EXHIBIT C

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
NO. 13-465 C
(FILED FEBRUARY 26, 2014)

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FAIRHOLME FUNDS, INC., ET AL

VS. RCFC 12(b); RCFC 12(b)(6); RCFC 56(d)

THE UNITED STATES
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PROTECTED INFORMATION ONLY TO BE DISCLOSED

IN ACCORDANCE WITH PROTECTIVE ORDER

ORAL DEPOSITION OF MS. SUSAN MCFARLAND

HOUSTON, TEXAS

JULY 15TH, 2015

10:01 A.M.

Reported By:
SAMANTHA DOWNING, CSR
JOB NO. 39652

at the risk-free rate of debt, but then they would layer on top of that some risk premium for credit risk?

MR. LAUFGRABEN: Objection; form, foundation.

A. I would say my experience not just at Fannie but over the course of career with financial services, that's a normal construct for providers of funds, to -- to come up with a price point --

Q. (BY MR. THOMPSON) Yes.

A. -- that they would be willing to provide those funds.

Q. Yeah. And I am trying to figure out how they would come up with that price point.

They would look at interest rate risk, among others things, right?

MR. LAUFGRABEN: Objection.

A. I can't sit here and tell you what each entity specifically did.

But I think if you look academically at, you know, the buildup of rates, you're looking at a risk-free rate and then building something on for risk. And then you can make your list of what risks you think you need to build into the price and how much price you think you need to build for each of those types of risks.

But, you know, on an individual entity-be-entity basis, you would have to ask them how they built their rate structure.

Q. (BY MR. THOMPSON) And that's fair enough.

I was trying to get inside Fannie's head, when they're doing projections into the future and trying to think about, "What is our funding expense going to be?"

Did you-all try to build that expense in the same way where you made an estimate of, "Here's what we think the risk-free rates will be, and here's what we think our funding sources will require as a risk of premium"?

MR. LAUFGRABEN: Object to the form of the question.

MR. BARTOLOMUCCI: Objection; form.

A. We -- there's a lot of history that exists, and so there was a lot of -- the more -- the funding markets, by the time I was there, were performing fairly effectively with one exception. When the debt ceiling debates occurred, and there were challenges with the debt ceilings, we saw some interesting things go on within the debt markets for short periods of time around those debates.

Outside of that, it -- the pricing wasn't

that crazy or volatile. In other words, you could kind of almost trendline out the correlations that existed in the recent past to continue to exist on a go-forward basis.

Q. (BY MR. THOMPSON) Now, if you're -- we're looking at the cost of funding for Fannie Mae, is one of the variables -- is it true to say that all other things being equal, if Fannie had more capital, it would pay less in funding than if it had less capital?

MR. LAUFGRABEN: Objection; calls for speculation, calls for an expert opinion.

A. Capital exists for unexpected losses. Your expected losses should be reserved for and already reflected in your financials.

If someone is building up a price point, taking a risk-free rate and then building onto something for risks, one would then assess what the capacity that the entity has to absorb those risks. Capital could be one place a company could absorb some of those risks.

So it would not -- it would make sense to me that entities would look at capital levels in consideration, as one factor in determining a company's capacity to absorb risks, and that could influence their pricing.

Q. (BY MR. THOMPSON) Okay. And in trying to

operate Fannie's financials on a sound basis, do you think it was desirable for Fannie to have capital?

MR. LAUFGRABEN: Objection; calls for speculation.

A. I believe that if you're going to operate the enterprise ongoing that it should have capacity to absorb risks, and unexpected losses and capital is the most -- would be the -- my preferred form of risk absorption. Because really, quite -- you know, to me, Fannie had two places: Either you build capital inside the enterprise, and/or you continue to rely on the U.S. Government as the full backstop for the enterprise --

Q. (BY MR. THOMPSON) Was there --

A. -- to step in.

Q. Was there any discussion about going to the private market once Fannie had returned to profitability in 2012 and raising capital there?

MR. LAUFGRABEN: Object to the form of the question.

A. There was no discussions about, you know, raising capital in the marketplace at Fannie Mae in the time that I was there, you know, like -- the theoretical potential to do that in time, yes. But there was no discussions of, "Gee. We're starting to make money.

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Should we go and do a stock offering?"

No.

Q. Okay. And do you know why there weren't such discussions?

A. I think two reasons in my opinion. This is strictly my opinion.

One, it was probably premature. I think Fannie, in the -- would need to have returned to -- you know, they would have had to have more periods of profitability before the marketplace would probably have entertained -- before we could expect a stock offering to be successful.

Two, we didn't legally have the ability to do that on our own. That would have to be the Treasury, and FHFA would have had to have agreed to that.

Q. Yes.

A. And it was pretty clear to me at that point in time that that was not going to be something they would have been receptive to.

Q. Understood.

Okay. So, Ms. McFarland, I am going to be showing you some documents today, and you're free to sort of flip through them. But I will be generally directing your attention to a specific passage.

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In this first one, I would like to have the court reporter mark as McFarland 1, and it has a Bates number of Treasury 0201.

(McFarland Exhibit No. 1 was marked.)

MR. LAUFGRABEN: We object to this document from December 20th, 2010. It's well before the beginning of the discovery time period set forth in the Court's order.

MR. THOMPSON: Yes. And I understand that, and I am going to be asking questions about the time period that is within the Government's understanding of the Discovery Order.

Q. (BY MR. THOMPSON) But I would -- this is, as Counsel quite rightly notes, a memo from December 20, 2010. It's from a Jeffrey Goldstein. The subject is, "Periodic Commitment Fee for GSE Preferred Stock Purchase Agreements."

Ms. McFarland, I would like to direct your attention to the second page. And under the heading, "Reasons to Set the PCF," there's a bullet point that says, "Makes clear the administration's commitment to ensure existing common equity holders will not have access to any positive earnings from the GSEs in the future."

Now, I am not asking you about

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December 2010. You weren't there.

A. Correct.

Q. But when you did arrive in the middle of 2011, did you see any manifestations of the administration's commitment to ensure existing common equity holders would not have access to any positive earnings from Fannie?

MR. LAUFGRABEN: Object to the form of the question; lack of foundation.

A. The only example that I -- that comes to mind of note is the Third Amendment.

Q. (BY MR. THOMPSON) Yeah.

And what was your reaction when you learned -- you learned of a Third Amendment a couple of days beforehand; is that right?

A. Correct.

Q. All right. And what was your reaction to it?

MR. LAUFGRABEN: Objection; vague.

Q. (BY MR. THOMPSON) Did you think it was the effective nationalization of the companies?

MR. LAUFGRABEN: Objection; form.

MR. BARTOLOMUCCI: Objection; form.

A. No, I didn't view it as nationalizing. It borders on that; I can see.

But I had, shortly before that, had

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a meeting with Treasury whereby we reviewed our forecasts. I had expressed a view that I believed we were now in a sustainable profitability, that we would be able to deliver sustainable profits over time. I even mentioned the possibility that it could get to a point in the not-so-distant future where the factors might exist whereby the allowance on the deferred tax asset would be released. We were not there yet, but, you know, you could see positive things occurring.

So when the amendment went into place, part of my reaction was they did that in response to my communication of our forecasts and the implication of those forecasts, that it was probably a desire not to allow capital to build up within the enterprises and not to allow the enterprises to recapitalize themselves.

