

ORAL ARGUMENT SCHEDULED FOR APRIL 15, 2016
Nos. 14-5243 (L), 14-5254 (con.), 14-5260 (con.), 14-5262 (con.)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PERRY CAPITAL LLC, for and on behalf of investment funds for which it acts as
investment manager,

Plaintiff-Appellant,

v.

JACOB J. LEW, in his official capacity as the Secretary of the Department of the
Treasury, MELVIN L. WATT, in his official capacity as Director of the Federal
Housing Finance Agency, UNITED STATES DEPARTMENT OF THE
TREASURY, and FEDERAL HOUSING FINANCE AGENCY,

Defendants-Appellees.

On Appeal From The United States District Court
For The District Of Columbia

SUPPLEMENTAL APPENDIX (S.A.1-57)

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Excerpts from Consolidated Class Action and Derivative Plaintiffs’ Omnibus Memorandum of Law in Opposition to Defendants’ Motions to Dismiss the Consolidated Amended Class Action and Derivative Complaint, or, in the Alternative, for Summary Judgment (D.D.C. No. 1:13-mc-1288, Dkt. 33, pp. 51-52)	S.A.53
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Discussion Materials

June 13, 2011

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Blackstone

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I. Introduction

Blackstone

I. Introduction

The Blackstone and Skadden Teams

We are pleased to have the opportunity to meet with the Department of the Treasury ("Treasury") to discuss our qualifications and potential strategic alternatives regarding FNMA and FMCC.

Blackstone



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Blackstone

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II. Blackstone and Skadden Qualifications

Blackstone

11. Disclosure and Significant Relationships

Blackstone Overview

Advisory Activities	Restructuring Advisory <ul style="list-style-type: none"> ▶ Preeminent advisor to companies and creditors in restructurings and reorganizations ▶ Advisor on more than 340 restructurings involving over \$1 trillion of total liabilities ▶ Known for working on the most complex situations ▶ Experience in the vast majority of the largest U.S. and European restructurings that have occurred in the past five years ▶ Unmatched experience across all industries ▶ Specialty in out-of-court restructurings of companies controlled by financial sponsors 	M&A Advisory <ul style="list-style-type: none"> ▶ Trusted strategic and financial advisor to leading public and private companies ▶ Leading M&A advisory franchise having advised on M&A deals representing over \$450 billion ▶ Significant relationships and access to key decision makers and investors ▶ Significant cross-border experience and capability ▶ Focused on providing unbiased, objective advice to companies and boards ▶ Provides customized M&A and corporate finance solutions ▶ "Principal" investment mentality 	Financing & Structured Products Advisory <ul style="list-style-type: none"> ▶ Provide customized M&A and corporate finance transaction solutions including: <ul style="list-style-type: none"> • Joint venture structuring • Advising on structured / complex financing transactions • Monetization of non-traditional assets • Optimization of corporate client tax attributes • Hedging and monetization of publicly-traded equity positions 	
	Investment Activities	Corporate Private Equity <ul style="list-style-type: none"> ▶ Raised over \$44.9 billion of capital through 7 funds ▶ Invested over \$33.9 billion of capital in 142 transactions ▶ Leading investor in the consumer / retail sector <ul style="list-style-type: none"> • Michaels Stores • Performance Food Group • Pinnacle Foods ▶ Portfolio companies employ over 325,000 people worldwide and generate revenues in excess of \$81 billion 	Real Estate <ul style="list-style-type: none"> ▶ Raised \$29.5 billion of capital through 11 funds ▶ Invested/committed \$19.4 billion of capital in 296 separate transactions 	Multi-Manager Funds <p>Multi-Manager Funds (BAAM)</p> <ul style="list-style-type: none"> ▶ \$26.7 billion in 18 non-traditional multi-manager funds ▶ Attractive risk-adjusted returns with low volatility <p>Closed-end Mutual Funds</p> <ul style="list-style-type: none"> ▶ India Fund (\$1.5 billion AUM) <ul style="list-style-type: none"> • Traded on NYSE: "IFN" ▶ Asia Tiger Fund (\$73 million AUM) <ul style="list-style-type: none"> • Traded on NYSE: "GRR"
Offices	New York • Atlanta • Boston • Chicago • Dallas • Los Angeles • Houston • Menlo Park • San Francisco Beijing • Dubai • Dusseldorf • Hong Kong • London • Mumbai • Paris • Shanghai • Sydney • Tokyo			

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11. Blackstone's Restructuring and Reorganization Group

The Group at a Glance

Blackstone's Restructuring and Reorganization Group has become an industry leader in providing advice to debtors and creditors in large, complex restructurings.

The Group

Blackstone is known for advising companies and stakeholders in the largest and most complex restructurings

- ▶ Since 1991, the U.S. team has been involved in approximately 300 distressed situations involving nearly \$1 trillion of liabilities⁽¹⁾
- ▶ Since its inception in June 2007, the European team has been involved in over 40 transactions involving over \$150 billion of liabilities
- ▶ We are committed to providing senior-level attention in our engagements (a key differentiating factor in our practice)
- ▶ Our transactions span across a broad set of industries, including airlines, automotive, energy / power, financial services, healthcare, media, real estate, steel and telecommunications, as well as other sectors experiencing distress

We have a reputation for leading highly complex, contentious negotiations and driving toward attainable, consensual solutions

(1) For certain financial companies, figure represents net par outstanding of policies restructured.

Blackstone and Shareholder Justifications

The Group at a Glance (Cont'd)

Blackstone's restructuring advisory efforts have received substantial praise in recent years.



Thomson's International Financing Review

- ▶ Americas Restructuring Deal – 2009
- ▶ Restructuring of the Year – 2008
- ▶ North American Restructuring House of the Year – 2004 & 2005

Turnaround Atlas Awards

- ▶ Turnaround of the Year – 2010 (\$5 billion+)
- ▶ Turnaround of the Year – 2010 (\$1 billion+)
- ▶ Corporate Turnaround Deal of the Year – 2010 (\$500 million+)
- ▶ Beverage, Food & Service Deal of the Year – 2009



Turnaround Management Association

- ▶ Mega Company Turnaround of the Year – 2007

II. Blackstone and Meritor Capabilities

Selected Recent Restructuring Clients

Blackstone's Restructuring Group is known for advising both companies and stakeholders in the largest and most complex restructurings.

Chapter 11 Assignments



Out-of-Court Assignments



Creditor Assignments



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Blackstone and Standard & Poor's Qualifications









Blackstone's Restructuring Expertise Spans a Broad Range of Industries Including Financial Services

Automotive	Energy	Health Care / Medical Products (Cont'd)	Manufacturing / Basic Industry (Cont'd)	Media / Communications (Cont'd)	Retail / Supermarkets (Cont'd)
American Axle & Manufacturing Holdings APS Holding Corporation Delphi Automotive Systems, LLC Dura Automotive Systems Inc. Eide Technologies Ford Motor Company Fruehauf Trailer Corporation General Motors Goodyear Tire & Rubber Harvard Industries, Inc. Meridian Automotive Systems Safelite Glass Corp White Motor Corporation	Enron Corp. Energy New Orleans Inc Flying J Inc Gen Holdings Hawkeye Renewables, LLC Mitsub Corporation Prisma Energy International Sea Dragon Offshore Limited SamGroup L.P. Skeie Drilling and Production ASA U.S. Energy Bogas Corp.	Medical Resources, Inc. Taro Pharmaceuticals Industries Ltd. Vencor, Inc. Infrastructure BAA Airports Ltd. Eurotunnel plc (for M&A) Jefferson County (Birmingham, AL) Leisure / Entertainment Alliance Entertainment Corp. AMF Bowling Worldwide, Inc. Bally Total Fitness Hoyts Cinemas Corporation Koster Cruise Limited Six Flags, Inc. SLM International, Inc.	Minera San Cristobal, S.A. Molten Metal, Inc. Mortek Inc. Oran I. Boston & Affiliates The Pacific Lumber Company Panolem Industries International Inc. Profine GmbH RPM International Inc. Russell-Stanley Holdings Safety-Kleen Services, Inc. Smurfit-Stone Container Corp. Solutia Inc. Spanston Sprackels Industries, Inc Sumtomo Corp. (re: Apex Silver Mines) Tracor, Inc. W.R. Grace & Co. Water Industries Westpoint Stevens, Inc.	Orion Cable GmbH Philadelphia Inquirer Price Communications Corp. RCN Corporation R.H. Donnelley Corp R.P. Companies SCI Television Star Tribune Supercanal Holdings S.A. TAK Communications Inc. Telemundo Group, Inc Teligent, Inc Thomas Nelson Tribune Company Unnamed Hollywood Studio Unnamed Hollywood Studio Williams Communications Group, Inc Winstar Communications, Inc.	Whomouse Entertainment, Inc. Winn-Dixie Stores, Inc. Winn-Dixie & Lohrman, Inc. Real Estate / Casinos AKG Global Real Estate AKG re: AKG Baker Citi Property Investors Empire City Gaming Foxwoods General Growth Properties Harral's Jazz Company Hilton Hotels Corporation Koll Real Estate Group Liberty Investors The M Resort Spa & Casino LLC Magna Entertainment Corp. Mameli Shar Gaming, LLC Olympia & York Companies Realty Corporation Station Casinos Inc Stratosphere Corporation Transwestern Homes Twin Rivers U.S. Trails, Inc Vista Properties, Inc.
Consumer Products American Pad and Paper Biederman Industries USA Bombardier Recreational Products Brown Jordan International Caterain International Corp. Chiquita Brands International, Inc. Esprit Holdings, Inc. G Heileman Brewing Co Indesno International, Inc Interstate Bakeries JPS Textile Group, Inc. The Leslie Fay Companies, Inc. Merchon Eyewear, Inc. Marvel Entertainment Group Marsant Worldwide Inc Natural Products Group LLC New World Pasta Company Paragon Trade Brands Plaid Clothing Group Inc Premium Standard Farms Punch Tavernis Purina Mills (for Koch) Royal Philips Electronics, NV Schaeffler Axa Systems Sevice America Corporation Summons Bedding Company The Singer Company NV Stokely USA, Inc Sunbeam Corporation Thule AB Town & Country Corp Wheelabrator Allevard Xerox Corporation	Financial Services ACA Capital Holdings Inc. Allied Capital Corporation Anbac Assurance Corporation American Capital American International Group, Inc Basis Capital Group Bear Stearns Asset Management BluePoint Re BTA Bank C-BASS LLC Conti Financial Corp CRIIMI MAE, Inc. Executive Life Insurance Co. Financial Guaranty Insurance Co Golden Key MBA Inc. MoneyGram International Northern Rock New Valley Corporation Parx Bank Refeo, Inc. UniCapital Corp. XL Capital Ltd. (re: SCA)	Manufacturing / Basic Industry ABB Lummus Global, Inc. AbitibiBowater, Inc. AET Resources Aleris American Banknote Anacamp, Inc. The Babcock & Wilcox Company Bombardier Recreational Products Combustion Engineering, Inc. Brown Pacific Partners The Dow Corning Corporation Envirodyme Industries, Inc. Flextronics International Ltd Fedders Corp. Figgie International, Inc. Garden Way, Inc Global Power Equipment Group, Inc. Goss Holdings, Inc. Guangdong Enterprises Harnischfeger Industries, Inc. Horsehead Industries, Inc. ICF Industries Joy Global Kochner Pentaplast GmbH & Co. Lone Star Industries, Inc LyondellBasell Mausser AG	Media / Communications Adelphia (for AT&T Broadband) Adelphia (for Comcast) Alicia (for AT&T) Arch Wireless, Inc. AT&T Canada (for AT&T) Audio Visual Services Corporation Bité Communications Corporation Cable & Wireless America Culinet Data Systems Inc. Communications Corp. of America DTM Emerson Radio Corporation EMI Group plc Emmis Communications Corporation Excite@Home (for AT&T) Flag Telecom Holdings, Ltd. Globalstar, LP Global Crossing, Ltd Granite Broadcasting Corp. Iridium (for Motorola) Leargity Corporation Maryland Cable Corporation Minneapolis Star Tribune MobileMedia Corporation Net Serviços de Comunicação S.A. Nortel (for Flextronics)	Retail / Supermarkets Barneys, Inc. Best Products Co., Inc Big V Supermarkets, Inc Buffets Holding Inc. The Caldor Corporation Camelot Music, Inc. Carson Price Scott & Co. County Seat, Inc Edison Brothers Stores, Inc Federated Department Stores Finlay Enterprises Inc Fleming Companies, Inc. Groesman's, Inc. Hechinger Company Hills Department Stores, Inc Levy's Furniture, Inc. Loehmann's Inc. Mattress Discounters Corp Montgomery Ward Holding Corp. (for General Electric) Movie Gallery Inc. Mrs. Fields Companies, Inc The Penn Traffic Company Phar-Mor, Inc Phillips Van Heusen R.H. Macy & Co., Inc Werner's Stores, Inc.	Steel Altos Hornos de Mexico Gesteira Steel The LTV Corporation WCI Steel, Inc.
	Health Care / Medical Products saipharma, Inc. Allegheny Health Systems American White Cross, Inc Angotech Pharmaceuticals, Inc. Dade Behring Inc The Kendall Company				Transportation Aeromexico / Mexican Airlines Allied Holdings, Inc. America West Airlines, Inc. Delta Air Lines, Inc. DX Services Ltd. Erms Maritime Holdings Eurotunnel plc (for M&A) Evergreen International Aviation Greater Beijing First Expressway Leaseway Transportation Corp Rocky Mountain Helicopters Smarte Carte, Inc. Trans World Airlines, Inc.

