second Rule 2004 motion in December 2009, on the subject of the events that led to the seizure and sale of WMB.

Instead of following through on the investigative efforts that the Debtors themselves had initiated but never completed, or in fact never started, the Debtors instead made the surprise announcement in late March 2010 that all such efforts would come to a halt, that all pending legal actions against JPMC and the FDIC should be dismissed with prejudice through the pending settlement, and that it was more important to distribute money quickly to selected classes of creditors than to finish the task of investigating and valuing the claims they now propose to release.

In light of these dramatic and quite recent course-changes, which were not foreseeable, no legitimate claim could be made that appointment of an examiner should be denied now because it was not sought earlier.

That conclusion is reinforced by even more recent events, namely, the disclosures summarized in the Background section of this memorandum that have come to light through the recent hearings and reports of the Senate Permanent Subcommittee on Investigations and by the equally recent reports of the inspectors general of the OTS and the FDIC. Those developments underscore the need for an examination in this bankruptcy case, not only of the events that led to the seizure and sale of WMB but also of the extent to which legal duties were violated pre-bankruptcy by directors, officers, and employees of WMI – many of whom remain in place to this day – in the management and oversight of WMB, and the extent to which any such breaches give rise to claims that

would potentially enhance the value of the estate.

2. Impact of An Examiner's Appointment on Plan Confirmation

The Debtors and other interested parties undoubtedly will protest that appointment of an examiner should be refused because it would delay the Debtors' completion of its proposed settlement with JPMC and the FDIC and slow down the Debtors' rush to have it approved and made the centerpiece of a proposed Plan of Reorganization.[22] Any such protest would be without merit.

In the first place, the proposed settlement is not yet complete. In a motion filed by the Debtors on April 23, 2010, for approval of their proposed Disclosure Statement and for establishment of a schedule leading to a July 20 plan confirmation hearing, the Debtors disclosed that "[w]hile the provisions of the proposed settlement agreement have been agreed to by WMI, JPMorgan Chase and significant creditor groups of WMI, as of this date, the FDIC has some remaining concerns." (Debtors' DS Motion at 4-5) Although the Debtors continue to express "hope" that an agreement will be obtained "in the near future," it is not a reality as of today. (Debtors' DS Motion at 5)

But even if the settlement agreement had already been finalized and executed, that would not provide a legitimate basis for denying appointment of an examiner at this juncture. Whether the settlement should or should not be approved, it is unquestionably of paramount significance in this bankruptcy. It is the centerpiece of the Debtors' proposed Plan of Reorganization, and it disposes of the estates' most valuable remaining assets – its legal claims against the FDIC and JPMC. Final consideration of the settlement should be based upon a thorough, independent, and objective assessment of the transactions and events that were the foundation for the released claims. If an

---

[22] On April 23, 2010, the Debtors filed a motion seeking approval of its proposed Disclosure Statement and establishment of a schedule leading to a plan confirmation hearing on July 20, 2010 ("Debtors' DS Motion"). (Docket # 3568)

examination of such issues does not occur now, it will never occur.

To be sure, appointment of an examiner would necessitate a delay in the Debtors' recently proposed (April 23, 2010) schedule leading to a plan confirmation hearing. That alone is not a reason to dispense with an examination, particularly under the circumstances described in this Motion. Instead, it is a factor to be considered by the Court in determining the amount of time to be allowed for the examiner to complete the assigned work.

3. Other Potential Objections Based on Cost

The Debtors and other interested parties may argue that appointment of an examiner should be refused because it duplicates efforts already undertaken and wastes estate resources. Such arguments would be unpersuasive as a basis for denying appointment of an examiner altogether.

First, the Court may (and should) order the examiner to make full use of information already gathered by the Debtors and by third parties, and provide the examiner authority to obtain such information quickly. No one will argue that the examiner should reinvent the wheel in gathering relevant information. To the extent information has already been assembled by the Debtors from sources outside WMI through formal or informal means, the examiner should have access to that information immediately. The other legal proceedings and investigations summarized in the Background section of this memorandum provide additional sources of relevant information upon which the examiner may draw at the outset, to avoid duplication of effort and to enhance the examination's efficiency.

Second, it is apparent that the Debtors have <u>not</u> conducted a complete investigation of the factual basis for the claims they propose to release, or of other potential claims related to the economic misfortunes of WMB and its eventual seizure

and sale by the government. By definition, the examiner will not be duplicating efforts by taking steps to gather and assess relevant information that the Debtors have been either unable or unwilling to collect and assess – and that the Debtors never will assemble and analyze if they have their way.

Third, the examiner would bring something vital to the table that the Debtors cannot bring: An independent, objective assessment by a person who was not a participant in the events that led to WMI's collapse and has no personal interests stemming from that participation that could create conflicts of interest. That is particularly important with respect to the examination of potential claims of misconduct by the Debtors' own management and members of their corporate boards. It is additionally important with respect to an examination of the events and negotiations that led to the pending settlement and the Debtors' abrupt reversal of course over the last few months.

Fourth, and finally, compared to the magnitude of the claims that the proposed settlement would release, and the financial consequences to the estate of the settlement's terms, the estate resources needed to fund an appropriate examination under Section 1104(c) would be modest, and certainly money worth spending. That is not to say that the cost will be insignificant in absolute terms, but the Court has ample authority to supervise the process in a manner designed to reasonably control that cost, while ensuring that the important purposes of an independent examination are safeguarded. That the examination will be expensive is no basis for refusing to allow it altogether.

4. Relationship of This Motion To Legal Actions Designed to Compel a WMI Shareholders Meeting

On April 20, 2010, the Court heard argument on the Equity Committee's motion for a determination that the automatic stay does not preclude the filing of a shareholder suit for an order compelling WMI to hold a meeting of shareholders, and the Court held

that such a suit may proceed. The Equity Committee understands that shareholders in Washington state court will file (or have filed) that suit today.

That state court action and the instant Motion for appointment of an examiner are not alternatives to each other. For the following reasons, commencement of the state court suit in no way detracts from the need for prompt appointment of an examiner in this bankruptcy case.

First, the Debtors have announced their intention to oppose the state court suit vigorously and to return to this Court for an order enjoining that suit from proceeding. At a minimum, it can be anticipated that the Debtors will do their best to delay its course, while at the same time pushing in this Court for rapid approval of the global settlement and confirmation of the plan that incorporates it.

Second, even if the state court suit is successful despite the efforts of the Debtors (and undoubtedly other interested parties) to derail it, there is no absolute assurance that shareholders will vote to elect a new board of directors. Even if a new board is elected, significant time may elapse prior to that election during which an examiner could and should begin its investigation.

Third – and most important – even if the suit is successful and even if it results in the election of a new slate of directors, that would not moot the need for appointment of an examiner. An objective, independent investigation and analysis of potential claims by a person reporting directly to this Court and to all interested parties would still be vital. A new board of directors would need such a report as an integral part of any new decision process regarding the pursuit or settlement of the Debtors' causes of action. And the sooner an independent examination begins under Section 1104(c), the sooner it will be completed. If such an appointment is deferred and either the state court suit is unsuccessful or a shareholders meeting does not result in the election of a new board,

appointment of an examiner at that point would simply result in more delay in the ultimate resolution of this bankruptcy.

B. The Proposed Scope of Examination

The Equity Committee proposes that the examiner be empowered and directed to investigate the following matters:

1. The extent to which there are potential claims and causes of action held by the Debtors' estates against any person or entity, and the merit and value of those claims, arising from circumstances leading to the OTS's closure of WMB and appointment of FDIC as receiver and the FDIC's sale of WMB assets to JPMC, including:

A. WMI's negotiations with JPMC and other potential investors or merger/acquisition partners during 2008;

B. Discussions between JPMC, the FDIC, the OTS, other officials at the Department of the Treasury, the SEC, and any other government agencies during 2008 concerning WMB or WMI;

C. Any actions by JPMC (including but not limited to direct or indirect communications to the media and securities transactions) that could have had the effect of damaging market or government agency perceptions of WMB or WMI's financial health, capital adequacy, or liquidity;

D. JPMC's communications about WMB or WMI with other actual or potential WMI investors or merger/acquisition partners or investment advisors (including Goldman Sachs) during 2008;

E. JPMC's decision to withdraw from discussions with WMI about a merger or acquisition;

F. WMB's financial condition during 2008 and its ability to satisfy regulatory requirements regarding capital and liquidity up to the time of seizure,

including how WMB's condition compared to that of other banks that were not seized and placed into an FDIC receivership;

G. The causes of the "run on the bank" experienced by WMB in the two-week period preceding OTS closure, including the extent to which institutional deposits, brokered deposits, or deposits under the control of governmental or quasi-governmental agencies were withdrawn;

H. The extent to which JPMC obtained confidential information from WMB or WMI during 2008, how it obtained such information, and how it used such information;

J. The decisions of OTS and FDIC regarding the seizure of WMB and the sale of WMB assets, the bases for those decisions, the communications of OTS and FDIC with other government or private personnel about those decisions in advance of making and acting on them, and whether the FDIC's sale of WMB's assets satisfied its statutory obligations;

K. Specific identification and valuation of WMB assets conveyed by the FDIC to JPMC;

L. The actions and communications of third-party professionals retained by WMI during 2007 and 2008 in its efforts to find additional investment capital and/or merger/acquisition partners;

M. The nature of the business relationships between WMI, WMB, and Goldman Sachs during 2007 and 2008, Goldman's communications with JPMC and other potential acquirers of WMB or its assets, and Goldman's proprietary trading activities in the securities of WMI during 2008.

N. To the extent not identified above, the allegations set forth in the complaint filed in the American National Action and the D.C. Action.

2. The extent to which there are potential claims and causes of action held by the Debtors' estates arising from breach of fiduciary duty or other legal duties by WMI officers, directors, and employees in their supervision or direction of WMB investment in subprime residential mortgages during 2007 and 2008, or in other actions and events that led to WMB's seizure and sale in September 2008;

3. The disputes at issue in the Turnover Action, including the existence and valuation of WMI tax attributes (principally its NOLs) and the meaning and impact of the Tax Sharing Agreement on the disputes;

4. The proper ownership, valuation, and asset affiliation of the trust preferred securities at issue in the JPMC Adversary Litigation and the proper ownership of all other assets that are the subject of claims and counterclaims in that adversary proceeding;

5. The communications and negotiations that led to the Debtors' proposed "Global Settlement" and the factors that produced the settlement and the Debtors' decision to agree to and support its terms;

6. Potential claims belonging to the Debtors for fraudulent conveyance or for the recovery of preferential transfers, including but not limited to any such claims that arise from WMI's capital contributions to WMB;

7. To the extent not encompassed in preceding topics, the subjects and proposed information sources identified in the Debtors' May and December Rule 2004 motions;

8. To the extent not addressed in the preceding topics, the merit and valuation of the claims of any parties that would be released under the proposed Global Settlement;

9. The identification, nature, and valuation of assets held by the Debtors post-bankruptcy, including assets that would be conveyed to JPMC and the FDIC under

the proposed Global Settlement Agreement.

C. Proposed Timetable for the Examiner's Investigation

The Equity Committee asks that the Court direct the U.S. Trustee to appoint an examiner pursuant to Section 1104(c)(1) with all deliberate speed, and to require that the examiner, within ten (10) days of that appointment, propose a work and expense plan that includes a good-faith estimate of the fees and expenses of the examiner and the examiner's proposed professionals for conducting the investigation. The Court may then hold a status conference to consider the work and expense plan and any responses thereto, and to order further relief as appropriate to aid the examiner in the performance of the examiner's duties and/or to accommodate the needs of the estate. However, the examiner should be authorized and directed to commence the investigation as promptly as reasonably possible following the appointment.

The Equity Committee further recommends that the examiner be directed to prepare and file a report as required by 11 U.S.C. § 1106(a)(4) within 150 days following the examiner's appointment, unless such time is extended by order of this Court upon the examiner's application.

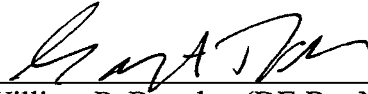
The Equity Committee proposes other terms and conditions relating to the examiner's appointment, powers, and investigation in the proposed Order filed as **Exhibit 1** to this Motion, which is incorporated in the Motion by this reference.

V.
CONCLUSION

WHEREFORE, for the reasons explained in this Motion, the Equity Committee requests that the Court enter an order, substantially in the form attached hereto as **Exhibit 1**, appointing an examiner pursuant to Section 1104(c) of the Bankruptcy Code, and for such other and further relief as to which the Equity Committee may be entitled.

Dated: April 26, 2010

ASHBY & GEDDES, P.A.



William P. Bowden (DE Bar No. 2553)
Gregory A. Taylor (DE Bar No. 4008)
Stacy L. Newman (DE Bar No. 5044)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
Telephone: (302) 654-1888
Facsimile : (302) 654-2067
E-mail: wbowden@ashby-geddes.com
gtaylor@ashby-geddes.com
snewman@ashby-geddes.com

Delaware Counsel to the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al.

-and-

SUSMAN GODFREY, L.L.P.
Stephen D. Susman (NY Bar No. 3041712)
Seth D. Ard (NY Bar No. 4773982)
654 Madison Avenue, 5th Floor
New York, NY 10065
E-mail:
ssusman@susmangodfrey.com
sard@susmangodfrey.com

Parker C. Folse, III (WA Bar No. 24895)
Edgar Sargent (WA Bar No. 28283)
Justin A. Nelson (WA Bar No. 31864)
1201 Third Ave., Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883
E-mail:
pfolse@susmangodfrey.com
esargent@susmangodfrey.com
jnelson@susmangodfrey.com

Proposed Co-Counsel for the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., *et al.*,[1]	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	**Hearing Date: May 5, 2009 at 10:30 a.m. (*Requested*)**
	)	**Objection Deadline: TBD**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on April 26, 2010, The Official Committee of Equity Security Holders (the "Equity Committee") of Washington Mutual, Inc. ("WMI" and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the "Debtors") filed the *Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that concurrently with the filing of the Motion, the Equity Committee also filed the *Motion to Shorten Notice of the Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code* (the "Motion to Shorten").

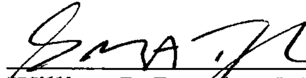
PLEASE TAKE FURTHER NOTICE that pursuant to the Motion to Shorten, the Equity Committee has requested that the Court enter an order scheduling a hearing on the Motion at the scheduled hearing on May 5, 2010 at 10:30 a.m. (Prevailing Eastern Time) (the "Hearing"), and setting a shortened objection deadline. In accordance with the Local Rules of Practice and Procedure for the United States Bankruptcy Court of the District of Delaware (the "Local Rules"), the Bankruptcy Court will rule on the Motion to Shorten without a hearing.

---

[1] Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.

Dated: April 26, 2010

ASHBY & GEDDES, P.A.



William P. Bowden (DE Bar No. 2553)
Gregory A. Taylor (DE Bar No. 4008)
Stacy L. Newman (DE Bar No. 5044)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
Telephone: (302) 654-1888
Facsimile : (302) 654-2067
E-mail: wbowden@ashby-geddes.com
gtaylor@ashby-geddes.com
snewman@ashby-geddes.com

Delaware Counsel to the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al.

-and-

SUSMAN GODFREY, L.L.P.

Stephen D. Susman (NY Bar No. 3041712)
Seth D. Ard (NY Bar No. 4773982)
654 Madison Avenue, 5th Floor
New York, NY 10065
E-mail:
ssusman@susmangodfrey.com
sard@susmangodfrey.com

Parker C. Folse, III (WA Bar No. 24895)
Edgar Sargent (WA Bar No. 28283)
Justin A. Nelson (WA Bar No. 31864)
1201 Third Ave., Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883
E-mail:
pfolse@susmangodfrey.com
esargent@susmangodfrey.com
jnelson@susmangodfrey.com

Proposed Co-Counsel for the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al.

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re WASHINGTON MUTUAL, INC., *et al.*,[1] Debtors.	))))))))	Chapter 11 Case No. 08-12229 (MFW) Jointly Administered

[PROPOSED] ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER

This matter came before the Court for hearing on the _____ day of ___________, 2010, on the Motion of the Official Committee of Equity Security Holders for the Appointment of An Examiner Pursuant to Section 1104(c) of the Bankruptcy Code ("the Motion"). Due and sufficient notice of the Motion was given to interested parties in accordance with the Bankruptcy Code and Rules. This Court, having considered the evidence in the record and arguments of counsel, concludes that the appointment of an examiner under 11 U.S.C. § 1104(c) is appropriate to investigate certain affairs of the Debtors' and the Debtors' affiliates and subsidiaries and that such appointment is in the best interests of creditors, equity security holders, and other interests of the estate, and for other good cause.

IT IS HEREBY ORDERED AND DECREED that:

1. The United States Trustee is directed to appoint an examiner (the "Examiner") pursuant to 11 U.S.C. § 1104(c)(1).
2. The Examiner shall:
    a. Evaluate whether there are claims and causes of action held by the Debtors' estate against any person or entity which may bear liability to the estate, and the merit

[1] Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.

and value of those claims, arising from circumstances leading to the closure of Washington Mutual Bank ("WMB") by the U.S. Office of Thrift Supervision ("OTS"), the OTS's appointment of the Federal Deposit Insurance Corporation ("FDIC") as receiver for WMB, and the FDIC's sale of WMB assets to JPMorgan Chase, N.A. ("JPMC"), including:

i. WMI's negotiations with JPMC and other potential investors or merger/acquisition partners during 2008;

ii. Discussions between JPMC, the FDIC, the OTS, other officials at the Department of the Treasury, the SEC, and any other government agencies during 2008 concerning WMB or WMI;

iii. Any actions by JPMC (including but not limited to direct or indirect communications to the media and securities transactions) that could have had the effect of damaging market or government agency perceptions of WMB or WMI's financial health, capital adequacy, or liquidity;

iv. JPMC's communications about WMB or WMI with other actual or potential WMI investors or merger/acquisition partners or investment advisors (including Goldman Sachs) during 2008;

v. JPMC's decision to withdraw from discussions with WMI about a merger or acquisition;

vi. WMB's financial condition during 2008 and its ability to satisfy regulatory requirements regarding capital and liquidity up to the time of seizure, including how WMB's condition compared to that of other banks that were not seized and placed into an FDIC receivership;

vii. The causes of the "run on the bank" experienced by WMB in the two-week period preceding OTS closure, including the extent to which institutional

deposits, brokered deposits, or deposits under the control of governmental or quasi-governmental agencies were withdrawn;

viii. The extent to which JPMC obtained confidential information from WMB or WMI during 2008, how it obtained such information, and how it used such information;

ix. The decisions of OTS and FDIC regarding the seizure of WMB and the sale of WMB assets, the bases for those decisions, the communications of OTS and FDIC with other government or private personnel about those decisions in advance of making and acting on them, and whether the FDIC's sale of WMB's assets satisfied its statutory obligations;

x. Specific identification and valuation of the assets conveyed by the FDIC to JPMC and which entity owned the assets prior to the FDIC's receivership and auction sale;

xi. The actions and communications of third-party professionals retained by WMI during 2007 and 2008 in its efforts to find additional investment capital and/or merger/acquisition partners;

xii. The nature of the business relationships between WMI, WMB, and Goldman Sachs during 2007 and 2008, Goldman's communications with JPMC and other potential acquirors of WMB or its assets,, and Goldman's proprietary trading activities in the securities of WMI during 2008;

xiii. To the extent not identified above, the allegations set forth in the complaint filed in the American National Action.

b. Evaluate the extent to which there are potential claims and causes of action held by the Debtors' estates arising from breach of fiduciary duty or other legal duties by WMI officers, directors, and employees in their supervision or direction of WMB

investment in subprime residential mortgages during 2007 and 2008, or in other actions and events that led to WMB's seizure and sale in September 2008;

c. Evaluate the disputes at issue in the Debtors' Turnover Action against JPMC, styled Washington Mutual, Inc., et al. v. JPMorgan Chase Band, N.A., Adversary Pro. No. 09-50934 (MFW), in this Court, including the existence and valuation of WMI tax attributes (principally its net operating losses) and the meaning and impact of that certain Tax Sharing Agreement, dated as of August 31, 1999, among WMI, WMB, and certain other direct and indirect subsidiaries of WMI and WMB, on those disputes;

d. Evaluate the proper ownership, valuation, and asset affiliation of the trust preferred securities at issue in the JPMC Adversary Litigation against the Debtors and the FDIC, styled JP Morgan Chase Bank, N.A. v. Washington Mutual, Inc., et al., Adversary Pro. No. 09-50551 (MFW), in this Court, and evaluate the proper ownership of all other assets that are the subject of claims and counterclaims in that adversary proceeding;

e. Investigate and identify the communications and negotiations that led to the Debtors' Proposed Global Settlement Agreement (a copy of which, in its current form, was attached to the Debtors proposed Plan of Reorganization filed in this case on March 26, 2010), and the factors that produced the settlement and the Debtors' decision to agree to and support its terms;

f. Potential claims belonging to the Debtors for fraudulent conveyance or for the recovery of preferential transfers, including but not limited to any such claims that arise from WMI's capital contributions to WMB;

g. To the extent not encompassed in preceding topics, investigate the subjects, and obtain information from the proposed information sources, identified in the

Debtors' Motion for Rule 2004 examination filed on December 14, 2009, and evaluate the extent to which such information bears on the actual or potential claims and causes of action held by the Debtors as specified in this Order;

h. To the extent not addressed in the preceding topics, evaluate the merit and valuation of the claims of any parties that would be released under the Debtors' Proposed Global Settlement Agreement;

i. The identification, nature, and valuation of assets held by the Debtors post-bankruptcy, including assets that would be conveyed to JPMC and the FDIC under the proposed global settlement agreement; and

j. Otherwise perform the duties of an examiner set forth in 11 U.S.C. § 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code.

k. All of the duties identified in Paragraph 2 of this Order shall collectively be referred to herein as "the Investigation."

