

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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*In re* : Chapter 11  
WASHINGTON MUTUAL, INC., et al., :  
 : Case No. 08-12229 (MFW)  
 :  
 Debtors. : (Jointly Administered)  
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**MOTION OF DEBTORS FOR (I) AUTHORIZATION  
TO MAINTAIN EXISTING BANK ACCOUNTS AND  
BUSINESS FORMS, AND (II) FOR AN EXTENSION OF TIME TO  
COMPLY WITH SECTION 345(b) OF THE BANKRUPTCY CODE**

TO THE HONORABLE MARY F. WALRATH,  
UNITED STATES BANKRUPTCY JUDGE:

Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI  
Investment"), as debtors and debtors in possession (collectively, the "Debtors"),<sup>1</sup>  
respectfully represent:

**Background**

1. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). As of the date hereof, the Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

<sup>1</sup> The Debtors' federal tax identification numbers are: (i) for WMI, 91-1653725; and (ii) for WMI Investment, 20-5885395.



2. A motion for an order, pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the joint administration of the Debtors’ chapter 11 cases is pending before the Court.

**WMI’s Business**

3. WMI is a holding company incorporated in the State of Washington and headquartered at 1301 Second Avenue, Seattle, Washington 98101. WMI is the direct parent of WMI Investment, which serves as an investment vehicle for WMI and holds a variety of securities. WMI Investment is incorporated in the state of Delaware.

4. Prior to the Commencement Date, and in addition to the Debtor Subsidiaries, WMI had numerous direct and indirect banking subsidiaries (the “Banking Subsidiaries”), including Washington Mutual Bank (“WMB”) and Washington Mutual Bank fsb (“WMBfsb”). WMI also has certain non-banking, non-debtor subsidiaries (the “Non-Debtor Subsidiaries”).

5. Prior to the Commencement Date, WMI, like all savings and loan holding companies, was subject to regulation by the Office of Thrift Supervision (the “OTS”). WMB and WMBfsb, like all depository institutions with federal thrift charters, were also subject to regulation and examination by the OTS. In addition, WMI’s banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation (“FDIC”) and the Comptroller of the Currency of the United States. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the “Bank Receivership”). The

Debtors have been advised that the receiver sold substantially all the assets of WMB to JPMorgan Chase Bank, National Association (“JPMorgan Chase”) pursuant to an agreement dated September 25, 2008.

6. WMI’s assets include its common stock interest in WMB, its interest in its non-banking subsidiaries, and approximately \$5 billion of cash that WMI and its non-banking subsidiaries (including WMI Investment Corp.) had on deposit at WMB and WMBfsb immediately prior to the time the FDIC was appointed as receiver (the “Deposits”). WMI is in the process of evaluating these and other assets for purposes of ultimate distribution to its creditors. In connection therewith, the Debtors have entered into a standstill agreement, dated September 28, 2008 (the “Standstill”) with JPMorgan Chase in an effort to resolve certain issues pertaining to the Deposits.

**Jurisdiction**

7. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Relief Requested**

8. By this motion (the “Motion”), the Debtors request, pursuant to sections 105(a), 363(c), and 345(b) of the Bankruptcy Code, entry of the proposed order substantially in the form attached hereto as Exhibit “A” authorizing (I) the Debtors to maintain existing bank accounts and business forms, and (II) an extension of time for the Debtors to comply with section 345 of the Bankruptcy Code. Without the requested relief, the Debtors submit that they would be subject to further disruption with respect to

their banking arrangements, which could cause significant harm to the Debtors and their estates.

**Maintenance of the Debtors' Existing  
Bank Accounts and Business Forms is Warranted**

9. Upon information and belief, the Debtors maintain bank accounts (the "Bank Accounts") at several banks (each a "Bank" and collectively, the "Banks"), including, among others, JPMorgan Chase (presently holding the Deposits), Bank of America and Bank of New York Mellon.<sup>2</sup> The deposits are the subject of the Standstill.

10. The Office of the United States Trustee's "Operating Guidelines and Financial Reporting Requirements Required in All Cases Under Chapter 11" mandate the closure of the Debtors' prepetition bank accounts, the opening of new accounts, and the immediate printing of new checks with a "Debtors in Possession" designation on them. If the Debtors were required to comply with these guidelines, their operations and assets would be subject to additional disruption and confusion, beyond that which the Debtors are dealing with post-Bank Receivership. At this time the closure of existing Bank Accounts, the opening of new accounts, and the immediate printing of new checks would just add additional confusion to a situation where the Debtors are in the process of identifying and protecting all assets, including bank deposits.

