

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

In re:

WASHINGTON MUTUAL, INC., *et al.*,<sup>1</sup>

Debtors

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered


**Re: Docket No. 10869**

**NOTICE OF FILING OF EXHIBIT 1 TO THE  
MOTION BY WMI LIQUIDATING TRUST FOR AN  
ORDER AUTHORIZING AN EXAMINATION OF  
GOLDMAN SACHS PURSUANT TO BANKRUPTCY RULE 2004**

*PLEASE TAKE NOTICE* that WMI Liquidating Trust, as successor in interest to Washington Mutual, Inc. and WMI Investment Corp., formerly debtors and debtors in possession, by and through its undersigned counsel, hereby submits the attached Exhibit 1 to the *Motion by WMI Liquidating Trust for an Order Authorizing an Examination of Goldman Sachs Pursuant to Bankruptcy Rule 2004* [Docket No. 10869] filed on November 30, 2012.

Dated: December 11, 2012  
Wilmington, Delaware

**COUSINS CHIPMAN & BROWN, LLP**

  
\_\_\_\_\_  
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<sup>1</sup> 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.



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— and —

**SUSMAN GODFREY, L.L.P.**

Edgar Sargent

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*Co-Counsel for the Washington Mutual Inc.  
Liquidating Trust Litigation Subcommittee*

# Exhibit 1

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GS Comments of September 24, 2008

PERSONAL AND CONFIDENTIAL

September 24, 2008

Mr. Robert Williams  
Senior Vice President and Treasurer  
Washington Mutual, Inc.  
Washington Mutual Bank  
1301 Second Avenue  
Seattle, WA 98101

Dear Mr. Williams:

We are pleased to confirm the arrangements under which Goldman, Sachs & Co. ("Goldman Sachs") is engaged by Washington Mutual, Inc. (the "Company") and Washington Mutual Bank (the "Bank") as financial advisor relating to the possible sale of all or a portion of the Company and/or the Bank and to explore capital raising alternatives.

1. During the term of our engagement, we will provide you with financial advice and assistance in connection with this potential transaction, which may include performing financial analyses, searching for a purchaser or investors acceptable to you, coordinating visits of potential purchasers and investors and assisting you in negotiating the financial aspects of the transaction.

2. At your request we also will undertake a study to enable us to render our opinion as to the fairness from a financial point of view of the financial consideration to be received by shareholders of the Company in connection with the sale of 50% or more of the outstanding common stock of the Company. The nature and scope of our investigation as well as the scope, form and substance of our opinion shall be such as we consider appropriate. If requested our opinion will be in written form.

3. The fees for our engagement will depend on the outcome of this assignment. Upon execution of the engagement letter, the Company agrees to pay us a fee of \$3,000,000 for services provided to date. Upon announcement of, or execution of a definitive agreement with respect to, a sale of 50% or more of the outstanding common stock or assets (based on the book value thereof) of the Company, the Company agrees to pay us a fee of \$5,000,000 (the "Initial Fee"), less the fee paid upon execution of the engagement letter. If the purchase of 50% or more of the outstanding common stock or the assets (based on the book value thereof) of the Company is accomplished in one or a series of transactions, including, but not limited to, private or open market purchases of stock, a tender offer, an exchange offer, a merger or a sale by the Company of its stock or assets, we will charge a transaction fee (the "Sale Completion Fee") equal to \$30,000,000 less, to the extent paid, the Initial Fee, subject to a maximum transaction fee of \$30,000,000 million. If less than 50% of the outstanding common stock or the assets (based on the book value thereof) is acquired in the manner set forth in the preceding sentence, we will charge a transaction fee to be mutually agreed upon by Goldman Sachs and the Company; provided, however, in the event such transaction takes the form of a private placement of the Company's common stock, preferred securities or other capital securities to one or more

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financial sponsors or investors who were contacted in connection with the transactions referenced in the preceding sentence, we will charge a transaction fee (the "Investor Completion Fee") equal to 1.375% of the gross proceeds received by the Company from a sale of such securities; provided, however, that Goldman Sachs' entitlement to the Investor Completion Fee shall be suspended following the execution of a definitive agreement for a transaction in respect of which a Sale Completion Fee would be payable upon consummation thereof and shall terminate upon consummation of such transaction. Except as provided herein, a transaction fee will be paid to us in cash upon consummation of each transaction.

