

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

In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Hearing Date: June 8, 2011 at 9:30 a.m.
	)	Obj. Deadline: May 31, 2011 at 4:00 p.m.

**APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION  
AND EMPLOYMENT OF BDO USA, LLP AS TAX ADVISOR  
TO THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF  
WASHINGTON MUTUAL, INC., ET AL. NUNC PRO TUNC TO APRIL 18, 2011**

The Official Committee of Equity Security Holders (the “Equity Committee”) of the above-captioned debtors and debtors in possession (the “Debtors”), hereby files this application (the “Application”) seeking entry of an order in the form attached hereto as Exhibit B, pursuant to Sections 328 and 1103 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the retention of BDO USA, LLP (“BDO”) as its tax advisor to the Equity Committee in these chapter 11 cases *nunc pro tunc* to April 18, 2011. In support of its Application, the Equity Committee relies upon the *Declaration of Kevin D. Anderson in Support of the Application for an Order Authorizing the Retention and Employment of BDO USA, LLP as Tax Advisor to the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al. Nunc Pro Tunc to April 18, 2011* (the “BDO Declaration”), attached hereto as Exhibit A. In further support of the Application, the Equity Committee respectfully represents as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



## **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district in accordance with 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are Sections 328 and 1103 of the Bankruptcy Code, Bankruptcy Rule 2014 and Rule 2014-1 of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

## **RELEVANT BACKGROUND**

3. On September 26, 2008, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

5. On January 11, 2010, the United States Trustee for the District of Delaware appointed an official committee of equity security holders (the “Equity Committee”).

6. On February 8, 2011, the Debtors filed their Modified Sixth Amended Joint Plan (as modified, the “Modified Plan”) [Docket Nos. 6696, 6964, 7038, 7040] and related supplemental disclosure statement for the Modified Plan (the “Supplemental Disclosure Statement”) [Docket No. 6697].

7. As set forth in the Equity Committee’s objection to the Supplemental Disclosure Statement, the Debtors’ valuation offered in connection with the Modified Plan values Reorganized WMI at \$160 million (midpoint) [Docket No. 6902]. However, the valuation relies, in part, upon the Debtors’ net operating loss (“NOL”) analysis, which asserts that the portion of

the \$5.5 billion of NOLs not subject to the limitation in Section 382 of the Internal Revenue Code is \$3.5 billion. As a result, the NOLs are valued at between \$10 and \$20 million.

8. Pursuant to the Order approving the Supplemental Disclosure Statement, a hearing to consider confirmation of the Modified Plan is scheduled for June 6, 2011 [Docket No. 7081].

### **RELIEF REQUESTED**

9. By this Application, the Equity Committee seeks authority to retain and employ BDO as its tax advisor *nunc pro tunc* to April 18, 2011 pursuant to the terms and conditions of that certain engagement letter dated April 18, 2011 (the "Engagement Letter"), a copy of which is attached as Exhibit 1 to the BDO Declaration filed contemporaneously herewith.

#### **A. BDO Is Well Qualified To Represent The Equity Committee**

10. BDO is well suited to represent the Equity Committee during these chapter 11 cases. BDO has the requisite expertise on tax consulting services that are likely to arise in connection with confirmation of the Modified Plan. BDO is a nationally-recognized firm that provides assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies.

6. After due consideration and deliberation, the Equity Committee has concluded that their interests and the interests of their constituency would best be served by the retention of BDO as tax advisor to the Equity Committee to render such services as are necessary and appropriate in connection with the matters set forth herein and other matters that may arise during the pendency of these chapter 11 cases.

7. Subject to the Court's approval of this Application, BDO will seek approval of payment of compensation and reimbursement of actual, necessary expenses and other charges by

filing appropriate applications for the allowance of interim and final compensation and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and Orders of the Court.

8. The Equity Committee requests that BDO be compensated consistent with the terms set forth in the Engagement Letter. As set forth therein, the Equity Committee requests that BDO be compensated on an hourly basis and reimbursed for actual, necessary expenses it incurs. BDO's current standard hourly rates are as follows:

<b><u>Position</u></b>	<b><u>Rate</u></b>
Partners	\$475 to \$795
Directors/Senior Managers	\$375 to \$600

The hourly rates set forth above are BDO's current regular hourly rates and may be periodically adjusted.

9. In addition to the hourly rates set forth above, it is BDO's policy to charge its clients for all other services provided and for disbursements and expenses incurred in relation thereto, including, among other things, charges for computer usage, telephone charges, facsimile transmissions, postage and photocopying. BDO will charge the Equity Committee for these expenses in a manner and at rates consistent with charges generally made to its other clients.

10. During the course of these chapter 11 cases, BDO will seek compensation based upon its normal hourly billing rates in effect for the period in which services are performed and will seek reimbursement of reasonable and necessary out-of-pocket expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and Orders of the Court. It is further contemplated that BDO will seek interim compensation and reimbursement of expenses during these chapter 11 cases as permitted by Section 331 of the Bankruptcy Code.

11. Other than as set forth above and in the BDO Declaration, no arrangement is proposed between the Equity Committee and BDO for compensation to be paid in these chapter 11 cases. BDO has not shared nor agreed to share any of its compensation in connection with this matter with any other person.