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<sup>2</sup> Prior to the Commencement Date, the Debtors began gathering the information necessary to generate a complete list of their Bank Accounts for filing with the Court. The Bank Receivership, however, disrupted this process by limiting the Debtors' access to their employees and their books and records. The Debtors expect to work with the FDIC, JP Morgan Chase, and other parties in interest to gain access to the information necessary to complete their list of Bank Accounts. The Debtors also will continue their independent efforts to obtain the requisite information, but anticipate that this will require an additional amount of time under the current circumstances.

11. The Debtors believe, therefore, that their transition to chapter 11 will be smoother and more orderly, with minimum disruption and harm to their operations, if they are permitted to continue the status quo and maintain their Bank Accounts with the same account numbers following the Commencement Date; provided, however, that checks issued or dated prior to the Commencement Date will not be honored, absent a prior order of this Court.<sup>3</sup> By preserving continuity and avoiding the disruption and delay to the Debtors' management of their operations and assets that would necessarily result from closing the Bank Accounts and opening new accounts, all parties in interest will be best served. Accordingly, the Debtors respectfully request authority to maintain the Bank Accounts in the ordinary course of business.

12. Unless otherwise ordered by this Court, no Bank shall honor or pay any check issued on account of a prepetition claim. The Debtors request that the Banks be authorized to accept and honor all representations from the Debtors as to which checks should be honored or dishonored consistent with any order(s) of this Court, whether or not the checks are dated prior to, on, or subsequent to the Commencement Date. The Banks shall not be liable to any party on account of following the Debtors' instructions or representations regarding which checks should be honored. The Banks also shall be permitted to accept and process chargebacks against the Bank Accounts arising out of returned deposits into such accounts without regard to the date such return item was deposited.

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<sup>3</sup> Importantly, the Debtors' request for authority to designate, maintain and continue using any and all existing bank accounts is subject to the Standstill.

13. Courts in this and other districts have recognized that strict enforcement of the requirement that a debtor in possession close its bank accounts does not serve the rehabilitative process of chapter 11 in similar cases. See, e.g., In re Semcrude, LP, Case No. 08-11525 (Bankr. D. Del. July 24, 2008); In re Vertis Holdings, Inc., Case No. 08-11460 (CSS) (Bankr. D. Del. July 16, 2008); In re Whitehall Jewelers Holdings, Inc., Ch. 11 Case No. 08-11261 (KG) (Bankr. D. Del. June 24, 2008); In re Landsource Comtys. Dev. LLC, Ch. 11 Case No. 08-11111 (KJC) (Bankr. D. Del. June 10, 2008); In re Sharper Image Corp., Ch. 11 Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008); In re Charys Holdings Co., Inc., Ch. 11 Case No. 08-10289 (BLS) (Bankr. D. Del. Feb. 15, 2008); In re Holley Performances Prods., Ch. 11 Case No. 08-10256 (PJW) (Bankr. D. Del. Feb. 12, 2008).<sup>4</sup> Similar authorization is appropriate in these chapter 11 cases.

14. In addition to mandating the closure of all bank accounts, the United States Trustee Guidelines require the immediate printing of new checks with the label “Debtor in Possession.” Similarly, Local Rule 2015-2(a) of the Local Rules for The United States Bankruptcy Court for the District of Delaware (the “Local Rules”) mandate that the Debtors, upon exhausting their existing check stock, order new ones with the “Debtor in Possession” label. To minimize expenses, the Debtors further request that they be authorized to continue to use their correspondence and business forms, including, but not limited to, purchase orders, multicopy checks, letterhead, envelopes, promotional materials, and other business forms (collectively, the “Business Forms”), substantially in

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<sup>4</sup> Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon request of Debtors' counsel, including at the hearing to consider the Motion.

the forms existing immediately before the Commencement Date, without reference to their status as debtors in possession. The Debtors propose that, in the event they need to purchase new Business Forms during the pendency of the chapter 11 cases, such forms will include a legend referring to the Debtors' status as debtors in possession.

15. If the Debtors are not permitted to maintain their Bank Accounts and continue to use their existing Business Forms, the resultant prejudice will include significant (i) disruption as the Debtors work to identify and manage their assets and continue operations, (ii) delay in the administration of the Debtors' estates, and (iii) cost to the Debtors' estates to set up new systems and open new accounts, print new business forms, and immediately print new checks.

**Authorization for an Extension of Time  
To Comply With Section 345(b) of the Bankruptcy Code is Warranted**

16. Section 345 of the Bankruptcy Code governs a debtor's cash deposits during a chapter 11 case and authorizes deposits of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) requires the estate to obtain from the entity with which the money is deposited a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, unless the Court for cause orders otherwise. *Id.* at § 345(b). In the alternative, the estate may require the entity to deposit governmental securities pursuant to 31 U.S.C. § 9303 which provides that, when a person is required by law to give a surety bond, that

person, in lieu of a surety bond, may provide a governmental obligation. See 31 U.S.C. § 9303.