4. If the Company or any of its affiliates enters into an agreement with respect to a transaction in respect of which a Sale Completion Fee would be payable upon consummation thereof (the "Agreement") and the Agreement provides for a payment at any time to the Company in the event the transaction contemplated thereby is terminated or otherwise not consummated (the "Payment"), the Company agrees to pay to Goldman Sachs a transaction fee, in cash if and when such Payment is made to the Company, equal to the lesser of (i) 10% of such Payment and (ii) the amount that would otherwise have been payable by the Company to Goldman Sachs if such transaction had been consummated in accordance with its terms, in each case less, to the extent paid, the Initial Fee.

5. In the event that the Company determines to undertake a public or private offering of its common stock, preferred securities or any securities linked to the Company's common stock or preferred stock other than any transaction for which a fee is payable pursuant to paragraph 3 of this letter (an "Offering"), the Company shall offer Goldman Sachs the right to act in a non-exclusive capacity to be agreed between the Company and Goldman Sachs in such offering, with a fee (the "Offering Fee") of not less than 1.375% of the amount of the aggregate offering price of such securities and at least 50% of the total economics. If Goldman Sachs agrees to act in such capacity, the Company and Goldman Sachs will enter into an appropriate form of underwriting or other applicable agreement containing customary terms and conditions, including customary fee provisions and provisions relating to our indemnity. However, unless specifically covered by a separate agreement setting forth such arrangement, the provisions in the attached Annex A shall apply to each such transaction. The Company acknowledges that this letter is neither an expressed nor an implied commitment by Goldman Sachs to act in any capacity in any such transaction, to provide financing or to purchase or place any securities, which commitment shall only be set forth in a separate agreement.

6. You also agree to reimburse us periodically, upon request, and upon consummation of the transaction or transactions contemplated hereby or upon termination of our services pursuant to this agreement, for our reasonable expenses, excluding expenses incurred in connection with a public offer that is consummated, including the reasonable fees and disbursements of our attorneys, plus any sales, use or similar taxes (including additions to such taxes, if any) arising in connection with any matter referred to in this letter.

7. In order to coordinate most effectively our efforts together to effect a transaction satisfactory to you during the term of our engagement, the Company and its management will

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promptly inform us of any discussions they may have or of inquiries they may receive concerning the availability of all or a portion of the stock or assets of the Company for purchase.

8. Please note that any written or oral opinion or advice provided by Goldman Sachs in connection with our engagement is exclusively for the information of the Board of Directors and senior management of the Company, and such opinion, such advice and the terms of this letter may not be disclosed to any third party (other than the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, Simpson Thacher & Bartlett LLP and Deloitte & Touche LLP, or another of the Company's outside legal counsel or independent accountants specified by you in writing who have been informed by you of the confidential nature of such opinion, such advice and the terms of this letter and have agreed to treat such information confidentially) or circulated or referred to publicly without our prior written consent. If reference to our opinion and our firm is required to be made in a proxy statement of the Company required to be filed under the federal securities laws, we will not unreasonably withhold our consent thereto so long as the full text of our opinion is reproduced therein and we have approved in advance the text of any accompanying disclosure.

9. In connection with engagements such as this, it is our firm policy to receive indemnification. The Company, jointly and severally, and the Bank, severally and not jointly, agree to the provisions with respect to our indemnity and other matters set forth in Annex A which is incorporated by reference into this letter. The Bank shall not be responsible for any obligations of the Company and this letter is not a guarantee of any obligations of the Company by the Bank.

10. As you know, Goldman Sachs is a full service securities firm engaged, either directly or through its affiliates in various activities, including securities trading, investment banking and financial advisory, investment management, principal investment, hedging, financing and brokerage activities and financial planning and benefits counseling for both companies and individuals. In the ordinary course of these activities, Goldman Sachs and its affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of the Company, as well as of other entities and persons and their affiliates which may (i) be involved in transactions arising from or relating to the engagement contemplated by this letter, (ii) be customers or competitors of the Company, or (iii) have other relationships with the Company. In addition, Goldman Sachs and its affiliates may provide investment banking, underwriting and financial advisory services to such other entities and persons. Goldman Sachs and its affiliates may also co-invest with, make direct investments in, and invest or co-invest client monies in or with funds or other investment vehicles managed by other parties, and such funds or other investment vehicles may trade or make investments in securities of the Company or such other entities. The engagement contemplated by this letter may have a direct or indirect impact on the investments, securities or instruments referred to in this paragraph.