**B. Services To Be Provided**

12. As set forth in the Engagement Letter, and subject to Court approval, BDO will be retained by the Equity Committee to investigate, analyze, formulate and provide an opinion on the Debtors' ability to use its NOLs and other federal income tax attributes in post-emergence periods. Such services may include written reports and testimony as required by the Equity Committee.

13. During the course of these chapter 11 cases, the Equity Committee anticipates that BDO will undertake the following procedures and tasks:

- Prepare an appropriate protocol and methodology to begin the investigation of the specific actions in question
- Analyze all financial and tax documents provided to BDO and such other documents as they may reasonably request that are related to the scope of retention
- Prepare a report of the findings (the "Opinion")
- Provide testimony with regard to the Opinion either via deposition or in Court, or both, and
- Provide the Equity Committee with such additional tax related advice as requested by the Equity Committee in connection with the Debtors' cases.

**C. BDO Is A "Disinterested Person"**

11. To the best of the Equity Committee's knowledge and except as may be set forth in the BDO Declaration, BDO has not represented the Debtors, any of the creditors of the Debtors or any other parties in interest, or any of their respective affiliates or their respective attorneys, in any matter relating to the Debtors or their estates.

12. To the best of the Equity Committee's knowledge and except as may be set forth in the BDO Declaration, BDO does not hold or represent any interest adverse to the interests of the Equity Committee or the Debtors' equity security holders.

13. Accordingly, BDO qualifies as a "disinterested person" within the meaning of Sections 101(14) and 328 of the Bankruptcy Code.

14. For the reasons set forth above, the Equity Committee submits that BDO's retention and employment is necessary and in the best interest of the Equity Committee and the Debtors' equity security holders.

#### **NOTICE**

15. Notice of this Application has been given to: (i) the Office of the United States Trustee; (ii) counsel to the Debtors; (iii) counsel to the Official Committee of Unsecured Creditors; and (iv) those parties entitled to notice pursuant to Bankruptcy Rule 2002, in accordance with Local Rule 2002-1(b). In light of the nature of the relief requested herein, the Equity Committee submits that no other or further notice is necessary.

#### **NO PRIOR APPLICATION**

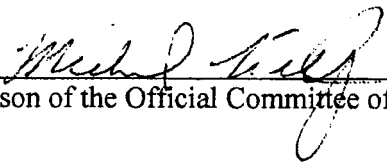
16. No previous application for the relief sought herein has been made by the Equity Committee to this or any other Court.

#### **CONCLUSION**

**WHEREFORE**, the Equity Committee respectfully requests the entry of an order, substantially in the form attached hereto as Exhibit B, (i) authorizing the Equity Committee to retain and employ BDO as its tax advisor *nunc pro tunc* to April 18, 2011 on the terms and conditions set forth in the Engagement Letter, and (ii) granting such other and further relief as is just and proper.

Dated: May 6, 2011

THE OFFICIAL COMMITTEE OF EQUITY SECURITY  
HOLDERS OF WASHINGTON MUTUAL., *et al.*

BY:   
Chairperson of the Official Committee of Equity Security Holders

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

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In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Hearing Date: June 8, 2011 at 9:30 am
	)	Obj. Deadline: May 31, 2011 at 4:00 pm
	)	

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**NOTICE OF APPLICATION FOR AN ORDER AUTHORIZING THE  
RETENTION AND EMPLOYMENT OF BDO USA, LLP AS TAX ADVISOR  
TO THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS  
OF WASHINGTON MUTUAL, INC., ET AL. NUNC PRO TUNC TO APRIL 18, 2011**

PLEASE TAKE NOTICE that on May 16, 2011, the Official Committee of Equity Security Holders filed its **Application for an Order Authorizing the Retention and Employment of BDO USA, LLP as Tax Advisor to the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al. Nunc Pro Tunc to April 18, 2011** (the "Application") 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 responses, if any, to the Application must be in writing, in conformity with the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the District of Delaware, filed with the Bankruptcy Court and served upon, so as to be received by, the undersigned proposed counsel on or before **May 31, 2011 at 4:00 p.m. (prevailing Eastern Time)**. Only properly and timely filed responses will be considered.

PLEASE TAKE FURTHER NOTICE that this Application is scheduled to be heard by the Court on **June 8, 2011 at 9:30 a.m. (prevailing Eastern Time)** before The Honorable Mary F. Walrath, Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801.

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.**

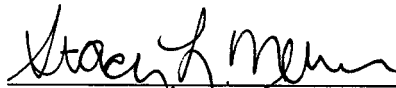
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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



Dated: May 16, 2011

ASHBY & GEDDES, P.A.