17. By this Motion, the Debtors seek a sixty (60) day extension of the time to comply with section 345(b) of the Bankruptcy Code without prejudice to further extensions upon motion to this Court. During the extension period, the Debtors propose to engage the Office of the United States Trustee in discussions to determine what modification to their investment guidelines, if any, would be appropriate under the circumstances. As noted above, in light of the uncertainty surrounding the Bank Accounts at JPMorgan Chase, who, upon information and belief, assumed responsibility for the Deposits (subject to the Standstill), the Debtors believe that the benefits of the requested extension far outweigh any harm to the estates. See, generally, In re Serv. Merchandise Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (noting that some of the factors to consider in determining whether cause exists “for relief from the strictures of § 345(b)” is whether benefits to the debtor outweigh the harm, if any, to the estate).

18. The Debtors believe that their current investment practices will provide the protection contemplated by section 345(b) of the Bankruptcy Code during the extension period. Based on, among other things, the FDIC’s post-Bank Receivership reports, the Debtors believe that the cash, in excess of the amounts insured by the FDIC, on deposit with WMB and WMBfsb is now held by JPMorgan Chase, and therefore not at risk. Particularly in light of the Standstill, the extension period will provide the Debtors with an opportunity to work with JPMorgan Chase to review and resolve the status of the deposits at JP Morgan Chase.



19. Similar extensions have been granted in other chapter 11 cases in this district. See, e.g., In re Semcrude, LP, Case No. 08-11525 (Bankr. D. Del. July 24, 2008); In re Vertis Holdings, Inc., Case No. 08-11460 (CSS) (Bankr. D. Del. July 16, 2008); In re Whitehall Jewelers Holdings, Inc., Ch. 11 Case No. 08-11261 (KG) (Bankr. D. Del. June 24, 2008); In re Landsource Comty. Dev. LLC, Ch. 11 Case No. 08-11111 (KJC) (Bankr. D. Del. June 10, 2008); In re Sharper Image Corp., Ch. 11 Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008); In re HomeBanc Mortgage Corp., Ch. 11 Case No. 07-11079 (KJC) (Bankr. D. Del. Aug. 14, 2007); In re Am. Home Mortgage Holdings, Inc., Ch. 11 Case No. 07-11047 (CSS) (Bankr. D. Del. Aug. 7, 2007).

20. There is also no question that the Debtors' funds in excess of the amounts insured by the FDIC located at Bank of America and Bank of New York Mellon accounts are not at risk, as Bank of America and Bank of New York Mellon, like JP Morgan Chase, are among the most highly-rated banking institutions in the country. The Debtors therefore will seek approval of these institutions as "Authorized Bank Depositories" by the Office of the United States Trustee for the District of Delaware, to the extent they are not already so designated.

21. Accordingly, the Debtors believe that obtaining bonds to secure their deposits and funds in excess of the amounts insured by the FDIC, as required by section 345(b) of the Bankruptcy Code, is unnecessary and detrimental to the Debtors' estates and creditors.

22. Strict compliance with the requirements of section 345(b) of the Bankruptcy Code would, in a case such as this, be inconsistent with section 345(a), which permits a debtor in possession to make such investments of money of the estate "as will

yield the maximum reasonable net return on such money.” Thus, in 1994, to avoid “needlessly handcuff[ing] larger, more sophisticated debtors,” Congress amended section 345(b) of the Bankruptcy Code to provide that its strict investment requirements may be waived or modified if the Court so orders “for cause.” 140 Cong. Rec. H. 10,767 (Oct. 4, 1994), 1994 WL 54773.

23. The Debtors submit that “cause” exists for this Court to waive or modify the requirements set forth in section 345(b) of the Bankruptcy Code because, among other considerations, (i) the Debtors retain the right to remove funds held at the banks and establish new bank accounts as needed (subject to the Standstill), (ii) the cost associated with satisfying the requirements of section 345 is burdensome, and (iii) the process of satisfying those requirements would lead to needless inefficiencies in the management of the Debtors’ assets. Moreover, strict compliance with the requirements of section 345 of the Bankruptcy Code would not be practical in these chapter 11 cases. A bond secured by the undertaking of a corporate surety for deposits in excess of \$5 billion would be prohibitively expensive, if such bond is available at all.

#### **Waiver of Bankruptcy Rules 6004(a) and (h)**

24. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

#### **Notice**

25. No trustee, examiner, or statutory creditors’ committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to (i) the United States Trustee for the District of Delaware; (ii) each of the Debtors’ twenty (20)

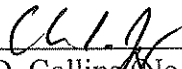
largest unsecured creditors; (iii) the OTS; (iv) the FDIC; (v) counsel to JPMorgan Chase; and (vi) counsel to Bank of New York Mellon. In light of the nature of the relief requested, the Debtors submit that no other or further notice need be provided.