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15. ~~Blackstone and Structured Finance~~








Financial Industry Restructuring Experience

Name	Assignment
	<ul style="list-style-type: none"> ▶ Advised on the restructuring of \$69 billion of Swaps and \$100 million of MTNs, allowing ACA to safeguard \$7.3 billion of public finance policies, avoid a receivership and eliminate billions of dollars of potential structured finance policy claims
	<ul style="list-style-type: none"> ▶ Advisor on restructuring of senior bank debt, mitigation of future losses on portfolio holdings, global divestitures and maintenance of ongoing business operations
	<ul style="list-style-type: none"> ▶ Advised the company in an out-of-court restructuring of \$1.65 billion of liabilities
	<ul style="list-style-type: none"> ▶ Acted as financial advisor to the Company, assisting in the commutation of approximately \$18 billion of CDS obligations and creation of segregated account holding over \$60 billion of "policy obligations" ▶ Assisting company in addressing its holding company obligations
	<ul style="list-style-type: none"> ▶ Advisor to public noteholders in an out-of-court restructuring
	<ul style="list-style-type: none"> ▶ Advised on restructuring of Basis Yield Alpha Fund and Basis Pac Rim Opportunity Fund
	<ul style="list-style-type: none"> ▶ Negotiated with creditors in High-Grade Structured Credit Strategies Fund and High-Grade Structured Credit Strategies Enhanced Leverage Fund to reduce "repo" exposure and delever funds
	<ul style="list-style-type: none"> ▶ Advised financial guarantee reinsurer regarding restructuring of risk portfolio

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11. Blackstone's Financial Restructuring Experience





Financial Industry Restructuring Experience (Cont'd)

Name	Assignment
 <p>C-BASS CREDIT-BASED ASSET SERVICING AND SECURITIZATION LLC</p>	<ul style="list-style-type: none"> ▶ Advised on sale of Litton Loan Servicing LP subsidiary, executed within two months of retention ▶ Negotiated four standstill agreements as well as a long-term override agreement with over 45 creditors
 <p>FGIC</p>	<ul style="list-style-type: none"> ▶ Advising the Company on strategic alternatives and portfolio restructuring
 <p>FGIC XLCA</p>	<ul style="list-style-type: none"> ▶ Advisor on the restructuring of financial guarantees for \$3.2 billion of Jefferson County (Birmingham, AL) municipal debt
 <p>MBIA</p>	<ul style="list-style-type: none"> ▶ Advised the Company on the restructuring of its business and the creation of a new U.S. public finance financial guarantee insurance subsidiary
 <p>MoneyGram International</p>	<ul style="list-style-type: none"> ▶ Advised on a comprehensive recapitalization, including a \$1.5 billion investment led by TH Lee and Goldman Sachs
 <p>northern rock</p>	<ul style="list-style-type: none"> ▶ Negotiated with shareholders and developed a restructuring plan used to formulate nationalization plan
 <p>XL CAPITAL</p>	<ul style="list-style-type: none"> ▶ Advised in the negotiation of a comprehensive restructuring of XL Capital's guaranty and reinsurance agreements with SCA ▶ Successfully eliminated \$65 billion of guaranty, facultative and excess of loss agreements, removing overhang to XL business franchise and stock price

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11. *Blackstone's Significant Government Involvement*

Transactions Featuring Significant Government Involvement



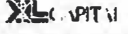



Assignment	Government Constituents	Blackstone's Role
 ACA Capital 2008	Maryland Insurance Administration	<ul style="list-style-type: none"> ▶ Retained as advisor to ACA on the restructuring of \$69 billion of swaps and \$100 million of notes <ul style="list-style-type: none"> • Organized ~30 institutional counterparties and negotiated six forbearance agreements • Assisted ACA in developing a detailed financial and operating plan • Developed and presented a standalone restructuring plan to the counterparties
 Ambac Financial Group 2009 – Present	Wisconsin Office of the Commissioner of Insurance (OCI)	<ul style="list-style-type: none"> ▶ Retained as financial advisor to the Company, assisting in the commutation of approximately \$18 billion of CDS obligations <ul style="list-style-type: none"> • Analyzed impact of various alternatives on both the Company and Policyholders • Negotiated with OCI and 15 counterparties the commutation of all of the Company's CDO of ABS exposures and certain other exposures and the establishment of a Segregated Account at AAC for over \$60 billion of "policy obligations" • Assisting Company in addressing its holding company obligations
 Asian Art Museum of San Francisco 2010	City and County of San Francisco	<ul style="list-style-type: none"> ▶ Retained by MBIA to restructure debt of approximately \$120 million issued by the Asian Art Museum of San Francisco and sponsored by the City and County of San Francisco <ul style="list-style-type: none"> • Developed restructuring scenarios and evaluated impact on MBIA and other key stakeholders • Negotiated a policy termination agreement and commutation with JP Morgan • Facilitated agreement on a broader restructuring with JP Morgan, the City and County of San Francisco and the Asian Art Museum Foundation
 Delphi 2008 – 2009	U.S. Treasury (UST)	<ul style="list-style-type: none"> ▶ Retained as advisor to the DIP Lenders in Delphi's Chapter 11 proceedings <ul style="list-style-type: none"> • Represented the DIP Lenders in negotiations with the U.S. Treasury and General Motors in regards to emergence capital, valuation, and transaction structure

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18. Qualitative and Materiality Considerations




Transactions Featuring Significant Government Involvement (Cont'd)

Assignment	Government Constituents	Blackstone's Role
 DELTA Delta Air Lines 2005 – 2007	Pension Benefit Guarantee Corporation (PBGC)	<ul style="list-style-type: none"> ▶ Retained as advisor to Delta Air Lines regarding all aspects of Delta's restructuring <ul style="list-style-type: none"> • Assisted with building long-term forecast and budget, including analyzing potential cost cuts • Negotiated with all major creditors and negotiated a new collective bargaining agreement with pilots • Negotiated restructuring of pensions with the PBGC • Raised and negotiated major financings (pre and post petition), which in aggregate totaled over \$5.3 billion
 Financial Guarantee Insurance Company  XL Capital Ltd 2008	New York State Insurance Department (NYSID)	<ul style="list-style-type: none"> ▶ Retained as advisor to FGIC and to XL, two distinct engagements, to negotiate restructuring plans with NYSID <ul style="list-style-type: none"> • Developed strategies to commute agreements and mitigate losses • Led comprehensive negotiations and due diligence process with the NYSID and CDS counterparties to reach solution beneficial to all policyholders
 General Motors 2009	U.S. Treasury (Auto Task Force)	<ul style="list-style-type: none"> ▶ Retained as advisor to General Motors related to the restructuring of the UAW VEBA as part of GM's Chapter 11 proceedings <ul style="list-style-type: none"> • Represented GM in negotiations with the U.S. Treasury and the UAW in regards to structure and funding of the VEBA trust
 Harris County City of Houston Houston Sports Authority 2010 – Present	Harris County City of Houston	<ul style="list-style-type: none"> ▶ Retained as advisor to the Houston Sports Authority to restructure municipal debt issued to fund improvements to Reliant Stadium, home of the Houston Texans <ul style="list-style-type: none"> • Developed restructuring proposal to address variable-rate notes in accelerated amortization • Leading negotiations on behalf of the Authority with the Texans, Harris County, J.P. Morgan as liquidity bank, UBS as swap provider and MBIA as bond insurer
 ILFC 2009 – 2010	New York Federal Reserve U.S. Treasury	<ul style="list-style-type: none"> ▶ Retained as advisor to International Lease Finance Corporation, the largest aircraft lessor in terms of fleet value <ul style="list-style-type: none"> • Restructured \$10 billion of debt through new financings and maturity extensions • Led aircraft portfolio sales generating approximately \$2 billion of proceeds

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Blackstone's most significant transactions





Transactions Featuring Significant Government Involvement (Cont'd)

Assignment	Government Constituents	Blackstone's Role
 Jefferson County 2008 – Present	Jefferson County Commission Alabama Legislature Office of Governor Bob Riley	<ul style="list-style-type: none"> ▶ Retained as advisor to Financial Guaranty Insurance Corporation (FGIC) and Syncora Guarantee in connection with the restructuring of \$3.2 billion of sewer system debt issued by Jefferson County, Alabama <ul style="list-style-type: none"> • Developed comprehensive restructuring plan • Worked alongside United States Magistrate Judge John E. Ott and court-appointed Special Masters to develop and negotiate restructuring terms • Met with federal and state officials to propose recommended courses of action and negotiate restructuring terms
 New York State Insurance Department 1999 – 2001	New York State Insurance Department (NYSID)	<ul style="list-style-type: none"> ▶ Retained as advisor on the demutualizations and IPOs of Prudential, Phoenix, John Hancock, Principal and MetLife <ul style="list-style-type: none"> • Provided fairness opinions evaluating the aggregate consideration to be received by policyholders in the demutualization • Provided opinions on the IPO procedures followed by certain of these companies
 Pension Benefit Guarantee Corporation (PBGC) 2009 – Present	Pension Benefit Guarantee Corporation (PBGC)	<ul style="list-style-type: none"> ▶ Retained as advisor to the PBGC regarding the \$1.5 billion underfunded pension plan in the Smurfit-Stone Container Corporation Chapter 11 proceedings <ul style="list-style-type: none"> • Analyzed Company business plan, plan of reorganization and the treatment of the PBGC • Represented the PBGC as a member of the UCC in all aspects of the bankruptcy process with respect to PBGC – insured pension liabilities ▶ Retained as advisor to the PBGC on Motorola's sale and spin-off transactions with respect to its pension plan obligations <ul style="list-style-type: none"> • Evaluated potential triggers of the Early Warning Program created by Motorola's sale and spin-off transactions • Analyzed the impact of the proposed transactions on Motorola's growth prospects, liquidity, cash flow stability, and future pension plan contributions

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Blackstone and Securities Identification

Transactions Featuring Significant Government Involvement (Cont'd)

Assignment	Government Constituents	Blackstone's Role
 State of New Jersey 2009 – Present	State of New Jersey	<ul style="list-style-type: none"> ▶ Retained as advisor to the New Jersey Department of Banking and Insurance and the New Jersey Attorney General on the proposed conversion of Horizon Blue Cross Blue Shield <ul style="list-style-type: none"> ▪ Advised on governance and voting provisions if the conversion were to be consummated ▪ Analyzed these provisions relative to previous Blue Cross Blue Shield conversions
 State of New York 2008 – Present	New York Public Asset Fund (NYPAF)	<ul style="list-style-type: none"> ▶ Retained as advisor to the NYPAF on the successful monetization of its 62% stake in WellChoice to WellPoint for approximately \$6.5 billion <ul style="list-style-type: none"> • Provided a valuation report and an opinion to the NYPAF stating the contemplated transaction was fair ▪ Assisted in negotiations regarding the terms of the transaction and definitive documentation
 State of Pennsylvania 2008 – 2009	Pennsylvania Insurance Department (PID)	<ul style="list-style-type: none"> ▶ Retained as advisor to the PID on the proposed Consolidation of Highmark and IBC, the two largest non-profit Blue Cross Blue Shield companies in Pennsylvania <ul style="list-style-type: none"> • Produced reports on the financial condition of Highmark, IBC and the pro forma company, and on whether the proposed Consolidation violated Pennsylvania's approval standards
 Twin River 2008 – 2009	Rhode Island State Authorities	<ul style="list-style-type: none"> ▶ Retained as advisor to Rhode Island state authorities regarding Twin River's restructuring of approximately \$555 million in senior secured debt <ul style="list-style-type: none"> • Analyzed the company's business plan and restructuring alternatives • Prepared valuation and debt capacity analyses ▪ Negotiated with all interested parties including state authorities, creditors, the current operator, and equity stakeholders

-S.A.17-

II. Background and Skadden Qualifications

Skadden Overview

- ▶ Global firm of approximately 2,000 lawyers in 23 offices in 13 countries, serving every major financial center
- ▶ More than 40 practice areas internationally, including mergers and acquisitions, litigation, corporate finance, real estate, corporate restructuring, banking, tax and arbitration
- ▶ Integrated practices provide significant value and cost-efficiencies by bringing together exceptional breadth of experience



Represents many of the largest US and international companies, including approximately one-half of the *Fortune* 250

FINANCIAL TIMES

Financial Times:

Named the top law firm in inaugural “U.S. Innovative Lawyers” report (2010)



Corporate Board Member:

Recognized as the top corporate law firm in America – for the 10th straight year – in annual survey of “America’s Best Corporate Law Firms” (2010)



Chambers:

Recipient of *Chambers Global Award* for “Client Service Law Firm of the Year” – one of *Chambers’* top honors



110 Skadden attorneys have been listed among the world’s leading lawyers in *Chambers Global: The World’s Leading Lawyers for Business 2011*

Chambers USA: America’s Leading Lawyers for Business 2010 cited 208 Skadden attorneys as “leading lawyers” – more than any other firm



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11. Background and Mission Questions

Skadden – Select Government Representations



- ▶ Represented United States Enrichment Corporation (now known as USEC Inc.) in its privatization by the U.S. government through a \$2 billion initial public offering
-



Represented Fannie Mae in:

- ▶ Development of a greenhouse gas credit program
 - ▶ Development of a program to create, capture and monetize GHG credits from an energy-efficient home building and renovation
-



Represented Sallie Mae in:

- ▶ Privatization
 - ▶ Establishment of \$5 billion shelf registration statement and first securitization ever
 - ▶ Proxy contest with Albert Lord
 - ▶ Three class actions in the US District Court for the District of Columbia involving alleged violations of federal securities laws
-



Represented the Government National Mortgage Association (Ginnie Mae) in connection with the largest default ever of a GNMA-approved issuer

-S.A.19-

Confidential

11. Financial Institutions and Bankruptcy Reorganizations

Skadden – Select Financial Institution Representations



Represented CIT Group in the fifth largest bankruptcy in history, the largest and only financial institution to ever successfully file and implement a pre-packaged chapter 11 plan

Represented Refco Inc. and 26 subsidiaries in their \$38 billion chapter 11 reorganization



- ▶ Negotiated simultaneously with five bidders to maximize the value of the sale of the company's crown jewel business, resulting in preservation of nearly \$1 billion in value

- ▶ Received a "Dealmaker of the Year" designation in *The American Lawyer*



Represented Residential Capital LLC, a subsidiary of GMAC Financial Services and one of the largest real estate mortgage companies in the world, in one of the largest global out-of-court refinancings in history, including:

- ▶ Refinancing \$14 billion of bond debt through an exchange offer

- ▶ Procurement of \$3.5 billion loan from GMAC

- ▶ Agreements to provide an additional \$2.4 billion in liquidity



Represented SKBHC Holdings LLC, a private bank holding company

- ▶ \$750 million committed capital raise by multiple funds

- ▶ \$6.5 million acquisition (the first of its kind) of AmericanWest Bank via a bankruptcy court supervised 363 sale process



Represented the consortium that successfully bailed out Long-Term Capital Management

-S.A.20-

Confidential

4. ~~Business and Standard Qualifications~~

Corporate Restructuring – The Group at a Glance

- ▶ A pioneer in out-of-court restructuring, Skadden helps clients avoid or minimize time spent in restructuring, lowering costs and adding maximizing value
- ▶ Handles high-stakes troubled company and bankruptcy-related litigation, including highly expedited litigation
- ▶ Negotiates and closes complex transactions on fast-track, cost-effective basis through integration and depth of global restructuring/other transactional practices
- ▶ Provides fully integrated advice across the entire credit cycle, from debt or equity issuances to amendments (including amend to extend transactions), refinancings, debt buy-backs, exchange offers, consent solicitations and debt tender offers
- ▶ Draws on Firm's M&A, banking and capital markets experience; advises on insolvency issues in corporate and financing transactions and on all aspects of distressed debt trading and securities issues

-S.A.21-

III. Directors and Officers Qualifications

Corporate Restructuring – The Group at a Glance (Cont'd)

FINANCIAL TIMES

Financial Times:

Top law firm in inaugural “U.S. Innovative Lawyers” report (2010), and one of the top firms in restructuring for representations of CIT Group and Delphi Corp.

Skadden also played a principal role in the top four restructuring deals chosen by the *Financial Times*

IFLR



International Financial Law Review:

“Restructuring Team of the Year,” *IFLR Americas Awards* 2010

2009



The M&A Advisor:

“Restructuring Law Firm of the Year,” 2009



Credit Today:

“Insolvency Legal Firm of the Year,” 2008

“International Insolvency and Rescue Firm of the Year,” 2008

Top-ranked in



Chambers USA:

“Bankruptcy Team of the Year,” 2007

II. Distinctive and Notable Qualifications

Corporate Restructuring – The Group at a Glance (Cont'd)



Legal 500:

Top tier for corporate restructurings (2010)



Chambers Global: The World's Leading Lawyers for Bankruptcy:

Top tier for bankruptcy (2010)



Turnarounds & Workouts:

Recognized as lead counsel on 5 of the 10 most successful restructurings (2009)



The National Law Journal:

Two partners named among "The Decade's Most Influential Lawyers" (2010)

Received several "Deal of the Year" awards for our work on the out-of-court restructurings of Centro Properties, Hayes Lemmerz, Intrawest, ION Media Networks, Metro-Goldwyn-Mayer and NTL Incorporated

-S.A.23-

VI. Background and Relevant Qualifications

Financial Institutions – The Group at a Glance

- ▶ Advises financial institutions and their investors on regulatory matters, provides advice on the introduction of new products, structures and negotiates mergers and acquisitions, arranges institutional investment and securitization transactions, and represents clients in shareholder and other litigation, as well as government enforcement matters
- ▶ Represents financial institutions on compliance and enforcement matters, including examinations, internal investigations, voluntary disclosures and resolution of actions by federal and state regulatory agencies
- ▶ Has experience with every major federal and state regulator of financial services
- ▶ Advises financial and nonfinancial firms on matters related to money laundering, economic sanctions, privacy, fair lending, consumer compliance, CRA and similar matters
- ▶ Counsels clients on all aspects of recent government lending, capital and liquidity programs, such as the Troubled Asset Relief Program (TARP)
- ▶ Involved in numerous high-profile and successful transactions and litigation cases arising from recent developments in the financial sector
- ▶ Works closely with other practice groups worldwide (M&A, consumer financial services, government enforcement and white collar crime, lending, investment management and government investigations) on regulatory issues arising in connection with transactions, civil and criminal investigations and litigation, enforcement matters, and subprime related cases

-S.A.24-

1. ~~Business and Service Qualifications~~

Financial Institutions – The Group at a Glance (Cont'd)



Chambers USA: America's Leading Lawyers for Business 2010:

Ranked for financial services regulation in the areas of banking, consumer financial services, financial institutions M&A and insurance



Financial Times:

The only firm to receive the top ranking in the Mergers & Acquisitions category in the "U.S. Innovative Lawyers" report (2010)



The American Lawyer:

Topped – for the 26th time – annual "Corporate Scorecard" (April 2011) in which the Firm ranked first for handling the greatest number of the largest M&A transactions



The M&A Journal:

"Law Firm of the Year," (2009, 2010)



Corporate Control Alert:

Ranked first as M&A legal advisor (2009)

Confidential

11. Blackstone and Skadden Qualifications

Structured Finance – The Group at a Glance

- ▶ Advises underwriters, issuers, investors and credit enhancers on the securitization of financial assets, such as commercial loans, mortgages, debt securities and derivatives, and on repackagings and resecuritizations of asset-backed securities, REIT debt, mezzanine debt and other securities
- ▶ Represents underwriters, issuers, investors and credit enhancers in a broad range of asset-backed securities offerings, including public, private and overseas issuances of asset-backed notes, asset-backed certificates, asset-backed commercial paper and other instruments
- ▶ Has been involved in offerings for both U.S. and non-U.S. originators
- ▶ Has assisted in structuring of financings designed to give insurance companies access to the capital markets
- ▶ Has assisted investment banking firms and U.S. and non-U.S. banks in establishing “conduit” companies to securitize financial assets originated by numerous lenders
- ▶ Handles a wide variety of mortgage-related transactions, including transactions involving swaps and other derivative arrangements
- ▶ Most diverse practice of its kind on Wall Street, having done more innovative securitization transactions than any other firm
- ▶ Works closely with other practice areas including Bank Regulatory, Corporate Restructuring, Banking, Investment Companies, UCC and Secured Transactions, Insurance, Blue Sky and ERISA

-S.A.26-

II. Blackstone and Structured Qualifications

Structured Finance – The Group at a Glance (Cont'd)



Chambers USA:

Ranked as a leading firm for structured finance and structured product transactions



Chambers Global:

Ranked as a leading firm for structured finance and structured product transactions



IFLR 1000:

Ranked in the top tier for "Capital Markets: Structured Finance and Securitization" (2009)



Legal 500:

Ranked for both "Structured Finance: Derivatives and Secured Products" and "Structured Finance: Securitization" (2008)

-S.A.27-

-S.A.28-

III. Situation Overview

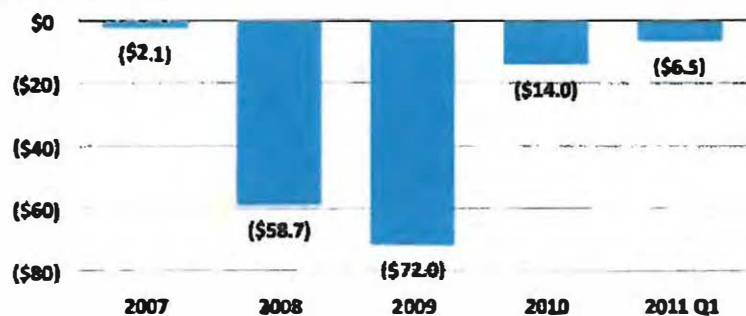
III. Strategic Overview

Improving Fundamentals

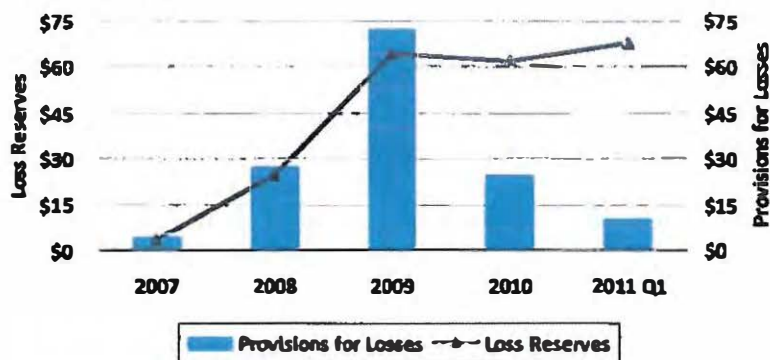
The GSE's are showing improved financial performance and stabilized loss reserves.

FNMA

Net Income (Pre-Dividend)
(\$ in billions)

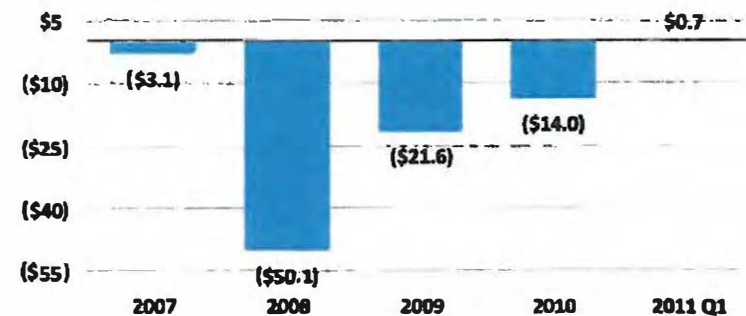


Loss Reserves
(\$ in billions)

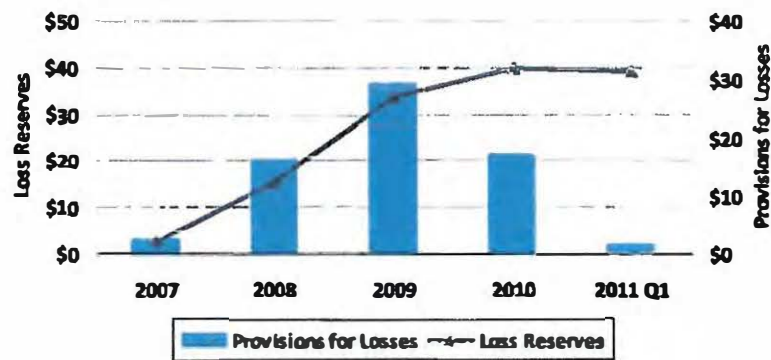


FMCC

Net Income (Pre-Dividend)
(\$ in billions)



Loss Reserves
(\$ in billions)



Source: Company 10-K and 10-Qs.

-S.A.29-

III. Transition Overview

Transitory Capital Structure

Treasury funding for the GSE's continues to slow as inflows to date approximate \$164 billion⁽¹⁾.

FNMA
(\$ in billions)

	Book Value 3/31/2011	Price	Market Value 3/31/2011
Debt ⁽²⁾			
FNMA Issued LT Debt	\$ 761.2	100.0%	\$ 761.2
Debt of Securitized Trusts	2,447.6	100.0%	2,447.6
Total Debt	\$ 3,208.8		\$ 3,208.8
Equity			
Senior Preferred Stock ⁽²⁾	\$ 91.2	100.0%	\$ 91.2
Add'l Sr. Pfd Stock (2011 Deficit)	8.5	100.0%	8.5
Subtotal - Sr. Preferred Stock	\$ 99.7		\$ 99.7
Preferred Stock	20.2	9.5% ⁽³⁾	1.9
Common Equity	(119.9)	\$0.39	2.2
Total Stockholder's Equity	\$ -		\$ 103.8
Total Capitalization	\$ 3,208.8		\$ 3,312.6

FMCC
(\$ in billions)

	Book Value 3/31/2011	Price	Market Value 3/31/2011
Debt ⁽²⁾			
FMCC Issued Debt	\$ 715.6	100.0%	\$ 715.6
Debt of Securitized Trusts	1,510.4	100.0%	1,510.4
Total Debt	\$ 2,226.0		\$ 2,226.0
Equity			
Senior Preferred Stock ⁽²⁾	\$ 64.7	100.0%	\$ 64.7
Add'l Sr. Pfd Stock (2011 Deficit)	-	100.0%	-
Subtotal - Sr. Preferred Stock	\$ 64.7		\$ 64.7
Preferred Stock	14.1	11.5% ⁽³⁾	1.6
Common Equity	(77.6)	\$0.39	1.3
Total Stockholder's Equity	\$ 1.2		\$ 67.6
Total Capitalization	\$ 2,227.2		\$ 2,293.6

Source: Company 10-K, 10-Q and Bloomberg.

- (1) Gross amount of Treasury funding received to date. Excludes \$24 billion of dividends paid to date.
- (2) Assume debt and senior preferred trade at 100% of book value.
- (3) As of 6/10/11. Pricing is calculated based on the average of each series' preferred stock market price.

-S.A.30-

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11. Mitigation Overview

Evolution of Government Thinking

Since 2009, the White House has listened to public opinion about different options ...

- ▶ In 2009, the White House outlined six possible courses of action for the future of FNMA and FMCC
 - 1) Liquidate the GSE's – winding-down Investment Portfolios and MBS trusts
 - 2) Covered Bond Market Replaces GSE's – banks issue bonds secured by pool of mortgages
 - 3) Nationalize GSE's – nationalize into public agency as part of FHFA or other federal agency
 - 4) Prior GSE status restored – return GSE's to prior status as private institution with public mandate
 - 5) Convert GSE's to public utilities – government regulates GSE's profit margin and guarantee fees
 - 6) Break up GSE's – break up GSE's into smaller regional institutions to mitigate systematic risk

-S.A.31-

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11. Situation Overview

Evolution of Government Thinking (Cont'd)