Q. (BY MR. THOMPSON) And with whom at Treasury do you have this meeting?

A. So the -- which meeting?

Q. The one you just referenced where --

A. Where I had the discussion about the forecasts?

Q. Yes.

A. So it was a common practice for us to meet with Treasury on a quarterly basis to review our results from the past quarter and to update them on our forecasts;

you know, our updated forecast.

And that meeting -- I don't remember every specific person in the meeting. I was there; Tim Mayopoulos, who was the CEO of Fannie Mae was there; Dave Benson I think would have been there. He -- he was the Treasurer of Fannie Mae at the time. That would have been normal for him to be in attendance. Mary Miller, the Secretary of the Treasury, was there.

Tim --

Q. Bowler?

A. Thank you.

I believe he was there. He was normally at those meetings.

I believe there was a gentleman -- and I can't remember his name -- who used to work at Fannie that was now at Treasury that was, like, a Financial Analyst. I think he was there because they knew part of the topic we wanted to talk about was these projections.

And then there were probably other members of -- excuse me -- FHFA, the U.S. Treasury, and Fannie Mae to talk about some other topics that were going to be covered in that meeting. Because normally we reviewed financials, but they were -- you know, there may be one, two, or three other topics that would be

discussed.

And both Fannie and Treasury would then make sure they had the -- the personnel around the table to facilitate those conversations. I don't remember in this particular meeting what those topics were and who those individuals were.

Q. Do you remember Jeff Foster being at the meeting?

A. He could have been.

MR. LAUFGRABEN: Objection.

A. He could have been. I can't confirm yes or not.

Q. (BY MR. THOMPSON) Yes.

A. It wouldn't surprise me if he was. That would have been reasonable.

Q. And Mario Ugoletti; was he at the meeting?

Do you know?

A. No, I don't remember Mario being there, you know, again, because I don't have perfect recollection of all the attendees.

If you said, "Here's this document. Mario was there," I would say, "Okay. He was there."

I don't remember him being there, but he could have been there.

Q. Okay. And so would it be fair to say that

there were at least five or six Treasury officials at this meeting?

A. Probably, yes.

Q. Okay. And did the meeting take place at Treasury?

A. Yes, it did.

Q. And was this within less than a month before the net worth sweep?

A. I believe it was the week before.

Q. Okay.

A. It was very -- it was within the week or two. It was very close to.

Q. Would it surprise you to know that there's an e-mail from Tim Bowler where he's saying, "We need to make a renewed push on the net worth sweep"?

MR. LAUFGRABEN: Objection; form, lack of foundation.

MR. BARTOLOMUCCI: Objection.

A. I don't have knowledge of that e-mail.

Q. (BY MR. THOMPSON) Okay. And was this meeting -- I am sorry if I asked this.

Was it at Treasury?

A. Yes.

Q. And would this -- how would this have been set up?

A. Normally Dave Benson was our primary sort of liaison between the company and Treasury. And these meetings were generally scheduled the day -- you know, because they were -- we had the regular kind of quarterly meetings, and there might be some other meetings of; you know, specific topics that would occur in between those other meetings.

I don't know -- I can't recollect exactly, you know, whether we would initiate setting it up, or Treasury would initiate setting it up. I don't know how the logistics all worked out.

Q. And when you were making your presentation, did you have a PowerPoint that you were using?

A. A few pages, yes, from a PowerPoint.

MR. THOMPSON: Okay. I don't believe, Mr. Bartolomucci -- and I apologize if I am wrong about this, but I don't believe we have that PowerPoint presentation.

So I would ask if you would be kind enough to go back and talk to your client and see if they did produce it? And if they didn't produce it, whether they have it, because it's our view that it's highly material to these depositions?

MR. BARTOLOMUCCI: Request noted.

MR. THOMPSON: Likewise, I would make the same request to the Government, that to the extent the Government has a copy of this document, I don't believe it's been provided to us. Again, I apologize if I am wrong, but I don't have knowledge of all the pages. But it's not one that I have seen.

I would just request if you could ask your client, Treasury, whether they have the document, whether it's been produced, whether privilege has been asserted, which I can't imagine since Fannie was there.

Will you take that back to your client?

MR. LAUFGRABEN: I will take it under advisement.

MR. THOMPSON: Thank you. I appreciate that.

Q. (BY MR. THOMPSON) Okay. And did you have internal -- so you had a PowerPoint presentation you used at the meeting.

Did you have also have any internal documentation that was provided to you in preparation of the meeting?

A. Well, in the sense that I was reviewing actual results and forecasts, there's a lot of documentation that I looked at on both of those to get comfortable and ultimately sign off on the financials and sign off on the 10-Q --

Q. Yes.

A. -- as well as approve the forecast. So -- and that's just part of the standard process of preparing actuals and preparing forecasts.

Q. And sorry if I am not being clear.

But I am just asking, when you went into this quarterly meeting with Treasury, would typically someone on your staff provide you with either a briefing book or some background materials that would be more detailed than the PowerPoint you would hand out to Treasury?

A. Well, in the normal course of preparing our actual results, there's a whole process for closing the books, reviewing the results, and preparing the 10-Qs.

And so the information contained in the PowerPoint from the actual results are ultimately pulled from -- they're basically summarizations, very high-level summarizations of results that come from that standard process that exists to, you know, approve our actuals.

So it wasn't like I needed a separate briefing book for that. I already had that information available to me in the normal course of my job and responsibilities to, you know, close the books, and sign off on the results and file our Q.

The forecasts, in much the same fashion, albeit not quite as formal, we had a process. My team would meet with me to review the forecasts, they would bring information, we would discuss. I, at times, would challenge assumptions, and, you know, I could play devil's advocate.

We could look at a lot of different things. We could look at sensitivity analyses, comparisons of this forecast to prior forecasts to things like that, a variety of mechanisms for me to get comfortable that we finalized a forecast that we felt comfortable with, that it was a baseline representation of what our most current perspectives were on expectations of future performance.

So because that process already existed, I was relying on that and the knowledge that I gained through that process to inform me to have those discussions with Treasury. I don't recollect bringing -- I didn't bring, like, you know, a bunch of supporting documentation with me.

Q. Okay.

A. Okay. You know, it was the PowerPoint presentation.

You know, from time to time, I might bring a page or two of notes that -- that I wanted to

make sure either -- you know, make sure I get these points across, or here's a few, you know, additional pieces of data that they may ask about that aren't reflected on the documents, and I wanted to make sure I had the correct information on hand.

Most of those would take the form of kind of personal notes on my part.

Q. Okay. Did you take notes of this meeting?

A. No.

I don't generally take notes in those types of meetings.

Q. Would there have been anyone on your team who would typically take notes on those meetings?

A. No one on my team was present. In other words, nobody from the Finance Team was present at the meeting other than me.

Q. Okay.

A. I -- I don't recollect -- there wasn't -- as far as I know, there was no official note-taking.

That doesn't mean that people at the table might be taking or jotting down personal notes.

Q. Okay. And I just was -- wanted to know if you had a recollection as to whether typically one participant from Fannie would try to take notes down as to what was said.