**No Previous Request**

26. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: October 2, 2008  
Wilmington, Delaware

  
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PROPOSED ATTORNEYS TO THE DEBTORS  
AND DEBTORS IN POSSESSION

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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*In re* : **Chapter 11**  
 :  
**WASHINGTON MUTUAL, INC., et al.** :  
 : **Case No. 08-12229 (MFW)**  
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**Debtors.** : **(Jointly Administered)**  
 :  
 : **D.I. \_\_\_\_\_**  
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**ORDER (I) AUTHORIZING THE DEBTORS TO  
MAINTAIN EXISTING BANK ACCOUNTS AND  
BUSINESS FORMS, AND (II) EXTENDING TIME TO  
COMPLY WITH SECTION 345(b) OF THE BANKRUPTCY CODE**

Upon the motion, dated October 1, 2008 (the "Motion"), of Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), as debtors and debtors in possession (collectively, the "Debtors"),<sup>1</sup> for entry of an order, pursuant to sections 105(a), 363(b), 363(c) and 345(b) of title 11 of the United States Code (the "Bankruptcy Code"), (I) authorizing the Debtors to maintain and utilize their existing bank accounts and business forms and (II) extending the time to comply with section 345(b) of the Bankruptcy Code, all as more fully set forth in the Motion; and upon the Declaration of Stewart M. Landefeld in Support of the Debtors' Chapter 11 Petitions and First-Day Motions;<sup>2</sup> and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the

<sup>1</sup> The Debtors' federal tax identification numbers are: (i) for WMI, 91-1653725; and (ii) for WMI Investment, 20-5885395.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that the Debtors are authorized, subject to the Standstill, to (i) designate, maintain, and continue to use any or all of their existing Bank Accounts in the names and with the account numbers existing immediately prior to the commencement of their chapter 11 cases, (ii) deposit funds in and withdraw funds from such Bank Accounts by all usual means, including without limitation, checks, wire transfers, automated clearing house transfers, and other debits, and (iii) treat their prepetition bank accounts for all purposes as debtor in possession accounts; and it is further

ORDERED that, except as otherwise provided in this Order, all financial institutions in which the Debtors maintain the Bank Accounts as of the commencement of their chapter 11 cases are authorized and directed to continue to maintain, service, and administer such Bank Accounts without interruption and in the usual and ordinary course, and, subject to the Standstill, to receive, process, honor and pay any and all checks,

drafts, wires, or other transfers by the holders or makers thereof, as the case may be; provided, however, that nothing contained herein shall authorize any such financial institution to honor any check, draft, wire, or other transfer issued or dated prior to the Commencement Date, except as otherwise provided by further order of this Court; provided further, however, that any such financial institution may rely on the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Commencement Date should be honored pursuant to an order of this Court, and such bank shall not have any liability to any party for relying on such representation by the Debtors as provided for herein; and it is further

ORDERED that the Debtors are in compliance with section 345(b) of the Bankruptcy Code with respect to those Bank Accounts located in Banks that have been approved by the U.S. Trustee as Authorized Bank Depositories; and it is further

ORDERED that the Debtors shall have sixty (60) days (or such additional time as the U.S. Trustee may agree to) from the entry of this Order (the “Extension Period”) to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee; and it is further

ORDERED, that nothing contained herein shall prevent the Debtors from opening any additional bank accounts, or closing any existing Bank Account(s) as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors’ requests to open or close, as the case may be, such Bank Accounts or additional bank accounts; provided, however, that any new account shall be with a bank that is insured with the Federal Deposit Insurance Corporation or the Federal Savings and Loan

Insurance Corporation and that is organized under the laws of the United States or any State therein; and it is further

ORDERED that the Debtors are authorized to maintain and continue to use any and all stationery, correspondence, and business forms, including, but not limited to, purchase orders, multicopy checks, customer catalogs, letterhead, envelopes, insurance and reimbursement forms, admission forms, promotional materials, and other business forms, whether existing prior to the commencement of these cases, substantially in the forms existing immediately prior to the commencement of their chapter 11 cases, without reference to their status as debtors in possession and shall not be required to order new stock with such marking until they exhaust their current stock; and it is further

ORDERED that notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are hereby waived; and it is further

ORDERED that and the ten-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h) is hereby waived; and it is further

ORDERED that this Order and the relief provided herein shall apply to chapter 11 cases filed subsequent to the Commencement Date by any and all direct and indirect subsidiaries of WMI, as if those subsidiaries had been parties to the Motion and were among the Debtors referred to in this Order; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: \_\_\_\_\_, 2008  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE