

FDIC-Corporate for the OTS. For all of those reasons, FDIC-Corporate (or possibly the U.S.

Government in their place if the Federal Tort Claims Act applies) is also potentially liable.

#### F. Potential Actual Fraud by FDIC-Corporate Related to Standstill Agreement

58. FDIC-Corporate negotiated a special indemnity for JPMC in the amount of \$500 million in the event JPMC was found liable for breach of contract from their March 2008 due

diligence agreement with WMI. That agreement had, inter alia, a standstill agreement which

prevented JPMC from purchasing any of WMB's assets from anyone other than WMI. After FDIC-

Corporate indemnified this potential breach, JPMC breached the agreement on September 25, 2008.

59. On October 3, 2008, the Emergency Economic Stabilization Act of 2008 (Public Law 1

110-343) (the "EESA") was signed into law. Eight days after WMB's seizure and sale breaching the

standstill agreement, this legislation was signed into law. The FDIC was potentially liable for \$500

million under their indemnity, with JPMC responsible for the unliquidated remainder. That EESA

has been alleged to have stripped WMI of its' right to pursue damages under the standstill

agreement. The Chairwoman of the FDIC at the time of the seizure was Sheila Bair. Earlier in her

career, Ms. Bair served as Research Director, Deputy Counsel and Counsel to Kansas Republican

Senate Majority Leader Robert Dole (1981 to 1988). Ms. Bair also pursued a seat in the U.S.

Congress in 1990, but lost the nomination. She was known to be fiercely protective of her agency

and the Deposit Insurance fund, and was clearly interested in politics and legislation.

60. Given Ms. Bair's background and general nature, I find it extremely suspicious that

shortly after agreeing to an indemnity which could cost FDIC—Corporate \$500 million, the EESA

was signed into law, allegedly relieving her agency of that significant liability. While I have no

proof at this time that she was involved, the circumstances warrant an investigation to determine

whether a cause of action exists which the Reorganized Debtor could pursue. If she was involved in

any way with the EESA's standstill legislation, I can think of no clearer case of actual intent to

delay, defraud, or hinder than this would be.

#### G. Potential Breach of Contract by FHLB-SF

61. OTS West Region Director Darrel Dochow was responsible for OTS regulation of WMB and WMBfsb. Based upon a review of his heavily redacted WaMu Timeline [Appendix 4], a

claim may exist against the Federal Home Loan Bank — San Francisco ("FHLB-SF") for breach of

contract. On September 18, 2008, WMB had agreed to provide a blanket lien on all of WMB's

assets, subject to their borrowing capacity from FHLB-SF not decreasing. Four days later, on

September 22, 2008, FHLB-SF significantly cut WMB's capacity, causing regulators to revise

WMB's liquidity estimates sharply downward. Please refer to the WaMu Timeline for details.

### III. INADEQUATE COMPENSATION FOR RELEASES

#### A. JPMC Release Issues

##### (1) Interest On The Debtor's Deposit Accounts at JPMC

62. The passage of time has rendered the GSA with J PMC materially and unacceptably

worse for the Debtors, and impermissibly better for JPMC, than the initial settlement considered by

the Court in December of 2010. The settlement considered by the Court in December 2010 was to ,

go effective by January 31, 2011 — a date integral to the fairness of the settlement. In fact, the i

settlement agreement initially negotiated in March 2010 was expected to go effective by the end of

July 2010 with a drop dead date of August 31, 2010. Now, however, the GSA will likely not go

effective before the end of February 2012 — nineteen months later.

63. Every day deprives the Debtors of access to more than the \$4 billion in cash

improperly held by JPMC. On the \$3.67 billion balance in account number xxx4234, only \$18

\_ million" in interest has accrued from the Petition Date through December 31, 2011.2\* (an average of

27 Cumulative to Date interest on WMI's \$3.67 billion Deposit account is \$18,001,201 as of the Monthly Operating

Report ("MOR") for December 2011, [D.I. 9478]. This amount is obtained by subtracting the initial balance of

\$3,667,943,173 (as of the November 2008 MOR) from the December 31 2011 balance of \$3,685,944,374. See Table

MOR-1, November 2008 MOR, [D.I. 1539], and Table MOR-] of the December 2011 MOR. Though this is not the

only deposit account at JPMC, it does include nearly 92 % of WM1's deposit balance at JPMC so is a good proxy for

the remainder.