A. Not that I was aware of, no.
Q. Okay. Was anyone from FHFA at this meeting?
A. I don't recollect. I don't remember.
Q. Okay. And you said there was an Analyst who had been at FHFA and --
A. No, had been at Fannie --
Q. Sorry.
A. -- and had gone to work for the U.S. Treasury.
Q. Mr. Goldstein?
A. Yes. Thank you.
Q. Okay.
A. Thank you. Yes.
Q. Allen Goldstein?
A. I said that if you refresh my memory on the name, I could confirm it.
Yes, it was Allen.
Q. And he was there at the meeting?
A. I believe he was at the meeting.
Q. Okay. Very good.
Did you ever have any similar type of conversation with anyone at the FHFA about the deferred tax asset prior to the Third Amendment?
A. Yes.
Q. Okay. And tell me about that meeting.
A. Well --

MR. LAUFGRABEN: Object to the form of the question; vague.
A. I don't -- so just as we -- you know, we had a formal quarterly sit-down with Treasury. We had more regular interactions with individuals at FHFA. So one either Jeff Spohn and/or Brad Martin would attend our Executive Committee meetings.
And so generally anything I was going to say at Treasury, I was already telling the Executive Committee, and Brad or Jeff would have been present at those meetings.
And as such, my reviews of actuals and forecasts and even the -- the -- the raising of the potential that that allowance might be reversed in the not-so-distant future I would have mentioned at an Executive Committee meeting, and Jeff and/or Brad would have been present to hear that.
Q. (BY MR. THOMPSON) And just to be clear on that, that would have been within a month of the Third Amendment?
A. It would have been prior to that --
Q. Yes.
A. -- because it's all part of the discussions we have through the quarter-end-close process and forecast preparation and Board prep and all that kind of stuff

that takes place in that cycle.
Q. Just so the record is clear, when you say, "prior to that," what period would that have been?
A. Well, it would have been probably -- I would suspect it was -- something that occurred in July would be my -- because of the timing.
You know, you're closing the books for the second quarter. We're prepping for the upcoming Board meetings, getting the forecasts done, letting the team know when the results are coming out for the quarter, all of those kinds of conversations that would happen internal at Fannie Mae before we would ever have that conversation with Treasury.
Q. Okay. And I am sorry I interrupted you.
You described these --
A. And then with the -- we also provide -- so we cannot file our Q unless DeMarco gave us permission to file the Q.
So drafts of our filings were also provided to FHFA first. They had the opportunity to provide feedback, and then we could incorporate that feedback and then got approval for the final filings.
We also had a press release that would go along with -- when we filed a Q, we would go out with a press release. There is where you might see a little

more color.
There would normally be a quote for the CEO like Tim and a quote from me, and we would also kind of preclear that press release with FHFA before issuing the press release.
As far as -- I believe during 2012, I began to signal -- there began to be some public communication as to our view that things were starting to look good and starting to head in a positive direction.
I would have to refresh my memory through documents as to the timing of what I said and when. But I know through the course of early 2012 and then throughout that summer, the messaging was getting a bit more and more positive that we were sending out. And certainly FHFA was aware of our communications, our external communications in that regard.
As far as the deferred tax asset, I -- I don't recollect that we had some big formal meeting to break the news to them, okay? I believe that it was just something that we talked about in the normal course of keeping them informed about kind of what we're seeing.
And also, Jeff Spohn and/or Brad Martin would attend our Board meetings, so they would also

hear that the same comments I was making to Treasury, I was making to the Board.

Q. Okay. In the same timetable?

A. I don't remember exactly when the Board meetings were within that window, but it would have been Board meetings shortly before that that I would have reviewed this very same information.

Q. Okay. And when you say that you would have had dialogue with people at FHFA about the deferred tax assets, with who would you have had the dialogue?

Would that have been Mario Ugoletti?

MR. LAUFGRABEN: Object to the form of the question; vagueness as to time period.

A. Yeah.

So early on, it's probably through the Chief Accountant's office of the FHFA, because it is a technical accounting matter.

Q. And do you happen to recall --

A. I can pick him out of a lineup.

Q. Okay. We'll show you some names later on.

A. I tell you, I -- ask me a number, I can probably give it to you. People's names...

It would have started there. Eventually there were conversations with Director DeMarco and key direct reports of his, but that -- the -- those -- the

DeMarco conversations occurred when we were actually in the serious mode of potentially -- we were looking -- we did a full analysis at the end of the second quarter; no release. We did a full analysis at the end of the third quarter; no release.

When we were doing the analysis for the fourth quarter of 2012, we started to get to a point where we were tipping towards release, and that's when I began to have conversations with more senior folks at FHFA on it. But they were already aware of the statement that I made to Treasury. I mean, in general, I put it on people's radar screens that it's something that could happen in the not-so-distant future.

I will say that I believe Mary Miller asked me in this meeting about how large would it be and did I have any idea of when.

Q. Yeah.

A. And I believe my response was around 50 billion, but that could be larger or smaller depending upon when. The further out in time it is, the smaller it probably would be. It is part of the evidence that it might be good.

So the further out in time that it would be released, the smaller the release size would be.

But I said probably in the

50-billion-dollar range and probably sometime mid 2013 at that time when I met with them late July, early August 2012.

But I said we had not done a real in-depth analysis, so I was just kind of giving her kind of my off-the-cuff perspective in the moment.

Q. And FHFA was on notice that you had sent this message to Treasury?

A. Yes.

MR. LAUFGRABEN: Object to the form of the question.

A. Yes.

Q. (BY MR. THOMPSON) And they were on notice of that fact before the Third Amendment; is that right?

MR. LAUFGRABEN: Same objection.

A. Yes.

Q. (BY MR. THOMPSON) Okay. Now, if we look for -- let's look at some of these Board minutes, and we've actually -- we've been going -- well, that's fine.

Does -- do you need a break, or --

A. I am fine right now.

Q. Okay.

A. I am fine right now. If I need water, then I will need a break.

Q. Okay. Very good.

Okay. So we're going to have the court reporter mark as McFarland 2 a document that bears the Bates number FM3153 through 3159.

(McFarland Exhibit No. 2 was marked.)

Q. (BY MR. THOMPSON) And if we look, these are minutes of the meeting of the Board of Directors from August 22, 2011. And if we look at the last sentence of the second paragraph, it indicates Jeff Spohn from the Federal Housing Finance Agency also participated.

Is this a piece of what you were saying earlier, that typically there was an FHFA member at your Board meetings?

A. Yes.

Q. Okay. And if we turn to page 4 of this document, there's a heading that says, "Bank of America Countrywide and Bank of New York Mellon Proposed Settlement."

Do you see that?

A. Yes.

Q. And do you recall that Fannie Mae had initiated a series of litigations against major financial institutions?

A. Yes.

MR. LAUFGRABEN: Object to the form of the question.

What does this have to do with the Discovery Order?

MR. THOMPSON: Profitability. They made tens of billions of dollars off of this.

MR. LAUFGRABEN: A couple of questions.

Q. (BY MR. THOMPSON) So at -- and do you recall what the gist of the lawsuit was?

Was it that you had bought product and covenants were false?

MR. LAUFGRABEN: Object to the form of the question.

A. Yes. Well, that we had bought product that had not complied with the requirements.

The general model that existed in originations at the time was to detect and correct after the fact, versus inspect and reject prior to taking it on. So it was determined that a significant percent of the -- the loans that we received that had been originated through some of these -- now, there were different lawsuits. So there's investment securities, and there is loan guarantee activity.

So the lawsuits and the loan guarantees was premised basically on the fact that we had found a significant defects in a significant number of loans. And that per the requirements, they were to make us

whole on that. That was sort of the operating model. And that were large sums of money owed to us to resolve all those loans in accordance with the Loan Origination Agreements that existed. So that's on the loan origination side.

There were also lawsuits that existed related to the investment securities and whether or not the institutions involved had fully and appropriately disclosed information about securities to the buyers of those securities as required, and that the lawsuits contend that they had not. And as a result, they owed damages to the buyers and owners of those securities, Fannie Mae being one of those.

Q. (BY MR. THOMPSON) Did your team, when it was building projections of future profitability, include a line item for expected values of settlements that might or verdicts that might be realized?

A. Not as a general practice.

We would only build those in if in the event it was all but certain and agreed to. Otherwise, we -- there -- now, I want to pause here, because there's two ways one can address some of these issues.

So on the investment securities side, we didn't build anything in for being -- you know, getting some kind of a settlement. On the loan origination

side, while we didn't build in settlement projections as settlement projections, we did have assumptions about how much we should expect to receive.

It's not -- in the normal course, a loan would go bad. We would assess the defects. If we thought we had a valid claim against the institution that originated the loan, we could build some assumption in for recovery from that institution for those defects. So in our normal projection of net loan losses, we would include some amount of recovery from various institutions for them curing the defects.

When we got into significant contention -- let's use the Bank of America Countrywide as an example -- we tried to be very conservative. Not that we didn't think we had a legitimate claim to a lot larger number, but we knew that Bank of America was heavily disputing our requests and how much we had been asking for them to make us good, you know, to cure the defects. So we tried to be very, very conservative as to how much we thought we would actually collect from Bank of America.

And so then as the actual agreements were reached, it was a matter of comparing that which we had already incorporated into our assumption set versus how much we actually got from them.

Q. Okay. Very helpful. Thank you.

A. Okay.

Q. And we can put this document to the side.

A. Okay.

Q. Now, the periodic commitment fee.

Do you recall there being any discussion while you were at Fannie Mae about the amount of the periodic commitment fee?

MR. LAUFGRABEN: Objection as to time period.

Q. (BY MR. THOMPSON) As I said, at the beginning -- the assumption is -- that I am asking about --

A. The main discussions were the -- that they were continuing to waive our need to pay the commitment fee.

Q. Okay. Was the commitment fee regarded by yourself as akin -- not the commitment fee, but the commitment itself as akin to a line of credit?

MR. LAUFGRABEN: Objection; vague.

A. Yeah.

I mean, obviously the Preferred Stock Purchase Agreement provides for funding -- access to funding if in the event certain conditions exist. One could say that's not dissimilar to some forms -- you can call it a line of credit, or

you can call it an LC, a letter of credit, because it's a little bit more you draw if in the event certain conditions exist, whereas a line of credit is open-ended as to where one can draw and pay down and whatnot on it.
So you -- yeah. The commitment fee would probably be very similar to fees that you would see structured into those types of instruments.
Q. And are those types of fees generally calculated as a percentage of the outstanding commitment?
MR. LAUFGRABEN: Objection; lack of foundation, calls for speculation, calls for expert testimony.
A. I would say it -- for letters of credit and lines of credit in the normal ordinary course of banks' dealings with customers, since I have a lot of banking experience, that would be a customary structure --
Q. (BY MR. THOMPSON) Okay.
A. -- Yes.
Q. All right. Did anyone at FHFA or Treasury tell you that the periodic commitment fee would be incalculably large if they didn't waive it?
A. No.
MR. LAUFGRABEN: Objection.
Q. (BY MR. THOMPSON) Okay. I am going to have --

our next one will be McFarland 3. It has a Bates number of FM3070 through 3074.
(McFarland Exhibit No. 3 was marked.)
Q. (BY MR. THOMPSON) So these are minutes of the meeting of the Board of Directors of Fannie dated October 20, 2011. If you look at the third full paragraph on the first page, we can see you're present, as well as Jeff Spohn of the FHFA.
A. Uh-huh.
Q. And if we turn to the second page, the first full paragraph, the first sentence reads, quote, "The Board discussed the utility of obtaining on an ongoing basis a good bank/bad bank financial presentation, and CFO McFarland indicated that she would include this information in the November Board reporting package."
What is being referred to there as the good bank/bad bank?
A. At that time, Fannie Mae's results were commingled. The results associated with the book that had been originated prior to the -- I use the word, "meltdown" -- the financials crisis, the 2007, 2008 period, whatever you want to call it, and obviously there were fairly significant losses coming forward from that book of business. All the while, over the last most-recent period, new loans had been originated, put

on the books.
And when you had this combined result, it made it at times difficult to ensure that you were -- we were getting the desired results from the new book of business. So could we kind of separate the results into two pieces, that of the bad back book, which is the bad bank, and that of the new book, that being the good bank, in such a way that it -- it would better enable us to understand the unique results of each of the -- each part of the portfolio.
Q. And have you heard of the term, "vintages"?
A. Yes.
Q. And is this a metaphor similar to wine, that the originations and investments made in a particular year could be good or bad?
A. Yes.
Q. Okay. And were the vintages of 2009 and '10 and '11 and '12 good vintages for Fannie Mae?
A. Yes. They were certainly much better vintages than the vintages of 2002, '3, '4, '5, '6, '7.
Q. Yes.
And as time went on, the good vintages became a bigger part of Fannie's future, and the bad vintages became diminished; is that right?
MR. LAUFGRABEN: Objection to the form of the question.

A. Yes.
So two things began to happen: The percentage of the overall book, you know, the -- the older vintages, comprised less of the total portfolio vis-à-vis the new vintages, and the performances of the new vintages improved.
The, for instance, the 2011 vintage had better performance than 2009 vintage.
Q. (BY MR. THOMPSON) Okay.
A. So you had both of those positives occurring over time.
Q. Okay. And I would like to ask the court reporter to mark this next exhibit as McFarland 4. It has a Bates number of FHFA72466 through 72484.
(McFarland Exhibit No. 4 was marked.)
Q. (BY MR. THOMPSON) This document says, "Senior Preferred Stock Purchase Agreement: Treasury Draw Projections, October 24, 2011, Financial Planning & Analysis."
Who was in charge of the financial planning and analysis of Fannie at this time?
A. I believe it was Anne Gehring reporting to me.
Q. Okay. And then if we turn to page -- I am going to refer to these Bates numbers -- these are the

little numbers in the bottom right-hand corner -- 72478. It's the 13th --

A. 78?

Q. Yes, 78.

A. Okay.

Q. And it shows projections of total net income. And if we look at 2020 out through 2026, it -- in this document, Fannie's projecting profits of about 10 billion a year; is that right?

A. Yes --

MR. LAUFGRABEN: Objection.

A. -- this document says that.

Q. (BY MR. THOMPSON) Okay. And do you believe as of October 2011 that that was a reasonable long-term projection of profitability for Fannie?