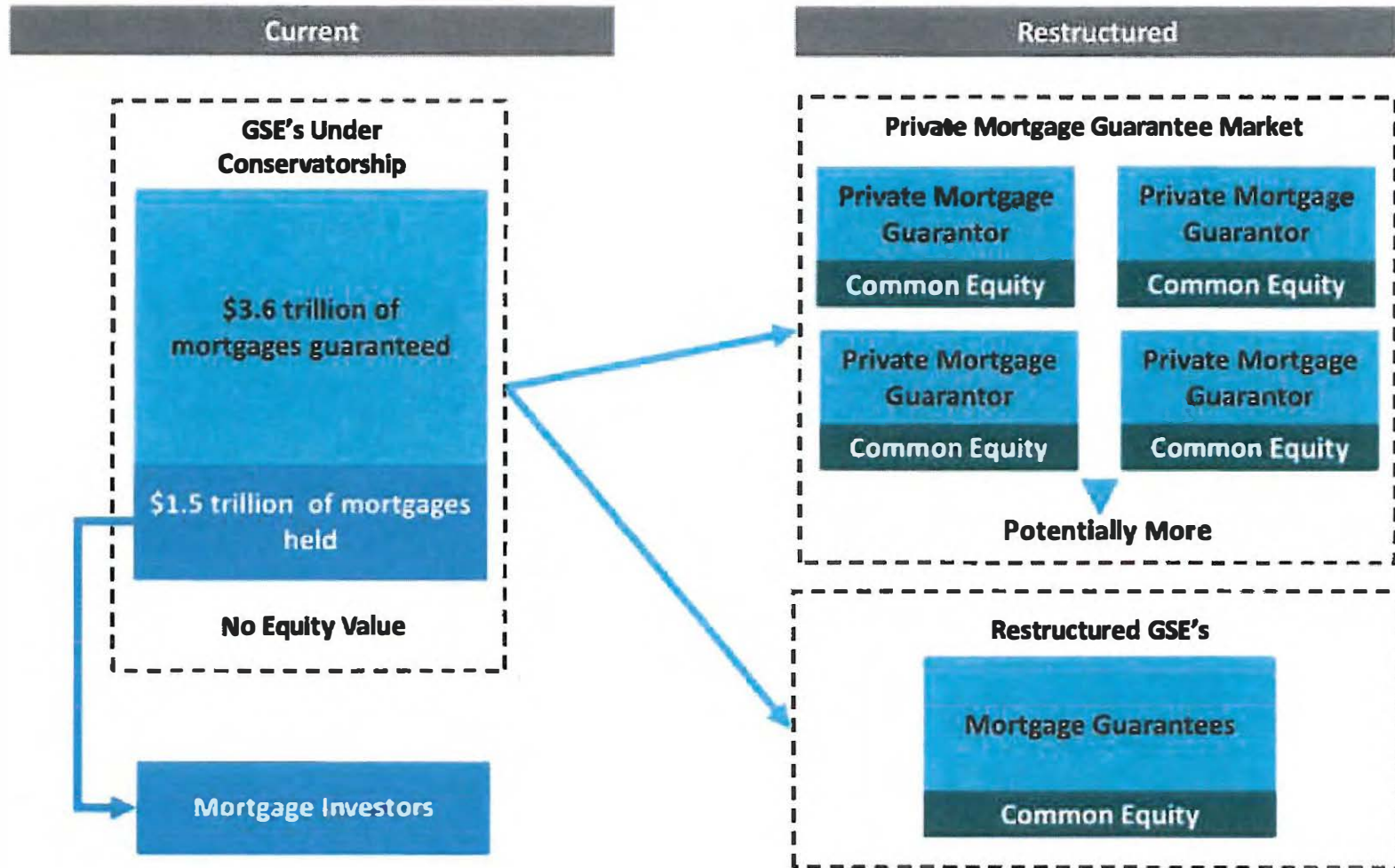
... based on this feedback, the current emphasis is on a wind-down of the GSE's.

- ▶ The Treasury's recommendation contains three different approaches to achieve a wind-down:
 - 1) No government role – only government involvement involves FHA and similar programs
 - 2) Contingent government role – guarantee private mortgages only when the market is in trouble
 - 3) Backstop insurance role – government backs certain mortgages already privately insured
- ▶ These methods are based on the following White House objectives:
 - Wind down FNMA and FMCC on a responsible timeline and transition to a privatized system
 - Fix the fundamental flaws in the mortgage market through stronger consumer protection, increased transparency of investors, and improved underwriting standards
 - Promote targeted and transparent support to creditworthy but underserved families
- ▶ In April, eight bills were proposed to provide immediate reforms to the GSE's and protect taxpayers
 - Proposed reforms include reducing GSE portfolio sizes and increasing guarantee fees
 - Measures will help attract private capital back to the mortgage market
- ▶ In May, certain legislation was proposed to replace the GSE's with at least five private companies
 - Restricted to buying loans that meet certain standards, including size caps, and explicit federal guarantees only for MBS securities issued
 - Other proposed legislation advocates for no continued government involvement in GSE's, anticipates dismantling GSE's and proposes preventing future creation of GSE's under HERA

-S.A.32-

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311. Situation Overview
Privatizing the System



-S.A.33-

III. System Overview

Privatizing the System (Cont'd)

Under the current conservatorship, the FHFA can only support the mortgage industry with the status quo, which is universally unsatisfactory. Challenges and goals that lie ahead include:

- ▶ Continue to strengthen underwriting standards for mortgages and to develop appropriate risk-based pricing
- ▶ Retain executive level talent and professional staff
- ▶ Invest in infrastructure and standardization of operational processes
- ▶ Determine the precise role of government in the mortgage industry
- ▶ Decide on the businesses to keep vs. those that should be divested
- ▶ Evaluate strategic alternatives for divestible assets
- ▶ Determine if GSE's can be used to populate the private system
- ▶ Analyze how can this be effectuated: spin-offs, sales, IPOs, etc.
- ▶ Create stable capital structure of GSE's to position them for chosen techniques

-S.A.34-

-S.A.35-

IV. Potential Value Creation Opportunity

Blackstone

IV. Potential Value Creation Opportunity

Recapitalizing the GSE's for a Private Sector Solution

Private capital will not make a substantial commitment to a solution in the absence of any likelihood of a meaningful return on equity capital.

- ▶ The first step in demonstrating the possibility of a return on equity capital is to enable the GSE's to generate capital to build more stable balance sheets

- ▶ The GSE's could experience a build-up of capital from:
 - Profit improvements from better market conditions and operational cost reductions
 - Increased earnings from higher guarantee fees
 - Profit expansion from the reversal of loan loss reserves

 - Increased capitalization of tax attributes

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IV. Potential Value Creation Opportunity

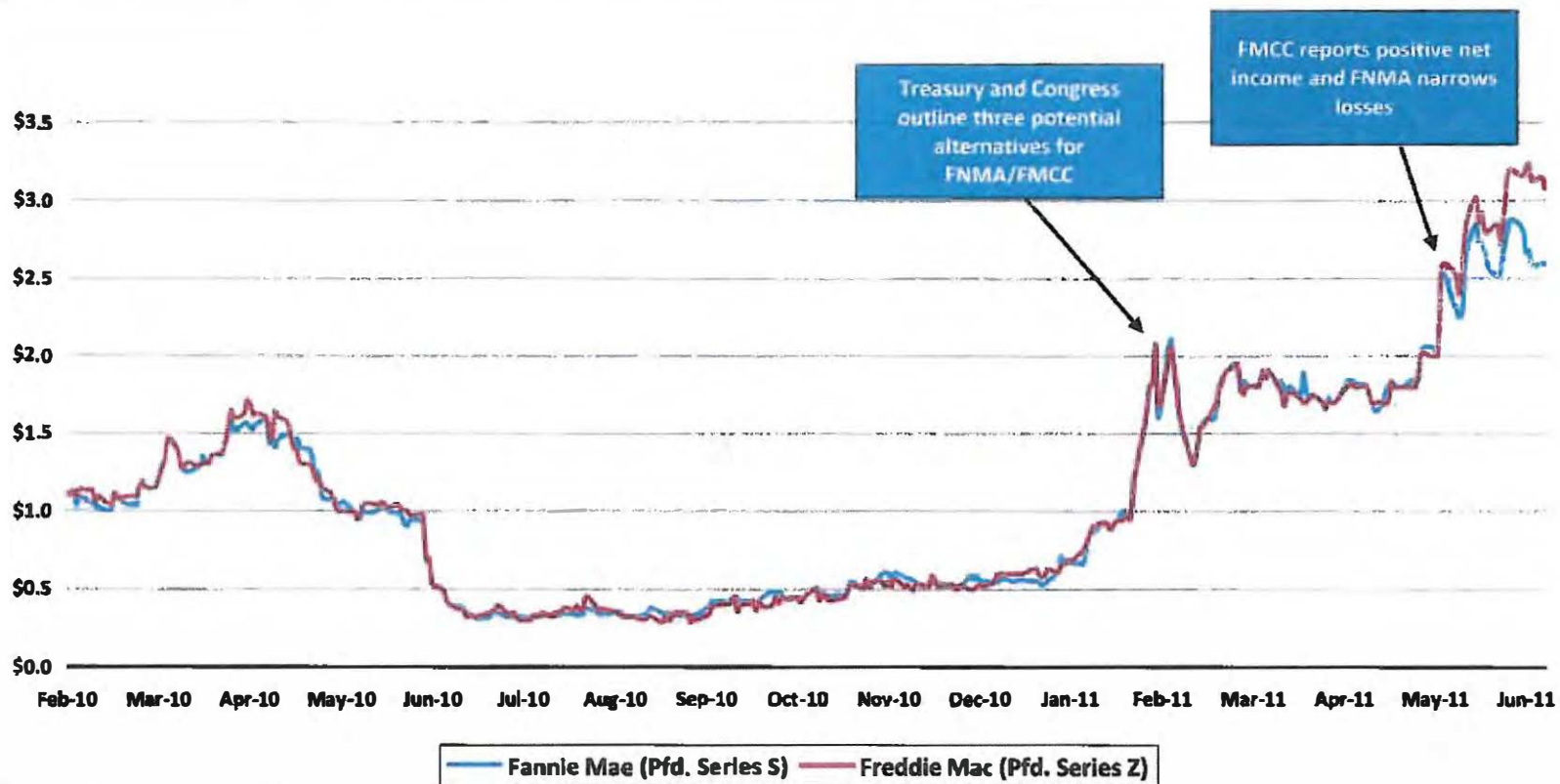
Public Policy Benefits of Restructuring GSE's

- ▶ **Increases value of Public Preferreds which benefits holders and serves as a platform for a restructured privatized solution**
 - **Community bank and insurance holders experience an increase in their capital reserves**
 - **Benefits economy at large due to increased ability to lend and the multiplier effect**
 - **Capital accumulation recapitalizes the GSE's allowing them to function as stand-alone private entities**
 - **Public Preferred offers the government an exit strategy for its Senior Preferred holding**
- ▶ **Restructuring GSE's in this way allows the restructured entity (Newco) increased flexibility to adjust underwriting standards to take reasonable lending risks**
 - **Benefits housing markets and entire economy with minimal taxpayer cost**
- ▶ **Allows Newco to build capital and restores investor confidence in an uncertain market**
 - **Excess liquidity reduces Treasury's ownership and recapitalizes Newco**

-S.A.37-

Fig. Potential Value Creation Opportunity
Value Creation Opportunity

With a current market capitalization of approximately \$3.5 billion dollars, the Public Preferred's recent pricing activity reflects the markets favorable outlook of proposed GSE reform and the improving financial performance of the GSE's.