28 By contrast, JPMC's average rate of return on interest-earning assets was 5.36% for 2008, 4.04% for 2009, 3.83%

for 2010, and 3.74%, 3.58%, and 3.40% for the first, second, and third quarters of 2011, suggesting that JPMC could

have earned more than \$475 million on those deposits since the Petition Date through September 30, 2011. See

15.1 basis points or 0.151 percent per annum<sup>2</sup>. The Deposit did not begin accruing interest until

the December 2008 MOR, and the rate has declined to 5.130 basis points (on an annualized basis) as

of the November 2011 MOR [D.I. 9236]. And even this low amount may have been overstated. In

the December 2011 Monthly Operating Report, accrued interest is reduced by \$1,279,792.

64. Additionally, as shown in table MOR 1 in Id, the tax refund account at Bank of America returned \$666,134 in December 2011, or 142 basis points per annum. This is over 27

times the rate Debtors reported JPMC to have paid in November 2011, and over 9 times the rate that

JPMC has averaged up to December 31, 2011. Based upon this similarly large tax refund deposit

account, I can only conclude that the 5.1 basis points is far below market rates. Absent the

settlement, the Debtors would be entitled to collect prejudgment interest from JPMC in a far greater

and ever increasing amount as interest compounds. Based on the State of Washington's 12 percent"

(per annum) prejudgment interest rate, WMI should be due roughly \$1.64 billion in prejudgment

interest from the Petition Date through February 2012.

65. The Debtors have been deprived of that value while incurring mounting costs from

the ongoing bankruptcy cases, rendering the settlement materially less valuable for the Debtors

today (and more valuable for JPMC) than it was when the Court first blessed the deal as fair.

Accordingly, at this time, JPMC should provide additional value to compensate for the delays.

66. Undoubtedly JPMC will argue that they are not responsible for the delays, but it is clear that they are at least partially responsible, as demonstrated in the Motion of JPMorgan Chase

JPMorgan Chase & Co., 2008 Form 10-K, at 222; 2009 Form 10-K, at 246, 2010 Form 10-K, at 306, Form 10-Q

(May 6, 2011) at 173, Form 10-Q (August 5, 2011) at 184, Form 10-Q (November 4, 2011) at 194. If the Modified

Seventh Amended Plan goes effective in February 2012, JPMC will have earned another five months of interest.

29 The total return is  $[\$18,001,201 / \$3,667,942,173] \times 100 \times [12/39] = 0.151$  percent, or 15.1 basis points (per

annum).

30  $[\$155,443 \text{ interest} / \$3,686,979,056 \text{ opening balance}] \times 100 \times 12 = 0.05059$  percent (annualized). This is

equivalent to 5.059 basis points per annum.

31 Twelve percent (per annum) is equivalent to 1200 basis points per annum. Washington State law would require over

237 times the rate JPMC was paying as of November 2011.

Bank National Association to Compel the Washington Mutual, Inc. Noteholders Group to Comply

with Federal Rule of Bankruptcy Procedure 2019, [D.I. 1444, filed August 6, 2009]. In response to

a large increase in the reported face amount of securities held by the WMI Noteholders Group,

JPMC filed that motion seeking to obtain information which could be used as leverage over the

Settlement Noteholders. In paragraph 6 of the JPMorgan Chase Bank NA. Is Response to the

Washington Mutual Noteholders Groups Objection to the Motion to Comply with Federal Rule of

Bankruptcy Procedure 2019, [D.I. 1535, filed August 21, 2009], JPMC further argued, "The

significance of Rule 2019 disclosure requirement is highlighted here by the fact that the Washington

Mutual Noteholders Group is apparently buying and selling large quantities of WMI notes, and may

be changing their positions in those securities based upon events in this case." With the 20/20

clarity of hindsight, this statement appears to have been an implied threat that without a mutually

agreed upon settlement, JPMC would seek to investigate the Settlement Noteholders for potential

insider trading. This was a potent threat from an adversary, such as JPMC, with a profit motive and

the funds needed to litigate indefinitely. This Court's determination that those subject to Rule 2019

could provide ranges of data, rather than more detailed reporting required under the law, allowed

JPMC to continue to use that leverage against the Settlement Noteholders, resulting in the GSA.

67. While the Court previously concluded that the Global Settlement

Agreement was reasonable and could be approved under the standards of Bankruptcy Rule 9019,

the Court should consider the effect of the significant delays affecting these cases. JPMC's use of

this leverage against the Settlement Noteholders (by an implied threat to investigate their activities)

32 See *Id.*, 1]]] 2 -4.

33 I believe I have inadvertently stumbled on JPMC's factual basis for this allegation. When Doreen Logan was

deposed on August 26, 2009, JPMC required a confidentiality agreement, and asserted at the beginning that the

information in that deposition constituted Material, Non-Public Information. See JPMC SJ Appendix at BI026. The

confidentiality period was to have been for 30 days, but JPMC filed the Doreen Logan affidavit on September 11,

2009, well short of the 30 day deadline. Immediately after it became public, but before the market had time to digest

the information, a buying spree ensued in all classes of WMI Notes and Equities causing a significant spike in prices.

The impact of the Doreen Logan Affidavit was only discovered by retail shareholders because we were diligently

I searching for some sort of news that would account for that spike in share prices.

has reached an entirely foreseeable outcome: many additional months of delay while the Equity

Committee and others investigate those potential insider trading allegations. JPMC clearly

benefited greatly when the exercise of that leverage caused the Settlement Noteholders and the

Debtors to agree to the extremely one-sided terms of the GSA. But that delay has had detrimental

consequences to the Debtors' estates and concomitant benefits to JPMC. They pay a de minimus

rate to WMI while raking in the interest rate spread.

68. As the Court noted in its Opinion, there is a "strong likelihood of success" on the merits of the Debtors' claims to the roughly \$4 billion in the Disputed Deposited Accounts.

(Opinion at 26.) As a result, not only would the Debtors be entitled to the return of those funds, but

they would also be entitled to recover prejudgment interest from JPMC. See, e. g., Black Diamond

Mining Co., *in re* Hazard Coal Sales, LLC (*In re* Black Diamond Mining Co.), Adv. Pro. No. 08-7005,

2009 Bankr. LEXIS 4639, at \*22 (Bankr. E.D. Ky. June 11, 2009) (awarding of prejudgment interest

at applicable state rate in turnover action); *Grauman* *in re* Smith (*In re* US Physicians, Inc. ), Adv. Pro.

No. 00-138, 2001 U.S. Dist. LEXIS 9707, at \*22 (E.D. Pa. July 12, 2001) (same).

69. However, the GSA releases JPMC from any claims for prejudgment interest, which,

outside of any settlement, would continue to accrue until a judgment is entered against JPMC.

Under Washington State law (the law of the State in which WMI is incorporated and has its

principal place of business), judgments for liquidated amounts owed by a defendant accrue

prejudgment interest at 12% per annum. Rev. Code. Wash. § 19.52.010; see also *Smith v Olympic*

*Bank*, 693 P.2d 92, 96 (Wash. 1985) (awarding prejudgment interest at 12% per annum where bank

failed to turn over a liquidated amount); *Unigard Sec. Ins. Co. v Kunsu Gen. Ins. Co.*, Case No. 90-

1693, 1992 U.S. Dist. LEXIS 20677, at \*26 (W.D. Wash. Nov. 9, 1992) (awarding prejudgment

interest at 12% per annum where amount owed was liquidated); *Jenner v De Los Santos Constr.*,

*Inc.*, Case No. 07-0550, 2008 U.S. Dist. LEXIS 90080, at \* 3 (W.D. Wash. Aug. 27, 2008) (same). I

70. Accordingly, assuming that Washington State law applies, JPMC's prejudgment  
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interest liability has accrued at approximately \$40 million per month. That equates to roughly \$ 1 .64

billion since the Petition Date through February 2012. Those are amounts to which the Debtors

would be entitled were the Court to grant judgment in favor of the Debtors — a prospect that the

Court already considered to be a "strong likelihood." (Opinion at 26.) Yet the Debtors' claims to

those amounts are completely released under the GSA. Meanwhile, JPMC has continued to enjoy

the benefit of and has earned an interest spread on, the \$4 billion in the Disputed Accounts.

71. The "immediate" cash benefits of the global settlement trumpeted by the Debtors in

December 2010 and July 2011 no longer exist. Due to the passage of time, recoveries have eroded to

the point where subordinated class recoveries are nearly exhausted. The additional delay that the

GSA intends to avoid will soon cause recoveries to reach a stable state where recoveries will for the

most part remain unchanged no matter how long the delay, since the more senior classes will in

effect be moving money from one pocket to the other as additional interest accrues. When

compounding of Washington State's 12 percent prejudgment interest is considered, it is obvious that

the estate is at or has nearly reached the point where prejudgment interest would equal or exceed the

main benefit: namely, the tax refund amounts to be paid to WMI as consideration for the GSA.

72. As a result, the GSA is no longer fair and equitable to the Debtors' estates. J PMC

must provide additional consideration to the Debtors' estates to compensate for the delays which

they initiated, and from which they have benefited greatly. Absent such additional value, the GSA

must not be approved and the Seventh Amended Plan cannot be confirmed.

73. To the extent that the Debtors may have agreed to the low interest rate being paid on

the deposits, a gross negligence or other similar claim may exist against the Debtors or its'

professionals in the approximate amount of \$40 million in lost interest per month from the date of

an agreement, if one is found to exist, until the effective date. (\$4 billion deposit x 12% less accrued

interest shown on JPMC's Deposit statements)

## (2) JPMC's Inadequate Compensation For Releases

74. It would appear that the Debtors are proposing an extreme remedy of releases for JPMC, even in the event of gross negligence or willful misconduct by JPMC or their related

persons. Section 41.6 of the Plan provides for releases from Equity: "...the release [...] shall not

extend to acts of gross negligence or willful misconduct of any Released Parties (other than with

respect to the JPMC Entities and their respective Related Persons)..." Their use of the Doreen

Logan Affidavit to entrap the Settlement Noteholders (See Supra, note 33 for discussion) so

that the GSA could be negotiated very likely constitutes some of that willful misconduct.

75. Additionally, the definition of Related Persons is much too broad, With an entity the

size of JPMC, a release is being provided to nearly half this planet. If my neighbor, for example,

happened to own JPMC stock, I'd be providing a release to him, even for his willful misconduct.

Upon information and belief, none of these Related Persons have provided any "substantial

contribution" to the estate. § 1.182 of the Plan defines Related Persons as: i

Related Persons: With respect to any Entity, its predecessors, successors and assigns

(whether by operation of law or otherwise) and their respective present Affiliates and Q

each of their respective current and former members, partners, equity holders, officers,

directors, employees, managers, shareholders (other than holders of Equity Interests of

WMI), partners, financial advisors, attorneys, accountants, investment bankers, consultants,

agents and professionals (including, without limitation, any and all professionals retained by WMI or the Creditors' Committee in the Chapter 11 Cases either (a) pursuant

to an order of the Bankruptcy Court other than ordinary course professionals or (b) as set

forth on Schedule 3.1(a) to the Global Settlement Agreement), or other representatives,

nominees or investment managers, each acting in such capacity, and any Entity claiming by

or through any of them (including their respective officers, directors, managers, shareholders, partners, employees, members and professionals), but, under all circumstances, excluding the "Excluded Parties," as such term is defined in the Global

Settlement Agreement.

76. In order to receive a distribution, the Equity must release JPMC and their related persons, including for gross negligence or willful misconduct. The Plan proposes to provide Equity

with 95% of a company, that will have \$75 million in cash, and \$10 million in runoff notes. The

remaining value of the company is stripped out of the Reorganized Debtor (the "RD") for the

benefit of the Creditors via the runoff notes. SO we've got a company with 200 million shares

outstanding, and an approximate \$85 million in cash value, making each RD common share worth

\$0.425. Preferred stock are to get 70% of 95% of that \$85 million, or \$56.525 million. Most

preferred stock by dollar value has a \$1000 liquidation preference, so I'll use that for my

calculations. There are \$7.5 billion of liquidation preference of preferred stock. So \$56.525 million

X  $[1000 / 7,500,000,000]$  is \$7.54 per \$1000 of face, or roughly 3/4 of one percent for preferred

stock in exchange for the releases. Similar calculations yield a payout of \$0.013 per common share.

This is clearly inadequate consideration, particularly for gross negligence or willful misconduct. If

this amount were offered to any of the Creditors, they'd sneer, and say, "See you in court. "

78. But when you consider that all of that return is coming from parties other than J PMC,

you realize that you are being goaded into providing a release for no consideration at all. Since the

GSA was first negotiated, the economic terms have not changed one iota. On January 7, 2011 his

Court expressed doubt that preferred stock would receive a distribution, "... the Liquidating Trust is

receiving certain assets, including potential lawsuits, which it will liquidate. It may not be known

for years whether all creditors will be paid in full so that preferred shareholders will be entitled to a

distribution. Consequently, shareholders cannot vote intelligently on whether to give a release. If

the preferred shareholders are not getting any distribution under the Plan, there is no consideration

for the releases of third parties." (Opinion at 84-85.) Without consideration being provided, those

releases were found to be impermissible.

79. In the Seventh Amended Plan, any consideration being provided to Equity is coming

from the Creditors, whose attempts to deprive Equity of their rightful recovery have delayed these

cases for well over a year, causing hundreds of millions of dollars to flow into their own pockets in

the form of post-petition interest. And in a liquidation, the results would likely be similar, since

those Creditors would still have the insider trading allegations hanging over their head, so they'd

still be looking to buy their way out of it.

#### B. FDIC-Receiver's Inadequate Compensation For Releases

80. For the reasons in Supra 75-78, FDIC-Receiver's consideration is also inadequate.

#### C. FDIC-Corporate is Providing No Compensation For Releases

81. FDIC-Corporate and FDIC-Receiver are legally distinct entities, and FDIC-Corporate

has no claim against the estate. They share the first four letters of their name, but no identity of

interest with any of the parties. See (Written Argument, 1]]] 15-26).

### IV ISSUES RELATED TO AAOC

#### A. Partial Vacatur of the September Opinion

82. This Court took a bold first step in its September Opinion, one which leads down a

path toward transparency and a more level playing field for all investors. Now the Court is being

asked by the Debtors to vacate significant portions of its' September Opinion. Obviously the

primary benefit of this proposed vacatur would accrue to AAOC, who could continue on with

"business as usual" as though nothing had happened. While this Court believes that the precedential

effect of her decision is not substantial, I believe that this Court is significantly underestimating the

potential impact of the decision on the market. Vacatur benefits not only the Settlement

Noteholders, but all hedge funds who thrive by taking advantage of secrecy and information

asymmetry. Vacatur would ensure that that advantage remains, whether legal or otherwise, to the

detriment of the undeniable public interest in maintaining free and fair markets.

83. Discarding 30 pages of the September Opinion would also effectively "raise the bar"

for any non-releasing parties going forward, since they would be unable to cite those relevant areas

of your September Opinion in support of their own litigation, so would have to work that much

harder to support their position. Further, this public benefit is being stripped from these non-

releasing parties for no consideration, in the form of a back-door mandatory partial release to

AAOC. This Court has previously held that it does not have the power to grant a non-consensual

third party release of a non-debtor (Opinion at 76).

84. This Court has previously refused to grant releases to those operating in a fiduciary

capacity to the estate. This Court (Opinion at 67-8) found,

The releases being granted to the Committee and its members are also not appropriate.

It is acceptable to provide exculpations for such parties for the role they played in the bankruptcy process, and the Court will approve appropriate ones in this case. See, e.g.,

In re PWS Holding Corp., 228 F.3d 34 224, 246 (3d Cir. 2000) (holding that exculpation

clause in plan which provided that committee members and estate professionals had no

liability to creditors or shareholders for their actions in the case except for willful misconduct or gross negligence merely conformed to the standard applicable to such fiduciaries and, therefore, did not violate any provision of the Code).<sup>34</sup>

85. On January 7, 2011, (Opinion at 69), this Court determined,

The Settlement Noteholders were not acting in this case in any fiduciary capacity; their

actions were taken solely on their own behalf, not others. The Settlement Noteholders

hold interests in various levels of debt and the result of the negotiations was to get them a

full recovery in all but the lowest level of debt. That is insufficient to warrant a release by the Debtors."

86. However, on September 13, 2011, (September Opinion at 69), this Court stated,

The Court finds that the Equity Committee has stated a colorable claim that the Settlement

Noteholders became temporary insiders of the Debtors when the Debtors gave them confidential information and allowed them to participate in negotiations with JPMC

for the shared goal of reaching a settlement that would form the basis of a consensual

plan of reorganization.

87. Assuming, arguendo, that had litigation gone forward and AAOC were found to have

been insiders of the Debtors with commensurate fiduciary duties to Creditors and Shareholders

alike, AAOC would not have been released of all liability, but would instead receive exculpations.

It is my understanding that under the Bankruptcy Code, exculpations are not allowed to provide

protections against willful misconduct or gross negligence. The insider trading allegations may fall

into either or both of these categories.

88. AAOC seems adamant that this vacatur provision must be included to obtain their support for the Plan. Presumably this provision is being included because AAOC believes that a

34 Originally the Plan exculpation clause did not comply with the applicable standards of the Code because it did not

exclude willful misconduct or gross negligence of the Committee and estate professionals. That was corrected, however,

in the October 29 modification of the Plan. (Ex. D—3 at § 43.8.)

significant percentage of Equity holders would prefer to decline releases so they can litigate on their

own. The obvious implication is that AAOC believes that they are not providing sufficient

consideration to obtain voluntary support for this Plan. Given the size of their potential liability and

the very significant risks posed to their firms with respect to the insider trading allegations, it is

entirely possible that many Equity holders feel shortchanged. While AAOC could easily make up

for their own shortfall by offering additional incentive from their billions of dollars in profits in this

case, they instead ask the Court to do their dirty work.

#### B. Payment of AAOC's Fees and Expenses

89. Section 41.18 of the Seventh Amended Plan, entitled "Payment of Fees and Expenses

of Certain Creditors," provides for a whole litany of attorney's fees to be paid to a variety of

Creditor groups. These Creditor Group "Section 41.18 Professionals project that they will

request an aggregate total of at least \$37.3 million on account of fees for services rendered..."

90. While AAOC and the other Creditors are giving \$75 million to the Reorganized

Debtor with one hand, they are proposing to take with the other hand \$37.3 million. This means

that there would have to be an additional \$37.3 million in litigation recovery before Equity sees a

dime from the liquidating trust interests. This is nearly half of what the Creditors as a whole are

giving up, and if I had enough data to mn the numbers, I suspect I would find that AAOC's total

consideration to Equity is only a few million dollars. I object to the payment of any of the fees or

expenses for AAOC or any of its professionals, including their counsel White & Case and Fried

Frank given their prior conduct which resulted in this Court determining that "colorable" insider

trading claims may exist against these entities. To the extent this is determined not to be a \

confirmation issue, I reserve all rights to raise or supplement this issue at a more appropriate time. ,

#### V. Exculpations To Be Provided To The Examiner And His Professionals

91. In my Written Argument, [D.I. 8407; filed 8/9/2011] following the most recent confirmation hearings, I further expressed my views regarding these third party causes of action.

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Paragraphs 55-67 discuss my views in detail, and provide what I believe are compelling grounds to

include Joshua Hochberg, (the "Examiner") along with his firm McKenna, Long, and Aldridge

("MLA") and the Examiner's other professionals as additional third party litigation targets. I repeat,

reassert and reallege all of those arguments. See Id, 1]]] 55 — 67.

92. Mr. Hochberg assured us all that the estate was receiving appropriate, equivalent

value in consideration for WMI's releases to JP Morgan and the FDIC. If he analyzed those as he

claimed, how could he have missed the gains that JP Morgan has already publicly admitted,

as further detailed in supra ]]]] 26, totaling \$46.22 billion dollars? How could he so easily dismiss

the fact that a plain reading of Section 3.5 of the P&A agreement specifically excludes the sale of

any pre-petition claims (including tax claims) against WMB's sole stockholder, WMI? How could

the Examiner not realize the GSA is to transfer more than \$6.7 billion in additional Disputed Assets

to JP Morgan for a mere \$50 million in consideration? How could Mr. Hochberg have determined

FDIC-Corporate releases were appropriate when they were providing no consideration at all'?

#### VI. Proposed Term Sheet 3

93. I propose that the FDIC-Receiver retain the Reorganized Debtor on a contingency

basis by to manage, explore, and prosecute any remaining causes of action WMB may have against

any Government agency, including without limitation the Office of Thrift Supervision, the Federal

Reserve Board, and the Federal Home Loan Bank of San Francisco. The litigation would be

conducted in the name of FDIC—Receiver, for the benefit of the WMB estate. To compensate the

Reorganiziied Debtor for the risk they are undertaking, FDIC-Receiver would agree to split any net

proceeds (after fees and expenses) 50:50 with the Reorganized Debtor. The Federal Tort Claims

Act, if it is determined to apply, may limit the proposed split to 75:25 for a judgment or 80:20 in the \_

event of a settlement. I will leave this determination up to the Debtors and the FDIC-Receiver, as

this is beyond my pay grade, See 28 U.S.C. § 2678.