3. The Debtors, the Debtors' affiliates and subsidiaries, and the Official Committees appointed in this bankruptcy case are directed to fully cooperate with the Examiner in conjunction with the performance of any of the Examiner's duties and the Investigation, and the Debtors and the Official Committees shall use their respective best efforts to coordinate with the Examiner to avoid unnecessary interference with, or duplication of, the Investigation.

4. The Debtors' duty to cooperate fully with the Examiner shall include promptly providing the Examiner with access to all information within the Debtors' possession, custody, or control that may be relevant to the Investigation, including information the Debtors have obtained through formal or informal means from third parties, as well as other information as identified and requested by the Examiner.

5. Within ten (10) days after the later of entry of this Order or the date on which the U.S. Trustee files a notice of the Examiner's appointment, the Examiner shall propose a work and expenses plan (the "Work and Expenses Plan"), which shall include a good faith estimate of the fees and expenses of the Examiner and the Examiner's proposed professionals for conducting the investigation. The Court may then hold a status conference to consider the Work and Expenses Plan and any responses thereto, and to order further relief as a appropriate to aid the Examiner in the performance of the Examiner's duties and/or to accommodate the needs of the estate. Notwithstanding the foregoing, the Examiner is authorized to commence the Investigation immediately upon appointment.
6. The Examiner shall prepare and file a report (the "Report"), as required by 11 U.S.C. § 1106(a)(4), within 150 days of the Examiner's appointment, unless such time shall be extended by order of the Court upon application by the Examiner on notice to interested parties.
7. The Examiner may retain counsel or other professionals if the Examiner determines that such retention is necessary to discharge the Examiner's duties, which retention shall be subject to Court approval after notice under the standards equivalent to those set forth in 11 U.S.C. § 327.
8. The Examiner and any professionals retained by the Examiner pursuant to the order of this Court shall be compensated and reimbursed for their expenses pursuant to the procedures for interim compensation and reimbursement of expenses of professionals established in these cases. Compensation and reimbursement of the Examiner shall be determined pursuant to 11 U.S.C. § 330, and compensation of the Examiner's professionals shall be determined pursuant to standards equivalent to those set forth in 11 U.S.C. § 330.

9. The Examiner shall cooperate fully with any governmental bodies or agencies (such cooperation shall not be deemed a public disclosure) including, but not limited to, any federal, state or local government agency that may be investigating the Debtors, their management or the pre-bankruptcy financial condition and performance of WMB, and the United States Congress or any committee or subcommittee thereof, and the Examiner shall use best efforts to coordinate with such agencies and bodies in order to avoid unnecessary interference with, or duplication of, any investigations conducted by such bodies or agencies, and to make use of information relevant to the Investigation that they may have developed and obtained through their own efforts.

10. The Examiner shall have the standing of a party in interest in this bankruptcy case with respect to matters within the scope of the Investigation, and shall be entitled to appear and be heard at any and all hearings in this case.

11. The Examiner shall have full access to the non-privileged documents of all parties and to all materials the Debtors have received in response to discovery authorized by this Court or otherwise. If the Examiner seeks the disclosure of documents or information as to which the Debtors assert a claim of privilege or have objected and the Examiner and Debtors are unable to reach a resolution on whether or on what terms such documents or information should be disclosed to the Examiner, the matter may be brought before the Court for resolution. The Debtors' attorney-client and work-product privileges remain and are not deemed waived or in any way impaired by this Order.

12. Nothing in this Order shall impede the rights of the U.S. Trustee, any of the Official Committees, the Examiner, or any other parties in interest to request any other lawful relief, including but not limited to a request to further expand the scope of the Investigation, if during such Investigation other relevant matters are revealed which the Examiner or other party believes should be brought to the attention of the Court.

DATED: ____________________

BY THE COURT:

____
Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT 2

MEMORANDUM

To: Members of the Permanent Subcommittee on Investigations

From: Senator Carl Levin, Subcommittee Chairman
Senator Tom Coburn, Ranking Member

Date: April 13, 2010

Re: **Wall Street and the Financial Crisis: The Role of High Risk Loans**

On Tuesday, April 13, 2010, beginning at 9:30 a.m., the Permanent Subcommittee on Investigations will hold its first in a series of hearings examining some of the causes and consequences of the recent financial crisis. This hearing will focus on the role of high risk loans, using a case study involving Washington Mutual Bank.

The Financial Crisis. In July 2007, two Bear Stearns offshore hedge funds specializing in mortgage related securities collapsed; the credit rating agencies suddenly downgraded hundreds of subprime residential mortgage backed securities; and the formerly active market for buying and selling subprime residential mortgage backed securities went cold. Banks, mortgage brokers, securities firms, hedge funds, and others were left holding suddenly unmarketable mortgage backed securities whose value began plummeting.

Banks and mortgage brokers began closing their doors. In January 2008, Countrywide Financial Corporation, a $100 billion thrift specializing in home loans, was sold to Bank of America. That same month, one of the credit rating agencies downgraded nearly 7,000 mortgage backed securities, an unprecedented mass downgrade. In March 2008, as the financial crisis worsened, the Federal Reserve facilitated the sale of Bear Stearns to JPMorgan Chase. In September 2008, in rapid succession, Lehman Brothers declared bankruptcy; AIG required a $85 billion taxpayer bailout; and Goldman Sachs and Morgan Stanley converted to bank holding companies to gain access to Federal Reserve lending programs.

In this context, Washington Mutual Bank, the sixth largest depository institution in the country with $307 billion in assets, $188 billion in deposits, and 43,000 employees, found itself losing billions of dollars in deposits as customers left the bank, its stock price tumbled, and its liquidity worsened. On September 25, 2008, after a century in the lending business, Washington Mutual Bank was closed by its primary regulator, the Office of Thrift Supervision ("OTS"). On the same day, the Federal Deposit Insurance Corporation ("FDIC"), having been appointed receiver, facilitated sale of the bank to JPMorgan Chase. It was the largest bank failure in the history of the United States.

The sudden financial losses and forced sales of multiple financial institutions put the U.S. economy into a tailspin. The stock market fell; business loans dried up; and unemployment exploded. Hidden liabilities associated with financial firms' proprietary positions in mortgage backed securities, credit default swaps, collateralized debt obligations ("CDOs"), structured investment vehicles, and other complex financial instruments created concerns about the stability of major financial institutions. The contagion spread worldwide as financial institutions holding similar financial instruments lost value and curtailed transactions with other firms. In October

Permanent Subcommittee on Investigations
EXHIBIT #1a

2008, Congress enacted the $700 billion Troubled Asset Relief Plan ("TARP") to stop the U.S. economy from falling off a cliff and taking the rest of the world economy with it. The United States and other countries are still recovering today.

Subcommittee Investigation. In November 2008, the Permanent Subcommittee on Investigations initiated a bipartisan investigation into some of the causes and consequences of the financial crisis. Since then, the Subcommittee has engaged in a wide-ranging inquiry, issuing subpoenas, conducting over 100 interviews and depositions, and consulting with dozens of government, academic, and private sector experts. The Subcommittee has also accumulated and initiated review of over -50 million pages of documents, including court pleadings, filings with the Securities and Exchange Commission, trustee reports, prospectuses for securities and private offerings, corporate board and committee minutes, mortgage transactions and analyses, memoranda, marketing materials, correspondence, and email. The Subcommittee has also reviewed documents prepared by or sent to or from banking and securities regulators, including bank examination reports, reviews of securities firms, enforcement actions, analyses, memoranda, correspondence, and email.

To provide the public with the results of its investigation, the Subcommittee plans to hold a series of hearings addressing aspects of the financial crisis, including the role of high risk home loans, regulators, credit rating agencies, and Wall Street. These hearings will examine issues related to mortgage backed securities, CDOs, credit default swaps, and other complex financial instruments. After the hearings, a report summarizing the investigation will be released.

Washington Mutual Case History. This initial hearing in the series examines Washington Mutual Bank as a case study in the role of high risk loans in the U.S. financial crisis. Headquartered in Seattle, with offices across the country and over 100 years of experience in the home loan business, Washington Mutual Bank had grown to become the nation's largest thrift. Each year, it originated or acquired billions of dollars of home loans through multiple channels, including loans originated by its own loan officers, loans brought to the bank by third party mortgage brokers, and loans purchased in bulk from other lenders or firms. In addition, its affiliate, Long Beach Mortgage Company ("Long Beach"), originated billions of dollars in home loans brought to it by third party mortgage brokers specializing in subprime lending.

Washington Mutual kept a portion of these home loans for its own investment portfolio, and sold the rest either to Wall Street investors, usually after securitizing them, or to the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).

At first, Washington Mutual worked with Wall Street firms to securitize its home loans, but later built up its own securitization arm, Washington Mutual Capital Corporation, which gradually took over the securitization of Washington Mutual and Long Beach loans. In addition, from 2001 to 2007, Washington Mutual sold about $430 billion in loans to Fannie Mae and Freddie Mac, representing nearly a quarter of its loan production during those years.

High Risk Home Loans. Over a five-year period from 2003 to 2008, Washington Mutual Bank made a strategic decision to shift its focus from traditional 30-year fixed and government-backed loans to higher risk home loans. This shift included originating more home loans for higher risk borrowers, with increased loan activity at Long Beach, which was exclusively a subprime lender. Washington Mutual also financed subprime loans brought to the

bank by third party mortgage brokers through its "Specialty Mortgage Finance" and "Wholesale" channels, purchased subprime loans through its "Correspondent" channel, and purchased subprime loans in bulk through its "Conduit" channel.

Washington Mutual decided to shift to higher risk loans, because it had calculated those loans were more profitable. Higher risk loans typically charged borrowers a higher rate of interest and higher fees. Once securitized, a large percentage of the mortgage backed securities received AAA ratings, yet offered investors a higher rate of return than other AAA investments, due to the higher risk involved. As a result, mortgaged backed securities relying on higher risk loans typically fetched a better price on Wall Street than those relying on lower risk loans.

Washington Mutual's most common subprime loans were hybrid adjustable rate mortgages, known as "2/28," "3/27," or "5/25" loans. These 30-year mortgages typically had a low fixed "teaser" rate, which then reset to a higher floating rate after two years for the 2/28, three years for the 3/27, or five years for the 5/25. The initial payment was typically calculated to pay down the principal and interest at the initial low, fixed interest rate. In some cases, the payments covered only the interest due on the loan and not any principal. After the fixed period expired, the monthly payment was typically recalculated to cover both principal and interest at the higher floating rate. The suddenly increased monthly payments sometimes caused borrowers to experience "payment shock" and to default on their loans, adding to the risk.

In addition to subprime loans, Washington Mutual made a variety of high risk loans to "prime" borrowers, including its flagship product, the Option Adjustable Rate Mortgage ("Option ARM"). Washington Mutual's Option ARMs typically allowed borrowers to pay an initial teaser rate, sometimes as low as 1% for the first month, and then imposed a much higher floating interest rate linked to an index, but gave borrowers the choice each month of paying a higher or lower amount. These loans were called "Option" ARMs, because borrowers were typically given four options: (1) paying the fully amortizing amount needed to pay off the loan in 30 years; (2) paying an even higher amount to pay off the loan in 15 years; (3) paying only the interest owed that month and no principal; or (4) making a "minimum" payment that covered only a portion of the interest owed and none of the principal. If the minimum payment option were selected, unpaid interest would be added to the loan principal. If the borrower repeatedly selected the minimum payment, the loan principal would increase rather than decrease over time, creating a negatively amortizing loan.

After five years or when the loan principal reached 110% (sometimes 115% or 125%) of the original loan amount, the Option ARM would "recast." The borrower would then be required to make the fully amortizing payment needed to pay off the loan within the remaining loan period. The new monthly payment amount was typically much greater, causing payment shock and increasing loan defaults. For example, a borrower taking out a $400,000 loan, with a teaser rate of 1.5% and subsequent interest rate of 6%, could have a minimum payment of $1,333. If the borrower then made only the minimum payments until the loan recast, the new payment using the 6% rate would be $2,786, an increase of more than 100%. What began as a 30-year loan for $400,000 became a 25-year loan for $432,000. To avoid having the loan recast, Option ARM borrowers typically refinanced their loans. A significant portion of Washington Mutual's Option ARM business consisted of refinancing existing loans. Borrowers unable to refinance were at greater risk of default.

Washington Mutual and Long Beach sold or securitized most of the subprime home loans they acquired. Initially, Washington Mutual kept most of its Option ARMs in its proprietary investment portfolio, but eventually began selling or securitizing those loans as well. From 2000 to 2007, Washington Mutual and Long Beach securitized at least $77 billion in subprime home loans. Washington Mutual sold or securitized at least $115 billion of Option ARM loans, as well as billions more of other types of high risk loans, including hybrid adjustable rate mortgages, Alt A, and home equity loans. According to its internal documents, by 2006, Washington Mutual was the second largest Option ARM originator and the eleventh largest subprime loan originator in the country.

Lending and Securitization Deficiencies. Over the years, both Long Beach and Washington Mutual were the subject of repeated criticisms by the bank's internal auditors and reviewers, as well as its regulators, OTS and the FDIC, for deficient lending and securitization practices. Long Beach loans repeatedly suffered from early payment defaults, poor underwriting, fraud, and high delinquency rates. Its mortgage backed securities were among the worst performing in the marketplace. In 2003, for example, Washington Mutual stopped Long Beach's securitizations and sent a legal team for three months to address problems and ensure its securitizations and whole loan sales were meeting the representations and warranties in Long Beach's sales agreements.

In 2005, Long Beach had to repurchase over $875 million of nonperforming loans from investors, suffered a $107 million loss, and had to increase its repurchase reserve by nearly $75 million. As a result, Long Beach's senior management was removed, and Long Beach's subprime lending operations were made subject to oversight by Washington Mutual's Home Loans Division. Despite those changes, early payment defaults and delinquencies surged again in 2006, and several 2007 reviews identified multiple lending, credit, and appraisal problems. By mid-2007, Washington Mutual shut down Long Beach as a separate entity and took over its subprime lending operations. At the end of the year, a Long Beach employee was indicted for having taken kickbacks to process fraudulent or substandard loans.

In addition to problems with its subprime lending, Washington Mutual suffered from lending and securitization deficiencies related to its own mortgage activities. It received, for example, repeated criticisms for unsatisfactory underwriting procedures, loans that did not meet credit requirements, and loans subject to fraud, appraisal problems, and errors. For example, a 2005 internal investigation found that loans originated from two top loan producing offices in southern California contained an extensive level of fraud caused primarily by employees circumventing bank policies. Despite fraud rates in excess of 58% and 83% at those two offices, no steps were taken to address the problems, and no investors who purchased loans originated by those offices were notified in 2005 of the fraud problem. In 2006, securitizations with elevated delinquency rates were found to contain lower quality loans that did not meet the bank's credit standards. In 2007, fraud problems resurfaced at the southern California offices, and another internal review of one of the offices found a fraud rate of 62%. In 2008, the bank uncovered evidence that employees at still another top producing loan office were "manufacturing" false documentation to support loan applications. A September 2008 internal review found that loans marked as containing fraudulent information had nevertheless been securitized and sold to investors, identifying ineffective controls that had "existed for some time."

Compensation. The Long Beach and Washington Mutual compensation systems contributed to these problems by creating misplaced incentives that encouraged high volumes of

risky loans but little or no incentives to ensure high quality loans that complied with the bank's credit requirements. Long Beach and Washington Mutual loan officers, for example, received more money per loan for originating higher risk loans and for exceeding established loan targets. Loan processing personnel were compensated according to the speed and number of the loans they processed. Loan officers and their sales associates received still more compensation if they charged borrowers higher interest rates or points than required in bank rate sheets specifying loan prices, or included prepayment penalties in the loan agreements. That added compensation created incentives to increase loan profitability, but not loan quality.

A second problem related to compensation was the millions of dollars paid to Washington Mutual senior executives even as their higher risk lending strategy began to lose money and increase the risk in the bank's own investment portfolio. Washington Mutual's chief executive officer, Kerry Killinger, for example, received each year a base salary of $1 million, cash bonuses, stock options, and multiple stock awards. He also received benefits from four pension plans, a deferred bonus plan, and a separate deferred compensation plan. In 2008 alone, the year he was asked to leave the bank, he received $21 million, including a $15 million severance payment. Altogether, from 2003 to 2008, Washington Mutual paid Mr. Killinger nearly $100 million, on top of multi-million-dollar corporate retirement benefits.

Failure of Washington Mutual. In July 2007, after the Bear Stearns hedge funds collapsed and the rating agencies downgraded hundreds of mortgaged backed securities, including over 40 Long Beach securities, the secondary market for subprime loans dried up. By September 2007, Washington Mutual had discontinued its subprime lending. It also became increasingly difficult for Washington Mutual to sell its high risk loans and related mortgage backed securities, including its Option ARMs. By the end of the year, Washington Mutual began to incur significant losses, reporting a $1 billion loss in the fourth quarter of 2007, and another $1 billion loss in the first quarter of 2008.

In February 2008, based upon increasing deterioration in the bank's asset quality, earnings, and liquidity, OTS lowered the bank's safety and soundness rating to a 3 on a scale of 1 to 5, signaling that it was a troubled institution. In April, the bank closed multiple offices, firing thousands of employees. That same month, Washington Mutual's parent holding company raised $7 billion in new capital, providing $3 billion of those funds to the bank.

In July 2008, a $30 billion mortgage lender, IndyMac, failed and was placed into receivership by the government. In response, depositors became concerned about Washington Mutual and withdrew over $9 billion in deposits, putting pressure on the bank's liquidity. After the bank disclosed a $3.2 billion loss for the second quarter, its stock price continued to drop, and more deposits left.

On September 15, 2008, Lehman Brothers declared bankruptcy. Three days later, on September 18, OTS and the FDIC lowered Washington Mutual's rating to a "4," indicating that a bank failure was a distinct possibility. The credit rating agencies also downgraded the bank's credit ratings. Over the span of eight days starting on September 15th, nearly $17 billion in deposits left the bank. At that time, the federal Deposit Insurance Fund contained about $45 billion, an amount which could have been exhausted by the failure of a $300 billion institution like Washington Mutual. As the financial crisis worsened each day, regulatory concerns about the bank's liquidity and viability intensified.

On September 25, 2008, OTS placed Washington Mutual Bank into receivership, and the FDIC facilitated its immediate sale to JPMorgan Chase for $1.9 billion. The sale eliminated the need to draw upon the federal Deposit Insurance Fund.

Findings. Washington Mutual was not the only mortgage lender to fail during the financial crisis. Nor was its high risk lending practices unusual. To the contrary, the Subcommittee investigation indicates that Washington Mutual was emblematic of practices at a number of financial institutions that originated, sold, and securitized high risk home loans from 2004 to 2008. Based upon the Subcommittee's investigation to date, we make the following findings of fact related to Washington Mutual Bank and its parent holding company, Washington Mutual Inc.

(1) **High Risk Lending Strategy.** Washington Mutual ("WaMu") executives embarked upon a high risk lending strategy and increased sales of high risk home loans to Wall Street, because they projected that high risk home loans, which generally charged higher rates of interest, would be more profitable for the bank than low risk home loans.

(2) **Shoddy Lending Practices.** WaMu and its affiliate, Long Beach Mortgage Company ("Long Beach"), used shoddy lending practices riddled with credit, compliance, and operational deficiencies to make tens of thousands of high risk home loans that too often contained excessive risk, fraudulent information, or errors.

(3) **Steering Borrowers to High Risk Loans.** WaMu and Long Beach too often steered borrowers into home loans they could not afford, allowing and encouraging them to make low initial payments that would be followed by much higher payments, and presumed that rising home prices would enable those borrowers to refinance their loans or sell their homes before the payments shot up.