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11. Our services may be terminated by you or us at any time with or without cause effective upon receipt of written notice to that effect. We will be entitled to the applicable transaction fee set forth above in the event that (A) none of the Sale Completion Fee, the Investor Completion Fee or the Offering Fee has been paid prior to the time of such termination and (B) at any time prior to the expiration of twelve months after such termination (i) an agreement is entered into with respect to a sale of all or a portion of the Company (excluding an Offering) which is eventually consummated or (ii) an Agreement is entered into pursuant to which a Payment is eventually made; provided, however, that in the event that Goldman Sachs terminates its services hereunder without cause, the foregoing provisions of this sentence shall not apply. In the event that our services are terminated by you or us before any of the Sale Completion Fee, the Investor Completion Fee or the Offering Fee has become payable, the Company's obligations to offer Goldman Sachs the right to act in the capacities set forth above in connection with an Offering shall survive for a period of twelve months following the date of such termination; provided, however, that in the event that Goldman Sachs terminates its services hereunder without cause, the foregoing provisions of this sentence shall not apply

12. The Company recognizes that, in providing our services pursuant to this letter, we will rely upon and assume the accuracy and completeness of all of the financial, accounting, tax and other information discussed with or reviewed by us for such purposes, and we do not assume responsibility for the accuracy or completeness thereof. Goldman Sachs will have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities of the Company or any other party or to advise or opine on any related solvency issues. It is understood and agreed that Goldman Sachs will act under this letter as an independent contractor with duties solely to the Company and nothing in this letter or the nature of our services in connection with this engagement or otherwise shall be deemed to create a fiduciary duty or fiduciary or agency relationship between us and the Company or its stockholders, employees or creditors, and the Company agrees that it shall not make, and hereby waives, any claim based on an assertion of such a fiduciary duty or relationship. Except as set forth in Annex A hereto, nothing in this letter is intended to confer upon any other person (including stockholders, employees or creditors of the Company) any rights or remedies hereunder or by reason hereof.

13. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), Goldman Sachs is required to obtain, verify and record information that identifies its clients, including the Company, which information may include the name and address of its clients, as well as other information that will allow Goldman Sachs to properly identify its clients.

14. Goldman Sachs does not provide accounting, tax or legal advice. Notwithstanding anything herein to the contrary, you are authorized to disclose to any person the US, federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to you relating to that treatment and structure, without Goldman Sachs imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with

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securities laws. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment.

15. This letter contains the entire agreement of the parties with respect to the performance by Goldman Sachs of services for the Company and the Bank described herein and supersedes any prior understandings and agreements.



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Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this letter, which shall become a binding agreement upon our receipt. We are delighted to accept this engagement and look forward to working with you on this assignment.

Very truly yours,

  
\_\_\_\_\_  
(GOLDMAN, SACHS & CO.)

Confirmed

WASHINGTON MUTUAL, INC.

By: \_\_\_\_\_  
Name:  
Title:

WASHINGTON MUTUAL BANK

By: \_\_\_\_\_  
Name:  
Title:

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

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Annex A

*In the event that Goldman Sachs becomes involved in any capacity in any action, proceeding or investigation brought by or against any person, including stockholders of the Company, in connection with or as a result of either our engagement or any matter referred to in this letter, the Company periodically will reimburse Goldman Sachs for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith; provided, however, that if it is found in any such action, proceeding or investigation that any loss, claim, damage or liability to any such person has resulted from the gross negligence or bad faith of Goldman Sachs in performing the services which are the subject this letter, Goldman Sachs shall repay such portion of the reimbursed amounts that is attributable to expenses incurred in relation to the act or omission of Goldman Sachs which is the subject of such finding. The Company, jointly and severally, and the Bank, severally and not jointly, will indemnify and hold Goldman Sachs harmless against any and all losses, claims, damages or liabilities to any such person in connection with or as a result of either our engagement or any matter referred to in this letter, except to the extent that any such loss, claim, damage or liability results from the gross negligence or bad faith of Goldman Sachs in performing the services that are the subject of this letter. If for any reason the foregoing indemnification is unavailable to Goldman Sachs or insufficient to hold it harmless, then the Company and the Bank shall contribute to the amount paid or payable by Goldman Sachs as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of the Company, the Bank and their stockholders on the one hand and Goldman Sachs on the other hand in the matters contemplated by this letter as well as the relative fault of the Company, the Bank and Goldman Sachs with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Company under this paragraph and the indemnity and contribution obligations of the Bank under this paragraph shall be in addition to any liability which the Company or the Bank may otherwise have, shall extend upon the same terms and conditions to any affiliate of Goldman Sachs and the partners, directors, agents, employees and controlling persons (if any), as the case may be, of Goldman Sachs and any such affiliate, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Company, the Bank, Goldman Sachs, any such affiliate and any such person. Neither the Company nor the Bank shall be required to indemnify Goldman Sachs for any amount paid or payable by Goldman Sachs in the settlement of any action, proceeding or investigation without the written consent of the Company or the Bank, as applicable, which consent shall not be unreasonably withheld. Each of the Company and the Bank also agrees that neither Goldman Sachs nor any of such affiliates, partners, directors, agents, employees or controlling persons shall have any liability to the Company or the Bank or any person asserting claims on behalf of or in right of the Company or the Bank in connection with or as a result of either our engagement or any matter referred to in this letter except to the extent that any losses, claims, damages, liabilities or expenses incurred by the Company or the Bank result from the gross negligence or bad faith of Goldman Sachs in performing the services that are the subject of this letter. Prior to entering into any agreement or arrangement with respect to, or effecting, any proposed sale, exchange, dividend or other*