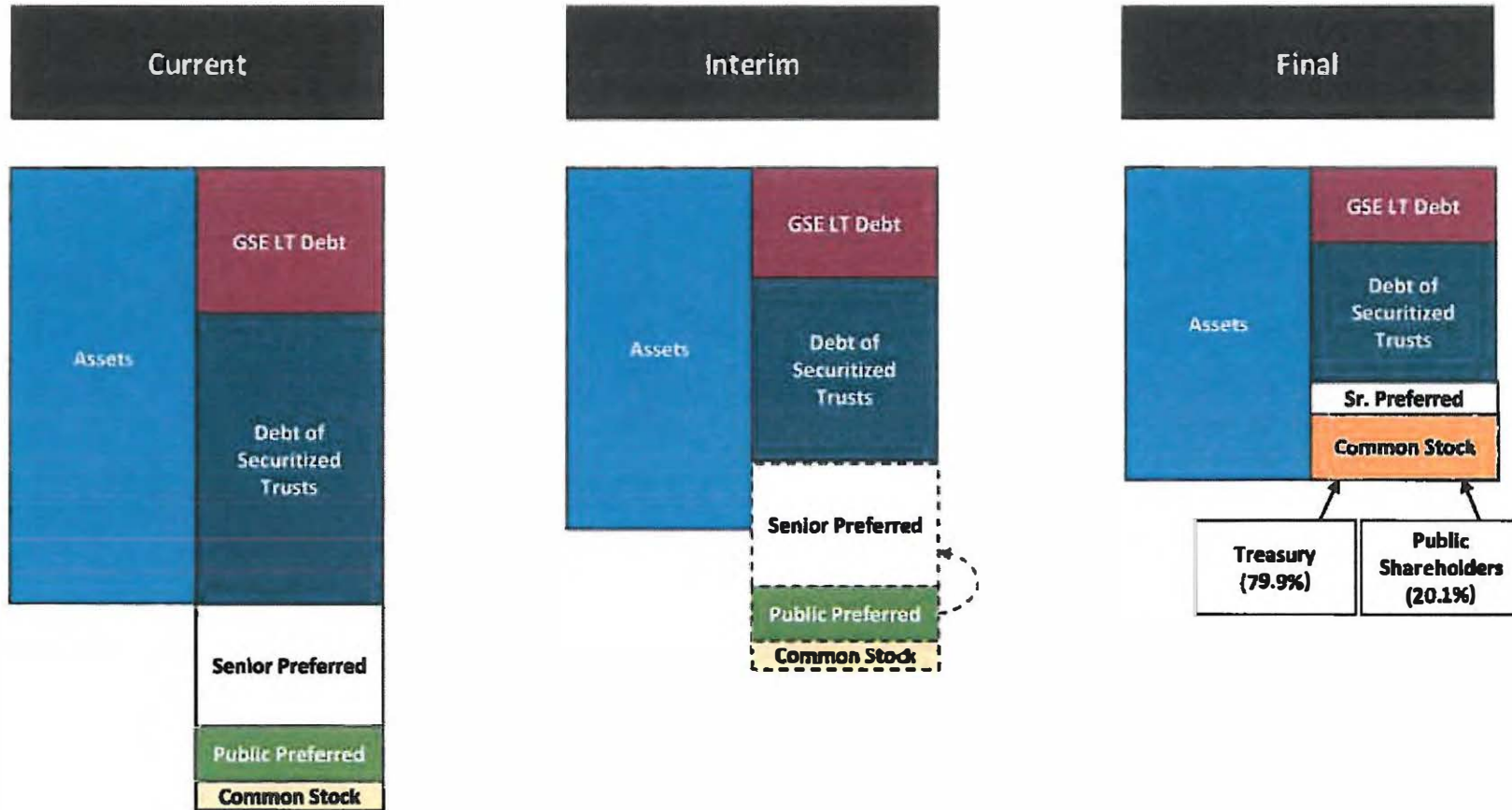


Source: Bloomberg pricing as of 6/10/11.
Note: \$25 Liquidation Preference.

-S.A.38-

IV. Potential Value Creation Opportunity
GSE Capital Evolution

Dealing with the Public Preferreds now can optimize the final benefits to the Federal Government.



-S.A.39-

NO. Potential Public Transaction Opportunity

Possible Transactional Solutions

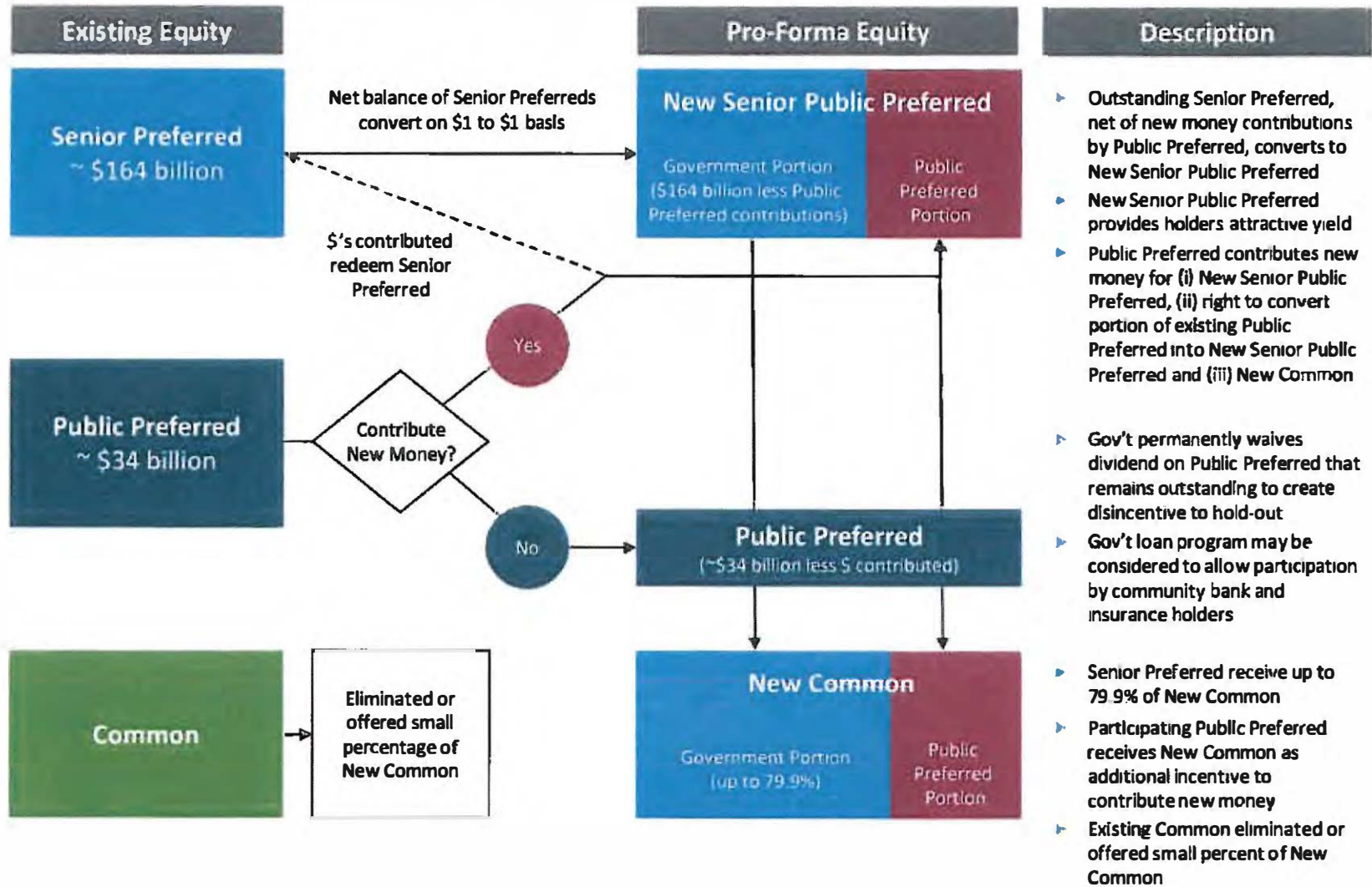
A restructuring of the GSE's could enhance the chances of a full monetization of the government's Senior Preferred holdings over time.

	Transaction 1: Public Preferred Conversion	Transaction 2: Public Preferred Repurchase	Transaction 3: Public Preferred Roll-Up
Description	<ul style="list-style-type: none"> Public Preferreds convert into new class of Senior Public Preferred stock at a discount Permits forum for government to monetize its Senior Preferreds over time Consider including new common stock 	<ul style="list-style-type: none"> Repurchase Public Preferreds at a discount Consider including new common stock 	<ul style="list-style-type: none"> Senior Preferreds convert into new class of Senior Public Preferred stock Public Preferreds contribute new money for (i) new Senior Public Preferred stock, (ii) right to convert portion of existing Public Preferred holdings into new Senior Public Preferred Stock and (iii) new common stock
Pro's	<ul style="list-style-type: none"> Captures significant discount on Public Preferreds prior to a turnaround Establishes market value for government's Senior Preferreds Potentially mitigates litigation with Public Preferred holders Provides foundation for permanent capital structure Potentially increases value of government's common stock 	<ul style="list-style-type: none"> Captures significant discount on Public Preferreds prior to a turnaround Potentially increases value of government's common stock Potentially mitigates litigation with Public Preferred holders Provides foundation for permanent capital structure 	<ul style="list-style-type: none"> Captures significant discount on Public Preferreds prior to a turnaround Creates public market out for government's Senior Preferreds Potentially increases value of government's common stock Immediately redeems government's Senior Preferred holdings Potentially mitigates litigation with Public Preferred holders Provides foundation for permanent capital structure Prevents full write-off of community bank / insurance holdings
Con's	<ul style="list-style-type: none"> Community banks / insurance holders may be forced to recognize significant losses Risks demonstrating low market price for Senior Preferreds if done too soon Potential holdouts reap windfall 	<ul style="list-style-type: none"> Does not create public market out for government's Senior Preferreds Community banks / insurance holders may be forced to recognize significant losses Potential holdouts reap windfall May require additional government funds 	<ul style="list-style-type: none"> Community banks / insurance companies may need further government assistance to participate Potential holdouts reap windfall Possible public perception of coercion

-S.A.40-

Potential Valuation Opportunity

Illustrative Transaction Three Structure



-S.A.41-

-S.A.42-

V. Proposed Work Plan

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V. Proposed Work Plan

Next Steps and Role of Financial and Legal Advisors

▶ **Phase I – Due Diligence and Analysis**

- Perform comprehensive due diligence of the GSE's financial condition and business prospects
- Assist in refining key goals and range of alternatives (financial and strategic)
- Analyze various restructuring alternatives to determine optimal recovery/outcome and timing considerations for various constituents

▶ **Phase II – Develop Restructuring Plan**

- Deliver preliminary recommendation and advice on choosing optimal strategic path
- Outline the pros and cons of each restructuring scenario, providing both qualitative and quantitative assessments
- Assist in developing and refining strategy for discussions with all key constituents, including all government officials, creditors, investors, banks, mortgage insurers and secondary markets makers

▶ **Phase III – Implement Restructuring Plan and Position GSE's for Privatization**

- Negotiate with key constituents, as requested
- Assist in communications with other government agencies and officials
- Finalize transaction structure, documentation and economics

-S.A.43-

-S.A.44-

VI. Team Biographies

Blackstone

VI Team Biographies

Stefan Feuerabendt, Senior Managing Director



Mr. Feuerabendt joined Blackstone's Restructuring Group in 1998 and has advised a wide variety of companies, creditors groups or owners of distressed assets.