William P. Bowden (#2553)  
Gregory A. Taylor (#4008)  
Stacy L. Newman (#5044)  
500 Delaware Avenue, 8th Floor  
P.O. Box 1150  
Wilmington, Delaware 19899  
Telephone: 302-654-1888  
Facsimile: 302-654-2067

*Co-Counsel for 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

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

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

**Exhibit A**  
**(BDO Declaration)**

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

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

**DECLARATION OF KEVIN D. ANDERSON IN SUPPORT OF THE  
APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION  
AND EMPLOYMENT OF BDO USA, LLP AS TAX ADVISOR  
TO THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF  
WASHINGTON MUTUAL, INC., ET AL. NUNC PRO TUNC TO APRIL 18, 2011**

Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, Kevin D. Anderson declares:

1. I am a Partner at BDO USA, LLP (“BDO”). I provide this Declaration on behalf of BDO in support of the application (the “Application”) of the Official Committee of Equity Security Holders (the “Equity Committee”) to retain BDO as its tax advisor pursuant to the terms and conditions of that certain engagement letter dated April 18, 2011 (the “Engagement Letter”), a copy of which is attached hereto as Exhibit 1.

2. Unless otherwise stated herein, the statements set forth in this Declaration are based upon my personal knowledge, upon information and belief and upon client matter records kept in the ordinary course of business that were reviewed by me or other employees of BDO.

3. As set forth in the Engagement Letter, BDO has agreed to investigate, analyze, formulate and provide an opinion on the Debtors’ ability to use its NOLs and other federal

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

income tax attributes in post-emergence periods. Such services may include written reports and testimony as required by the Equity Committee.

4. Subject to this Court's approval and in accordance with Section 330(a) of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of the United States Bankruptcy Court for the District of Delaware and the Orders and Rules of the Court, BDO seeks to be compensated consistent with the terms set forth in the Engagement Letter. As set forth therein, BDO seeks to be compensated on an hourly basis and reimbursed for actual, necessary expenses it incurs. BDO's current standard hourly rates are as follows:

<u>Position</u>	<u>Rate</u>
Partners	\$475 to \$795
Directors/Senior Managers	\$375 to \$600

The hourly rates set forth above are BDO's current regular hourly rates and may be periodically adjusted.

14. In addition to the hourly rates set forth above, it is BDO's policy to charge its clients for all other services provided and for disbursements and expenses incurred in relation thereto, including, among other things, charges for computer usage, telephone charges, facsimile transmissions, postage and photocopying. BDO will charge the Equity Committee for these expenses in a manner and at rates consistent with charges generally made to its other clients.

5. During the course of these chapter 11 cases, BDO will seek compensation based upon its normal hourly billing rates in effect for the period in which services are performed and will seek reimbursement of reasonable and necessary out-of-pocket expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and Orders of the Court. It is further contemplated that BDO will seek interim compensation and reimbursement of expenses during these chapter 11 cases as permitted by Section 331 of the

Bankruptcy Code.

6. Other than as set forth herein, no arrangement is proposed between the Equity Committee and BDO for compensation to be paid in these chapter 11 cases. BDO has not shared nor agreed to share any of its compensation in connection with this matter with any other person.

7. Neither I nor any partner or employee of BDO, insofar as I have been able to ascertain, has any connection with the Debtors, their creditors or any other parties in interest herein, or their respective attorneys and accountants, the U.S. Trustee, or any person employed in the Office of the U.S. Trustee, except as set forth herein.

8. Rule 2014(a) of the Federal Rules of Bankruptcy Procedure requires that an application for employment under Section 1103 of the Bankruptcy Code disclose all connections with the Debtors, the estates, the professionals and the Office of the U.S. Trustee. BDO, therefore, discloses its known connections as follows:

(a) BDO is currently engaged to provide, or has provided, professional services to the following professionals reflected in its records as “active” clients, none of which has retained BDO in connection with these chapter 11 cases:

- (1) Akin Gump
- (2) Goldman Sachs Group, Inc.
- (3) Alvarez & Marsal
- (4) Richards, Layton & Finger, P.A.
- (5) Simpson Thacher & Bartlett LLP
- (6) Perkins Coie LLP
- (7) Gibson Dunn & Crutcher LLP
- (8) Shearman & Sterling LLP

(9) Miller & Chevalier, Chartered

(10) Grant Thornton LLP

(b) Partners or employees of BDO have or had ordinary-course banking relationships with the former Washington Mutual Bank or its affiliates.

9. I or others at BDO performed the following investigation of disinterestedness before submitting this Declaration:

(a) I provided the complete list of “potential parties-in-interest,” in the form provided to us by counsel for the Equity Committee (the “Conflicts List”), to our Financial Systems Support personnel.

(b) Financial Systems Support personnel compared the names of the individuals and entities on the Conflicts List with the names of clients in BDO’s list of active and inactive clients, and generated a report identifying identical or similar names found in both of the lists.

(c) I sent E-mail messages to those engagement partners reflected in BDO’s records responsible for the delivery of services to “active” clients with names identical or reasonably similar to individuals or entities identified on the Conflicts List. The purpose of these communications was to determine either that (a) the individual or entity on the Conflicts List was not BDO’s client or (b) BDO was not engaged by that client to represent the client in connection with these chapter 11 cases.

(d) I distributed an E-mail message to all client-service professionals within BDO describing the scope of the proposed engagement, identifying all parties on the Conflicts List, and requesting a response by any such professional having information regarding potential conflicts.

- (e) I followed up, as appropriate, with the senders of all responses to the messages described in paragraphs (c) or (d) above, to clarify the responses and to determine that BDO had not been engaged by any client (other than the Equity Committee) to represent that client in connection with these chapter 11 cases.

10. BDO is a “disinterested person,” as that term is defined in Section 101(14) of the Bankruptcy Code in that BDO, its partners and employees (a) are not creditors, equity security holders or insiders of the Debtors; (b) are not and were not, within two years before the Petition Date, a director, officer, or employee of the Debtors; (c) are not and were not, within three years before the Petition Date, an investment banker for a security of the Debtors, or an attorney for such investment banker in connection with the offer, sale or issuance of any security of the Debtors; (d) do not have an interest materially adverse to the interests of the Debtors’ estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason, except as disclosed herein.


- (a) BDO is currently engaged to provide, or has provided, professional services to the following persons reflected in its records as “active” clients, none of which has retained BDO in connection with these chapter 11 cases:

- (1) Various entities using a variant of the “Fir Tree” name
- (2) Various entities using a variant of the “York” or “York Capital” name
- (3) Various entities using a variant of the “Marathon” or “Marathon Capital” name
- (4) Covansys
- (5) Bank of New York Mellon

- (6) Law Debenture Trust Company of New York
  - (7) General Electric Capital Corporation and its affiliates
  - (8) Key Equipment Finance
  - (9) Wells Fargo Bank and its affiliates
  - (10) Federal Deposit Insurance Corporation
  - (11) JP Morgan Chase
- (b) Partners or employees of BDO have or had ordinary-course banking relationships with the JP Morgan Chase or its affiliates.
- (c) Partners or employees of BDO may have non-controlling equity interests in creditors identified in the list of potential parties-in-interest provided to BDO.

15. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 16, 2011

  
\_\_\_\_\_  
Kevin D. Anderson, Partner



**Exhibit 1**  
**(Engagement Letter)**



Tel: 301-654-4900  
Fax: 301-654-3567  
www.bdo.com

National Tax Services  
7101 Wisconsin Ave, Suite 800  
Bethesda, MD 20814

April 18, 2011

**PERSONAL AND CONFIDENTIAL**

The Official Committee of Equity Security Holders of  
Washington Mutual Inc. et al.  
c/o Ashby & Geddes, P.A.  
500 Delaware Avenue, 8th Floor  
P.O. Box 1150  
Wilmington, DE 19801

Attention: Michael Willingham, Equity Committee Chair

Dear Mr. Willingham:

**Re: Tax Services in Connection with Washington Mutual, Inc., et al.  
(the "Company"), Case No. 08-12229 (MFW), Now Proceeding in  
the Bankruptcy Court for the District of Delaware (the "Case")**

BDO USA, LLP ("BDO," "we" or "us") is pleased to be retained by the Official Committee of Equity Security Holders of Washington Mutual Inc. et al. (the "Equity Committee" or "You"), subject to the approval of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), for the purpose of providing tax consulting services to the Equity Committee. This letter agreement (the "Agreement") serves to confirm our understanding of the services requested, and the terms and conditions of the proposed engagement of us by the Equity Committee.

**Scope of Retention**

BDO is being retained by the Equity Committee in connection with the above-referenced matter to investigate, analyze, formulate, and provide an opinion on the Debtors' ability to use its net operating losses and other federal income tax attributes in post-emergence periods. Such services may include written reports and testimony as required by You.

**Procedures and Analyses**

Pursuant to the scope of the retention, BDO anticipates undertaking the following procedures and tasks:

1. Prepare an appropriate protocol and methodology to begin the investigation of the specific actions in question.

2. Analyze all financial and tax documents provided to us, and such other documents as we may reasonably request, that are related to the scope of retention.
3. Prepare a report of the findings (the "Opinion").
4. Provide testimony with regard to the Opinion, either via deposition or in court, or both.

BDO will maintain frequent informal communication with You and representatives of the Equity Committee so that You are aware of our progress and to share interim findings.

BDO has no responsibility to update our findings or conclusions for events or circumstances occurring after our procedures and analyses are completed.

In performing the procedures and analyses contained herein, BDO will not audit, examine, or review (as these terms are defined in applicable professional standards) the financial statements of the Company. Accordingly, BDO will be unable to, and will not, express an opinion on the financial statements or any specified amount or item included herein based on these procedures.

#### **Timing**

BDO is prepared to begin work immediately. The successful completion of this assignment is dependent upon receiving detailed supporting documentation, and the cooperation and availability of the relevant personnel. BDO will notify You immediately should conditions arise which alters the defined scope of the project or the nature of our anticipated involvement.

#### **Terms and Conditions**

The terms of this Agreement shall be governed by and construed in accordance with Attachment A of this letter, which is an important part hereof and should be read carefully. You should be aware that services under this Agreement may be provided to You by a non-licensee owner; that is, by an owner of the firm who, because of his or her specialty, is not individually licensed as a certified public accountant.

All professional services performed, including any additional services that may be requested shall be governed and construed in accordance with this Agreement including attachment(s).