A. Yes.

I do, though, appreciate, having been in this business for a long time, that the further out in time you go, the more those projections are subject to a lot of factors that have yet to occur that would not have been, you know, explicitly incorporated into those projections.

So they are reasonable placeholders based on trending out what you know today or could reasonably expect based on what you know today. But as you get

further out in time, a lot of stuff can happen; with that as a caveat.

Q. Okay. Now, did anyone at FHFA -- well, first of all, would FHFA have been aware of these projections?

MR. LAUFGRABEN: Object to the form of the question; calls for speculation.

A. I need to refresh my memory as to where this document was -- it's -- this looks like a document that would have been covered in the Executive Committee and/or the Board, but I can't -- you know, I need -- I don't know if that was the case or not, because there's no nomenclature on this document to indicate one way or the other.

If it had been, then clearly members of FHFA would have been present in those meetings.

Q. (BY MR. THOMPSON) And if we look at this, is it fair to say that you at this time, October 2011, really thought that 2013 and then maybe going into 2014 was going to be a turning point for Fannie's profitability?

A. The projections that existed at that time based on this document show that profitability starts to show up in 2013. I mean, that's what this particular forecast indicated.

Q. Yes.

Do you recall anyone at FHFA ever criticizing any of the projections of future profitability that Fannie was making in 2011 and 2012 up through the time of the net worth sweep?

MR. LAUFGRABEN: Object to the form of the question.

A. I -- my recollection is there wasn't criticism.

There were questions. There were cautions. In other words, you know, let's not forget that, you know, this -- that a lot of bad things have happened, right?

And, you know, with some history in mind, when the declines were occurring, the degradations were occurring, the company was having a hard time keeping up with the face of the degradations. As a result, the forecasts that the company had been producing prior to my arrival -- and I am basing this on what I have been told, so I don't know if it's relevant here or not -- that the actual outcomes tended to be a little bit worse than what the company had been projecting.

But when I got there, we focused very heavily on trying to continue to improve the quality of the forecasts. And I think if you look at the actual results vis-a-vis a lot of the forecasts we were

producing, you would see the results and forecasts being more in alignment. In fact, it improved over time.

Having had experience at other companies, that's not unusual that it's hard to catch up with trends, whether that's negative trends or positive trends.

So if some things are going bad, sometimes it's hard to catch up to how bad. And, you know -- but on the flip side, when things start to turn good, sometimes it's hard to catch up with how fast and the magnitude of the tailwinds and how much things are going to improve and how fast. So that's not a unique thing to Fannie Mae.

I just remember there being some general discussions about, you know, are we -- you know, let's not forget that there have been times in the past where the forecasts didn't reflect all the badness that ultimately happened, right?

Q. (BY MR. THOMPSON) Uh-huh.

A. And it was more in that general conversation, but not a -- what I would call an outright criticism of, "You're wrong. That can't be right."

There wasn't any of that kind of --

Q. Okay. And were you aware that Grant Thornton was doing its own projections of the future

of foundation. This is also beyond the scope of the Discovery Order.

A. I mean, you know, I don't remember exactly, you know, did somebody say this or that or whatever. I don't remember the specific comments, but I remember the general gist of conversation was in that kind of vein.

Q. (BY MR. THOMPSON) And was there a sense of this is a problem if we can't generate capital and retain capital?

MR. LAUFGRABEN: Object to the form of the question.

How is this related to any of the topics in the Discovery Order?

MR. THOMPSON: Well, it relates to the profitability, was it a problem in the term of probability.

MR. LAUFGRABEN: We will instruct the witness not to answer this.

MR. THOMPSON: She is not your witness.

MR. BARTOLOMUCCI: Do you know what the question on the table is?

A. So why we've had a little bit of back and forth here.

Q. (BY MR. THOMPSON) So was there a sense that this was going to be a problem for Fannie going forward

that it was not able to retain capital?

MR. LAUFGRABEN: Same objection.

We're instructing the witness not to answer, this is so far beyond the scope of the discovery order.

A. There were discussions about the pros and cons. In other words, what about it is good for Fannie, what about it may not be so good for Fannie, okay?

Q. Okay.

A. Sos, you know, one of the things, you know, that is to the good is it did resolve this iterative borrow-to-pay-the-dividend issue that we've talked about previously.

You know, in my mind, the lack of capital accumulation meant that we had no -- we were building no financial wherewithal to take on unexpected events and losses, that we would be highly dependent on the Government -- even more-so dependent on the Government if an event, things like that happened in the future.

I didn't take in my own mind whether this was a temporary -- you know, that we've got this -- you know, look, they put a second amendment in, they put a third amendment in, could there be a fourth amendment.

So things could change in the future, so I didn't take it as a forever and ever amen necessarily.

It could be, but it didn't necessarily need to be. So I wasn't, you know, kind of trying to draw any conclusion.

It seemed odd to me that if what they wanted to do was wipe out the shareholders, why they didn't do that in inception of the conservatorship in the first place, because they left market speculation to occur in the marketplace.

So -- but time passes. Different people and minds may think differently over time. So, you know, I wasn't assuming one way or the other that they were trying to wipe out the shareholders.

Q. Well, you said earlier that, well, you know, there was surprise and not surprise.

Was the not surprise because there was a sneaking suspicion that the Government wasn't going to let anyone else participate in the profits?

MR. LAUFGRABEN: Same objection as we specified before.

We would instruct the witness not to answer this question. It's far beyond the scope of the Discovery Order, and Counsel has not tied it to any topics in the Discovery Order.

MR. BARTOLOMUCCI: Do you want to restate the question?

MR. THOMPSON: Sure.

Q. (BY MR. THOMPSON) So was there a -- did you have the sense that the Government simply was not going to allow the private shareholders to participate in future profits when you were at Fannie?

Do you think that was one of the possibilities that might ultimately come out?

MR. LAUFGRABEN: Renew our objections and our instruction to the witness not to answer.

Counsel still has not tied this to the Discovery Order.

MR. BARTOLOMUCCI: David, do you really want her to answer what was her sense of what the Government thought was possible?

MR. THOMPSON: Yeah.

I mean, it goes to the reasonable investment -- yeah.

Q. (BY MR. THOMPSON) I mean, from your perspective, you were dealing with the Government, and you said you weren't surprised totally by the net worth sweep.

I just really want you to explain why.

MR. LAUFGRABEN: Same objections, and same instructions.

A. I will tell you -- yeah. This is from my vantage point. I am not presuming what the Government was thinking or wanted. I am not trying to represent anything from them. I may represent my perspective on what they may have been thinking.

I just sat down with them -- to the Treasury and said, "We think we're sustaining profitable."

The numbers were decent-sized. I also put on the radar that there was a possibility of a deferred tax allowance release that could be sitting in the not-so-distant future.

So the fact that this happened shortly thereafter -- so the time -- the time connection there was part of why -- that was part of why I wasn't surprised. Okay. I just told them that.

So then the question is why would they be concerned of us making money and creating capital inside the enterprise. I think in my own opinion, a lot of -- a lot of people got wiped out, and the Government had to step in on a lot of fronts during the financial crisis. I think politically it seemed a little -- it would seem to me that there would be individuals bothered that some individuals might profit from the Government's support of the enterprises, okay?