94. Non-conflicted counsel (or FDIC-Receiver could waive any conflict) would have to

be retained to prosecute any colorable claims. If a waiver may be obtained, I suggest the retention

of Quinn Emanuel. They do excellent work, and are already familiar with the case so it should be

more cost effective to hire them. I propose that FDIC—Receiver should also waive any bond that

may be required to retain the Reorganized Debtors to manage this litigation. After all, they are

unlikely to prosecute any of the actions I propose on their own. Evidence of this is the fact that no

litigation against FDIC-Corporate has been filed to date, despite potentially viable claims due to

their pre-seizure conduct. Some of these potential claims have a 3 year statute of limitations which

may have already passed, and FDIC-Receiver appears to have breached their fiduciary duty to the

WMB estate on September 25, 20] I by allowing that lapse.

A. Proposed Solution is in the Best Interest of the Debtors Estate

95. There are a number of benefits to the estate: Among these are:

(1) Assuming a successful outcome to the litigation, the Reorganized Debtor will be compensated for its outlay for attorneys fees and costs;

(2) Due to the FDIC—Receiver's expedited scheduling for hearings and appeals, litigation could i

be completed in 2 to 3 years that might otherwise take a decade or more;

(3) The Reorganized Debtor would obtain 50 percent of any net recovery, much quicker than if

we were to litigate independently. Once the WMB bondholders are paid in full, the

remaining litigation recoveries would flow 100 percent to the Reorganized Debtor;  
and

(4) Assuming no ownership change, the Receivership could be kept open, allowing the

Reorganized Debtor to utilize the \$17.7 billion of Net Operating Losses at the Washington

Mutual Bank level. In that event, the FDIC-Receiver and the Reorganized Debtor should

negotiate an appropriate agreement to set out the terms for the selection of the Receivership

closing date, so that the NOLs could be used. Note: Existing common stock must be kept

intact so that there is no ownership change under IRC § 382(l)(5).

(5) Dramatically streamlined litigation in the DC Court.

B. Proposed Solution is in the Best Interest of the FDIC-Receiver

96. The FDIC-Receiver benefits by:

(1) Receives 50 percent of any net recovery against OTS or other agencies. Fifty percent of `

something is better than 100 percent of nothing;

(2) No Cost to FDIC-Receiver if unsuccessful, since the Reorganized Debtor assumes that risk. i

The only costs would be those of keeping the Receivership open, and those should be

minimal in light of the potential recovery; E

(3) Reduced potential for a breach of fiduciary duty claim against FDIC-Receiver; and

(4) Releases would be provided by all of the Debtor's stakeholders.

C. Proposed Solution is in the Best Interest of the FDIC-Corporate

97. The FDIC-Receiver benefits by:

(1) Pursuit of an any case against the FHLB banks, Office of Thrift Supervision, another agency

(or the Government on their behalf) could reduce FDIC-Corporate's potential liability for

failure to maximize the Net Present Value of the WMB estate.

(2) Dramatically streamlined litigation in the DC Court.

D. Proposed Solution is in the Best Interest of the JPMorgan Chase

98. JPMC should support this proposal, because:

(1) It gives them an "out", allowing a face-saving settlement without any appearance of

wrongdoing. This is particularly important to them given the Lehman, Madoff, and MF Global litigation they are currently mired in;

(2) The ANICO litigation (based upon WMB bondholder losses) is pending and may be

remanded back to Texas State Court. A recovery against any Government agency on WMB's behalf would reduce JPMC's eventual liability if found responsible in the ANICO litigation;

(3) JPMC gives up assets to which they would have weak claims against if litigated:

namely the tax reftrnds (which were precluded from sale under P&A 3.5) and the prejudgment interest which would be due under Washington State law;

(4) Releases to JPMC would be provided by all of the Debtor's stakeholders; many more

would provide releases tmder the solution I propose vs. the present Plan,

VII. Irrevocable Protections Needed

99. AAOC, acting in consort with the Debtors, has attempted on several occasions to wrest ownership of the Reorganized Debtor from Equity. Their previous intention (as evidenced by

the \$2 million threshold of PIERS holdings to elect common stock in the Sixth Amended Plan) was

for the Reorganized Debtor to be a privately held corporation so that they could run the business in

secret as is the norm for hedge funds, and I fear that that still may be their intention, My concern is

that once they gain control of the Reorganized Debtor (following the first election of the Board of

Directors since they will hold a significant position of reorganized common stock) they may attempt

to involuntarily reduce the number of stockholders by conducting a large reverse split, with a small

payment made to those who would then own fractional shares. This would serve to strip the smaller

holders of their ownership without the holder's consent, at prices that would not reflect the full

future value of the company. I request that shareholders be provided irrevocable protections in the

corporate bylaws of the Reorganized Debtor to prevent their ownership in the Reorganized Debtor

from being reduced or eliminated involuntarily through a reverse split or other means.

#### VIII. Conclusions

100. JPMC can easily afford a reasonable settlement in either cash or stock, given their

earnings of \$12 billion in 2009, a record \$17 billion in 2010, and an even higher record \$19 billion

in 2011. As noted in supra 111 26, JPMC will receive \$46.22 billion dollars in negative goodwill,

accreted or accretable interest, and GSA assets due to the Washington Mutual Transaction. The

payment 1 propose is far lower than the result which I believe likely if we were allowed to litigate,

and is funded for the most part by our money which we would be entitled to anyway, if litigated to

conclusion. JPMC would still be receiving tens of billions in value, and my proposal, viewed from

JPMC's perspective, is "more than fair."

101. My proposal intends for the Reorganized Debtor to provide counsel and litigation

management services so that FDIC-Receiver may litigate against the OTS, the Federal Reserve

Board, the Federal Home Loan Banks, any other Government Agency, or the U.S. Government itself

for any viable Washington Mutual Bank claim going forward (e.g. for actual fraud, breach of

contract, etc). I do not have the benefit of the extensive law library or research staff the Debtors

have, so it is possible that there could be a flaw that I have not found which could prevent my

proposal from being implemented as fully as I suggest. In that event, I argue that it should be

implemented to the fullest extent possible, with any reasonable modifications made to make it

feasible.

102. In order to obtain releases and allow the Reorganized debtor to pursue this litigation

against these other potential third party litigation targets, I proposed that J PMC should voluntarily

relinquish the \$2.36 billion in tax refunds, and an additional \$1.64 billion (totalling \$4.0 billion) to

compensate for the prejudgment interest which could be awarded under Washington State law. This

amount, while far less than is warranted by the facts of this case should it proceed to trial, might be

enough to sway the last remaining holdouts to support the Plan.

103. I believe the support of preferred stockholders and the TPS Group could be obtained

by making a small cash payout to preferred stock (e.g. ten to twenty percent of liquidation

preference), while allowing enough left over to prosecute the remaining litigation to provide the

remainder of Equity's recovery. It would also provide needed funds so the reorganized Debtor could

make acquisitions or to grow organically and to use the . In that way, it would benefit all

stakeholders of the Reorganized Debtor, whether they be preferred holders, common stockholders,

LTW holders, or Creditors who have elected the Reorganized Debtor's common stock.

104. In any event, FDIC-Corporate must not be released by the Debtors unless and until

they provide appropriate consideration for that release. Absent such a release, sufficient funds must

be provided so that the Litigation Trust Advisory Board will have the resources necessary to fully

litigate the DC Action with respect to FDIC-Corporate only, as FDIC-Receiver would be released. In

this manner, a recovery could be obtained for all of WMI's stakeholders.

#### IX. Reservation of Rights

105. I expressly reserve the right to supplement this objection for any reason, and to join

in the objections of other parties, regardless of whether those grounds are addressed herein,

WHEREFORE, It is my hope that the Debtors will not conduct another round of contested

confirmation hearings with an uncertain outcome. I believe that my proposed term sheet could spur

discussions between all of the parties, resulting in a "third instance" of mediation which will allow a

further modified plan to be proposed and quickly confirmed. In the event this does not happen,

though, I humbly request the following:

1. FDIC Corporate be denied releases both from the Debtors and Equity
2. FDIC Receiver be denied releases from Equity
3. JPMC be denied releases from Equity

In the event a plan is not confirmed, additionally:

4. Order WMI's deposit to be returned, along with prejudgment interest at the maximum

allowable rate.

Dated: February 3, 2011

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Appendix 1