#### **Staffing and Fees**

BDO's charges for services in developing and documenting the Opinion will be based on the actual time incurred by specific individuals at their current normal billing rates plus reasonable out-of-pocket expenses and our internal charges for certain support activities. Our internal charges include certain flat-rate amounts that reflect an allocation of estimated costs, including those associated with airline ticketing and general office services such as computer usage,

telephone charges, facsimile transmissions, postage and photocopying. We leverage our size to achieve cost savings for our clients in all areas of expense, including those covered by internal charges, and use this system of allocation to minimize total costs. As of the date hereof, our regular hourly rates are as follows:

<u>Position</u>	<u>Rate*</u>
Partners	\$475 to \$795
Directors/Senior Managers	\$375 to \$600

*\* Please note that billing rates are periodically subject to firm wide adjustment.*

### **Billing Arrangements**

Bills will be rendered periodically and not less than on a monthly basis, and will be accompanied by a listing of personnel, hourly rates, and time spent. Amounts are due and payable upon receipt. If You wish to inquire about your billing or about the services that have been rendered, please call our office when You receive the invoice. Invoices that are unpaid 30 days past the invoice date are deemed delinquent. If an account has fees that are not paid in a timely manner, then we reserve the right to suspend our services, withhold delivery of any deliverables, or withdraw from this engagement entirely if any of our invoices are delinquent.

If we elect to terminate our services for nonpayment, or for any other reason provided for in this Agreement, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our services. You will be obligated to compensate us for all of our time expended, and to reimburse us for all of our out-of-pocket expenses and internal charges incurred, through the date of termination. We know that You understand this concept and employ good fiscal procedures over your collections and, accordingly, we look forward to your cooperation and understanding.

### **Bankruptcy Court Approval**

We understand that the terms of BDO's retention in this matter are subject to approval by the Bankruptcy Court. Counsel for the Equity Committee will file an application with the Bankruptcy Court for the retention of BDO by the Equity Committee, based on the terms set forth in this Agreement. The retention application shall set forth that BDO seeks to be retained pursuant to the terms of this Agreement and this Agreement shall be attached as an exhibit to the retention application. We understand that the order entered by the Bankruptcy Court governs the terms of BDO's retention and supersedes this Agreement to the extent any terms of this Agreement are modified by the order of the Bankruptcy Court.

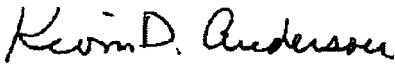
\* \* \* \* \*

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable laws, regulations, or published interpretations, but if any provisions of this Agreement shall be deemed prohibited, invalid, or otherwise unenforceable for any reason under such applicable laws, regulations, or published interpretations, such provision shall be ineffective only to the extent of such prohibition, invalidity, or unenforceability and such revised provisions shall be made a part of this Agreement as if it was specifically set forth herein. Furthermore, the provisions of the foregoing sentence shall not invalidate the remainder of such provisions or other provisions of this Agreement.

We believe the foregoing correctly sets forth our understanding; however, if You have any questions, please let us know. If You find the foregoing arrangements acceptable, please acknowledge your agreement by signing and returning to us a copy of this letter.

Very truly yours,

**BDO USA, LLP**

By:   
Kevin D. Anderson, Partner

Acknowledged:

**THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF  
WASHINGTON MUTUAL, INC. et al.**

By: \_\_\_\_\_  
Michael Willingham, Equity Committee Chair

Date: \_\_\_\_\_

Attachment A - Terms and Conditions

Mr. Michael Willingham, Equity Committee Chair

April 18, 2011

Page 4

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable laws, regulations, or published interpretations, but if any provisions of this Agreement shall be deemed prohibited, invalid, or otherwise unenforceable for any reason under such applicable laws, regulations, or published interpretations, such provision shall be ineffective only to the extent of such prohibition, invalidity, or unenforceability and such revised provisions shall be made a part of this Agreement as if it was specifically set forth herein. Furthermore, the provisions of the foregoing sentence shall not invalidate the remainder of such provisions or other provisions of this Agreement.

We believe the foregoing correctly sets forth our understanding; however, if You have any questions, please let us know. If You find the foregoing arrangements acceptable, please acknowledge your agreement by signing and returning to us a copy of this letter.

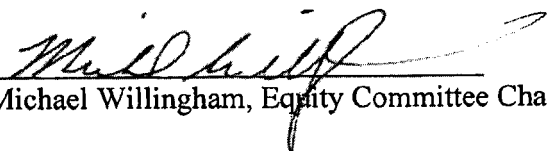
Very truly yours,

**BDO USA, LLP**

By: \_\_\_\_\_  
Kevin D. Anderson, Partner

Acknowledged:

**THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF  
WASHINGTON MUTUAL, INC. et al.**

By:   
Michael Willingham, Equity Committee Chair

Date: \_\_\_\_\_

Attachment A - Terms and Conditions

## ATTACHMENT A

### TERMS AND CONDITIONS

1. Services. It is understood and agreed that our services frequently include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be your responsibility. In connection with our services, BDO USA, LLP (“BDO” or “we”) shall be entitled to rely on all decisions and approvals made by you.
2. Term. Unless terminated earlier in accordance with its terms, this Agreement shall terminate on the completion of BDO’s services hereunder. Each party shall have the right to terminate this Agreement at any time by giving written notice to the other party not less than 10 business days before the effective date of termination. In the event of termination pursuant to this paragraph, you agree to compensate BDO for services performed and expenses incurred through the effective date of termination.
3. BDO Liability. You agree that BDO and its members, partners, employees and agents (collectively, the “BDO Group”) shall not be liable to you for any claims, liabilities or expenses relating to this Agreement for an aggregate amount in excess of the fees paid by you to BDO pursuant to this Agreement, except to the extent finally judicially determined to have resulted from the gross negligence or intentional misconduct of any member of the BDO Group. In no event shall the BDO Group be liable for consequential, special, indirect, incidental, punitive or exemplary losses or damages relating to this engagement. This limitation on liability provision shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence) or otherwise. In the event that BDO believes that any liability and costs relating to our services under this Agreement is attributable to any misrepresentation by you and BDO is seeking to be held harmless and be indemnified by you against any such liability, then BDO shall file an application with the Bankruptcy Court seeking such relief.
4. Third Parties and Internal Use. Except as otherwise agreed, all services hereunder shall be solely for the Equity Committee’s purposes and use in connection with the Case, and this engagement does not create privity between BDO and any person or party other than the Equity Committee (“Third Party”). This engagement is not intended for the express or implied benefit of any Third Party. No Third Party is entitled to rely, in any manner or for any purpose, on the advice, opinions, reports or other services of BDO. You are, however, authorized to disclose any and all aspects of our advice, opinions, reports or other services to any persons without limitation. Since our advice, opinions, reports or other services are solely for the Equity Committee’s benefit and are not to be relied upon by others, you must inform anyone else to whom you make disclosures (other than in court or by deposition, interrogatory, pleading or affidavit in connection with the Case) that they may not rely upon our advice, opinions or reports without our written consent.
5. Information and Data. BDO shall not be entitled to assume that any information and data so supplied by you and your representatives will be complete or accurate, and you make no

representation or warranty as to any such information and data. BDO may use information and data furnished by others; however, BDO shall not be responsible for, and BDO shall provide no assurance regarding, the accuracy of any such information or data. Except as specifically provided, BDO shall not assume any responsibility for any financial reporting with respect to the services provided hereunder. BDO shall have no responsibility to address any legal matters or questions of law.

The tax consulting services we provide will generally be based on data and information provided by the Company or other sources. BDO will not take responsibility for verifying the accuracy, completeness or otherwise evaluating such information. Tax returns may be examined by taxing authorities who may not agree with your tax positions. If an examination occurs, documentation may be requested to support items and positions reported on the tax returns. Penalties may apply for failure to maintain adequate documentation. Representation of the Company in connection with tax examinations is not provided for in this agreement and will be the subject of a separate engagement letter as needed.

Our work does not include any procedures designed to discover the existence of any defalcations or irregularities.

6. Professional Advice. It is our policy to provide all professional advice in writing. You should not rely on any advice that has not been issued in final form in writing by BDO.
7. Federally Authorized Tax Practitioner Privilege. Communications between you and us/our Firm may be privileged under IRC § 7525 in a manner similar to communications between a client and an attorney, and disclosure of such information may result in waiver of such privilege. While BDO will not take actions to cause a waiver of such privilege unless required to by law, BDO will not take affirmative steps to protect or assert privilege claims on your behalf unless specifically engaged to do so.
8. Intentionally Omitted.
9. E-mail Communication. In connection with this engagement, we may communicate with you or others via e-mail. As e-mails can be intercepted, disclosed, used, and/or otherwise communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed, we cannot ensure that e-mails from us will be properly delivered and read only by the addressee. Therefore, we disclaim and waive any liability for interception or unintentional disclosure of e-mail transmissions, or for the unauthorized use or failed delivery of e-mails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage arising from the use of e-mail, including any punitive, consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure of confidential information.
10. Record Retention. We want you to be aware of our record retention policy with respect to your tax files and related documentation. Based on our present policies, we will maintain this information either in hard copy or electronic format for a period of eight years, after



which it will be destroyed. We may modify our record retention policies from time to time in accordance with our professional obligations. It is, therefore, important for you to keep the copies of tax returns and related supporting data in your files.