(4) **Polluting the Financial System.** WaMu and Long Beach securitized over $77 billion in subprime home loans and billions more in other high risk home loans, used Wall Street firms to sell the securities to investors worldwide, and polluted the financial system with mortgage backed securities which later incurred high rates of delinquency and loss.

(5) **Securitizing Delinquency-Prone and Fraudulent Loans.** At times, WaMu selected and securitized loans that it had identified as likely to go delinquent, without disclosing its analysis to investors who bought the securities, and also securitized loans tainted by fraudulent information, without notifying purchasers of the fraud that was discovered.

(6) **Destructive Compensation.** WaMu's compensation system rewarded loan officers and loan processors for originating large volumes of high risk loans, paid extra to loan officers who overcharged borrowers or added stiff prepayment penalties, and gave executives millions of dollars even when its high risk lending strategy placed the bank in financial jeopardy.

# # #

EXHIBIT 3

MEMORANDUM

To: Members of the Permanent Subcommittee on Investigations

From: Senator Carl Levin, Subcommittee Chairman
Senator Tom Coburn, Ranking Member

Date: April 16, 2010

Re: **Wall Street and the Financial Crisis: The Role of Bank Regulators**

On Friday, April 16, 2010, beginning at 9:30 a.m., the Permanent Subcommittee on Investigations will hold the second in a series of hearings examining some of the causes and consequences of the recent financial crisis. This hearing will focus on the role played by federal bank regulators, using as a case history Washington Mutual Bank, the largest bank failure in U.S. history.

Subcommittee Investigation. In November 2008, the Permanent Subcommittee on Investigations initiated a bipartisan investigation into some of the causes and consequences of the financial crisis. Since then, the Subcommittee has engaged in a wide-ranging inquiry, issuing numerous subpoenas; conducting over 100 interviews and depositions; and consulting with dozens of government, academic, and private sector experts on banking, securities, financial, and legal issues. The Subcommittee has also accumulated and initiated review of over 50 million pages of documents, including court pleadings, filings with the Securities and Exchange Commission, trustee reports, prospectuses for securities and private offerings, corporate board and committee minutes, mortgage transactions and analyses, memoranda, marketing materials, correspondence, and email. The Subcommittee has also reviewed documents prepared by or sent to or from banking and securities regulators, including bank examination reports, reviews of securities firms, enforcement actions, analyses, memoranda, correspondence, and email.

To provide the public with the results of its investigation, the Subcommittee is holding a series of hearings addressing the role of high risk lending, regulators, credit rating agencies, investment banks, and others in the financial crisis. These hearings will examine issues related to mortgage backed securities, collateralized debt obligations, credit default swaps, and other complex financial instruments. After the hearings, a report on the investigation will be prepared.

Washington Mutual Case History. The initial hearing in the series, on April 13, used Washington Mutual Bank as a case study to examine the role of high risk loans in the U.S. financial crisis. Headquartered in Seattle, with branches and loan centers across the country, Washington Mutual Bank had over 100 years of experience in the home loan business and had grown to become the nation's largest thrift with more than $300 billion in assets, $188 billion in deposits, and 43,000 employees. Washington Mutual's thrift charter required the bank to concentrate on home loans and maintain most of its assets in mortgage related activities. Each year, it originated or acquired billions of dollars of home loans through multiple channels, including loans originated by its own loan officers, loans brought to the bank by third party mortgage brokers, and loans purchased in bulk from other lenders or firms. In addition, its

Permanent Subcommittee on Investigations
EXHIBIT #1a

affiliate, Long Beach Mortgage Company ("Long Beach"), originated billions of dollars in home loans brought to it by third party mortgage brokers specializing in subprime lending.

Washington Mutual kept a portion of its home loans for its own investment portfolio, and sold the rest either to Wall Street investors, usually after securitizing them, or to Fannie Mae and Freddie Mac. At first, Washington Mutual worked with Wall Street firms to securitize its home loans, but later built up its own securitization arm, Washington Mutual Capital Corporation.

Until 2006, Washington Mutual's operations were profitable. In 2007, many of its high risk loans began experiencing increased rates of delinquency and loss, and after the subprime mortgage backed securities market collapsed in September 2007, Washington Mutual was unable to sell its subprime loans. In the fourth quarter of 2007, the bank recorded a loss of $1 billion. In 2008, Washington Mutual's stock price plummeted against the backdrop of a worsening financial crisis, including the forced sales of Countrywide Financial Corporation and Bear Stearns, government takeover of IndyMac, bankruptcy of Lehman Brothers, taxpayer bailout of AIG, and conversion of Goldman Sachs and Morgan Stanley into bank holding companies. In the first half of 2008, Washington Mutual lost another $4.2 billion, and its depositors withdrew a total of over $26 billion from the bank. On September 25, 2008, Washington Mutual Bank was placed into receivership by its primary regulator and was immediately sold to JPMorgan Chase for $1.9 billion.

Washington Mutual's Regulators. Washington Mutual's primary federal regulator was the Office of Thrift Supervision ("OTS"). OTS was created in 1989, in response to the savings and loan crisis to charter and regulate the thrift industry. It is part of the U.S. Department of the Treasury and headed by a Presidentially-appointed Director. Like other bank regulators, OTS is charged with ensuring the safety and soundness of the financial institutions it oversees. Its operations are funded through semiannual fees assessed on the institutions it regulates, with the fee amount based on the size, condition, and complexity of each institution's portfolio. Washington Mutual provided 12-15% of OTS revenue from 2003 to 2008.

OTS supervises its thrifts through four regional offices led by a Regional Director, Deputy Director, and Assistant Director. The regional offices assign an Examiner In Charge, supported by other examination personnel, to each thrift. OTS currently oversees about 765 thrift-chartered institutions. In all, approximately three-quarters of the OTS workforce reports to the four regional offices, while the remaining quarter works at the OTS Washington headquarters. Washington Mutual was supervised by the West Region whose office was, through the end of 2008, based in Daly City, California.

In addition to OTS, Washington Mutual was regulated by the Federal Deposit Insurance Corporation ("FDIC"). The mission of the FDIC is to maintain stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, and managing failed institutions placed into receivership. To carry out these responsibilities, FDIC has backup supervisory authority over approximately 3,000 federally insured depository institutions whose primary regulators are the OTS, Office of the Comptroller of the Currency, or Federal Reserve. The

Deposit Insurance Fund is financed through fees assessed on the insured institutions, with assessments based on the amount of deposits requiring insurance and the degree of risk posed by each institution to the insurance fund.

For the eight largest institutions, the FDIC assigns at least one Dedicated Examiner to work on-site at the institution. The examiner's obligation is to evaluate the institution's risk to the Deposit Insurance Fund and work with the primary regulator to lower that risk. The FDIC has entered into a 2002 inter-agency agreement with the primary bank regulators to facilitate and coordinate their respective oversight obligations and ensure the FDIC is able to protect the Deposit Insurance Fund. Pursuant to that agreement, the FDIC may request to participate in examinations of large institutions or higher risk financial institutions, recommend enforcement actions to be taken by the primary regulator, and if the primary regulator fails to act, take its own enforcement action with respect to an insured institution. Washington Mutual had a FDIC-assigned Dedicated Examiner who worked with OTS examiners to oversee the bank.

Federal bank regulators have a wide range of informal and formal enforcement actions that may be used to ensure the safety and soundness of a financial institution. Informal enforcement actions, which are not made public, include issuing examination findings to the bank and both recommending and requiring corrective action, notifying the Board of problems, and requiring the Board to issue a resolution with commitments for corrective actions. Formal enforcement actions, which become public, include requiring the bank to enter into a Memorandum of Understanding with commitments for corrective action, imposing monetary fines, issuing cease and desist orders, and removing bank personnel.

The Examination Process. The stated mission of the OTS is "[t]o supervise savings associations and their holding companies in order to maintain their safety and soundness and compliance with consumer laws, and to encourage a competitive industry that meets America's financial services needs." The OTS Examination Handbook, in section 10.2, requires "[p]roactive regulatory supervision" with a focus on evaluation of "future needs and potential risks to ensure the success of the thrift system in the long term."

To carry out its mission, OTS traditionally conducted an examination of its thrifts every 12-18 months and provided the results in an annual Report of Examination ("ROE"). In 2006, OTS initiated a "continuous exam" program for its largest thrifts, requiring its examiners to conduct a series of specialized examinations during the year with the results from all of those examinations included in an annual ROE. The Examiner in Charge led the examination activities which were organized around a rating system called CAMELS that is used by all federal bank regulators. The CAMELS rating system evaluates a bank's: (C) capital adequacy, (A) asset quality, (M) management, (E) earnings, (L) liquidity, and (S) sensitivity to market risk. CAMELS ratings use a scale of 1 to 5, with 1 being the best rating and 5 the worst. In the annual ROE, OTS provided its thrifts with an evaluation and rating for each CAMELS component, as well as an overall composite rating on the bank's safety and soundness.

At Washington Mutual, OTS examiners conducted both on-site and off-site activities to review bank operations, and maintained frequent communication with bank management through

emails, telephone conferences, and meetings. Washington Mutual formed a Regulatory Relations office charged with overseeing its interactions with OTS, the FDIC, and other regulators. During the year, OTS examiners issued "findings memos," which set forth particular examination findings, and required a written response and corrective action plan from Washington Mutual management. The findings ranged from "observations," to "recommendations," to "criticisms." The most serious findings were elevated to the Washington Mutual Board of Directors through designation as a Matter Requiring Board Attention ("MRBA"). MRBAs were set forth in the ROE and presented to the Board in an annual meeting attended by OTS and FDIC personnel. Washington Mutual tracked OTS findings and its responses through its Enterprise Issue Tracking System ("ERICS"). In a departure from its usual practice, OTS did not maintain a separate tracking system but simply relied on Washington Mutual's ERICS system to identify past examination findings and the bank's responses.

The FDIC also examined Washington Mutual, relying primarily on the examination findings and ROEs developed by OTS. The FDIC assigned its own CAMELS ratings to the bank. In addition, for institutions with assets of $10 billion or more, the FDIC has established the Large Insured Depository Institutions ("LIDI") Program to assess and report on emerging risks that may pose a threat to the Deposit Insurance Fund. Under this program, the Dedicated Examiner and other regional case managers perform ongoing analysis of emerging risks within each insured institution and assign a quarterly risk rating, using a scale of A to E, with A being the best rating and E the worst. In addition, senior FDIC analysts within the Complex Financial Institutions Branch analyze specific bank risks and develop supervisory strategies.

Washington Mutual's Examination History. From 2003 to 2008, OTS repeatedly identified significant problems with Washington Mutual's lending practices, risk management, and asset quality, and requested corrective action. Washington Mutual promised year after year to correct identified problems, but failed to do so. OTS failed to respond with meaningful enforcement action, resisted FDIC recommendations for stronger measures, and even impeded FDIC examination efforts.

OTS findings memoranda and ROEs repeatedly identified serious underwriting and risk management deficiencies at Washington Mutual. OTS elevated these issues to Washington Mutual's board by issuing MRBAs on underwriting deficiencies every year from 2003-2008. For most of those years, OTS determined that either Single Family Residential loan underwriting at Washington Mutual or subprime underwriting at Long Beach was "less than satisfactory." It also issued MRBAs on the need for stronger risk management from 2004-2008. In 2007, an OTS examiner noted that WaMu had nine different compliance officers in the past seven years, and that "[t]his amount of turnover is very unusual for an institution of this size and is a cause for concern."[1]

[1] Draft OTS Exam Findings Memo, "Compliance Management Program," May 31, 2007, Franklin_Benjamin-00020408_001.

In January 2005, Washington Mutual made a strategic decision to shift its focus from low risk fixed rate and government-backed loans to higher risk subprime, home equity, and Option ARM loans. OTS examiners expressed concern about but did not restrict a number of high risk lending practices at the bank, including accepting stated income loans without verifying the borrower's assets or ability to repay the loan, low documentation loans, loans with low FICO scores and high loan-to-value ratios, loans that required interest only payments, and loan payments that did not cover even the interest owed, much less the principal.[2] When one OTS examiner attempted to restrict "No Income No Asset (NINA loans)" in which the lender did not have to verify information about a borrower's income or assets, the OTS West Region overruled him and ignored an OTS policy official in Washington, D.C., discouraging use of such loans, calling him a "lone ranger" within the agency.

When Washington Mutual announced its shift to higher risk loans, OTS examiners observed that robust risk management practices would be necessary to function as a check and balance on the high-risk lending strategy. Yet from 2005 through 2008, OTS examiners consistently found Washington Mutual's risk management practices lacking. In addition, as noted above, throughout this period, OTS examiners continuously criticized Washington Mutual's underwriting standards and practices as "less than satisfactory" and the amount of underwriting errors as "higher than acceptable." OTS also observed over the years loans with erroneous or fraudulent information, loans that did not comply with the bank's credit requirements, or loans that contained other problems. Notwithstanding the many control weaknesses the bank's underwriting and risk management practices, OTS examiners took no action to bring about change in these areas.

OTS examiners were also aware that many Washington Mutual and Long Beach loans were brought to the bank by third party mortgage brokers or lenders over which the bank exercised weak oversight, but again took little action. For example, when OTS examiners noted in a 2007 findings memo that Washington Mutual had only 14 full-time employees overseeing over 34,000 third-party brokers, the examiners made only the following observation: "Given the . . . increase in fraud, early payment defaults, first payment defaults, subprime delinquencies, etc., management should re-assess the adequacy of staffing."[3] Washington Mutual management agreed with the finding, but provided no corrective action plan, stating only that "[s]taffing needs are evaluated continually and adjusted as necessary."

In 2006, due to increasing concerns about lax lending practices and exotic high-risk mortgages, federal bank regulators worked together to draft inter-agency guidance on

---

[2] *See, e.g.*, OTS Report of Examination for Washington Mutual Bank, March 14, 2006, at 19, OTSWMEF-0000047030 ("We believe the level of delinquencies, if left unchecked, could erode the credit quality of the portfolio. Our concerns are increased when the risk profile of the portfolio is considered, including concentrations in Option ARMS to higher-risk borrowers, in low and limited documentation loans, and loans with subprime or higher-risk characteristics. We are concerned further that the current market environment is masking potentially higher credit risk.").

[3] OTS Examination Findings Memo, "Broker Credit Administration," June 7, 2007, Hedger_Ann-00027930_001.

nontraditional mortgage products ("NTM guidance"). During the drafting process, OTS argued for less stringent lending standards than other regulators were advocating, using data supplied by Washington Mutual in order to protect the bank's loan volume. Once the guidance was issued in October 2006, while other bank regulators told their institutions that they were expected to come into immediate compliance, OTS took the position that compliance was something institutions "should" do, not something they "must" do, and allowed its thrifts over a year to comply.

For example, the NTM guidance required banks to evaluate a borrower's ability to repay a mortgage using a fully-indexed interest rate and fully-amortized payment amount. Washington Mutual, after learning that compliance with that requirement would lead to a 33% drop in loan volume due to borrowers who would no longer qualify for the loans, determined to "hold[] off on implementation until required to act for public relations ... or regulatory reasons."[4] OTS allowed Washington Mutual to continue qualifying borrowers using lower loan payment amounts for another year, resulting in the bank's originating many Option ARM loans that would later suffer significant losses.

OTS justified its regulatory stance in part by pointing to Washington Mutual's profits and low level of mortgage delinquencies during the height of the mortgage boom, reasoning that the lack of losses made it difficult to require the bank to reduce the risks threatening the bank's safety and soundness. The OTS Examiner in Charge put it this way in a 2005 email: "It has been hard for us to justify doing much more than constantly nagging (okay, 'chastising') through ROE and meetings, since they have not been really adversely impacted in terms of losses."[5] Another examiner concerned about the bank expressed her frustration this way: "I'm not up for the fight or the blood pressure problems. . . . It doesn't matter that we are right . . . They [Washington Mutual] aren't interested in our 'opinions' of the program. They want black and white, violations or not."[6]

FDIC evaluations of Washington Mutual were consistently more negative than those of the OTS, with LIDI ratings that showed a higher degree of bank risk than OTS CAMELS ratings indicated, creating friction between the two agencies. In 2006, OTS began to exclude FDIC staff from active bank oversight by limiting the number of staff allowed on site, temporarily disrupting FDIC access to office space and bank information, and refusing to allow FDIC to review loan files, even for higher risk loans that could affect the FDIC's assessment of insurance fees on Washington Mutual or pose a threat to the deposit insurance fund. In February 2007, OTS refused to allow the FDIC to review loan files to evaluate Washington Mutual's compliance with the NTM guidance. In April 2007, when FDIC officials raised the issue with the OTS West Region Director, he disclosed for the first time to the FDIC that OTS was allowing the bank additional time to comply with the guidance before conducting file reviews.

---

[4] Email from Ron Cathcart to David Schneider, dated March 19, 2007, JPM_WM02571598.

[5] EIC Lawrence Carter email to West Region Deputy Director Darrel Dochow, Sept. 15, 2005, OTSWMS05-002 0000535.

[6] Email from Mary Suzanne Clark to EIC Ben Franklin, dated June 3, 2007, OTSWMS07-013 0002576.

When asked why the FDIC did not use its independent enforcement authority at Washington Mutual, one senior FDIC official told the Subcommittee that the agency had never used that authority because its fellow banking agencies would view an independent enforcement action as "an act of war" – an invasion of their regulatory turf that would irreparably harm the FDIC's working relationships with those agencies. Rather than take independent enforcement action, the FDIC had restricted itself to urging action by the primary bank regulator.

In July 2007, U.S. financial markets took a turn for the worse. Credit rating agencies suddenly downgraded hundreds of subprime mortgage backed securities, including over 40 Long Beach securities, and the subprime market collapsed. Washington Mutual was suddenly stuck with billions of dollars in unmarketable subprime loans and securities, and reported a $1 billion loss in the fourth quarter of 2007. In late February 2008, OTS downgraded Washington Mutual for the first time, changing its CAMELS rating from a 2 to a 3, signifying a troubled bank. At that point, consistent with its own practice, OTS should have concomitantly issued an enforcement action, but did not do so. Washington Mutual lost another $1 billion in the first quarter of 2008, and $3.2 billion in the second quarter. Its stock price plummeted, and depositors began withdrawing substantial sums.

In March 2008, at the urging of the FDIC, Washington Mutual invited potential buyers of the bank to review its information. Several institutions responded, and JPMorgan Chase made an offer which Washington Mutual turned down. The bank raised additional capital of $7 billion instead to reassure the market. In July 2008, IndyMac, another thrift with high risk loans, failed and was taken over by the FDIC. In response, Washington Mutual depositors began to withdraw more funds from the bank, eventually removing over $9 billion.

During this liquidity run on the bank, the FDIC formally challenged the OTS CAMELS rating, advocating a downgrade to a 4, indicating significant concern about the bank's long-term viability. The two agencies argued amongst themselves over the rating for weeks during the summer of 2008, as the bank's condition continued to deteriorate. Finally, in September 2008, as the FDIC's judgment of Washington Mutual's risk profile became more severe, the FDIC independently downgraded the bank to a 4. In response, mere days before the bank's failure, OTS agreed to the 4 rating. In addition, on September 7, 2008, OTS took its first formal enforcement action, requiring the bank to enter into a Memorandum of Understanding. Even then, the MOU did not require the bank to strengthen its lending or risk management practices, instead directing it to hire a consultant to revise its business plan. FDIC contributed the strongest measure, requiring development of a plan to increase the bank's capital. Apart from the capitalization plan, OTS' Chief Operating Officer described the MOU as a "benign supervisory document."

After Washington Mutual failed, the OTS Examiner in Charge at the bank expressed his frustration with the role played by the bank regulators, writing to an OTS colleague: "You know, I think that once we (pretty much all the regulators) acquiesced that stated income lending was a reasonable thing, and then compounded that with the sheer insanity of stated income, subprime, 100% CLTV [Combined Loan-to-Value], lending, we were on the figurative bridge to nowhere. Even those of us that were early opponents let ourselves be swayed somewhat by

those that accused us of being 'chicken little' because the losses were slow in coming, and let[']s not forget the mantra that 'our shops have to make these loans in order to be competitive'. I will never be talked out of something I know to be fundamentally wrong ever again!!"[7]

OTS' failure to act allowed Washington Mutual to engage in unsafe and unsound practices that cost borrowers their homes, led to a loss of confidence in the bank, and sent hundreds of billions of dollars of toxic mortgages into the financial system with its resulting impact on financial markets at large.

Findings. Federal bank regulators are supposed to ensure the safety and soundness of individual U.S. financial institutions and, by extension, the U.S. banking system. Washington Mutual was just one of many financial institutions that federal banking regulators allowed to engage in such high risk home loan lending practices that they resulted in bank failure and damage to financial markets. The ineffective role of bank regulators was a major contributor to the 2008 financial crisis that continues to afflict the U.S. and world economy today.