So, you know, it wouldn't -- would it be -- how would it play out if somebody made big bucks

because -- off the backs of the taxpayers? I am kind of -- how some people could connect dots that the Government stepped in, put a bunch of money into the GSEs using taxpayers' funds, and now Daddy Big Bucks over here is making a big profit off of Fannie Mae stock.

You could see how positioned that way, how that would be pretty politically unpalatable. I could see why there could be a concern that anybody plays things out that way. So, thus, why -- I wasn't trying to presume that they completely wanted to wipe out the shareholders, but I certainly would appreciate why there would be sensitivity of things playing out in a way that somebody would glob on to that story line.

Does that make sense?

Q. (BY MR. THOMPSON) Yes. Thank you. And let's go on.

MR. LAUFGRABEN: Is this a good time to take a five-minute break?

MR. THOMPSON: Sure.

THE REPORTER: Okay. It's 2:58.

(Recess from 2:58 p.m. to 3:05 p.m.)

THE REPORTER: It's 3:05.

Q. (BY MR. THOMPSON) Okay. We're on to McFarland 20, and it has a Bates number of Fannie Mae

2523 through 2525.

(McFarland Exhibit No. 20 was marked.)

Q. (BY MR. THOMPSON) Now, this is a letter from you to Ed DeMarco dated August 6th, 2012; is that right?

A. Yes.

Q. And you're reporting that there's a surplus amount, thus there's no need for a draw; is that right?

A. Yes.

MR. LAUFGRABEN: Object to the form of the question.

Q. (BY MR. THOMPSON) If we look at the last page of the document, there's a lists of assets and liabilities. I just want to make sure I understand.

The Government's commitment was not listed as an asset on the Balance Sheet of the company; is that correct?

A. Yes.

Q. Okay. So this next one is going to be McFarland 21. It has a Bates number of Fannie Mae 2482.

(McFarland Exhibit No. 21 was marked.)

Q. (BY MR. THOMPSON) So this is an e-mail from Nicola Fraser dated August 7th, 2012 to you and Mr. Benson and Mr. Mayopoulos and others. The subject is, "Draft Treasury Meeting Discussion Materials, Treasury Slides 8, 9, 12 Version 9."

Does this relate to the meeting that you described earlier that took place at Treasury on the eve of the net worth sweep where you spoke to Ms. Miller about deferred tax assets and other things?

MR. LAUFGRABEN: Object to the form of the question; mischaracterizes previous testimony.

A. This relates to the presentation that was being prepared for my use in the meeting with Treasury on the 9th with Mary Miller and others at Treasury to update them on our financial results forecast. And while the meeting materials didn't express in writing the deferred tax allowance issue, I in that meeting articulated that orally to Treasury.

Q. (BY MR. THOMPSON) Okay. And you can put that to the side. Let's look at McFarland 22, which has Bates numbers 2526 through 2535.

(McFarland Exhibit No. 22 was marked.)

Q. (BY MR. THOMPSON) So take a moment, Ms. McFarland, to look through this, and my question is whether this is the PowerPoint presentation that was provided to Treasury at that meeting?

A. Yes, although -- so you asked earlier -- I think you didn't think you had the presentation.

Q. Exactly.

A. This is it, although this is the update.

So from time to time, presentations, whether that's -- you know, Treasury or Board or whatever, it looks like this has some updates. Normally those updates are minor corrections. Maybe it's spellings or -- you know, I can't tell you what got changed, but clearly we met with them on August 9th.

So the version I would have used would have been the version that existed on August 9th, not the updated version as of August 15th. I am not aware of substantive changes made the document. In all material respects, probably the information here is the same material that I reviewed with Treasury.

Q. Okay.

MR. THOMPSON: And I guess, Chris, if you-all could look and see if you have the August 9th version, that would be great, you know? We would certainly appreciate it.

MR. BARTOLOMUCCI: Got it.

Q. (BY MR. THOMPSON) Okay. So -- and you walked them through each of these slides --

MR. LAUFGRABEN: Object to the form of the question.

Q. (BY MR. THOMPSON) -- the Treasury officials who were present?

A. I walked Treasury through the financial slides.

Q. The financial slides, okay.

A. Correct.

Q. Including the projections of future profitability?

A. Yes.

MR. LAUFGRABEN: Objection.

Q. (BY MR. THOMPSON) Okay. And what was their reaction to the projections of future profitability?

MR. LAUFGRABEN: Object to the form of the question. It's vague.

A. I remember there being a few questions asked that I would put more in the category of seek to understand.

Q. (BY MR. THOMPSON) Okay.

A. And I do think there was a, you know -- a little bit of question around, well, you know, what could cause the outcomes to be, you know, different than this. And I believe I gave them a brief update of some sensitivity analyses that we do, which we kind of do on a recurring basis.

But there wasn't any expression of -- I want to be careful here.

Generally in our meetings with Treasury, they wanted to hear a lot more from us than they were giving.

Q. Yes. I understand.

A. They kept things fairly close to the vest, if you will.

Q. Yes.

A. So this was not untypical of that.

But they asked a few questions. Sometimes from the questions they ask, you can kind of get a sense of what's on their mind.

That is where, you know, Mary did ask me -- when I brought up the deferred tax asset allowance valuation, you know, she asked me that question as an example. But --

Q. Okay. That's helpful.

Let me ask you a question: Does it follow from the fact that -- well, strike that.

Am I right in thinking that Fannie Mae did reserve some of its loan loss provisions?

MR. LAUFGRABEN: Object to the form of the question.

A. Fannie Mae's loan loss reserve declined --

Q. (BY MR. THOMPSON) Okay.

A. -- over time.

Q. Okay.

A. And so in -- you know, so if you think of that as a loan loss reserve reversal, then yes.

Q. Okay. And does it mean that, with the benefit of hindsight, Fannie was over-reserved at one point?

MR. LAUFGRABEN: Object to the form of the question; calls for speculation.

Just please put a time frame on it.

A. Let me answer this in the theoretical construct, and then we can apply it to Fannie specifically.

Q. (BY MR. THOMPSON) Okay.

A. When a company changes its allowance one way or the other, it can be for a variety of reasons. One, it can be because they didn't get it right before, and they had to correct it, which I think is a little bit of the question you're asking.

There are two other general reasons: One, for instance, if I reserved in period A for loans I expected to go bad in the future, and I am now in the future, those loans have gone bad, I have worked through them, and I charged them off, I no longer need to carry the reserve on them anymore. So the reserves will going away.

Now, I may put up new reserves for new loans that I think will go bad or loans that didn't look as bad in period A but now look not so hot in the next period.

So reversing reserves may just be the fact that you've worked through the problems, and you no longer need to carry the reserve because you actually realize the charge-off.

The third bucket can be because assumptions have changed, that you have seen -- you assumed a certain home price, so your severity was going to be a certain level. Now home prices are improving, so what you're likely to get -- it could be the other way. Let's say it was improving.

Then you would say, "Okay. I expect to get more for the collateral than I previously expected."

That's not a correction of an error. That's not meaning I was over-reserved in the prior period.

The reserves were based on what home prices were in the prior period. Now that I see that home prices are going to be better, I am updating the reserves to reflect those updated assumptions.