11. Disclosure. BDO agrees to enter into and comply with any confidentiality agreement, order or procedure applicable to professionals in the Case, as reasonably modified by BDO.
12. Disclosure of Certain Transactions. The Internal Revenue Code and Treasury regulations require that taxpayers disclose to the Internal Revenue Service their participation in certain types of transactions. The failure to properly disclose such transactions may result in the imposition of substantial penalties. These transactions include: (1) certain "reportable transactions" including those identified by the Internal Revenue Service as "Listed Transactions" (or transactions considered to be substantially similar to a Listed Transaction); (2) certain "uncertain tax positions," for which a corporate taxpayer or related party has recorded a reserve in an audited financial statement; and (3) transactions lacking economic substance. (A transaction is treated as having economic substance where the transaction changes in a meaningful way [apart from federal income tax effects] the taxpayer's economic position, and the taxpayer has a substantial purpose [apart from federal income tax effects] for entering into such transaction.) Disclosure may also be required of transactions entered into in the course of your business that may be considered typical. In addition, certain state tax shelter rules require taxpayers to file reportable transactions disclosure statements with the appropriate state income and franchise tax returns, if applicable. In connection with the performance of tax services covered by this Agreement, you agree to assume responsibility for adequate disclosure of all reportable transactions, reportable uncertain tax positions, and/or transactions lacking economic substance which the Company has entered into. At your request, we will provide you with a Reportable Transaction Questionnaire to assist you in identifying reportable transactions which the Company may have entered into. We will advise you if we identify any reportable transactions based upon information that comes to our attention. We cannot, however, take responsibility for the identification of reportable transactions, reportable uncertain tax positions, or transactions lacking economic substance. Further, BDO will not be liable for any penalties that may be incurred with respect to any failure to adequately and timely disclose any reportable transactions or transactions lacking economic substance.
13. Electronic Transmission. This Agreement may be transmitted in electronic format and shall not be denied legal effect solely because it was formed or transmitted, in whole or in part, by electronic record; however, this Agreement must then remain capable of being retained and accurately reproduced, from time to time, by electronic record by the parties to this Agreement and all other persons or entities required by law. An electronically transmitted signature to this Agreement will be deemed an acceptable original for purposes of consummating this Agreement and binding the party providing such electronic signature.
14. Severability. If any portion of this Agreement, including without limitation any portion of this Agreement addressing dispute resolution, indemnification or limitation of liability, is held to be void, invalid or otherwise unenforceable in whole or in part, for any reason whatsoever, such portion of the Agreement shall be amended to the minimum extent required

to make the provision enforceable and the remaining portions of this Agreement shall remain in full force and effect.

15. Assignment. BDO USA, LLP shall have the right to assign its rights to perform a portion of the services described in this Agreement to any of its independent Alliance members, affiliates (including where applicable, Member Firms of BDO International), agents, or contractors (a "Permitted Assignee") without your prior consent. If such assignment is made, you agree that, unless you enter into an engagement letter directly with the Permitted Assignee, all of the applicable terms and conditions of this Agreement shall apply to the Permitted Assignee. We agree that we shall not permit the Permitted Assignee to perform any work until it agrees to be bound by the applicable terms and conditions of this Agreement. We further agree that we will remain primarily responsible for the services described above, unless you and we agree otherwise, and we will properly supervise the work of the Permitted Assignee to ensure that all such services are performed in accordance with applicable professional standards. From time to time, and depending on the circumstances, Permitted Assignees located in other countries may participate in the services we provide to you. In some cases, we may transfer information to or from the United States or another country. Although applicable privacy laws may vary depending on the jurisdiction, and may provide less or different protection than those of your home country, we require that all Permitted Assignees enter into contractual agreements to maintain the confidentiality of the Company's information and observe our policies concerning any confidential client information that we provide to them.
16. Dispute Resolution Procedure. If any dispute, controversy, or claim arises out of, relates to, or results from the performance or breach of this Agreement, excluding claims for non-monetary or equitable relief (collectively, the "Dispute"), either party may, upon written notice to the other party, request non-binding mediation. A recipient party of such notice may waive its option to resolve such Dispute by non-binding mediation by providing written notice to the party requesting mediation and then such parties hereto shall resolve such Dispute by binding arbitration as described below. Such mediation shall be assisted by a neutral mediator acceptable to both parties and shall require the commercially reasonable efforts of the parties to discuss with each other in good faith their respective positions and different interests to finally resolve such Dispute. If the parties are unable to agree on a mediator within twenty (20) days from delivery of the written notice, either party may invoke the mediation service of the American Arbitration Association (the "AAA").

Each party may disclose any facts to the other party or to the mediator that it, in good faith, considers reasonably necessary to resolve the Dispute. However, all such disclosures shall be deemed in furtherance of settlement efforts and shall not be admissible in any subsequent proceeding against the disclosing party. Except as agreed to in writing by both parties, the mediator shall keep confidential all information disclosed during mediation. The mediator shall not act as a witness for either party in any subsequent proceeding between the parties. Unless waived, such mediation shall conclude after the parties have engaged in good faith settlement negotiations, but nonetheless are unable to resolve the Dispute through the mediation process. The attorneys' fees and costs incurred by each party in such mediation shall be borne solely by

such party, except that the fees and expenses of the mediator, if any, shall be borne equally by the parties.

Any Dispute not resolved first by mediation between the parties (or if the mediation process is waived as provided herein) shall be decided by binding arbitration. The arbitration proceeding shall take place in the city in which the BDO USA office providing the majority of services involved exists, unless the parties agree in writing to a different locale. The arbitration shall be governed by the provisions of the laws of the state in which the arbitration is to take place (except if there is no applicable state law providing for such arbitration, then the Federal Arbitration Act shall apply) and the substantive law of such state shall be applied without reference to conflicts of law rules. In any arbitration instituted hereunder, the proceedings shall proceed in accordance with the then current Arbitration Rules for Professional Accounting and Related Disputes of the AAA, except that the Arbitration Panel (as defined below) shall permit discovery that is consistent with the scope of discovery typically permitted by the Federal Rules of Civil Procedure and/or is otherwise customary in light of the complexity of the Dispute and the amount in controversy. Any Dispute regarding discovery, or the relevance or scope thereof, shall be determined by the Arbitration Panel (as defined below).