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*distribution or liquidation of all or a significant portion of its assets in one or a series of transactions or any significant recapitalization or reclassification of its outstanding securities that does not directly or indirectly provide for the assumption of the obligations of the Company and the Bank set forth in this Annex A, the Company will notify Goldman Sachs in writing thereof (if not previously so notified) and, if requested by Goldman Sachs, shall arrange in connection therewith alternative means of providing for the obligations of the Company and the Bank set forth in this paragraph, including the assumption of such obligations by another party, insurance, surety bonds or the creation of an escrow, in each case in an amount and upon terms and conditions satisfactory to Goldman Sachs. Promptly after receipt by Goldman Sachs of notice of its involvement in any action, proceeding or investigation, Goldman Sachs shall, if a claim for indemnification in respect thereof is to be made against the Company or the Bank under this Annex A, notify the Company or the Bank, as applicable, of such involvement. Failure by Goldman Sachs to so notify the Company shall relieve the Company and the Bank, as applicable, from the obligation to indemnify Goldman Sachs under this Annex A only to the extent that the Company or the Bank, as applicable, suffers actual prejudice as a result of such failure, but shall not relieve the Company from its obligation to provide reimbursement and the Company and the Bank from its obligations to provide contribution to Goldman Sachs. If any person is entitled to indemnification under this Annex A (the "Indemnified Person") with respect to any action or proceeding brought by a third party that is also brought against the Company or the Bank, the Company shall be entitled to assume the defense of any such action or proceeding with counsel reasonably satisfactory to the Indemnified Person. Upon assumption by the Company of the defense of any such action or proceeding, the Indemnified Person shall have the right to participate in such action or proceeding and to retain its own counsel but the Company shall not be liable for any legal expenses of other counsel subsequently incurred by such Indemnified Person in connection with the defense thereof unless (i) the Company has agreed to pay such fees and expenses, (ii) the Company shall have failed to employ counsel reasonably satisfactory to the Indemnified Person in a timely manner, or (iii) the Indemnified Person shall have been advised by counsel that there are actual or potential conflicting interests between the Company or the Bank and the Indemnified Person, including situations in which there are one or more legal defenses available to the Indemnified Person that are different from or additional to those available to the Company or the Bank, provided, however, that the Company shall not, in connection with any one such action or proceeding or separate but substantially similar actions or proceedings arising out of the same general allegations, be liable for the fees and expenses of more than one separate firm of attorneys at any time for all Indemnified Persons, including Goldman Sachs, except to the extent that local counsel, in addition to its regular counsel, is required in order to effectively defend against such action or proceeding. Neither the Company nor the Bank shall consent to the terms of any compromise or settlement of any action defended by it in accordance with the foregoing without the prior written consent of the Indemnified Person unless such compromise or settlement (i) includes an unconditional release of the Indemnified Person from all liability arising out of such action and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any Indemnified Person. Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either our engagement or any matter referred to in this*

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*letter is hereby waived by the parties hereto. The Company and the Bank agree that any suit or proceeding arising in respect to this letter or our engagement will be tried exclusively in the U.S. District Court for the Southern District of New York or, if that court does not have subject matter jurisdiction, in any state court located in the City of New York and the Company and the Bank agree to submit to the jurisdiction of, and to venue in, such courts. The provisions of this Annex A shall survive any termination or completion of the engagement provided by this letter agreement, and this letter agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws. The Bank shall not be responsible for any obligations of the Company and this Annex A is not a guarantee of any obligations of the Company by the Bank.*