Q. Okay. Do you recall for Fannie whether all three of those factors were in place, or just some of them --

MR. LAUFGRABEN: Object to the form of the question.

Q. (BY MR. THOMPSON) -- in the reduction of the

loan loss provisions?

MR. LAUFGRABEN: Same objection with respect to the time period.

A. For the time period -- I believe we started reducing reserves sometime in 2012, so let's -- I will answer it in the context of declines in allowance during 2012 from, say, where it ended in 2011. So let me just box it in.

There was nothing that caused those declines that we deemed to be a correction of an error, because, quite frankly, if it was a correction of an error, and it was material, we would need to restate our prior financials. We have that responsibility from an accounting perspective to do so.

All of the materials chance in the allowance were driven by the burnoff of the bad stuff and improving assumptions and applying those improving assumptions to what we thought we now needed to have in the reserves.

Q. (BY MR. THOMPSON) Is there some judgment that you as CFO and your team had to exercise as you were trying to set the right level of loan loss provisions?

MR. LAUFGRABEN: Objection; form of the of the question.

A. Yes.

Judgment is required in setting allowance loan loss.

Q. (BY MR. THOMPSON) Okay. Where are the areas where judgment needs to be brought into bear?

Future home prices is one, right?

MR. LAUFGRABEN: Objection; vague, calls for speculation.

A. As we discussed previously, there were a number of different home-price projections out there.

Q. (BY MR. THOMPSON) Yeah.

A. So you use judgment as to which home price projections you're going to use as your base-case calculation.

You can see periods of time -- so when you look back at your history, you can try to extrapolate off the historical performance what you might expect in the future for loans in the same stage of delinquency. So you could say that historically loans that are 90 days delinquent, X percent of them don't pay.

However, what you would probably see, if you looked back over history, what that percentage looked like 12 months ago might look different than 6 months ago which may look different than 3 months ago. There's judgment involved in how you should consume

historical information into your assumptions set and calculations of where you think you need to set your reserves today.

We talked earlier about the fact that we had made requests of a myriad of financial institutions to make good on their warrant obligations for defects in loans that they presented to us, and we had to make assumptions to the collectability of those demands and requests on other financial institutions.

So those are just examples of things that are included in the loan loss reserve calculations that requires some degree of management judgment.

Q. Okay. Do you also have to make some management judgment about future macroeconomic conditions like the employment rate and that sort of thing?

MR. LAUFGRABEN: Objection; vague.

A. You can make assumptions around unemployment and its effect on expected performance. And, you know, you need to have an analytical basis for how you're consuming those assumptions.

But that can be a factor that can be used and considered in setting your allowances.

Q. (BY MR. THOMPSON) Okay. This one is going to be McFarland 23. It has a Bates number of Fannie Mae 3595 through 3602.

MR. LAUFGRABEN: Object to the form of the question.
Within what time period?
MR. THOMPSON: The same time period we've been talking about.
A. 2008?
Q. (BY MR. THOMPSON) And 2011, '12.
A. I am not aware of swapping of loans that occurred at my time at Fannie.
Q. Okay.
A. Okay.
MR. THOMPSON: Well, we are ending -- getting very close to the end of my questions.
And so what I would request is maybe we could take a short break, and I can confer with my colleagues. We may have some questions of their own, but there's light at the end of the tunnel. Let's take a five-minute break.
THE REPORTER: It's 3:48.
(Recess from 3:48 p.m. to 4:18 p.m.)
THE REPORTER: It's 4:18.
MR. THOMPSON: So the Fairholme plaintiffs do not have any more questions at this time, but thank you very much. We appreciate you taking the time today and we owe you a check and we will get that

to your counsel next week for -- you know, it's a witness fee. I think it's $120, so don't spend it all in one place.
THE WITNESS: I can retire now.
MR. THOMPSON: Thank you very much.
EXAMINATION
BY MR. ZAGAR:
Q. Good afternoon, Ms. McFarland. My name is Eric Zagar. I represent the class action plaintiffs, and I have a few questions.
All of my questions will pertain to the time period from when you started at Fannie Mae in 2011 until the Third Amendment in August of 2012.
A. Okay.
Q. We talked a lot today about projections that Fannie Mae would be profitable and able to accumulate capital.
My question is, did you give any thought to how Fannie Mae could use that capital that it was projected to accumulate?
MR. LAUFGRABEN: Objection; form.
A. Not -- we didn't have conversations about, oh, if we had this much capital, then we could go out and expand our business in this way or, you know, any of those types of things.

It was merely that the -- the profits, under the structure prior to the Third Amendment, would create some capital accumulation, and that capital accumulation could, you know, be there for providing the starting of capital available for whatever the resolution of housing finance might be.
It could be there to help take future negative events; you know, those kinds of things, but not -- there was no specific conversations about deploying capital in various ways, no.
Q. I think that answers my question, but I will ask it again.
Was there any discussion that you were aware of, of deploying that capital to try to pay back the Government for the money that it had borrowed?
MR. LAUFGRABEN: Objection; calls for a legal conclusion.
A. In the context that there would be capital available that at some point the existing construct, the Preferred Stock Purchase Agreement and the conservatorship, there's a hope and maybe an optimistic belief that that couldn't continue in perpetuity. And so all of the claims of the Government against Fannie needed to be resolved, and that to the extent that Fannie was profitable and that might create capacity

from which to, you know, make available for whatever those resolutions might be.
But there wasn't any specific conversation on specific structures from which to try to make that happen in the near term.
Q. (BY MR. ZAGAR) Was there any discussion that you were aware of of just getting the excess capital to Treasury voluntarily?
MR. LAUFGRABEN: Object to the form of the question.
A. I think it's important to bear in mind that the profitable was recent, so the actual, you know, profitable quarters started in early 2012; that the improvement in our forecasts, you know, all kind of came about, you know, in that positive way in the last, say, six-month period. And so we were consuming a lot of new-and-improved information, and then the Third Amendment went in place.
So really, in some ways, I would contend there really wasn't sufficient enough time for us to really sort of contemplate. If the Third Amendment had not been put in place, it's theoretical we might we have begun to explore a myriad of options possibly.
But the way that the timing of everything played out, the Third Amendment was put in place, you

know, so quickly, if you will, after the news started to turn good, we never delved in in a deep way into some of those options and alternatives.

Q. (BY MR. ZAGAR) The net worth sweep giving all the profits to Treasury, that was not your idea, correct?

A. It was not my idea.

MR. LAUFGRABEN: Object to the form of the question.

Q. (BY MR. ZAGAR) Do you think it is likely that you would have come up with that idea on your own?

MR. LAUFGRABEN: Objection; form, calls for speculation. It's outside the scope.

A. No, I don't believe that I would have proposed something quite like that.

MR. ZAGAR: That's all I have. Thank you.

EXAMINATION

BY MR. LAUFGRABEN:

Q. Good afternoon, Ms. McFarland. As I mentioned earlier, my name is Eric Laufgraben, and I represent the United States in this action.

I think you testified earlier that one source of recapitalization would be retained earnings.

In your view, what amount of capital, if

any, would Fannie Mae need to be deemed adequately capitalized?

A. You know, we did do some what I call back-of-the-envelope work on that, and, you know, I -- I would have to -- I don't remember the exact numbers.