Based upon the Subcommittee's ongoing investigation, we make the following findings of fact regarding the role of federal regulators in the Washington Mutual case history.

(1) **Largest U.S. Bank Failure.** From 2003 to 2008, OTS repeatedly identified significant problems with Washington Mutual's lending practices, risk management, and asset quality, but failed to force adequate corrective action, resulting in the largest bank failure in U.S. history.

(2) **Shoddy Lending and Securitization Practices.** OTS allowed Washington Mutual and its affiliate Long Beach Mortgage Company to engage year after year in shoddy lending and securitization practices, failing to take enforcement action to stop its origination and sale of loans with fraudulent borrower information, appraisal problems, errors, and notoriously high rates of delinquency and loss.

(3) **Unsafe Option ARM Loans.** OTS allowed Washington Mutual to originate hundreds of billions of dollars in high risk Option Adjustable Rate Mortgages, knowing that the bank used unsafe and unsound teaser rates, qualified borrowers using unrealistically low loan payments, permitted borrowers to make minimum payments resulting in negatively amortizing loans (*i.e.*, loans with increasing principal), relied on rising house prices and refinancing to avoid payment shock and loan defaults, and had no realistic data to calculate loan losses in markets with flat or declining house prices.

(4) **Short Term Profits Over Long Term Fundamentals.** OTS abdicated its responsibility to ensure the long-term safety and soundness of Washington Mutual by concluding that

[7] OTS EIC Benjamin Franklin email to OTS Examiner Thomas Constantine, Oct. 7, 2008, Franklin_Benjamin-00034415.

short-term profits obtained by the bank precluded enforcement action to stop the bank's use of shoddy lending and securitization practices and unsafe and unsound loans.

(5) **Impeding FDIC Oversight.** OTS impeded FDIC oversight of Washington Mutual by blocking its access to bank data, refusing to allow it to participate in bank examinations, rejecting requests to review bank loan files, and resisting FDIC recommendations for stronger enforcement action.

(6) **FDIC Shortfalls.** FDIC, the backup regulator of Washington Mutual, was unable to conduct the analysis it wanted to evaluate the risk posed by the bank to the Deposit Insurance Fund, did not prevail against unreasonable actions taken by OTS to limit its examination authority, and did not initiate its own enforcement action against the bank in light of ongoing opposition by the primary federal bank regulators to FDIC enforcement authority.

(7) **Recommendations Over Enforceable Requirements.** Federal bank regulators undermined efforts to end unsafe and unsound mortgage practices at U.S. banks by issuing guidance instead of enforceable regulations limiting those practices, failing to prohibit many high risk mortgage practices, and failing to set clear deadlines for bank compliance.

(8) **Failure to Recognize Systemic Risk.** OTS and FDIC allowed Washington Mutual and Long Beach to reduce their own risk by selling hundreds of billions of dollars of high risk mortgage backed securities that polluted the financial system with poorly performing loans, undermined investor confidence in the secondary mortgage market, and contributed to massive credit rating downgrades, investor losses, disrupted markets, and the U.S. financial crisis.

(9) **Ineffective and Demoralized Regulatory Culture.** The Washington Mutual case history exposes the regulatory culture at OTS in which bank examiners are frustrated and demoralized by their inability to stop unsafe and unsound practices, in which their supervisors are reluctant to use formal enforcement actions even after years of serious bank deficiencies, and in which regulators treat the banks they oversee as constituents rather than arms-length regulated entities.

EXHIBIT 4

Statement of

John M. Reich
Former Director, Office of Thrift Suprvision
Former Vice Chairman, Federal Deposit Insurance Corporation

regarding

Washington Mutual Bank

Before the

U.S. Senate Permanent Subcommittee on Investigations
United States Senate

April 16, 2010

Good morning, Mr. Chairman, and Members of the Subcommittee, my name is John Reich. I retired in February 2009 after a 49 year career that included 25 years as a community bankers in Illinois and Florida – 12 years as CEO; followed by nearly 12 years in the U.S. Senate as a staff member with former Senator Connie Mack – the last three years as his chief of staff; and eight (8) years from January 15, 2001 to February 27, 2009 as a member of the Board of Directors of the FDIC that included five (5) years as an inside director serving as Vice Chairman. In 2005, the White House asked if I would move to the Office of Thrift Supervision to serve as its Director, and on August 5, 2005, I took the Oath as OTS Director and served in that capacity for three and one-half years until I retired on February 27, 2009.

When asked by the White House to move to OTS, I agreed to do so - with some level of concern. The banking industry was at the peak of a six year boom, recording successively increasing earnings records, and a decline seemed likely. In addition, OTS staffing numbers had experienced a decline in recent years, with no new hiring at any level, and a diminishing priority had been given to the compliance function, partially evidenced by the elimination of senior level Compliance and Consumer Protection management positions in Washington, DC.

At the beginning of my tenure as OTS Director, the agency had 899 employees, 4 Regional Offices, and no centralized Compliance and Consumer Protection function in the Washington, DC headquarters office. I spent a good portion of my first year becoming familiar with staff and structure throughout the agency, initiating a number of changes. I learned very early that OTS had operated its Regions with a high degree of decentralization and autonomy. This presented challenges with achieving consistency in carrying out our responsibilities, and we sought during the duration of my tenure to change the culture to more standardized procedures with greater direction and leadership from the headquarters office.

Much of this effort was facilitated by regular meetings of senior regional staff with senior Washington, DC management, usually, but not always, including me. These Regional Management Group (RMG) meetings occurred approximately 6 times a year, rotating among Regional offices around the country and the Washington, DC office. The meetings generally lasted two to two and one-half days, and the Agenda almost always included briefings from each Region on the current status of high risk cases. Thus, Washington Mutual Bank (WaMu) was formally discussed several times a year by OTS management, and in fact, during the last year of its existence,

was discussed informally on virtually a daily basis by Washington, DC management.

The Failure of Washington Mutual Bank

There are three points I would like to make concerning the failure of WaMu on September 25, 2008:

1. Though Asset Quality was a growing and continuing concern at WaMu, this was a liquidity failure, not a capital failure, brought on because of a $16.4 billion run on deposits, during the 10-day period preceding September 25th, with zero cost to the Deposit Insurance Fund or to taxpayers.
2. A majority of WaMu's mortgages were in California and Florida – two of the states hit with the most severe price declines.
3. WaMu suffered with a lack of diversity in its asset portfolio because of restrictions imposed by the HOLA statute under which savings institutions operate. Though they attempted asset diversity, all of the categories were in real estate related loans.

The liquidity failure at WaMu was induced by the decline in public confidence in large financial institutions, brought on by a series of prior significant events in 2008:

a. the March failure of Bear Stearns;
b. the July failure of IndyMac,
c. the early September government takeover of Fannie Mae and Freddie Mac;
d. the mid-September collapse of Lehman and bailout of AIG;
e. the September 21st weekend approval by the Fed for Goldman Sachs and Morgan Stanley to become bank holding companies.
f. On September 25th, WaMu was closed by OTS with zero cost to the Deposit Insurance Fund or to taxpayers.

These events were followed by:

a. The September 29th acquisition of Wachovia announced by Citi
b. The October 3rd acquisition of Wachovia announced by Wells Fargo
c. The October 3rd announcement by the FDIC of an increase in deposit insurance to $250,000 per depositor – an event which might have prevented the closure of WaMu if it had occurred a couple of weeks earlier.
d. The November 24th announcement of a government bailout of Citigroup (not the first, by the way)

Had WaMu's liquidity crises occurred 2 weeks later, there would have been no failure, as the FDIC's October 3rd announcement of an increase in deposit insurance to $250,000 per depositor would likely have mitigated the run on deposits which took place. Whether there would have been a later capital failure is pure conjecture. Furthemore, though I do not personally support the "Too Big to Fail" public policy which presently exists, the informal definition of which in reality was acknowledged and expanded when regulators publicly mandated a capital stress test of the 19 largest institutions in the country in 2009 with over $100 Million in Total Assets – WaMu again would have been prevented from failure. Under an inconsistent and moving public policy, WaMu was in fact a systemically important institution and should have been treated as such. It is noteworthy that Secretary Hank Paulson in his recent book, *On The Brink*, states (on page 293) that… "I see that, in the middle of a panic, this was a mistake.

WaMu, the sixth-biggest bank in the country, was systemically important."
I agree with Secretary Paulson's revised view.

WaMu and OTS and Staffing

During my tenure at OTS, I believe WaMu at its peak size represented approximately 23% of the Total Assets in institutions supervised by OTS, and its assessment revenue represented approximately 12 to 13% of OTS's Total Assessment Revenue.

As Director of the agency, I never ever felt beholden to 'preserve' WaMu or any other chartered entity under our supervision for the purpose of preserving OTS's revenue stream or its standing as a separate regulatory agency.

I'm fully aware there is a belief - long held by some - that a supervising agency dependent on those it supervises for significant components of its revenue stream, may tend to supervise or administer with a lighter touch in order to preserve the future of the supervising agency. I understand why that belief is held – for in Material Loss Reviews and case studies throughout all of the Federal Banking Agencies over the years, including OTS, OCC, FDIC, and the Fed, there are examples cited indicating that examination information was known and recommendations made by examiners calling attention to serious weaknesses which if not corrected

could jeopardize an institution's safety and soundness. In a number of instances in recent years, including WaMu, these prophecies came true, though in WaMu's case, I strongly maintain the immediate cause of OTS's decision to close the institution and appoint the FDIC as receiver was not a depletion of capital, but a depletion of liquidity.

Some opinions to the contrary, I firmly believe that size of an institution and its proportion of an agency's revenue stream are irrelevant factors. It is also an insult to the integrity of nearly 5,000 bank examiners and professional regulators around the country to suggest their priorities and motivations would be anything other than to provide for the safety and soundness of our nation's financial institutions. Anyone aware of the psyche of the typical career bank examiner or career regulator would understand this view. These are dedicated public servants committed to their mission, and are often described by bankers as overly-zealous.

OTS, though a small agency, had sufficient resources dedicated to the examination of WaMu, including resident examiners and assigned specialists. In 2005, at the time I became Director of OTS, the agency was performing full-scope annual 'point-in-time' examinations. In 2007, OTS moved to a 'continuous' examination process, issuing 'findings memoranda"

to bank management during the year, and including these as necessary in a final Report of Examination.

With regard to Agency staffing, we restored a hiring and internal professional development program, and over the period 2005 to 2009, with approximately 45 to 50 retirements per year, OTS recruited well over 200 new employees, and total staffing stood at approximately 1,030 employees at the time of my retirement, with an approved staffing level of 1,060. In addition, we almost immediately restored and staffed a centralized Compliance and Consumer Protection management function in Washington, DC, coordinating compliance and consumer protection through Regional Compliance and Consumer Protection managers and gave increased emphasis on compliance and consumer protection examinations. Many new hires were directed into the compliance examiner training program.

OTS Supervision of WaMu

I believe the record (Reports of Examination) and any external Inspector General reviews of OTS's work will show that OTS examiners were diligent and rigorous in the conduct of their work and in identifying matters requiring attention. Many issues and weaknesses were brought to bank management's attention during the examination process, not waiting for the production of a Report, but communicated through periodic

memorandums which contained findings classified as Criticisms, Recommendations, or Observations.

Asset Quality was an underlying concern at WaMu monitored continuously by OTS examiners and highlighted in Reports of Examination. As worldwide liquidity markets crashed in August, 2007, considerable losses developed in WaMu's loan portfolio because of stated income, low doc and no doc loans. For some time I had been concerned about these types of loans. As a former banker, these concepts were anathema to me, having grown up in an era when loans were made, regardless of type, based upon the 5 C's of Credit: Character, Collateral, Capacity, Capital, and Conditions. My greatest regret as a regulator is that I did not act to eliminate these types of loans. I was influenced by the argument that these types of loans had been successfully underwritten and administered by institutions on the West Coast of the United States for more than 20 years with minimal loss experience. As simplistic as it may seem, regardless of size of institution, if the 5 C's of credit administration had been followed in the past, and if they are utilized as fundamental components of lending policies in the future, any meltdown such as we have recently experienced will be far less traumatic.

Long Beach Mortgage Company (LBMC) was a source of concern from the bottom to the top of OTS management because of its subprime

mortgage practices. My recollection is that OTS insisted that certain underwriting improvements take place before WaMu was permitted to integrate LBMC into the bank. In the second half of 2007, WaMu ceased making subprime loans, though – in my recollection - not before this component of their portfolio represented a little over 10% of their entire portfolio.

Relationship with FDIC

As previously mentioned, I spent five of my eight years as a regulator as an inside Director within the FDIC, serving as Vice Chairman for several years, and as Acting Chairman for several weeks during 2001 prior to Donald Powell taking the Oath as Chairman. During this period, the failure of Superior Bank FSB, Hinsdale, Illinois occurred. The institution was supervised by OTS, and it became necessary for me to make the then-OTS Director aware that OTS's Regional Office in Chicago had declined FDIC's request to participate in a joint examination. My call resulted in the reversal of OTS's decision, but it was too late to preserve the institution. I cite this experience to indicate that I am well aware of the FDIC's need for timely examination visits and information, and am generally predisposed to agree to such requests.

Part of the tension is attributable to the composition of the FDIC Board – currently five members, with three inside Director positions and two outside Director positions – the Comptroller of the Currency and the Director of the OTS. I believe a diverse board is an asset. There are occasional differences of opinion on policy issues which come before the FDIC Board resulting in a 3-2 split. The inside directors may think the outside directors are viewing issues from their own independent agency's parochial point of view and not from the standpoint of what is in the best interests of the FDIC and its Deposit Insurance Fund. Conversely, the outside directors may believe the inside directors view issues from an overly narrow perspective and do not always appreciate the potential for unintended consequences and negative impacts on institutions the FDIC does not supervise and about which they may not have an informed perspective.

Some Members of Congress seem to believe that disagreement among regulators is unseemly and an indication the process is broken and needs to be changed. I could not disagree more with that view. Like the U.S. Congress, differences of opinion are desirable, productive, and usually result in the best policy being adopted.

In the exercise of its backup supervisory authority, the FDIC has the unfettered right to examine any 3, 4,or 5 rated institution. For institutions

rated 2 or higher, the FDIC must have the consent of the primary federal regulator in order to perform or participate in an examination of an institution that it does not directly supervise. These backup policies and practices exist for basically four reasons in my opinion:

1. The statutory authority of the primary supervisory gives that supervisor the responsibility for the oversight of the institution.

2. The presence of another supervisory authority creates room for confusion among the staff of the financial institution over what agency really is in charge.
3. Past experience has highlighted situations that occur among financial institutions over the additional regulatory burden presented when an additional agency's staff is on site making requests, sometimes duplicative.

4. Finally, the presence of FDIC staff in an institution for which it is not the primary federal regulator heightens concern and alarm within an institution and a community if it becomes known that the FDIC is on site.

Conclusion

WaMu failed because of an acute run on deposits totaling $16.4 Billion during the 10 days preceding September 25, 2008, resulting in backup liquidity lines at the Federal Home Loan Bank of Seattle, the Federal Home Loan Bank of San Francisco, and the Federal Reserve Bank of San Francisco being reduced or pulled. Its financial condition was exacerbated over the years by the fact it operated under an obsolete HOLA statute which essentially mandates two-thirds of a savings institution's assets be invested

in real estate related loans. Hence by definition, a savings institution's portfolio is a concentration of assets in what has now proven to be a vulnerable component of our economy – the housing market.

In my opinion, the current thrift charter is obsolete. Savings institutions need the flexibility for greater asset diversity, and Congress needs to provide for that capability in any reform legislation. In addition, the competitive landscape needs to be leveled from a regulatory point of view. We cannot continue to have an environment where highly regulated institutions compete against lesser or unregulated entities for the same or similar financial products.

<u>EXHIBIT 5</u>

WSJ.com Law Page | lexis.com® | LexisNexis® Total Litigator | Historical Quotes | LexisNe:

Dow Jones Reprints: This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers, use the Order Reprints tool at the bottom of any article or visit www.djreprints.com

See a sample reprint in PDF format. Order a reprint of this article now

THE WALL STREET JOURNAL.
WSJ.com

BUSINESS | APRIL 13, 2010

Panel Tries to Unravel WaMu's Failure

Senators to Begin Hearings as Regulators Remain Reluctant to Detail Their Handling of Collapse

By DAN FITZPATRICK and JOHN D. MCKINNON

More than 18 months after the largest bank failure in U.S. history, federal regulators have disclosed few details about their handling of Washington Mutual Inc.'s collapse, including the decision to let J.P. Morgan Chase & Co. buy the doomed financial institution at a bargain price.

Washington Mutual has largely faded from the headlines as the U.S. banking industry gets back on its feet, helped by massive infusions of taxpayer-funded capital and intervention in the financial markets. But the decision-making process by regulators as the thrift teetered remains a mystery, showing the continued reluctance of government officials to release details about some of the biggest crashes of the financial crisis.

"Glad we are all working toward the same end," Federal Deposit Insurance Corp. Chairman Sheila Bair told other regulators in an email sent five days before the Seattle thrift was seized by regulators in September 2008. The email's subject line is "Status report re WaMu," but the FDIC refused to disclose the rest of the document, blacking out the contents in a copy obtained by The Wall Street Journal under the Freedom of Information Act.

At a Senate subcommittee hearing Tuesday, former Washington Mutual Chief Executive Kerry Killinger is expected to denounce the failure as "unnecessary" and "unfair," partly because the thrift was shut out of "hundreds" of meetings and phone calls with financial-industry executives that determined the "winners and losers" in the crisis, according to a person familiar with his prepared remarks.

Officials at J.P. Morgan declined to comment. In a statement, Sen. Carl Levin (D., Mich.), chairman of the Senate Permanent Subcommittee on Investigations, said the testimony about Washington Mutual was needed to "construct a public record of the facts in order to deepen public understanding of what happened."

The Senate panel is making Washington Mutual a case study of the problems that paralyzed U.S. financial markets. Sen. Levin said investigators gathered evidence that suggests company officials continued securitizing large volumes of risky and fraudulent loans despite repeated warning signs. Mr. Killinger and former Washington Mutual President Stephen Rotella are expected to reject the charge they ramped up risky lending as the crisis worsened and testify the company reduced its volume of high-risk lending between 2005 and 2007.

A second hearing by the subcommittee Friday will focus on the regulatory response to Washington Mutual's problems. Ms. Bair is scheduled to testify.

Federal officials have been under pressure from lawmakers to make public more detailed information about the government's handling of the crisis. In late March, the Federal Reserve Bank of New York disclosed dozens of troubled mortgage assets it got as part of the 2008 rescues of Bear Stearns Cos. and American International Group Inc.

WSJ.com Law Page | lexis.com® | LexisNexis® Total Litigator | Historical Q

Subsc

The FDIC's view is that the seizure and sale came at "zero cost" to the taxpayer, said a person close to the FDIC, and all deposits were protected. "Action had to be taken" due to WaMu's worsening financial situation, this person added, and further delay may have exposed the FDIC to potential losses.

The FDIC's view is that the seizure and sale came at "zero cost" to the taxpayer, said a person close to the FDIC, and all deposits were protected. "Action had to be taken" due to WaMu's worsening financial situation, this person added, and further delay may have exposed the FDIC to potential losses.

The Wall Street Journal requested emails about Washington Mutual sent by Ms. Bair and other federal officials shortly before the failure. The FDIC released more than 100 pages of documents, many of them with entire pages blacked out. The agency cited legal exemptions, including one that allows the withholding of information related to the FDIC's examination of financial institutions.

J.P. Morgan, now the second-largest U.S. bank in assets, unsuccessfully tried to buy Washington Mutual in early 2008. As the thrift's problems deepened, then-Treasury Secretary Henry Paulson told Mr. Killinger in a July phone call that "you should have sold the company to J.P. Morgan when you had the chance," according to four people familiar with the conversation. Mr. Paulson doesn't recall the specifics of what was said in that conversation, said a spokeswoman, but "he advised Killinger as he advised other firms on the verge of failure to look for a buyer."

At the New York bank, executives continued discussing takeover scenarios, according to emails filed as part of the bankruptcy case for the failed thrift's parent company. One possibility was to buy the thrift from a "receiver," a reference to the FDIC, according to a July 2008 presentation circulated within J.P. Morgan.

Less than two weeks before the failure, Ms. Bair told Washington Mutual executives that she would stand aside while they sought a buyer. She said the company had to be sold by the end of September or it would be put on the FDIC's list of "problem" institutions, according to people familiar with the situation. J.P. Morgan lost interest in buying the thrift unless it failed, acknowledging in a slide presentation circulated internally on Sept. 19 that bank officials had been "contacted by FDIC about interest in" Washington Mutual.

"Approach is to work directly with FDIC," read the presentation, submitted to a U.S. Bankruptcy Court.

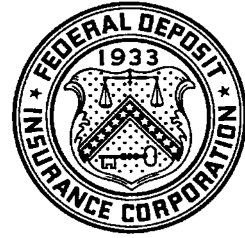
Five days before the failure, Washington Mutual executives expected a $10 billion offer from Banco Santander to buy an 80% stake, according to people familiar with the situation. But the Spanish bank's board decided against the idea. The FDIC launched an auction for the thrift, which J.P. Morgan won with a $1.88 billion bid.

Details of a Citigroup Inc. bid were redacted in a document obtained from the FDIC.

Write to Dan Fitzpatrick at dan.fitzpatrick@wsj.com and John D. McKinnon at john.mckinnon@wsj.com

Copyright 2009 Dow Jones & Company, Inc. All Rights Reserved
This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com

EXHIBIT 6



Offices of Inspector General

Department of the Treasury
Federal Deposit Insurance Corporation

Evaluation of Federal Regulatory Oversight of Washington Mutual Bank

Report No. EVAL-10-002

April 2010

OIG

Evaluation Report

Department of the Treasury
Federal Deposit Insurance Corporation

April 9, 2010

John E. Bowman, Acting Director
Office of Thrift Supervision

Sheila C. Bair, Chairman
Federal Deposit Insurance Corporation

This report presents the results of our review of the failure of Washington Mutual Bank (WaMu), Seattle, Washington; the Office of Thrift Supervision's (OTS) supervision of the institution; and the Federal Deposit Insurance Corporation's (FDIC) monitoring of WaMu for insurance assessment purposes. OTS was the primary federal regulator for WaMu and was statutorily responsible for conducting full-scope examinations to assess WaMu's safety and soundness and compliance with consumer protection laws and regulations. FDIC was the deposit insurer for WaMu and was responsible for monitoring and assessing WaMu's risk to the Deposit Insurance Fund (DIF). On September 25, 2008, FDIC facilitated the sale of WaMu to JPMorgan Chase & Co in a closed bank transaction that resulted in no loss to the DIF.

Section 38(k) of the Federal Deposit Insurance Act requires the cognizant Inspector General to conduct a material loss review (MLR) of the causes of the failure and primary federal regulatory supervision when the failure causes a loss of $25 million to the DIF or 2 percent of an institution's total assets at the time the FDIC was appointed receiver. Because the FDIC facilitated a sale of WaMu to JPMorgan Chase & Co without incurring a material loss to the DIF, an MLR is not statutorily required. However, given WaMu's size, the circumstances leading up to WaMu's sale, and non-DIF losses, such as the loss of shareholder value, the Inspectors General of the Department of the Treasury and FDIC believed that an evaluation of OTS and FDIC actions could provide important information and observations as the Administration and the Congress consider regulatory reform.

Our objectives were to (1) identify the causes of WaMu's failure; (2) evaluate OTS's supervision of WaMu, including implementation of the Prompt Corrective Action (PCA) provisions of Section 38(k), if required; (3) evaluate FDIC's monitoring of WaMu in its role as deposit insurer, including the manner and extent to which FDIC and OTS coordinated oversight of the institution; and (4) assess FDIC's resolution process for WaMu to determine whether that process complied with applicable laws, regulations, policies, and procedures. This report covers objectives 1, 2, and 3 above. We intend to report on objective 4, the assessment of the resolution process, at a later date.

We are presenting our findings in three sections. Section I describes the causes of WaMu's failure, Section II details the supervision of WaMu by OTS, and Section III describes FDIC's monitoring of risk at WaMu and FDIC's assessments for WaMu's deposit insurance premiums.

We conducted our fieldwork from March 2009 through November 2009 at OTS headquarters in Washington, DC, and regional office in Daly City, California, and FDIC headquarters in Washington, DC, regional office in San Francisco, California, and a field office in Seattle, Washington. We reviewed supervisory files and interviewed key officials involved in regulatory, supervisory, enforcement, and deposit insurance matters. We performed our evaluation in accordance with the *Quality Standards for Inspections.* Appendix 1 contains a more detailed description of our review objectives, scope, and methodology.

We have also included several other appendices to this report. Appendix 2 contains background information on WaMu. Appendix 3 describes OTS's thrift supervision processes and FDIC's monitoring and insurance assessment processes. Appendix 4 is a glossary of terms used in this report. Appendix 5 shows OTS's examinations of WaMu and enforcement actions taken from 2003 through 2008.

Results in Brief

Causes of WaMu's Failure. WaMu failed primarily because of management's pursuit of a high-risk lending strategy that included liberal underwriting standards and inadequate risk controls. WaMu's high-risk strategy, combined with the housing and mortgage market collapse in mid-2007, left WaMu with loan losses, borrowing capacity

limitations, and a falling stock price. In September 2008, depositors withdrew significant funds after high-profile failures of other financial institutions and rumors of WaMu's problems. WaMu was unable to raise capital to keep pace with depositor withdrawals, prompting OTS to close the institution on September 25, 2008.

OTS Supervision. As the primary federal regulator, OTS was responsible for conducting full-scope examinations to assess WaMu's safety and soundness and compliance with consumer protection laws. OTS's examinations of WaMu identified concerns with WaMu's high-risk lending strategy, including repeat findings concerning WaMu's single family loan underwriting, management weaknesses, and inadequate internal controls. However, OTS's supervision did not adequately ensure that WaMu corrected those problems early enough to prevent a failure of the institution. Furthermore, OTS largely relied on a WaMu system to track the thrift's progress in implementing corrective actions on hundreds of OTS examination findings. We concluded that had OTS implemented its own independent system for tracking findings memoranda and WaMu's corrective actions, OTS could have better assessed WaMu management's efforts to take appropriate and timely action.

OTS repeatedly recommended corrective actions through matters requiring board attention (MRBA) and findings memoranda. In March 2008, OTS took informal enforcement action against WaMu by requiring its Board of Directors to pass a Resolution to ensure that weaknesses and concerns with earnings, asset quality, liquidity, and compliance that led to a composite downgrade to a 3 were promptly addressed. However, the Resolution that was passed addressed only near-term liquidity concerns. In September 2008, OTS took another informal enforcement action when it issued a memorandum of understanding (MOU) requiring that WaMu correct all items identified in its MRBAs and findings memoranda by specified due dates. By then, however, it was too late to prevent the thrift from failing.

We concluded that OTS should have lowered WaMu's composite CAMELS rating sooner and taken stronger enforcement action sooner to force WaMu's management to correct the problems identified by OTS. Specifically, given WaMu management's persistent lack of progress in correcting OTS-identified weaknesses, we believe OTS should have followed its own policies and taken formal enforcement action rather than informal action.

The Treasury Office of Inspector General has made a number of recommendations to OTS as a result of completed material loss reviews of failed thrifts during the current economic crisis. These recommendations pertain to taking more timely formal enforcement action when circumstances warrant, ensuring that high CAMELS ratings are properly supported, reminding examiners of the risks associated with rapid growth and high-risk concentrations, ensuring thrifts have sound internal risk management systems, ensuring repeat conditions are reviewed and corrected, and requiring thrifts to hold adequate capital. OTS has taken or plans to take action in response to these recommendations. Additionally, OTS established a large bank unit to oversee regional supervision of institutions over $10 billion. We are making one new recommendation. Specifically, OTS should use its own internal report of examination system to formally track the status of examiner recommendations and related thrift corrective actions. OTS concurred with our recommendation and has completed action to address it.

FDIC Monitoring and Insurance Assessment. FDIC was the deposit insurer for WaMu and was responsible for monitoring and assessing WaMu's risk to the DIF. As insurer, FDIC has authority to perform its own examination of WaMu and impose enforcement actions to protect the DIF, provided statutory and regulatory procedures are followed. FDIC conducted its required monitoring of WaMu from 2003 to 2008. As a result of this monitoring, FDIC identified risks with WaMu's lending strategy and internal controls. The risks noted in FDIC monitoring reports were not, however, reflected in WaMu's deposit insurance premium payments. This discrepancy occurred because the deposit insurance regulations rely on OTS examination safety and soundness ratings and regulatory capital levels to gauge risk and assess related deposit insurance premiums. Since OTS examination results were satisfactory, increases in deposit insurance premiums were not triggered. Further, because of statutory limitations and Congressionally-mandated credits, WaMu paid $51 million of $215.6 million in deposit insurance assessments during the period 2003 to 2008. FDIC challenged OTS's safety and soundness ratings of WaMu in 2008. However, OTS was reluctant to lower its rating of WaMu from a 3 to a 4 in line with the FDIC's view. OTS and FDIC resolved the 2008 safety and soundness ratings disagreement 7 days prior to WaMu's failure, when OTS lowered its rating to agree with FDIC's. However, by that time, the rating downgrade had no impact on WaMu's insurance premium assessments and payments.

FDIC has enforcement powers to act when a primary regulator, such as OTS, does not take action; however, it did not use those powers for WaMu in 2008 because of the significant procedural steps necessary to invoke such action. Coordination between FDIC and OTS was problematic because of the terms of an interagency agreement governing information sharing and back-up examination authority, and the inherent tension between the roles of the primary regulator and the insurer.

According to the terms of the interagency agreement, FDIC needed to request permission from OTS to allow FDIC examiners to review information on-site at WaMu in order to better assess WaMu's risk to the DIF. Further, under the terms of the interagency agreement, FDIC had to show that a high level of risk existed for the primary regulator to grant FDIC access. The logic of the interagency agreement is circular – FDIC must show a high level of risk to receive access, but FDIC needs access to information to determine an institution's risk to the DIF. OTS resisted providing FDIC examiners greater on-site access to WaMu information because they did not believe that FDIC met the requisite need for that information according to the terms of the interagency agreement and believed FDIC could rely on the work performed by OTS. Eventually OTS did grant FDIC greater on-site access at WaMu but limited FDIC's review of WaMu's residential loan files.

We concluded that the interagency agreement did not provide FDIC with the access to information that it needed to assess WaMu's risk to the DIF. There is clearly a need to balance FDIC information needs and the regulatory burden imposed on a financial institution, but the current interagency agreement does not allow FDIC sufficient flexibility to obtain information necessary to assess risk in order to protect the DIF. Finally, we also concluded that FDIC deposit insurance regulations are restrictive in prescribing the information used to assign an institution's insurance category and premium rate.

We are recommending that the FDIC Chairman, in consultation with the FDIC Board of Directors, revisit the interagency agreement governing information access and back-up examinations for large depository institutions to ensure it provides FDIC with sufficient access to the information necessary to assess an institution's risk to the DIF. Although FDIC is taking steps to clarify access to systemically important institutions, we believe the interagency agreement should be modified for all large depository institutions. We note that risky institutions such as IndyMac Bank, F.S.B. (IndyMac),

were not considered to be systemically important but nevertheless caused significant losses to the DIF (the IndyMac failure consumed 24 percent of the DIF balance at the time). Further, we recommend that the FDIC Chairman, in consultation with the FDIC Board of Directors, revisit FDIC deposit insurance regulations to ensure those regulations provide FDIC with the flexibility needed to make its own independent determination of an institution's risk to the DIF rather than relying too heavily on the primary regulator's assignment of CAMELS ratings and on the institution's capital levels. Although FDIC is taking steps to look at a number of variables that influence an institution's risk to the DIF, we believe that the bank failures of this current economic crisis show that more factors are indicative of an institution's risk to the DIF than those currently taken into consideration. FDIC agreed with our recommendations and proposed actions to be completed by December 31, 2010. FDIC's proposed actions are responsive to our recommendations. Both FDIC recommendations will remain open until FDIC OIG determine that the agreed-upon corrective actions have been implemented.

EXHIBIT 7

STATEMENT OF THE HONORABLE ERIC M. THORSON
INSPECTOR GENERAL
DEPARTMENT OF THE TREASURY
BEFORE THE SENATE HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS COMMITTEE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
APRIL 16, 2010
9:30 AM

Chairman Levin, Senator Coburn, and Members of the Committee, thank you for the opportunity, along with Mr. Jon Rymer, the Inspector General of the Federal Deposit Insurance Corporation (FDIC), to discuss our joint evaluation of the failure of Washington Mutual Savings Bank (WaMu) of Seattle, Washington.

Over the past 2 plus years, our country has found itself immersed in a financial crisis that started when housing prices stopped rising and borrowers could no longer refinance their way out of financial difficulty. Since then, we have seen record levels of delinquency, defaults, foreclosures, and declining real estate values. As a result, securities tied to real estate prices have plummeted, and financial institutions have collapsed. In many cases, these financial institutions were large and, before the crisis, seemed to be financially sound. But the warning signs were there. Since mid-2007, my Office has completed 18 reviews of failed financial institutions, including the one that we are testifying about this morning. Based on those reviews, we have found that time and time again, the regulators for which we have oversight, the Office of Thrift Supervision (OTS) and the Office of Comptroller the Currency (OCC), frequently identified the early warning signs (or "red flags") that could have at least minimized, if not prevented, the losses associated with the financial institutions' failure but did not take sufficient corrective action soon enough to do so.

My testimony today, and that of my colleague, will focus on the failure of WaMu. WaMu was a federally-chartered savings association established in 1889 and FDIC-insured since January 1, 1934. WaMu was wholly owned by Washington Mutual, Inc., a non-diversified, multiple savings and loan holding company. WaMu grew rapidly through acquisitions and mergers during the period 1991 to 2006, acquiring 11 institutions and merging with 2 affiliates with assets totaling nearly $198 billion. At the time of its failure, WaMu was one of the eight largest federally-

insured financial institutions, operating 2,300 branches in 15 states, with total assets of $307 billion.

TREASURY OFFICE OF INSPECTOR GENERAL OVERVIEW

My office provides independent audit and investigative oversight of the Department of the Treasury's programs and operations and that of its bureaus, excluding the Internal Revenue Service and the Troubled Asset Relief Program also know as TARP. In addition to overseeing Treasury's financial institution regulators, OTS and OCC, we oversee Treasury's programs and operations to combat money laundering and terrorist financing, manage federal collections and payments systems, manage and account for the public debt, maintain government-wide financial accounting records, manufacture the Nation's currency and coins, collect revenue on alcohol and tobacco products and regulate those industries, provide domestic assistance through the Office of the Fiscal Assistant Secretary and the Community Development Financial Institutions Fund, and international assistance through multilateral financial institutions. Our current on-board staffing level is 144 which breaks down as follows: 100 personnel in the Office of Audit and 20 personnel in the Office of Investigations. The remaining personnel include my deputy, my legal counsel, our administrative support staff, and me. Our fiscal year 2010 budget appropriation is $29.7 million.

INSPECTOR GENERAL REVIEWS OF FEDERALLY-INSURED FAILED FINANCIAL INSTITUTIONS

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires that the Inspector General of the cognizant federal banking agency review and report to that agency when an institution under its supervision fails and that failure results in a material loss to the Deposit Insurance Fund. Among other things, these reviews determine the causes of the institution's failure and assess the supervision exercised over the failed institution. Furthermore, a loss to the Deposit Insurance Fund is considered material if it exceeds the greater of $25 million or 2 percent of an institution's total assets at the time of its failure.

With that in mind, beginning with the failure of NetBank, FSB, in September 2007, 65 Treasury-regulated (OTS and OCC) financial institutions have failed as of April 1, 2010. Of those, 49 have met the material loss review threshold. Of those, my office has completed and issued 17 such reviews (8 to OTS and 9 to OCC); we currently have another 32 failed thrift/bank reviews in progress. The total estimated loss to the Deposit Insurance Fund attributable to those 49 Treasury-regulated failed financial institutions is approximately $34.5 billion. Unfortunately, looking forward, I believe my office will be busy conducting such reviews for some time to come.

JOINT TREASURY OIG/FDIC OIG REVIEW OF WAMU

On September 25, 2008, OTS closed WaMu and FDIC facilitated the sale of WaMu to JPMorgan Chase in a closed bank transaction for $1.89 billion that resulted in no loss to the Deposit Insurance Fund. It should be noted that since the failure of WaMu did not result in a loss to the Deposit Insurance Fund, it did not trigger a material loss review by my office. Nonetheless, given the size of WaMu and the loss that it would have caused to the Deposit Insurance Fund had a sale not been facilitated, Inspector General Rymer and I decided that an evaluation of OTS and FDIC supervision was warranted. Among other things, we thought such a review would provide important information and observations as the Administration and Congress consider regulatory reform.

We completed our joint review and issued our results to Acting OTS Director Bowman and FDIC Chairman Bair on April 9, 2010. That report discussed three things: (1) the causes of WaMu's failure; (2) OTS's supervision of WaMu, and (3) FDIC's monitoring of WaMu in its role as deposit insurer, including the manner and extent to which FDIC and OTS coordinated oversight of the institution. The balance of my testimony will cover the causes of WaMu's failure and OTS's supervision of it. Inspector General Rymer's testimony will focus on FDIC's role as deposit insurer and its coordination with OTS with regard to exercising its back-up examination authority. I will also briefly share the results of other work conducted by my office involving a certain senior OTS official that interacted with FDIC in the federal supervision of WaMu.

CAUSES OF WAMU'S FAILURE

WaMu failed because its management pursued a high-risk business strategy without adequately underwriting[1] its loans or controlling its risks. WaMu's high-risk strategy, combined with the housing and mortgage market collapse in mid-2007, left WaMu with loan losses, borrowing capacity limitations, and a falling stock price. In September 2008, WaMu was unable to raise capital to counter significant depositor withdrawals sparked by rumors of WaMu's problems and other high-profile failures at the time. OTS closed WaMu on September 25, 2008.

High Risk Lending Strategy

In 2005, WaMu shifted away from originating traditional fixed-rate and conforming single family residential loans, towards riskier subprime loans[2] and option adjustable

---

[1] Underwriting is the process by which a lender decides whether a potential borrower is creditworthy and should receive a loan.

[2] WaMu defined borrowers with a score of less than 620 on the FICO scale as subprime. FICO is a credit score representing the creditworthiness of a person or the likelihood that person will pay his or her debts. A person's FICO score falls somewhere between 300 and 850.

rate mortgages also known as Option ARMs.[3] WaMu pursued this new strategy in anticipation of higher earnings and to compete with Countrywide Financial Corporation, which, at the time, it viewed as its strongest competitor.

In 2006, WaMu estimated in internal documents that its internal profit margin on subprime loans was more than 10 times the amount for a government-backed loan product and more than 7 times the amount for a fixed-rate loan product. WaMu also estimated its internal profit margin on Option ARMs at more than 8 times the amount for a government-backed loan product and nearly 6 times the amount for a fixed-rate loan product. In short, WaMu saw these riskier loan vehicles as a way to substantially increase its profitability.

Option ARMs represented nearly half of all WaMu loan originations from 2003 to 2007 and totaled approximately $59 billion, or 47 percent, of the home loans on WaMu's balance sheet at the end of 2007.

WaMu's underwriting policies and procedures made inherently high-risk products even riskier. For example, WaMu originated a significant number of loans as "stated income" loans, sometimes referred to as "low-doc" loans. These loans allowed borrowers to simply write-in their income on the loan application without providing supporting documentation. Approximately 90 percent of all of WaMu's home equity loans, 73 percent of its Option ARMs, and 50 percent of its subprime loans were "stated income" loans.

WaMu also originated loans with high loan-to-value ratios.[4] To that end, WaMu held a significant percentage of loans where the loan exceeded 80 percent of the underlying property value. For example, at the end of 2007, 44 percent of WaMu's subprime loans, 35 percent of WaMu's home equity loans, and 6 percent of WaMu's Option ARMs were originated for total loan amounts in excess of 80 percent of the property's value. Moreover, WaMu did not require borrowers to

---

[3] An option ARM is an adjustable rate mortgage that typically offers a very low teaser rate which translates into very low minimum payments for a very short period of time. WaMu's Option ARMs provided borrowers with the choice to pay their monthly mortgages in amounts equal to monthly principal and interest, interest-only, or a minimum monthly payment. The minimum monthly payment was based on teaser rate. After the introductory rate expired, the minimum monthly payment feature introduced two significant risks to WaMu's portfolio: negative amortization and payment shock. Negative amortization occurred when the minimum monthly payments made after the expiration of the teaser rate was insufficient to pay monthly interest cost. The unpaid interest was added to the principal loan balance thereby increasing the original loan amount. Payment shock occurred 5 years after the loan was originated, or sooner in some circumstances, because the minimum monthly payment was recomputed using a market interest rate, the larger principal balance, and the remaining term of the loan.

[4] Loan to value (LTV) is one of the key risk factors that lenders assess when qualifying borrowers for a mortgage. Typically, low LTV ratios (below 80 percent) carry with them lower rates for lower-risk borrowers. Conversely, as the LTV ratio of a loan increases, the qualification guidelines for certain mortgage programs become much more strict. Lenders can require borrowers of high LTV loans to buy private mortgage insurance to protect the lender from borrower default.

purchase private mortgage insurance to protect itself against loss in case of default by the borrowers.

Inadequate Controls to Manage the High-Risk Strategy

In addition to originating retail loans with its own employees, WaMu began originating and purchasing wholesale loans through a network of brokers and correspondents.[5] From 2003 to 2007, wholesale loan channels represented 48 to 70 percent of WaMu's total single family residential loan production.[6] WaMu saw the financial incentive to use wholesale loan channels for production as significant. According to an April 2006 internal presentation to the WaMu Board, it cost WaMu about 66 percent less to close a wholesale loan ($1,809 per loan) than it did to close a retail loan ($5,273). So while WaMu profitability increased through the use of third-party originators, it had far less oversight and control over the quality of the originations.

In fact, WaMu did not adequately oversee the third-party brokers who were originating most of WaMu's mortgages. Specifically, in 2007, WaMu only had **14 WaMu employees** overseeing more than **34,000 third-party brokers** – an **oversight ratio of over 2,400 third party brokers to 1 WaMu employee.** WaMu used scorecards to evaluate its third-party brokers, but those scorecards did not measure the rate of significant underwriting and documentation deficiencies attributable to individual brokers. Furthermore, in 2007, WaMu itself identified fraud losses attributable to third-party brokers of $51 million for subprime loans and $27 million for prime loans. These matters are under further review by law enforcement agencies.

Risk management was especially important for WaMu because of its high-risk lending strategy, significant and frequent management changes, corporate reorganizations, and significant growth as well as its sheer size. WaMu grew rapidly from a regional to a national mortgage lender through acquisitions and mergers with affiliate companies. From 1991 to 2006, WaMu acquired 11 institutions and merged with 2 affiliates. WaMu, however, did not fully integrate and consolidate the information technology systems, risk controls, and policies and procedures from the companies it acquired into a single enterprise-wide risk management system. To that end, from 2004 through 2008, OTS repeatedly noted that WaMu did not have effective controls in place to ensure proper risk management.

---

[5] Brokers concentrate on finding customers in need of financing and process the loan application and mortgage documents. Correspondents deal with the customer, then close and fund the loan before selling the loan to an investor.
[6] WaMu exited wholesale lending channels in 2008 as losses mounted.

Significant Liquidity Stress in 2008

WaMu experienced liquidity problems beginning in late 2007. In the fourth quarter of 2007 and first quarter of 2008, WaMu suffered consecutive $1 billion quarterly losses because of loan charge-offs and reserves for future loan losses. WaMu did briefly improve its liquidity position in April 2008 through a $7 billion investment in WaMu's holding company made by a consortium led by the Texas Pacific Group, $5 billion of which was downstreamed to WaMu. Nevertheless, WaMu went on to suffer a $3.2 billion loss in the second quarter of 2008 and saw its share price decrease by 55 percent.

The high-profile failure of IndyMac Bank in July 2008 coupled with rumors of WaMu's problems further stressed WaMu's liquidity. At the same time, the Federal Home Loan Bank of San Francisco began to limit WaMu's borrowing capacity. As a result, WaMu began offering deposit rates in excess of its competitors in order to bring in deposits to improve liquidity. Shortly thereafter, Lehman Brothers collapsed on September 15, 2008, and over the following 8 days, WaMu incurred net deposit outflows of $16.7 billion, creating a second liquidity crisis. WaMu's ability to raise capital was hindered by its borrowing capacity limits, share price declines, portfolio losses, and an anti-dilution clause tied to the $7 billion capital investment. On September 25, 2008, OTS closed WaMu and appointed FDIC as receiver.

OTS'S SUPERVISION OF WAMU

WaMu was OTS's largest regulated institution and represented as much as 15 percent of OTS's revenue from 2003 through 2008. OTS spent significant resources examining WaMu. For example, in 2003, OTS devoted 17,285 examination hours to WaMu (the equivalent of more than 8 full time employees for the entire year). Annually increasing the hours, by 2007 OTS devoted over 31,000 examination hours to WaMu (the equivalent of more than 15 full time employees for the entire year).

OTS conducted regular risk assessments and examinations that rated WaMu's overall performance satisfactory until 2008. Furthermore, it should be noted that those supervisory efforts did identify the core weaknesses that eventually led to WaMu's demise – high-risk products, poor underwriting, and weak risk controls. In fact, issues with poor underwriting and weak risk controls were noted at least as far back as 2003, the earliest examination documentation we looked at during our review, and issues with high-risk loan products were reported soon after WaMu started to offer them in 2005. OTS, however, relied largely on WaMu management to track progress in correcting examiner-identified weaknesses and accepted assurances from WaMu management and its Board of Directors that problems would be resolved. The problem was, however, that OTS did not ensure that WaMu corrected those weaknesses. In fact, OTS did not take any safety and

soundness enforcement action against WaMu until 2008 after the thrift started to incur significant losses, and the two actions taken were very weak.

Bank regulators, including OTS, use a uniform rating system called CAMELS[7] to assess financial institution performance. The CAMELS rating is a critical factor in supporting the need for enforcement actions and in determining the assessment rate an institution should pay for deposit insurance. Briefly put, CAMELS ratings are based on a scale from 1 to 5, with 1 being the best rating and 5 being the worst. Generally, if a financial institution has a composite CAMELS rating of 1 it is considered to be a high-quality institution, while financial institutions with composite CAMELS ratings of greater than 3 are considered to be less than satisfactory.

The following table provides standard definitions of each CAMELS composite rating level.

CAMELS Composite Rating Definitions

1	Sound in every respect
2	Fundamentally sound
3	Exhibits some degree of supervisory concern in one or more of the component areas (*i.e.*, capital adequacy, asset quality, management, earnings, liquidity, sensitivity to market risk)
4	Generally exhibits unsafe and unsound practices or conditions
5	Exhibits extremely unsafe and unsound practices or conditions; exhibits a critically deficient performance; often contains inadequate risk management practices relative to the institution's size, complexity, and risk profile; and is of the greatest supervisory concern

From 2001 to 2007, OTS consistently rated WaMu a CAMELS composite 2, meaning, by definition, that OTS considered WaMu as fundamentally sound during these years. Specifically, the CAMELS composite criteria for a 2 rating state that such institutions have only moderate weaknesses that are within the board's and management's capability and willingness to correct, and have satisfactory risk management practices relative to the institution's size, complexity, and risk profile. Furthermore, institutions in this category are considered to be stable and capable of withstanding business fluctuations.

[7] The CAMELS rating is a supervisory rating of a financial institution's overall condition. Bank regulators assign each financial institution under their supervision a score on a scale of 1 (best) to 5 (worst) for each CAMELS component. The CAMELS components are: C - Capital adequacy, A --- Asset quality, M - Management quality, E – Earnings, L – Liquidity, and S - Sensitivity to Market Risk.

Given the multiple repeat findings related to asset quality and management, and considering the definitions of the composite ratings, it is difficult to understand how OTS continued to assign WaMu a composite 2-rating year after year. It was not until WaMu began experiencing losses at the end of 2007 and into 2008 that OTS lowered WaMu's CAMELS composite rating to 3 in February 2008, and ultimately to 4 in September 2008.

The following chart shows the CAMELS composite ratings and asset management and management component ratings assigned to WaMu by OTS from 2003 through 2008.

WaMu's OTS–Assigned CAMELS Ratings

Year	Composite	Asset Quality	Management
2003	2	2	2
2004	2	2	2
2005	2	2	2
2006	2	2	2
2007	2	2	2
2008			
As of February 27	3	3	2
As of June 30	3	4	3
As of September 18	4	4	3

OTS Examiners Identified Concerns with WaMu's Asset Quality

Asset quality is one of the most critical areas in determining the overall condition of a financial institution. The primary factor to consider in assessing an institution's overall asset quality is the quality of the loan portfolio and the credit administration program.

OTS examiners repeatedly identified issues and weaknesses associated with WaMu's asset quality – especially with regard to issues identified in single family residential loan underwriting and oversight of third-party brokers. Nevertheless, OTS rated WaMu's asset quality as satisfactory (CAMELS component rating of 2) until February 2008, when it downgraded it to a 3 on an interim basis. The asset quality rating was further dropped to a 4 in June 2008.

CAMELS asset quality ratings definitions are shown in the table below.

CAMELS Rating Definitions for Asset Quality

1	Strong asset quality and credit administration practices
2	Satisfactory asset quality and credit administration practices
3	Less than satisfactory asset quality and credit administration practices
4	Deficient asset quality or credit administration practices
5	Critically deficient asset quality or credit administration practices

OTS identified a number of significant concerns with WaMu's single family residential underwriting practices from 2003 to 2008. Those concerns included questions about the reasonableness of stated incomes contained in loan documents, numerous underwriting exceptions, miscalculations of loan-to-value ratios, and missing or inadequate documentation. Furthermore, the fact that so many of WaMu's single family residential loans were Option ARMs further underscored the risky nature of its loan portfolio. In the 2005 Report of Examination to WaMu, OTS wrote, "We believe the level of deficiencies, if left unchecked, could erode the credit quality of the portfolio. Our concerns are increased when the risk profile of the portfolio is considered, including concentrations in Option ARM loans to higher-risk borrowers, in low and limited documentation loans, and loans with subprime or higher-risk characteristics. We are concerned further that the current market environment is masking potentially higher credit risk."

Examples of WaMu underwriting deficiencies identified by OTS from 2003 to 2007 when asset quality was rated as a 2 are described below.

- **2003 and 2004 -** OTS reported that underwriting of single family residential loans, WaMu's core loan activity, was less than satisfactory.

- **2005 -** OTS reported that although overall single family residential loan quality and performance trends were stable, the thrift's underwriting remained less than satisfactory. OTS noted that this concern had been expressed at several prior exams as well as internal reviews and that the examiners remained concerned with the number of underwriting exceptions and with issues that evidenced a lack of compliance with bank policy.

- **2006 to 2007** - OTS reported that single family residential loan and prime underwriting had improved to marginally satisfactory and generally satisfactory, respectively. However, OTS reported concerns with subprime underwriting

practices by Long Beach Mortgage Company, a WaMu affiliate that merged with WaMu in March 2006. OTS also reported that subprime underwriting practices remained less than satisfactory and cited exceptions related to the miscalculation of debt-to-income ratios, reasonableness of stated incomes on loan documents, and borrower acknowledgement of payment shock. (It should be noted that WaMu discontinued subprime lending in the fourth quarter of 2007.)

From 2005 through 2007, while OTS was issuing multiple repeat findings pertaining to single family residential loan underwriting, WaMu originated almost $618 billion in single family residential loans.

As discussed earlier, in addition to originating retail loans with its own employees, WaMu began originating and purchasing wholesale loans through a network of brokers and correspondent banks. So much so that wholesale loan channels represented 48 to 70 percent of WaMu's single family residential loan production from 2003 to 2007. The financial incentive to use the wholesale channels was significant—internal WaMu documents dated April 2006 showed that it cost WaMu more than $5,000 to close a retail loan but only $1,800 to close a wholesale loan. It was simply far cheaper, and more profitable, for WaMu to purchase loans then to originate them with its own employees.

From 2003 to 2007, OTS repeatedly identified weaknesses in WaMu's oversight of third-party originators. As discussed earlier, in 2007, there were only 14 WaMu employees overseeing more than 34,000 third-party brokers. It wasn't until April 2008 that WaMu management announced that it would discontinue the wholesale channel.

During our review, we asked OTS examiners why they did not lower WaMu's asset quality ratings earlier. Examiners responded that even though underwriting and risk management practices were less than satisfactory, WaMu was making money and loans were performing. Accordingly, the examiners thought it would have been difficult to lower WaMu's asset quality rating.

This position was a surprise to us since OTS's own guidance states: "[if] an association has a high exposure to credit risk, it is not sufficient to demonstrate that the loans are profitable or that the association has not experienced significant losses in the near term."

Given this guidance, the significance of single family residential lending to WaMu's business, and the fact that the OTS repeatedly brought the same issues related to asset quality to the attention of WaMu management and the issues remained uncorrected, we find it difficult to understand how OTS could assign WaMu a satisfactory asset quality 2-rating for so long. Assigning a satisfactory rating when conditions are not satisfactory sends a mixed and inappropriate supervisory message to the institution and its board. It is also contrary to the very purpose for which regulators use the CAMELS rating system.

OTS Examiners Identified Problems but Consistently Rated WaMu Management Satisfactory

OTS's guidance states that one of the most important objectives of an examination is to evaluate the quality and effectiveness of a savings association's management, and that the success or failure of almost every facet of operations relates directly to management.

The CAMELS management rating definitions are below.

CAMELS Rating Definitions for Management

1	Strong performance by management and the Board of Directors and strong risk management practices
2	Satisfactory performance by management and the Board of Directors and satisfactory risk management practices
3	Improvement needed in management and Board of Directors performance or less than satisfactory risk management practices
4	Deficient management and Board of Directors performance or inadequate risk management practices
5	Critically deficient management and Board of Directors performance or risk management practices

OTS identified problems regarding WaMu management in its examination documents from 2003 through 2008. The primary areas of concern were the lack of effective internal controls and an insufficient commitment on the part of WaMu's Board and management to take action to address OTS-identified weaknesses.

Despite its concerns, OTS reported that WaMu's Board oversight and management's performance was satisfactory through 2007 and rated the CAMELS management component a 2 in those examinations. It was not until June 2008 that OTS reported that WaMu's Board oversight and management's performance was less than satisfactory and downgraded the CAMELS management component to a 3. OTS faulted the WaMu Board and management for not adequately addressing prior examination findings, including single family mortgage loan underwriting weaknesses and an ineffective enterprise-wide risk management system. OTS now (in 2008 and after WaMu started incurring big losses) concluded that failure to address those weaknesses in a timely manner was exacerbating credit losses and exposing WaMu to heightened reputation risk.

OTS examination reports repeatedly directed that WaMu take corrective actions in response to examination findings. Nevertheless, WaMu management did not make lasting or complete improvements to its asset quality or risk management programs. Here again OTS's own guidance notes that governance is strong when

the Board addresses and corrects problems early. That guidance further states that where governance is weak or nonexistent, problems remain uncorrected, possibly resulting in the association's failure.

In an effort to determine the extent to which WaMu addressed OTS findings, we attempted to review the 545 findings made by OTS and WaMu's responses to them from 2003 through 2007. The status of these findings were tracked in a WaMu system called Enterprise Risk Issue Control System (ERICS) and not independently by OTS on an OTS system. Based on our review of ERICS reports and other documents, we were unable to determine whether a number of findings had been closed and resolved. As discussed later, after considerable effort, OTS was able to provide evidence that some of those findings had been closed.

We also noted that a number of the findings reported by OTS were repeat findings, indicating the issue was identified during more than one examination cycle. For example, 18 percent of OTS's more significant findings (those specifically directed to WaMu's Board for corrective action) between 2003 and 2006 were categorized as repeat findings. However, WaMu discontinued indicating in ERICS whether a finding was a repeat finding in 2006. Thus, the number of repeat findings could have been much greater.

Given WaMu's lack of progress in addressing OTS-identified weaknesses, we believe that a less than satisfactory management component rating should have been assigned to WaMu sooner.

OTS Should Have Done More to Track WaMu's Progress

We found, to our surprise, that OTS largely relied on WaMu's ERICS system instead of its own to track corrective actions. As I mentioned earlier, we tried to track findings closed and resolved through the WaMu tracking system, but could not.

OTS examiners told us that they had a process for reviewing WaMu's corrective actions. Specifically, we were told that during an examination, ERICS reports were divided up among the OTS examiners based upon each examiner's area of responsibility. Each examiner was responsible for determining whether ERICS properly reflected the status of findings for their assigned area. If satisfied, the examiner would then sign-off on the respective ERICS report.

With that in mind, we reviewed 8 ERICS status reports for the years 2003 through 2008, and found evidence of examiner sign-off on only 3 of the 8 reports. During our review, we asked OTS to provide evidence of the status of 39 significant findings that appeared to be open in the ERICS reports.

OTS showed us that 16 findings were issued/newly identified during 2008 and remained unresolved as of WaMu's failure. For another 16 findings, OTS provided

evidence, although limited in some cases (such as handwritten notes on an ERICS report), that those findings were resolved. For the other 7 findings, however, OTS either did not provide evidence as to the findings' status or stated that the findings had been replaced by new findings pertaining to a repeat finding area. While OTS was ultimately able to provide some additional information about the status of certain findings, doing so required considerable time and effort on OTS's part. This further underscores the flawed decision by OTS to rely on the WaMu system for tracking the examiner findings.

OTS Enforcement Actions Against WaMu Were Limited and Late

OTS can take a variety of enforcement actions, both informal (which are non-public) and formal (which are public), to address, among other things, unsafe and unsound practices by a thrift.

In general, OTS policy provides that formal enforcement action should be taken when any institution is in material noncompliance with prior commitments to take corrective actions and for CAMELS composite 3-rated institutions with weak management, where there is uncertainty to whether management and the board have the ability or willingness to take appropriate corrective measures.

OTS never took formal enforcement action against WaMu to force it to correct its safety and soundness deficiencies. OTS did impose two informal enforcement actions against the thrift, but not until 2008. The informal enforcement actions —a Board Resolution and an MOU—lacked sufficient substance and were too late to make a difference. Moreover, though, there were other troubling aspects as to how OTS handled both actions. In the instance of the Board Resolution, the OTS West Region Director approved the Board Resolution despite concerns raised by other regional management officials. Furthermore, with regard to the MOU, an important provision that FDIC had proposed that would have required WaMu to raise $5 billion in additional capital was replaced with a capital contingency plan, and another requiring that a consultant review of Board oversight was dropped at the request of WaMu.

During our review, we were told that OTS had a general sense of the status of WaMu's progress in addressing weaknesses, but OTS examiners said that tracking WaMu's progress was difficult given its size and complexity. Further, OTS examiners told us that WaMu oftentimes replaced managers as its response to significant findings in their areas of responsibility. WaMu would then ask OTS for time to allow the newly hired manager to implement plans to address weaknesses. Given the size of WaMu, the magnitude of the weaknesses identified by OTS examiners year after year, coupled with the limited progress made by WaMu management in correcting those weaknesses, we believe that OTS should have elevated its supervisory response much sooner and much more forcefully.

OTS sought a Board Resolution as a result of the interim downgrade of WaMu to a CAMELS composite 3 rating in February 2008. WaMu drafted the Board Resolution and sent it to the OTS West Region Director on March 13, 2008. The Board Resolution endorsed undertaking "strategic initiatives" to improve asset quality, earnings, and liquidity and directed WaMu management to implement and report on those initiatives. The strategic initiatives tied the improvements to either (1) the sale of WaMu or (2) raising $3 billion to $4 billion in capital. Interestingly, the resolution only addressed short-term liquidity issues, not the systemic problems repeatedly noted by OTS.

The OTS West Region Director sent the Board Resolution to two members of OTS's regional management for their comments. Both OTS regional management officials expressed concern about the fact that the Board Resolution did not require specific corrective actions. Further, those officials recognized WaMu's lack of follow-through on past promises and believed that OTS needed to review management's strategic plans to ensure they addressed the critical weaknesses linked to WaMu's composite downgrade. Despite the concerns of these officials, the OTS West Region Director approved WaMu's version of the Board Resolution anyway, which the Board passed on March 17, 2008.

The second informal enforcement action taken by OTS against WaMu was an MOU as a consequence of its downgraded CAMELS composite 3 rating at the end of its examination on June 30, 2008. OTS drafted the MOU and provided a copy to FDIC for comment. FDIC proposed a number of changes to the MOU, including a provision that WaMu raise an additional $5 billion in capital. OTS did not want to include the $5 billion capital increase requirement because OTS believed that WaMu's capital was sufficient following a $2 billion contribution from WaMu's holding company in July 2008. Further, OTS thought that FDIC's model used to determine the $5 billion amount was flawed. FDIC and OTS eventually compromised and included a capital contingency plan requirement in the MOU rather than a specific amount. OTS sent WaMu management the proposed MOU on August 1, 2008, that would require WaMu to

- correct all findings noted in OTS's June 30, 2008, examination;
- submit a contingency capital plan and maintain certain capital ratios;
- submit a 3-year Business Plan to OTS;
- engage a consultant to review WaMu's risk management structure, underwriting, management, and board oversight; and
- certify compliance with the MOU quarterly.

On August 4, 2008, WaMu asked that the requirement for the consultant review of Board oversight be removed from the proposed MOU. OTS accepted WaMu's

change notwithstanding the OTS examiners' findings over many years that the Board's performance was weak. By August 25, 2008, WaMu's attorney and OTS had informally reached agreement on the terms of the MOU and were waiting for final execution of the MOU. However, it was not until September 7, 2008, that OTS signed the MOU. A week later, WaMu was placed into receivership. The MOU was therefore obviously ineffective.

While we recognize it is speculative to conclude that earlier and more forceful enforcement action would have prevented WaMu's failure, we believe that more forceful action in 2006 and 2007 may have compelled WaMu's Board and management to take more aggressive steps to correct deficiencies and stem the losses that eventually occurred because of its risky loan products and weak controls.

Prompt Corrective Action Was Not a Factor With WaMu

The Prompt Corrective Action (PCA) provisions of the Federal Deposit Insurance Act provides OTS with supervisory remedies aimed to minimize losses to the Deposit Insurance Fund. PCA requires that certain operating restrictions take effect when a thrift's capital levels fall below well-capitalized. In the case of WaMu, OTS did not take, and was not required to take, PCA action because WaMu remained well-capitalized through September 25, 2008, when it was placed in receivership. That said, it was only a matter of time before losses associated with WaMu's high-risk lending practices would have depleted its capital below regulatory requirements.

TREASURY OIG RECOMMENDATIONS

We have made a number of recommendations to OTS as a result of completed material loss reviews of failed thrifts during the current economic crisis. These recommendations have pertained to the need for OTS to take more timely formal enforcement action when circumstances warrant, ensure that high CAMELS ratings are properly supported, remind examiners of the risks associated with rapid growth and high-risk concentrations, ensure thrifts have sound internal risk management systems, ensure repeat conditions are reviewed and corrected, and require thrifts to hold adequate capital. OTS has taken or plans to take action in response to each of these recommendations. As a result of this review, we made one new recommendation to OTS. Specifically, OTS should ensure that an internal OTS system is used to formally track the status of examiner recommendations and related thrift corrective actions. The Acting Director of OTS concurred.

FINAL REMARKS AND OBSERVATIONS

Among other things, in my invitation to testify before you this morning, the Subcommittee requested that I address our Office's findings regarding OTS's implementation of the *Interagency Guidance on Nontraditional Mortgage Product*

Risks (NTM Guidance) at WaMu as well as its level of cooperation with other federal financial regulators towards WaMu, including but not limited to FDIC.

Implementation of NTM Guidance. In short, this guidance, issued in October 2006 by the federal financial institution regulatory agencies, sets forth supervisory expectations for institutions that originate or service nontraditional mortgage loans, including:

- Portfolio and Risk Management practices. Financial institutions should have strong risk management practices, capital levels commensurate with risk, adequate allowances for loan losses, and strong systems and controls for establishing and maintaining relationships with third parties.
- Loan Team and Underwriting Standards. Institutions should establish prudent lending policies and underwriting standards for nontraditional mortgage products that include consideration of a borrower's repayment capacity.
- Risk Layering. Financial institutions that layer multiple product types may increase the potential risks of alternative mortgage products. Institutions should perform adequate underwriting analysis when layering products, including alternative mortgage loans, reduced or no documentation loans, loans without customer verification, or a combination of any of these mortgages with simultaneous second mortgages.
- Consumer Protection. Institutions should implement programs and practices designed to ensure that consumers receive clear and balanced information to help them make informed decisions while shopping for and selecting alternative mortgage loans.

Our work did not specifically evaluate OTS's assessment of WaMu's implementation of, or compliance with the NTM Guidance. Nonetheless, based on your request, I had my staff review the documents we had collected in the conduct of our work. To that end, we did find that in the 2007 report of examination on WaMu, OTS noted that while WaMu was not in complete adherence with the NTM Guidance, satisfactory progress had been made to address identified risks. OTS also drafted a finding during the 2007 examination cycle that identified the steps WaMu planned to take to comply with the guidance and also included that WaMu should review third-party originators because they were a key source of WaMu's nontraditional loans. OTS classified this finding as an "observation" which meant that it was a weakness that was not a regulatory concern, but could improve the bank's operating effectiveness if addressed.

OTS Cooperation with Other Federal Financial Regulators. Our work did not expressly evaluate OTS's cooperation with other federal financial regulators. However, we are able to comment on OTS's relationship with FDIC as the deposit insurer. In this regard, FDIC, as the deposit insurer, has a number of

procedural and regulatory tools available to take action when an institution's risk increases, to include requesting that the primary regulator (OTS in the case of WaMu) grant FDIC back-up examination authority. FDIC invoked its back-up examination authority each year from 2005 to 2008. Those requests, however, often met with resistance from OTS.

A discussion of OTS's interaction with FDIC on these requests follows. OTS granted FDIC's 2005 back-up examination request but denied FDIC the ability to review the subprime operations of WaMu's affiliate, Long Beach Mortgage Company (LBMC), because LBMC was a subsidiary of WaMu's parent corporation and not part of WaMu. In 2006, FDIC again requested back-up examination authority, and OTS initially denied the FDIC request. After the matter was elevated to OTS and FDIC headquarters, OTS eventually granted FDIC back-up examination authority.

OTS granted FDIC's 2007 back-up examination request but did not allow FDIC examiners access to WaMu residential loan files. OTS considered loan file review to be an examination activity rather than an insurance risk assessment activity. FDIC wanted to review the files because of underwriting concerns and because FDIC had concerns that OTS had not adequately reviewed the loan files during its examination to fully understand the embedded risk.

In granting FDIC's 2008 back-up examination request, OTS was concerned about the number of examiners (nine) that FDIC was planning to use. OTS indicated that it was a heavy staffing request given OTS's on-site presence and reiterating that FDIC was not to actively participate in the examination.

As one final matter, as I noted above, we were troubled by the handling of the informal enforcement actions that OTS finally did impose in 2008 including the decision by the then OTS West Region Director to approve the use of a Board Resolution that did not require WaMu to correct its deficiencies. This is not the only decision by that OTS official that we have found of serious concern. As our office previously reported,[8] the same OTS official approved IndyMac Bank, FSB, to backdate a capital contribution made in May 2008 to the quarter ending March 31, 2008. The impact of recording the capital contribution in this manner was that IndyMac was able to maintain its well-capitalized status for the quarter, and avoid the requirement in law to obtain a waiver from FDIC to accept brokered deposits.[9] Having said that, I do want to note that shortly after our Office first reported this matter to the Treasury Secretary, OTS placed the official on administrative leave pending an internal review. The official has since retired from federal service.

---

[8] Treasury OIG, ***Safety and Soundness***: OTS Involvement With Backdated Capital Contributions by Thrifts (OIG-09-037; issued May 21, 2009).

[9] On July 11, 2008, OTS closed IndyMac and appointed FDIC as conservator. As of December 31, 2008, the estimated loss to the Deposit Insurance Fund for IndyMac was $10.7 billion.

That concludes my prepared statement. I will be happy to answer any questions you may have. Thank you.

EXHIBIT 8

From: Morris, Loren <████@gs.com>
Sent: Tuesday, May 29, 2007 5:00 PM
To: Potolsky, Doug <doug.potolsky@wamu.net>
Subject: FW: Repurchase Requests - initially denied WaMu

▬ = Redacted by the Permanent Subcommittee on Investigations

Sorry, I misspelled your name. Here is the email. Thanks

From: Morris, Loren
Sent: Friday, May 25, 2007 12:55 PM
To: 'GM Recourse & Recovery'; Hernandez, Sarah; 'dawn.lehrmann@wamu.net'
Cc: Liepold, Christina; Murray, Kelli; Herrera, Lina M.; Parkinson, David; 'doug.potowsky@wamu.com'
Subject: RE: Repurchase Requests - initially denied WaMu

Dawn, we appreciate your groups' involvement in the repurchase process on behalf of WaMu and Long Beach. We look forward to working closely with you and your group to satisfactorily resolve all repurchase claims.

As discussed with Doug Potowsky, we wish to lay the foundation for collaboration between Goldman and WaMu to facilitate the repurchase process.

With that goal, let me respond to your email with the scope of activity we are addressing:

1. We have received and reviewed the documents forwarded by WaMu in response to our October 30, 2006 repurchase demand (consisting of 77 loans).
We have found 28 of the original population to contain material misrepresentations and remain subject to repurchase. We will be sending the rebuttal letter with additional documentation on 24 of those loans shortly. You should have our rebuttal letter on 4 of those loans by letter dated April 19, 2007.

2. We have another population of 25 second lien loans that have been charged off and that contain material misrepresentations.They too will be the subject of a repurchase letter.

3. We will be reviewing approximately 600 loans that have been charged off. Further, we will be reviewing the approximately 100 second lien loans per month that continue to roll to charge off.

4. We are in the process of reviewing approximately 2000 second lien loans (pre-charge off). We anticipate that approximately 40% of this population will have material issues subject to repurchase.

Generally, the issues we see that are deemed material misrepresentations consist of straw buyers and undisclosed real estate liens and other debts. To a lesser degree, we see material guideline variances, such as less than the required trade lines.

We believe it will benefit both organizations to work together to create a "flow" frame work to direct the review and vetting process. For example, we would like to discuss the type of issues that are material, the type of documentation required to evidence the issue and the vetting process. We suggest that our team works directly with your group in your offices in Jacksonville, FL to facilitate the vetting process.

I will be your primary contact and can be reached at: 727████ I look forward to working with Doug and your group.

Thank you, Loren Morris

From: GM Recourse & Recovery [mailto:recourse.recovery@wamu.net]
Sent: Friday, May 25, 2007 9:33 AM
To: Hernandez, Sarah
Cc: Liepold, Christina; Morris, Loren; Murray, Kelli; Herrera, Lina M.
Subject: RE: Repurchase Requests - initially denied

Permanent Subcommittee on Investigations
EXHIBIT #54b

EXHIBIT 9

(206) 377-2496 (fax)
todd.baker@wamu.net
**Note my contact information is updated as of September 5, 2006. Please update your contact information so we don't lose touch.
-----Original Message-----
From: Killinger, Kerry K.
Sent: Friday, October 12, 2007 3:51 PM
To: Baker, Todd
Subject: Re: Can you take a look at this before Monday and give your blessing?
I don't trust Goldy on this. They are smart, but this is swimming with the sharks. They were shorting mortgages big time while they were giving CfC advice.
I trust Lehman more for something this sensitive. But we would need to assess if they have the smarts we need.
----- Original Message -----
From: Baker, Todd
To: Killinger, Kerry K.
Cc: Casey, Tom; Williams, Robert J.; Rotella, Steve
Sent: Fri Oct 12 15:36:00 2007
Subject: Can you take a look at this before Monday and give your blessing?
Kerry: The Finance team, under Tom, is starting next week to look at structural ideas around large scale credit risk transfer (everything from good bank/bad bank to securitization ideas). We would like to bring in a top investment banker to help us brainstorm and think these issues through. The idea at this point is to understand what the range of options is and begin to prepare preliminary plans. We want to be in a position to move forward quickly in the event that market conditions shift or something becomes executable.
A key to our success will be absolute confidentiality, so we want to discuss these issues with only one banker only and not let the other firms know anything about our thoughts or process. This will involve disclosing confidential WM information, which will probably require an engagement letter and a fee discussion.
Our strong first choice for this effort would be Goldman Sachs, as John Mahoney is the smartest banker overall, the best at thinking about financial structures, has been through this before, and his firm is the deepest. He also has the advantage of understanding the CFC situation.
If Bill Longbrake is right we could be in for a rough road ahead and hiring the best brains is always wise when the stakes are high. Goldman also has the strong balance sheet, market heft and risk appetite to do many things themselves for us that others couldn't as part of the solution. On the other hand, they are very expensive and we may have trouble getting John's full attention. John himself is very discreet but we always need to worry a little about Goldman because we need them more than they need us and the firm is run by traders. Nevertheless, we recommend going with John on this.
One alternative choice would be Doug Simons at Credit Suisse, as he is incredibly bright and creative, although with less practical experience with credit risk transfer vehicles. He would be very loyal and give us 150% effort. The firm backup would be somewhat weaker but they would view it as a plum assignment. This would be a risk that Doug couldn't deliver but there is also a chance that we could end up with something unique and out of the box that would work.
Lehman would be another alternative choice. The internal dynamics there are better than they were but it is still a problem getting coordination between Phil (who would insist on running things) and the rest of their team. There are some strong people there, Phil has a good

Permanent Subcommittee on Investigations
EXHIBIT #69a

<u>EXHIBIT 10</u>

- THE WALL STREET JOURNAL.
  WSJ.com

- April 11, 2008, 12:03 PM ET

Goldman: Short WaMu Stock, Buy the Bonds

Given the general reticence of analysts to issue "sell" ratings on shares, suggesting that investors actively short a stock takes a negative outlook to another level. Goldman Sachs analysts today told investors they should short shares of **Washington Mutual** Inc.

However, they offset that position by recommending buying the company's bonds. Whereas the recent capital-raising activity dilutes the shareholders, it helps bondholders worried about the balance sheet. **Some of the $7 billion raised came from convertible bonds, which convert at a price lower than the current share price.**

Goldman analyst James Fotheringham estimates that the struggling lender should trade at a value equal to its tangible common equity which they estimate at $9.84 a share; **the stock is currently at $11.38 a share, down a few pennies on the day.**

He estimates the company has $17 billion to $23 billion of embedded losses in its mortgage portfolio — of which just $3 billion has been absorbed.

However, in the same note, Goldman credit analyst Louise Pitt suggests **buying the company's bonds and credit-default swaps**, saying both indicators trade at levels wider than their peers, particularly following the raise of $7 billion in capital — including $5.5 billion in convertible preferred shares — to shore up the balance sheet. The convertible shares can convert at $8.75 a share.

"The $7bn of new equity capital is a clear positive for bondholders," she writes. **"We expect the convertible to become common equity later this quarter,** though we believe there is still a small risk that shareholders do not approve the dilution."

WaMu's CDS currently trade at a cost of $415,000 for insurance against default for five years, according to Phoenix Partners Group.

<u>EXHIBIT 11</u>

The New York Times
DealBook
Edited by Andrew Ross Sorkin

September 17, 2008, 3:58 pm

Washington Mutual Begins Efforts to Sell Itself

Washington Mutual, the struggling savings and loan, has been working on several efforts to save itself, including a potential sale, people briefed on the matter said Wednesday.

Goldman Sachs, which Washington Mutual has hired, started the process several days ago, these people said. Among the potential bidders that Goldman has talked to are **Wells Fargo**, **JPMorgan Chase** and **HSBC**. But no buyers may materialize. That could force the government to place Washington Mutual into conservatorship, like **IndyMac**, or find a bridge-bank solution, which was extended to thrifts in the new housing regulations.

Citigroup is also considering an offer, but would likely be able to buy Washington Mutual only if it emerged from a receivership, according to a person close to the situation. JPMorgan is maintaining its posture that it will not bid unless it receives government support, according to another person briefed on the matter.

The unsurprising announcement comes as the bank, which has suffered badly from losses on mortgages it had made, continues to stumble. Shares in Washington Mutual fell nearly 10 percent on Wednesday to $2.09; they have plunged 94 percent over the last 12 months. This week alone, investors have been frightened by Standard & Poor's cutting of the bank's debt rating to junk.

TPG, the private equity firm that led a $7 billion cash injection into Washington Mutual in April, said Wednesday afternoon that it would waive its right to be compensated if the bank sold more shares to raise capital. "Our goal is to maximize the bank's flexibility in this difficult market environment," TPG said in a statement.

The April deal gave the investing group roughly 822 million new shares, diluting existing shareholders by nearly 50 percent. TPG bought shares for roughly $8.75 each. Those shares have since fallen to $2.14 a share, meaning that the value of the investor group's holdings at Tuesday's close had declined 75.5 percent.

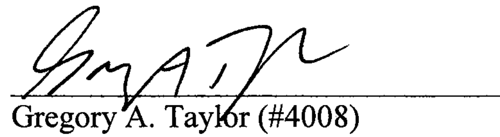
While the bank has a strong deposit base, the uncertainty of the markets and the increasingly poor housing market have increased concerns about Washington Mutual's outlook. The bank plunged into the option adjustable rate mortgage business.

Eric Dash, Andrew Ross Sorkin and Michael J. de la Merced

- Copyright 2010 The New York Times Company | Privacy Policy | NYTimes.com 620 Eighth Avenue New York, NY 10018

CERTIFICATE OF SERVICE

I, Gregory A. Taylor, hereby certify that on April 26, 2010, I caused one copy of the foregoing document to be served upon the parties on the attached service list by Hand Delivery (local) and first class U.S. Mail, postage prepaid (non-local), unless otherwise indicated.



Gregory A. Taylor (#4008)

Acxiom Corporation
CB Blackard III
301 E Dave Ward Dr
PO Box 2000
Conway, AR 72033-2000

Akin Gump Strauss Hauer & Feld LLP
Fred S Hodara
One Bryant Park
New York, NY 10036

Akin Gump Strauss Hauer & Feld LLP
Scott L Alberino
1333 New Hampshire Ave NW
Washington, DC 20036

Akin Gump Strauss Hauer & Feld LLP
Peter J Gurfein
2029 Century Park E Ste 2400
Los Angeles, CA 90067-3012

Akin Gump Strauss Hauer & Feld LLP
David P Simonds
2029 Century Park E Ste 2400
Los Angeles, CA 90067-3012

Alston & Bird LLP
J William Boone
1201 W Peachtree St
Atlanta, GA 30309-3424

Angelo Gordon & Co
Edward W Kressler
245 Park Ave 26th Fl
New York, NY 10167

Arapahoe County Attorneys Office
George Rosenberg
5334 S Prince St
Littleton, CO 80166

Archer & Greiner PC
Charles J Brown III
300 Delaware Ave Ste 1370
Wilmington, DE 19801

Arent Fox LLP
Andrew Silfen
1675 Broadway
New York, NY 10019

Arent Fox LLP
Jeffrey N Rothleder
1050 Connecticut Ave NW
Washington, DC 20036

Arnall Golden Gregory LLP
Darryl S Laddin
171 17th St NW Ste 2100
Atlanta, GA 30363-1031

Arnall Golden Gregory LLP
Michael F Holbein
171 17th St NW Ste 2100
Atlanta, GA 30363-1031

Severson & Werson, PC
Duane M. Geck
One Embarcadero Center, 26th Floor
San Francisco, CA 94111

Michael P. Morton, PA
Michael P. Morton
1203 North Orange Street
Wilmington, DE 19801

Rosenthal Monhait & Goddess, PA
Carmella Keener
919 N. Market Street, Suite 1401
P.O. Box 1070
Wilmington, DE 19899-1070

Bartlett Hackett Feinberg PC
Frank F McGinn
155 Federal St 9th Fl
Boston, MA 02110

Bayard PA
Jeffrey M Schlerf
PO Box 25130
Wilmington, DE 19899

Bernstein Litowitz Berger & Grossmann LLP
Chad Johnson
1285 Avenue of the Americas 38th Fl
New York, NY 10019

Bernstein Litowitz Berger & Grossmann LLP
Hannah Ross
1285 Avenue of the Americas 38th Fl
New York, NY 10019

Bernstein Litowitz Berger & Grossmann LLP
Jerald Bien Willner
1285 Avenue of the Americas 38th Fl
New York, NY 10019

Bifferato LLC
Ian Connor Bifferato
800 N King St Plaza Level
Wilmington, DE 19801

Bifferato LLC
Kevin G Collins
800 N King St Plaza Level
Wilmington, DE 19801

Blank Rome LLP
Michael DeBaecke
1201 Market St Ste 800
Wilmington, DE 19801

Bronwen Price
Gail B Price
2600 Mission St Ste 206
San Marion, CA 91108

Brown & Connery LLP
Donald K Ludman
6 N Broad St Ste 100
Woodbury, NJ 08096

Buchalter Nemer PC
Shawn M Christianson
333 Market St 25th Fl
San Francisco, CA 94105-2126

California Dept of Toxic Substances
James Potter
Deputy Attorney General
300 South Spring Street, Ste 1702
Los Angeles, CA 90013

Capehart & Scatchard PA
William G Wright
8000 Midlantic Dr Ste 300S
Mt Laurel, NJ 08054

Centerbridge Capital Partners LP
Vivek Melwani
375 Park Ave 12th Fl
New York, NY 10152-0002

City and County of Denver
Eugene J Kottenstette
Municipal Operations
201 W Colfax Ave Dept 1207
Denver, CO 80202-5332

City of Fort Worth
Christopher B Mosley
1000 Throckmorton St
Fort Worth, TX 76102

Connolly Bove Lodge & Hutz LLP
Jeffrey C Wisler
1007 N Orange St
PO Box 2207
Wilmington, DE 19899

Connolly Bove Lodge & Hutz LLP
Marc J Phillips
1007 N Orange St
PO Box 2207
Wilmington, DE 19899

County Attorneys Office
Erica S Zaron Asst County Attorney
2810 Stephen P Clark Center
111 NW First St
Miami, FL 33128-1993

Cox Smith Matthew Inc
Patrick L Huffstickler
112 E Pecan Ste 1800
San Antonio, TX 78205

Cross & Simon LLC
Christopher P Simon
913 N Market St 11th Fl
Wilmington, DE 19801

Curtis Mallet Prevost Colt & Mosle LLP
Steven J Reisman
101 Park Ave
New York, NY 10178-0061

David D Lennon
Asst Attorney General
Revenue Section
PO Box 629
Raleigh, NC 27602-0629

Dewey & LeBoeuf LLP
Peter A Ivanick
1301 Avenue of the Americas
New York, NY 10019

Dewey & LeBoeuf LLP
Andrew Z Lebwohl
1301 Avenue of the Americas
New York, NY 10019

Dexter D Joyner
Attorney for Pasadena ISD & Pearland ISD
4701 Preston Ave
Pasadena, TX 77505

DLA Piper LLP
Thomas R Califano
1251 Avenue of the Americas
New York, NY 10020-1104

DLA Piper LLP
Jeremy R Johnson
1251 Avenue of the Americas
New York, NY 10020-1104

Eckert Seamans Cherin & Mellot LLC
Ronald S Gellert
300 Delaware Ave Ste 1210
Wilmington, DE 19801

Edwards Angell Palmer & Dodge LLP
Stuart M Brown
919 N Market St 15th Fl
Wilmington, DE 19801

Edwards Angell Palmer & Dodge LLP
Craig R Martin
919 N Market St 15th Fl
Wilmington, DE 19801

Electronic Data Systems LLC
Ayala A Hassell
5400 Legacy Dr
MS H3 3A 05
Plano, TX 75024

Entwistle & Cappucci LLP
Andrew J Entwistle
280 Park Ave 26th Fl
New York, NY 10017

Entwistle & Cappucci LLP
Johnston de F Whitman Jr
280 Park Ave 26th Fl
New York, NY 10017

Entwistle & Cappucci LLP
Joshua K Porter
280 Park Ave 26th Fl
New York, NY 10017

First Pacific Bank of California
Jame Burgess
9333 Genesee Ave Ste 300
San Diego, CA 92121

Fox Hefter Swibel Levin & Carroll LLP
Margaret Peg M Anderson
200 W Madison St Ste 3000
Chicago, IL 60606

Fox Rothschild LLP
Jeffrey M Schlerf
919 N Market St
Citizens Bank Center Ste 1600
Wilmington, DE 19801

Freshfields Bruckhaus Deringer LLP
Will Higgs
65 Fleet St
London, EC4Y 1HS UK

Fried Frank Harris Shriver & Jacobson LLP
Matthew M Roose
One New York Plaza
New York, NY 10004-1980

Freshfields Bruckhaus Deringer US LLP
Harvey Dychiao
520 Madison Ave
New York, NY 10022

Fried Frank Harris Shriver & Jacobson LLP
Brian D Pfeiffer
One New York Plaza
New York, NY 10004-1980

Goulston & Storrs PC
Christine D Lynch
400 Atlantic Ave
Boston, MA 02110-333

Friedlander Misler
Robert E Greenberg
1101 17th St NW Ste 700
Washington, DC 20036-4704

Gay McCall Isaacks Gordon & Roberts
David McCall
777 E 15th St
Plano, TX 75074

Gulf Group Holdings Acquisitions & Applications
Beatriz Agramonte
18305 Biscayne Blvd Ste 400
Aventura, FL 33160

Greer Herz & Adams LLP
Frederick Black
One Moody Plz 18th Fl
Galveston, TX 77550

Greer Herz & Adams LLP
Tara B Annweiler
One Moody Plz 18th Fl
Galveston, TX 77550

Hewlett Packard Company
Ken Higman
2125 E Katella Ave Ste 400
Anaheim, CA 92806

Hagens Berman Sobol Shapiro LLP
Andrew M Volk
1301 Fifth Ave Ste 2900
Seattle, WA 98101

Hennigan Bennet Dorman LLP
Michael C Schneidereit
865 S Figueroa St Ste 2900
Los Angeles, CA 90017

IBM Credit LLC
Bill Dimos
North Castle Dr
MD 320
Armonk, NY 10504

Hennigan Bennet Dorman LLP
Bennett J Murphy
865 S Figueroa St Ste 2900
Los Angeles, CA 90017

IBM Corporation
Vicky Namken
13800 Diplomat Dr
Dallas, TX 75234

Kasowitz Benson Torres & Friedman
Paul M Oconnor III
1633 Broadway
New York, NY 10019

Hodges and Associates
A Clifton Hodges
4 E Holly St Ste 202
Pasadena, CA 91103-3900

Kasowitz Benson Torres & Friedman
David S Rosner
1633 Broadway
New York, NY 10019

Keller Rohrback LLP
Derek W Loeser
Lynn L. Sarko
Karin B. Swope
1201 Third Ave Ste 3200
Seattle, WA 98101

Johnson Pope Bokor Ruppel & Burns LLP
Angelina E Lim
PO Box 1368
Clearwater, FL 33757

Kasowitz Benson Torres & Friedman
Daniel A Fliman
1633 Broadway
New York, NY 10019

Landis Rath & Cobb LLP
Adam G Landis
919 Market St Ste 600
Wilmington, DE 19801

Kasowitz Benson Torres & Friedman
Trevor J Welch
1633 Broadway
New York, NY 10019

Kelley Drye & Warren LLP
Eric R Wilson
101 Park Ave
New York, NY 10178

Law Offices of Robert E Luna PC
Andrea Sheehan
4411 N Central Expressway
Dallas, TX 75205

Kelley Drye & Warren LLP
Howard S Steel
101 Park Ave
New York, NY 10178

Law Offices of Lippe & Associates
Emil Lippe Jr
600 N Pearl St Ste S2460
Plaza of the Americas South Tower
Dallas, TX 75201

Lichtsinn & Haensel
Kathleen R. Dahlgren
111 E Wisconsin Ave Ste 1800
Milwaukee, WI 53202

Landis Rath & Cobb LLP
Matthew B McGuire
919 Market St Ste 600
Wilmington, DE 19801

Lichtsinn & Haensel
Michael J Bennett
111 E Wisconsin Ave Ste 1800
Milwaukee, WI 53202

Loeb & Loeb LLP
Vadim J Rubinstein
345 Park Ave
New York, NY 10154

Linebarger Goggan Blair & Sampson LLP
Elizabeth Weller
2323 Bryan St Ste 1600
Dallas, TX 75201

Loeb & Loeb LLP
Walter H Curchack
345 Park Ave
New York, NY 10154

Lowenstein Sandler PC
Ira M Levee
65 Livingston Ave
Roseland, NJ 07068

Loeb & Loeb LLP
Daniel B Besikof
345 Park Ave
New York, NY 10154

Lowenstein Sandler PC
Michael S Etkin
65 Livingston Ave
Roseland, NJ 07068

Lowenstein Sandler PC
Joseph M Yar
65 Livingston Ave
Roseland, NJ 07068

Lowenstein Sandler PC
Vincent A Dagostino
65 Livingston Ave
Roseland, NJ 07068

Lowenstein Sandler PC
Eric H Horn
65 Livingston Ave
Roseland, NJ 07068

McCreary Veselka Bragg & Allen
Michael Reed
PO Box 1269
Round Rock, TX 78680

Manatee County Tax Collector
Ken Burton
Michelle Leeson
PO Box 25300
Bradenton, FL 34206-5300

Manatee County Tax Collector
Ken Burton
Michelle Leeson
819 US 301 Blvd W
Bradenton, FL 34205

McGuire Woods LLP
Sally E Edison
625 Liberty Ave 23rd Fl
Pittsburgh, PA 15222

McDermott Will & Emery LLP
Gary O Ravert
340 Madison Ave
New York, NY 10173-1922

McDermott Will & Emery LLP
Nava Hazan
340 Madison Ave
New York, NY 10173-1922

Morris James LLP
Brett D Fallon
500 Delaware Ave Ste 1500
PO Box 2306
Wilmington, DE 19899-2306

McGuire Woods LLP
Nicholas E Meriwether
625 Liberty Ave 23rd Fl
Pittsburgh, PA 15222

Miami Dade Bankruptcy Unit
Alberto Burnstein
140 W Flagler St Ste 1403
Miami, FL 33130-1575

O Melveny & Myers LLP
Michael J Sage
Time Square Tower
7 Times Square
New York, NY 10036

Morrison & Foerster LLP
Brett H Miller
1290 Avenue of the Americas
New York, NY 10104

Newstart Factors Inc
Gregory Vadasdi
2 Stamford Plaza Ste 1501
281 Tresser Blvd
Stamford, CT 06901

Oregon Dept of Justice
Carolyn G Wade
Senior Asst Attorney General
1162 Court St NE
Salem, OR 97301-4096

O Melveny & Myers LLP
Jason Alderson
Time Square Tower
7 Times Square
New York, NY 10036

Office of Thrift Supervision
Christopher A Sterbenz
Trial Counsel Litigation Div
1700 G St NW
Washington, DC 20552

Pension Benefit Guaranty Corp
Joel W Ruderman
Office of the Chief Counsel
1200 K St NW
Washington, DC 20005-4026

Patterson Belknap Webb & Tyler
Daniel A Lowenthal
1133 Avenue of the Americas
New York, NY 10036-6710

Patterson Belknap Webb & Tyler
Brian P Guiney
1133 Avenue of the Americas
New York, NY 10036-6710

Pepper Hamilton LLP
David M Fournier
Hercules Plaza Ste 5100
1313 N Market St
Wilmington, DE 19801

Pepper Hamilton LLP
David B Stratton
Hercules Plaza Ste 5100
1313 N Market St
Wilmington, DE 19801

Pepper Hamilton LLP
Evelyn J Meltzer
Hercules Plaza Ste 5100
1313 N Market St
Wilmington, DE 19801

Perkins Coie LLP
Ronald L Berenstain
1201 Third Ave 48th Fl
Seattle, WA 98101

Perdue Brandon Fielder Collins & Mott LLP
Elizabeth Banda
PO Box 13430
Arlington, TX 76094-0430

Perkins Coie LLP
Alan D Smith
1201 Third Ave 48th Fl
Seattle, WA 98101

Pillsbury Winthrop Shaw Pittman LLP
Rick B Antonoff
1540 Broadway
New York, NY 10036-4039

Perkins Coie LLP
Brian A Jennings
1201 Third Ave 48th Fl
Seattle, WA 98101

Phillips Goldman & Spence PA
Stephen W Spence
1200 N Broom St
Wilmington, DE 19806

Platzer Sergold Karlin Levine Goldberg Jaslow LLP
Sydney G Platzer
1065 Avenue of the Americas 18th Fl
New York, NY 10018

Pillsbury Winthrop Shaw Pittman LLP
Erica Carrig
1540 Broadway
New York, NY 10036-4039

Plains Capital Bank Building
Michael S Mitchell
18111 N Preston Rd Ste 810
Dallas, TX 75252

Reed Smith LLP
James C McCarroll
599 Lexington Ave 30th Fl
New York, NY 10022

Procopio Cory Hargreaves & Savitch LLP
Jeffrey Isaacs
530 B St Ste 2100
San Diego, CA 92101

Reed Smith LLP
J Cory Falgowski
1201 Market St Ste 1500
Wilmington, DE 19801

Riddell Williams PS
Joseph E Shickich Jr
1001 4th Ave Ste 4500
Seattle, WA 98154-1192

Reed Smith LLP
Kurt F Gwynne
1201 Market St Ste 1500
Wilmington, DE 19801

Reed Smith LLP
J Andrew Rahl
599 Lexington Ave
New York, NY 10022

San Diego Treasurer Tax Collector of California
Bankruptcy Desk
Dan McAllister
1600 Pacific Hwy Rm 162
San Diego, CA 92101

Robert M Menar
700 S Lake Ave Ste 325
Pasadena, CA 91106

Romero Law Firm
Martha Romero
6516 Bright Ave
BMR Professional Bldg
Whittier, CA 90601

Satterlee Stephens Burke & Burke LLP
Pamela A Bosswick
230 Park Ave
New York, NY 10169

San Joaquin County Treasurer & Tax Collector
Christine M Babb
500 E Mail St 1st Fl
PO Box 2169
Stockton, CA 95201

Satterlee Stephens Burke & Burke LLP
Christopher R Belmonte
230 Park Ave
New York, NY 10169

Singer & Levick PC
Michelle E Shriro
16200 Addison Rd Ste 140
Addison, TX 75001

Saul Ewing LLP
Mark Minuti
222 Delaware Ave Ste 1200
PO Box 1266
Wilmington, DE 19899

Shipman & Goodwin LLP
Julie A Manning
One Constitution Plaza
Hartford, CT 06103-1919

Sullivan & Cromwell LLP
Hydee R Feldstein
1888 Century Park E
Los Angeles, CA 90067-1725

State of Washington Dept of Revenue
Zachary Mosner Asst Attorney General
800 Fifth Ave Ste 2000
Seattle, WA 98104-3188

Steckbauer Weinhart Jaffe LLP
Barry S Glaser
333 S Hope St Ste 3600
Los Angeles, CA 90071

Tannenbaum Helpern Syracuse & Hirchtritt
Roy H Carlin
900 Third Ave 13th Fl
New York, NY 10022

Sullivan & Cromwell LLP
Robert R Urband
1888 Century Park E
Los Angeles, CA 90067-1725

Sullivan & Cromwell LLP
Robinson B Lacy
125 Broad St
New York, NY 10004-2498

Treasurer Tax Collector
Dan McAllister Bankruptcy Desk
1600 Pacific Hwy Room 162
San Diego, CA 92101

Tax Collector for Polk County
Office of Joe G Tedder
Bonnie Holly Delinquency & Enforcement
PO Box 2016
Bartow, FL 33831-2016

Tennessee Dept of Revenue
TN Attorney Generals Office Bankruptcy Div
PO Box 20207
Nashville, TN 37202-0207

US Department of Justice
Jan M Geht Trial Attorney Tax Division
PO Box 227
Washington, DC 20044

Tulare County Tax Collector
Melissa Quinn
221 S Mooney Blvd Rm 104 E
Visalia, CA 93291-4593

Unisys Corporation
Janet Fitzpatrick Legal Asst
Unisys Way
PO Box 500 MS E8 108
Blue Bell, PA 19424

Weiss Serota Helfman
Douglas R Gonzales
200 E Broward Blvd Ste 1900
Fort Lauderdale, FL 33301

Vedder Price PC
Douglas J Lipke
222 N LaSalle St Ste 2600
Chicago, IL 60601

Walter R Holly Jr
10853 Garland Ave
Culver City, CA 90232

White & Case LLP
Thomas E Lauria
Wachovia Financial Center
200 S Biscayne Blvd Ste 4900
Miami, FL 33131

Werb & Sullivan
Duane D Werb
300 Delaware Ave Ste 1300
PO Box 25046
Wilmington, DE 19899

Werb & Sullivan
Matthew P Austria
300 Delaware Ave Ste 1300
PO Box 25046
Wilmington, DE 19899

Willkie Farr & Gallagher LLP
Shaunna D Jones
787 Seventh Ave
New York, NY 10019-6099

Willkie Farr & Gallagher LLP
Shelley Chapman
787 Seventh Ave
New York, NY 10019-6099

Willkie Farr & Gallagher LLP
Thomas H Golden
787 Seventh Ave
New York, NY 10019-6099

Attorney Generals Office
Joseph R Biden III
Carvel State Office Bldg
820 N French St 8th Fl
Wilmington, DE 19801

Young Conaway Stargatt & Taylor LLP
Robert S Brady
1000 West St 17th Fl
Wilmington, DE 19801

Young Conaway Stargatt & Taylor LLP
M Blake Cleary
1000 West St 17th Fl
Wilmington, DE 19801

Delaware Secretary of the State
Division of Corporations
PO Box 898
Franchise Tax Division
Dover, DE 19903

Bank of New York Mellon
Attn Gary S Bush
Global Corporate Trust
101 Barclay St
New York, NY 10286

Delaware Dept of Justice
Attn Bankruptcy Dept
Div of Securities
820 N French St 5th Fl
Wilmington, DE 19801

Federal Deposit Insuance Corp
Donald McKinley
1601 Bryan St
PAC 04024
Dallas, TX 75201

Delaware Secretary of the Treasury
PO Box 7040
Dover, DE 19903

Department of Labor
Division of Unemployment Ins
4425 N Market St
Wilmington, DE 19802

Internal Revenue Service
Centralized Insolvency Operation
11601 Roosevelt Blvd
Mail Drop N781
Philadelphia, PA 10154

Federal Deposit Insuance Corp
Stephen J Pruss
1601 Bryan St
PAC 04024
Dallas, TX 75201

Internal Revenue Service
Centralized Insolvency Operation
PO Box 21126
Philadelphia, PA 19114-0326

Office of Thrift Supervision
Darrell W Dochow
Pacific Plaza
2001 Junipero Serra Blvd Ste 650
Daly City, CA 94014-1976

Law Debenture Trust Company of New York
Jame Heaney
400 Madison Ave 4th Fl
New York, NY 10017

Office of the United States Trustee Delaware
Joseph McMahon
844 King St Ste 2207
Lockbox 35
Wilmington, DE 19899-0035

Wilmington Trust Company
Jame McGinley
520 Madison Ave 33rd Fl
New York, NY 10022

Wells Fargo Bank NA
Thomas M Korsman
625 Marquette Ave
Minneapolis, MN 55479

Weil Gotshal & Manges LLP
Michael F Walsh
767 Fifth Ave
New York, NY 10153

Richards Layton & Finger PA
Mark D Collins
One Rodney Square
920 N King St
Wilmington, DE 19899

Richards Layton & Finger PA
Chun I Jang
One Rodney Square
920 N King St
Wilmington, DE 19899

Securities & Exchange Commission
15th & Pennsylvania Ave NW
Washington, DC 20020

Securities & Exchange Commission
100 F Street NE
Washington, DC 20549

Securities & Exchange Commission
Daniel M Hawke
The Mellon Independence Ctr
701 Market St
Philadelphia, PA 19106-1532

Securities & Exchange Commission
Allen Maiza
Northeast Regional Office
3 World Financial Center Rm 4300
New York, NY 10281

State of Delaware Division of Revenue
Randy R Weller MS No 25
820 N French St 8th Fl
Wilmington, DE 19801-0820

US Attorney General US Department of Justice
Michael Mukasey
950 Pennsylvania Ave NW
Washington, DC 20530-0001

US Attorneys Office
Ellen W Slights
1007 N Orange St Ste 700
PO Box 2046
Wilmington, DE 19899-2046

Verizon Services Corp
William M Vermette
22001 Loudon County Parkway
Room E1 3 113
Ashburn, VA 20147

Washington Mutual Claims Processing
c o Kurtzman Carson Consultants
2335 Alaska Ave
El Segundo, CA 90245

Weil Gotshal & Manges LLP
Marcia L Goldstein
767 Fifth Ave
New York, NY 10153

Weil Gotshal & Manges LLP
Brian S Rosen
767 Fifth Ave
New York, NY 10153

Quinn Emanuel Urquhart Oliver & Hedges
Peter E. Calamari
Michael B. Carlinsky
51 Madison Avenue
New York, NY 10010

Quinn Emanuel Urquhart Oliver & Hedges
Susheel Kirpalani
David Elsberg
51 Madison Avenue
New York, NY 10010

Elliott Greenleaf
Neil R. Lapinski
1105 North Market Street, Suite 1700
Wilmington, DE 19801

Wilmer Cutler Pickering Hale & Dorr
Philip D. Anker
399 Park Avenue
New York, NY 10022

Wilmer Cutler Pickering Hale & Dorr
Russell J. Bruemmer
Gianna Ravenscourt
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Pachulski Stang Ziehl & Jones
Timothy Cairns
919 North Market Street, 17th Floor
Wilmingont, DE 19801

Morris Nichols Arsht & Tunnell
Donna L. Culver
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19801

Ulmer & Berne LLP
Scott A. Meyers
500 West Madison Street
Suite 3600
Chicago, IL 60661-4587

Wilmer Cutler Pickering Hale & Dorr
Nancy L. Manzer
Lisa Ewart
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Schindler Cohen & Hochman LLP
Jonathan L. Hochman
Daniel E. Shaw
100 Wall Street, 15th Floor
New York, NY 10005

King & Spaulding LLP
Arthur J. Steinberg
1185 Avenue of the Americas
New York, NY 10036-4003

Brice Vander Linden & Wernick PA
Hilary B. Bonial
9441 LBJ Freeway, Suite 350
Dallas, TX 75243