The arbitration shall be conducted before a panel of three persons, one selected by each party, and the third selected by the two party-selected arbitrators (the "Arbitration Panel"). The party-selected arbitrators shall be treated as neutrals. The Arbitration Panel shall have no authority to award non-monetary or equitable relief, but nothing herein shall be construed as a prohibition against a party from pursuing non-monetary or equitable relief in a state or federal court. The parties also waive the right to punitive damages and the arbitrators shall have no authority to award such damages or any other damages that are not strictly compensatory in nature. In rendering their award, the Arbitration Panel shall issue in writing findings of fact and conclusions of law. The Arbitration Panel shall not have authority to grant an award that is not supported by substantial evidence or that is based on an error of law, and such absence of substantial evidence or such error of law may be reviewed on appeal to vacate an award based on the standard of review otherwise applicable in the Federal Appellate Court responsible for the jurisdiction in which the arbitration is venued, and without regard to any heightened standard of review otherwise applicable to an arbitration decision rendered by the AAA. The confidentiality provisions applicable to mediation shall also apply to arbitration. The award issued by the Arbitration Panel may be confirmed in a judgment by any federal or state court of competent jurisdiction. No payment of any award or posting of any bond of any kind whatsoever is required to be made or posted until such Dispute is finally determined.

In no event shall a demand for arbitration be made after the date on which the initiation of the legal or equitable proceeding on the same Dispute would be barred by the applicable statute of limitations or repose. For the purposes of applying the statute of limitations or repose, receipt of a written demand for arbitration by the AAA shall be deemed the initiation of the legal or equitable proceeding based on such Dispute.

Notwithstanding the foregoing, BDO and You submit to the jurisdiction of the Bankruptcy Court in the Case for the resolution of any disputes hereunder as to which such court has competence.

17. Independent Contractor. BDO and you acknowledge that the relationship between the parties to this Agreement is exclusively that of an independent contractor and that BDO's obligations to you are exclusively contractual in nature. This Agreement does not create an agency, employment, partnership joint venture, trust or other fiduciary relationship between the parties. Neither party shall have the right to bind the other to any Third Party or otherwise to act in any way as a representative or agent of the other except as otherwise agreed in writing between the parties.
  
18. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the subject matter herein, superseding all prior agreements, negotiations or understandings, whether oral or written, with respect to such subject matter. To the extent that any of the terms and conditions of the Engagement Letter conflict with these Terms and Conditions, these Terms and Conditions will control. This Agreement may not be changed, modified or waived in whole or part except by an instrument in writing signed by both parties.

**Exhibit B**  
**(Proposed Order)**

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

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

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT  
OF BDO USA, LLP AS TAX ADVISOR TO  
THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS  
OF WASHINGTON MUTUAL, INC., ET AL. NUNC PRO TUNC TO APRIL 18, 2011**

Upon consideration of the application dated May 16, 2011 (the “Application”)<sup>2</sup> of the Official Committee of Equity Security Holders of the above-captioned debtors and debtors in possession (the “Equity Committee”), for an order authorizing the Equity Committee to retain and employ BDO USA, LLP (“BDO”) as its tax advisor *nunc pro tunc* to April 18, 2011 pursuant to Sections 328 and 1103 of the Bankruptcy Code and Bankruptcy Rule 2014, in accordance with the terms and conditions of the Engagement Letter, a copy of which is attached to the BDO Declaration as Exhibit 1; and upon consideration of the BDO Declaration filed in support thereof; and the Court being satisfied based upon the representations made in the Application and the BDO Declaration that BDO represents no interest adverse to the Equity Committee or the Debtors’ equity security holders with respect to matters upon which BDO is to be engaged, that BDO is a “disinterested person” as that term is defined under Section 101(14) of the Bankruptcy Code, as modified by Section 1107(b) of the Bankruptcy Code, and that BDO’s

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Application.

employment is necessary and is in the best interests of the Equity Committee and the Debtors' equity security holders; and due and adequate notice of the Application having been given; and it appearing that no further or other notice is required; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

1. The Application is hereby **GRANTED**.
2. In accordance with Sections 328 and 1103 of the Bankruptcy Code, the Equity Committee is hereby authorized to retain and employ BDO as its tax advisor on the terms and conditions set forth in the Engagement Letter (which is hereby approved) *nunc pro tunc* to April 18, 2011.
3. BDO shall be entitled to an allowance of compensation and reimbursement of expenses upon the filing and approval of interim and final applications pursuant to the Bankruptcy Code, Bankruptcy Rules, the Local Rules and such other Orders as the Court may direct.
4. The Equity Committee is authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.
5. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2011

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY COURT

**CERTIFICATE OF SERVICE**

I, Stacy L. Newman, hereby certify that on May 16, 2011, I caused one copy of the foregoing document to be served upon the parties on the attached service list via first class U.S. mail.

*/s/ Stacy L. Newman*

\_\_\_\_\_  
Stacy L. Newman (#5044)



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