The International Financing Review recognized Mr. Feuerabendt's efforts in the restructuring of C-BASS by naming the transaction the *Restructuring of the Year* in 2008 and in the restructuring of Ford Motor Company by naming the transaction the *Americas Restructuring Deal of the Year* in 2009.

Before joining Blackstone, Mr. Feuerabendt was a Vice President at Lehman Brothers in its Financial Services Group. Prior to working at Lehman Brothers, Mr. Feuerabendt worked at Hellmold Associates, Inc. and the Restructuring Group at Prudential-Bache Capital Funding.

Mr. Feuerabendt received a BS from the California Institute of Technology and an MBA from the Anderson School of Management at UCLA.

Mr. Feuerabendt's current and completed advisory assignments include:

ACA Capital Holdings, Inc.
Aleris International, Inc.
Allied Capital Corporation
Ambac Assurance Corporation
Ambac Financial Group, Inc.
American Heavy Lift Shipping Company
APS Holding Corporation
Azurix (re. Enron)
Credit-Based Asset Servicing and Securitization ("C-BASS")
Darling International
Eco Electrica (re. Enron)

Entergy New Orleans
Ermis Maritime
Federal Deposit Insurance Corporation
Financial Guaranty Insurance Company ("FGIC")
Flag Telecom Holdings Limited
Fleming Companies, Inc.
Ford Motor Company
Glendale Federal Bank, F.S.B.
Goss Graphics Systems
Greater Beijing First Expressways

Guangdong Enterprises
Lomas Financial Corporation
LyondellBasell Industries
Navistar International Transportation Corporation
Resolution Trust Corporation
Sithe Independence (re. Enron)
Stadacona (re. Enron)
Sunbeam Corporation (Board)
USG Corporation
Winstar Communications
XL Capital Ltd



Key Executive Biographies

Erik Lisher, Managing Director



Mr. Lisher is a Managing Director in the Restructuring & Reorganization Group.

Since joining Blackstone in 2003, Mr. Lisher has been involved in advising the Goodyear Tire & Rubber Company, General Motors Corporation, Ford Motor Company, Financial Guaranty Insurance Company ("FGIC"), XL Capital Ltd, Levitz Home Furnishings, Inc., Marchon Eyewear, Inc., Comcast Corporation, Russell-Stanley Holdings, Inc. and Specialty Products Holding Corp. In addition, Mr. Lisher has advised various creditor groups including the Ad Hoc Bondholders Committee of American Capital, Ltd., the Official Creditors Committee of Magna Entertainment Corp., the Ad Hoc Bondholders Committee of aaiPharma, Inc., the Senior Lenders of Communications Corporation of America, Inc., and the Second Lien Committee of Westpoint Stevens, Inc.

Before joining Blackstone, Mr. Lisher was an Associate at J.P. Morgan, where he executed various mergers and acquisitions and financing assignments.

He received an MBA with concentrations in Finance and Strategic Management from the University of Chicago Graduate School of Business and graduated magna cum laude from Wake Forest University with a BA in Political Science.

-S.A.46-

~~27. Team Biographies~~

Edward Slapansky, Vice President



Mr. Slapansky is a Vice President in the Restructuring & Reorganization Group.

Since joining the firm in 2007, Mr. Slapansky has been a member of multiple deal teams advising a variety of clients in complex transactions including debtor-side reorganizations and debt restructurings, creditors' committee representations, out-of-court workouts, and special situation investments. Before joining Blackstone, he worked as a Manager in the Corporate Advisory Services unit of Huron Consulting Group Inc. and an Associate at a boutique investment bank headquartered in Chicago.

Mr. Slapansky has assisted in advising on a variety of restructuring transactions and advisory assignments including Aleris International, Highland Hospitality, Goodyear Tire & Rubber Co., American Capital Strategies, Simmons Bedding Company, Finlay Enterprises, Financial Guaranty Insurance Company, The Pacific Lumber Company, Eagle Food Centers, Inc., Detroit Medical Centers and Ingalls Health System.

Mr. Slapansky received an MBA degree in Finance from the University of Chicago Booth School of Business and a BS degree in Finance at the University of Illinois Urbana-Champaign. He is a Certified Public Accountant (CPA).

-S.A.47-

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VI. Team Biographies

Ronak Patel, Analyst



Mr. Patel is an Analyst in the Restructuring & Reorganization Group.

Since joining Blackstone, Mr. Patel has worked on several transactions in various industries.

Mr. Patel received a BS in Finance and Accounting from New York University's Leonard N. Stern School of Business, where he graduated summa cum laude.

-S.A.48-

U.S. Team Members

William J. Sweet, Partner



William J. Sweet, Jr. is head of Skadden, Arps' Financial Institutions Regulatory and Enforcement Group and concentrates in financial institution merger and acquisition, regulatory and enforcement matters. Before joining the firm, Mr. Sweet was a staff attorney with the Federal Reserve Board, where he handled bank holding company regulatory, litigation and enforcement matters.

Mr. Sweet represents U.S., Asian, European and Latin American banking, securities and other financial institutions and their boards of directors on the strategic, policy and regulatory aspects of mergers and acquisitions, negotiated investments, joint ventures, restructuring transactions, bankruptcies and receiverships. In addition, Mr. Sweet advises private equity firms and others seeking to invest in regulated financial institutions.

In addition, Mr. Sweet regularly advises financial institutions on compliance and enforcement issues with respect to a broad range of governance, risk management, money laundering compliance, OFAC sanctions, fair lending, consumer, CRA and other matters, including representation before federal and state regulatory and enforcement agencies.

Mr. Sweet also represents financial institutions before the Financial Services Oversight Council, the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Treasury Department and other financial regulatory agencies on a wide range of rulings, interpretations and approvals.

Mr. Sweet represented clients on various aspects of federal lending, capital and liquidity support programs, including those established pursuant to the Emergency Economic Stabilization Act of 2008. In addition, Mr. Sweet has advised investors, banks and thrifts on the acquisition of depository institutions and assets from the Federal Deposit Insurance Corporation.

Mr. Sweet also advises clients on the implementation of the Dodd-Frank Act and on strategic transactional and compliance responses to the act.

**Washington, D.C. office:
T: 1. 202.371.7030**

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**Education
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Mr. Durrer consistently has been recognized as a "leading lawyer" by *Chambers USA: America's Leading Lawyers for Business* since 2007 and is included in *Legal Media Group's Guide to the World's Leading Insolvency and Restructuring Lawyers* and in *The Best Lawyers in America*. He also has been included in *Turnarounds & Workouts'* list of "Outstanding Young Bankruptcy Lawyers." He has moderated panels and participated as a guest speaker at several engagements for the Association of Insolvency & Restructuring Advisors, Turnaround Management Association, American Bankruptcy Institute, Los Angeles Bankruptcy Forum, Practising Law Institute (PLI) and other similar organizations in the United States and China.

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Mark McDermott represents public and private corporations and their principal stakeholders in troubled company M&A, restructuring and financing transactions. He has represented corporations in out-of-court restructurings, prepackaged and prearranged Chapter 11 cases, and traditional Chapter 11 cases. He also has represented bank groups, bondholders, financial institutions, investment funds, equity holders and real estate developers in all types of distressed investments. He advises businesses and investment vehicles in nondistressed transactions, including M&A, spin-off and structured finance transactions. He counsels clients on the bankruptcy aspects of derivatives and similar structured financial products. Finally, he advises officers and directors on matters related to corporate governance and fiduciary duties.

Mr. McDermott has advised clients in numerous industries, including consumer products, energy, entertainment, finance, health care, home building, manufacturing, oil and gas, real estate and real estate finance (including CMBS), retail, technology, telecommunications and transportation. He also has represented troubled companies or their stakeholders facing government investigations and mass tort liability. For instance, he represented Blue Bird Corporation, one of the nation's largest manufacturers of buses, in the fastest prepackaged Chapter 11 reorganization case in history, with the company's stay in bankruptcy lasting approximately 32 hours. He represented Spectrum Brands, Inc., a large consumer products conglomerate, in one of the first Chapter 11 reorganization cases involving litigation over the propriety of reinstatement of senior secured debt. In addition, Mr. McDermott represented Centro Properties Group, one of the largest owners of shopping malls in Australia and the United States, in its out-of-court restructuring. He also represented Kmart Corporation in the largest retail business reorganization case in history, and he served as a member of the team representing Refco Inc. and its subsidiaries in one of the largest broker liquidation proceedings ever.

Mr. McDermott recently was named one of America's "Outstanding Young Restructuring Lawyers" by *Turnarounds & Workouts* magazine. He also was named to the *Euromoney and Legal Media Group's 2009 Expert Guide to the World's Leading Insolvency and Restructuring Lawyers*. The out-of-court restructuring of Centro Properties Group, for which Mr. McDermott served as one of the lead restructuring attorneys, received the "2009 M&A Advisors Cross Border Deal of the Year Award" and the "2009 Turnaround Atlas Award for Out of Court Restructuring of the Year."

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Mr. Kadlick has acted as counsel in a broad variety of public offerings and private placements involving the issuance of all types of structured securities, including asset-backed and mortgage-backed pass-through certificates, notes and bonds; CMOs, CDOs, CBOs and CLOs; and securitized commercial paper notes and participation certificates. His structured finance experience includes transactions in which such instruments have been backed by credit card receivables; underperforming and nonperforming assets; home equity, single-family and commercial mortgage loans; auto and boat loan receivables; federal agency securities; auto and equipment leases; and various other assets.

In the asset- and mortgage-backed area, Mr. Kadlick has worked on many new and innovative structures. For instance, he has worked on the development of the master trust (a widely used vehicle for the issuance of asset-backed securities), balance sheet CLOs, the MACRO (an ETF-like exchange-traded financial product), numerous senior-subordinated structures in the credit card receivables area and many transactions in the structured finance area generally using derivatives.

Mr. Kadlick repeatedly has been selected for inclusion in *Chambers Global* and *The Best Lawyers in America*.

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Power Ass'n, Inc. v. Rural Electrification Admin., 988 F.2d 1480, 1491 (7th Cir. 1993) (holding that government agency that made loans to utility companies was not authorized to preempt state rate regulations in order to ensure that taxpayer-funded loans would be repaid); *Waterview Mgmt.*, 105 F.3d at 701-02 (holding that applying FIRREA to preempt state law contract rights would exceed the scope of the statute).

3. The Tucker Act Does Not Require Plaintiffs To Bring Their Fiduciary Duty Claims In The Court Of Federal Claims

Finally, Treasury argues that the Tucker Act requires that Plaintiffs' breach of fiduciary duty claims be brought in the Court of Federal Claims because those claims are supposedly contract-based actions. Treasury Memo at 44-45. Treasury is wrong because "[t]he breach of fiduciary duty claim sounds in tort[.]" *C&E Servs., Inc. v. Ashland Inc.*, 601 F. Supp. 2d 262, 276 (D.D.C. 2009); *see also Hampshire Grp., Ltd. v. Kuttner*, No. 3607-VCS, 2010 WL 2739995, at *54 (Del. Ch. July 12, 2010) ("A breach of fiduciary duty is easy to conceive of as an equitable tort[.]"); Restatement (Second) of Torts, § 874 cmt. b (1979) ("A fiduciary who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act."); J. Travis Laster and Michelle D. Morris, *Breaches of Fiduciary Duty and the Del. Uniform Contribution Act*, 11 Del. L. Rev. 71, 71 (2010) ("We conclude that a breach of a fiduciary duty is in fact a tort, although a unique species historically called an 'equitable tort.'"). Because Plaintiffs' fiduciary duty claims are tort claims, this Court has jurisdiction to hear them under the Federal Tort Claims Act. 28 U.S.C. § 1346(b).

Treasury misquotes *Albrecht v. Comm. on Emp. Benefits of the Fed. Reserve Emp. Benefits Sys.*, 357 F.3d 62, 68-69 (D.C. Cir. 2004). That case did not hold that a "breach of fiduciary claim is essentially a contract action." Treasury Memo at 44. Rather, it held that "the district court lacks jurisdiction *if* appellants' breach of fiduciary duty claim is essentially a

contract action.” *Albrecht*, 357 F.3d at 68 (emphasis added). In *Albrecht*, the court found that the case was essentially a contract action within the scope of the Tucker Act because it turned entirely on the terms of a retirement plan contract. *See id.* at 69. Here, by contrast, Plaintiffs seek a remedy for a breach of equitable fiduciary duties that defendants assumed under Delaware law as a result of their control over Fannie Mae, and not under any contract. *See Parfi Holding AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 156-57 (Del. 2002) (holding that controlling shareholder’s fiduciary duties to the corporation “consist of a set of rights and obligations that are independent of any contract[.]”). There is no contract between FHFA and Fannie Mae, and Treasury’s fiduciary obligations arise as a result of its status as a controlling shareholder and its control over the implementation of the Third Amendment, not due to the explicit or implicit terms of the PSPAs. *See* section IV.C.1, *supra*. As such, Plaintiffs’ fiduciary duty claims fall within the ambit of the Federal Tort Claims Act, not the Tucker Act, and therefore this Court possesses jurisdiction to hear them. Hence, there is no basis to dismiss Plaintiffs’ claims for breach of fiduciary duty.

V. PLAINTIFFS ADEQUATELY STATE THEIR TAKINGS CLAIMS

A. This Court Has Jurisdiction Over Plaintiffs’ Takings Claims Under The “Little Tucker Act”

The Court has jurisdiction to hear the Takings Claims under the Little Tucker Act, 28 U.S.C. § 1346(a)(2), because the Complaint defines the Takings Class as limited to persons and entities who held shares of Fannie Mae and/or Freddie Mac stock as of the Third Amendment and who “suffered less than \$10,000 damages thereby, measured individually.” ¶120, and Prayer For Relief at ¶¶1, 9, 10. *See also U.S. v. Bormes*, 133 S. Ct. 12, 17 n.1 (2012) (quoting *U.S. v. Will*, 449 U.S. 200, 211, n.10 (1980)) (“It is undisputed that this class action satisfied the Little Tucker Act’s amount-in-controversy limitation. We have held that to require only that the

2. The Prudential Shareholder-Standing Doctrine Has No Application To Plaintiffs' APA Claims.

Treasury contends that Plaintiffs lack prudential standing under the “shareholder-standing rule,” which generally prohibits shareholders from enforcing rights that belong to the corporation. *See Alcan Aluminium*, 493 U.S. at 336; Treasury Br. 34-36. Treasury is incorrect. Notably, Treasury does not cite a single case in which a court has held that the shareholder-standing doctrine applies in APA cases, and there are good reasons to conclude that it does not. *See FAIC Sec. Inc. v. United States*, 768 F.2d 352, 357 (D.C. Cir. 1985) (“The zone of interests adequate to sustain judicial review is particularly broad in suits to compel federal agency compliance with law, since Congress itself has pared back traditional prudential limitations by the Administrative Procedure Act, which affords review to any person ‘adversely affected or aggrieved by [federal] agency action within the meaning of the relevant statute.’”). In any event, none of Plaintiffs’ claims runs afoul of the shareholder-standing doctrine because their claims seek to redress personal injuries and vindicate rights that belong to Plaintiffs, not the Companies.

The shareholder-standing rule under Delaware law, and more generally, affects only derivative actions. *See, e.g., Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1036 (Del. 2004).¹⁰ It has no application where a plaintiff asserts “a direct, personal interest,” “even if the corporation’s rights are also implicated.” *Alcan Aluminium*, 493 U.S. at 336; *see also Gilardi v. U.S. Dep’t of Health & Human Servs.*, 733 F.3d 1208, 1216 (D.C. Cir. 2013) (citing *Rawoof v. Texor Petroleum Co.*, 521 F.3d 750, 757 (7th Cir. 2008)); *In re Kaplan*, 143 F.3d 807, 812-13 (3d Cir. 1998) (Alito, J.); *Helmerich & Payne Int’l Drilling Co. v. Bolivarian Rep. of Venez.*, --- F. Supp. 2d ----, 2013 WL 5290126, at *17 (D.D.C. Sept. 20, 2013). This includes cases where

¹⁰ Fannie Mae’s and Freddie Mac’s corporate governance practices are governed by Delaware law and Virginia law, respectively.

the plaintiff challenges conduct that benefits one class of shareholders at the expense of another, as when a controlling shareholder expropriates the company's economic value for its own benefit, to the other shareholders' detriment. *Gentile v. Rossette*, 906 A.2d 91, 100 (Del. 2006) ("A separate harm also results: an extraction from the public shareholders, and a redistribution to the controlling shareholder"); *In re Tri-Star Pictures, Inc., Litig.*, 634 A.2d 319, 330-32 (Del. 1993); 12B *Fletcher Cyclopedia of the Law of Corporations* § 5914 (2011 rev. vol.).¹¹ Accordingly, where a plaintiff claimed that the defendant had impaired its "essential right . . . to share in the profits and in the distribution of assets on liquidation in proportion to their interest in the enterprise" (much as Plaintiffs assert here), Judge Wilkins held that the shareholder-standing doctrine was inapplicable. *Helmerich & Payne Int'l Drilling Co.*, 2013 WL 5290126, at *20 (quoting 1 James D. Cox & Thomas Lee Hazen, *Treatise on the Law of Corporations* § 7:2 (3d ed. 2012)) (brackets omitted). So, too, here.

3. HERA Does Not Strip Plaintiffs Of Their Rights In Their Stock.

FHFA and Treasury contend that HERA vested FHFA, as the Companies' conservator, with any "rights, titles, powers, and privileges" that inhered in Plaintiffs' stock, and that Plaintiffs accordingly have no rights in that stock left to vindicate. *See* FHFA Br. 36-37 (citing 12 U.S.C. § 4617(b)(2)(A)); Treasury Br. 29-33, 45-46 (same). This argument is meritless for two independent reasons.

First, HERA does not grant the conservator *all* of the rights of the shareholders; if it had, it would have effected a taking, and it would have meant that Treasury's assurances that it was retaining the Companies' existing capital structure were lies from the day they were uttered. *See*

¹¹ Virginia law also recognizes that shareholders may bring individual actions where the alleged harm accrued to the shareholder directly. *See Parsch v. Massey*, 72 Va. Cir. 121, 128 (Va. Cir. Ct. 2006).

Companies' renewed profitability suggested that the Companies might soon recognize these massive assets. Indeed, FHFA's Office of the Inspector General explained soon after FHFA executed the Sweep Amendment that the Amendment could result in "an extraordinary payment to Treasury" "due to the accounting treatment surrounding deferred tax assets." FHFA Office of Inspector General, *Analysis of the 2012 Amendments to the Government Stock Purchase Agreements* 15 (Mar. 20, 2013), available at http://www.fhfaoig.gov/Content/Files/WPR-2013-002_2.pdf. To the extent that FHFA was blind to the existence of these assets, it was willfully so.

d. The Sweep Amendment Did Not Keep The Companies In A "Holding Pattern."

FHFA contends that it may operate the Companies "in a holding pattern, awaiting major policy decisions in the future," and that the Sweep Amendment is simply its chosen means of doing so. FHFA Br. 31-32. Even if FHFA had such authority, the Sweep Amendment does not place the Companies in a "holding pattern," but rather makes the Companies' wind down inevitable. Treasury made this point on the date that it and FHFA executed the Sweep Amendment, explaining that the Companies "w[ould] be wound down" and "w[ould] not be allowed to retain profits, rebuild capital, and return to the market in their prior form." 2012 Press Release. Far from a "holding pattern," the Sweep Amendment puts the Companies on a planned descent into liquidation. This certainly does not maintain the "status quo," which is the bare minimum the law expects from a conservator. *See Bryce v. Nat'l City Bank of New Rochelle*, 17 F. Supp. 792, 799 (S.D.N.Y. 1936), *aff'd*, 93 F.2d 300 (2d Cir. 1937); *see also CedarMinn*, 956 F.2d at 1454 ("[T]he purpose of a conservator [is] to maintain the institution as an ongoing concern.").

* * *

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 2016, I electronically filed the foregoing document with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit using the CM/ECF system. Service was accomplished by the CM/ECF system on the following counsel, who are registered CM/ECF users:

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