I think you would probably be looking at something in the high single-digit percent of assets, you know? You know, something in the 7-to-8-percent-of-asset range, and I could work the math backwards and come up with a -- what that means in dollars.

It would certainly be at a level higher than what Fannie would require to have in capital pre-conservatorship.

Q. Do you know how much that would be based on the level of assets held in 2012?

A. On-Balance-Sheet assets -- of course, we haven't done any kind of risk because it's a little more complex than that simple math.

I think the on-Balance-Sheet assets of Fannie on a GAAP basis were a little over 3 trillion, if I remember correctly. What would that be, 24 -- is that 24 billion? Do I have the zeros right?

But -- well, but you would do it on -- really have to look at -- okay. Let me -- that's why I

said I would love to be able to use a little pen and paper to calculate that.

But, you know, I kind of come from a traditional bank environment. So when I assess and look at the activities, you know, I thought of it in the context of what -- how would you evaluate the capital requirements if you -- you constructed it more similar to how capital requirements are set for banks.

Having said that, some of the back of the envelope we were doing wasn't based on the Balance Sheet that existed in 2012, because the presumption is that certain things would change over time. So the held portfolio, which I think was a little under a billion dollars, then -- I can't remember the exact number -- would diminish over time, the guaranteed assets that were consolidated onto the Balance Sheet.

So I can't remember how we kind of worked through all of those different numbers. That's why I am hesitant to just throw, you know, an off-the-cuff enumeration of it.

Q. Now, were any of the forecasts that you presented to -- to Treasury prior to the execution of the Third Amendment -- now, it's true that none of them took into account the potential for a payment of periodic committee fees; is that correct?

A. That's correct.

Q. Okay. And the Treasury commitment, did that serve as a means to absorb losses like capital?

A. It could be used -- if I remember, it was structured I think in a way that that could be used in addition to or instead of up to the amount that was available.

Q. And I will come back to it, but with respect to the -- I think it's the August 9th, 2012 meeting that you attended with Treasury, I think you mentioned that you advised Mary Miller of the possibility and the Treasury team of the possibility of releasing the DTA valuation allowance.

Is that correct?

A. Correct.

Q. Okay. Now -- and I think you -- you said that you had some belief that there was some sort of -- that Treasury was influenced by that -- by that disclosure that you said that you made during that meeting when it decided to execute the Third Amendment.

A. The timing of the Third Amendment was coincidental. It was closely -- followed closely after those conversations.

Q. Okay.

A. And so it was possible that the information we provided in that meeting may have had some influence on the going forward with the Third Amendment when it happened.

Q. But to be clear, no one from -- you don't know either way; is that correct?

A. That's correct.

Q. And no one from Treasury ever indicated that as much to you?

A. They never mentioned the Third Amendment until they told us they were doing it.

Q. Right.

And no one from Treasury ever indicated that the Third Amendment was somehow connected in any way to your disclosure to Mary Miller or to Treasury during the August 9th meeting?

A. Yeah; no one at Treasury ever said that.

Q. And no one from FHFA ever said that, either, did they?

A. No.

Q. And turning back to that meeting, we saw what was previously marked as McFarland Exhibit No. 24. This is an e-mail from David Benson to Tim Bowler dated August 11th, 2012.

A. Okay. I remember the document. I can pull it out from this stack here.

Okay. Got it.

Q. Okay. Now, this is now, I guess, 2 days after you met with Treasury on August 9th?

A. Based on the date of the e-mail, yes.

Q. Now, none of -- the models that are reflected in the attachments here, none of those models incorporate the release of the valuation allowance, do they?

A. No, but they incorporate the utilization of the deferred tax asset over time.

It got back -- that conversation on the assumption from a tax perspective, but, no, not a -- you know, a release in a near future period, no.

Q. Okay. And what was previously marked for identification as McFarland 22 -- this is the one that says on the cover, "Fannie Mae Update Treasury Meeting August 9th, 2012" -- it says it's updated on August 15th, 2012.

A. Correct.

Q. Now, is it also correct for the models in these attachments that none of those models, you know, reflect a -- you know, any sort of, you know, definitive release of a valuation allowance at any particular point in time; is that correct?

A. That's correct.

As I stated earlier, I did not include any of that in the numbers or in writing, but I did articulate that potential to the members that were present there from Treasury.

Q. Okay.

A. And Mary asked me some follow-up questions about that.

Q. Now, I guess the day before the Treasury meeting was, you know, I guess, August 8th, 2012.

Do you recall being interviewed by media outlets following Fannie Mae's release of the 10-Q for the second quarter of 2012 on or around August 8th, 2012?

A. If August 8th was the date we released the 10-Q, then I would have done media interviews on August 8th. That would have been normal.

I don't recollect the date we filed the Q.

MR. LAUFGRABEN: May I have this marked for identification?

(McFarland Exhibit No. 28 was marked.)

MR. BARTOLOMUCCI: Do you have any other copies?

MR. LAUFGRABEN: No.

MR. BARTOLOMUCCI: Don't worry about it.

Q. (BY MR. LAUFGRABEN) Do you recognize what's --

THE REPORTER: 28.

Q. (BY MR. LAUFGRABEN) What's been handed to you is what's been marked for identification as McFarland 28. It's a filing for Fannie Mae, the Form 10-Q.

And do you recognize this document?

A. Yes.

Q. Okay. And is this the -- is this the 10-Q for Fannie Mae for the second quarter of 2012?

A. Yes.

Q. Okay. And was this released on or around August 7th, 2012?

A. I would have to look here. I should be able to.

It's dated August 8th, 2012.

Q. Thank you for clarifying.

Is this the 10-Q that was released on or around August 8th, 2012?

A. Yes.

Q. Okay. And just for the record, on the page that's marked for identification as Treasury 4079 at the very end --

A. 4079; let me get to that.

Okay. Yes, my certification.

EXHIBIT D

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

\- - - - - - - - - - - - - - - - X

FAIRHOLME FUNDS, INC, et al., :

Plaintiffs, :

v. : Case No. 13-465C

THE UNITED STATES, :

Defendant. :

\- - - - - - - - - - - - - - - - X

Washington, D.C.

Friday, May 15, 2015

CONFIDENTIAL - PROTECTED INFORMATION TO BE

DISCLOSED ONLY IN ACCORDANCE WITH PROTECTIVE ORDER

Videotaped Deposition of MARIO UGOLETTI, a witness herein, called for examination by counsel for Plaintiffs in the above-entitled matter, pursuant to notice, the witness being duly sworn by AMANDA BLOMSTROM, a Notary Public in and for the District of Columbia, taken at the offices of Cooper & Kirk, 1523 New Hampshire Avenue NW, Washington, D.C., at 9:34 a.m., Friday, May 15, 2015, and the proceedings being taken down by Stenotype by AMANDA BLOMSTROM, CRR/RMR/CLR/CSR, and transcribed under her direction.

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first three-quarters of 2012, did you also assume that FHFA was under a mandate to ensure the companies were operated in a sound and solvent manner?
A. That's another one of conservatorship, yes.
Q. And what does that mean to you?
A. Well, a sound manner means that companies, as I talked about some of the examples earlier, that they are operating their businesses under a traditional supervisory regime. Examiners go out there and look at, you know, their processes. There's a whole host of issues that a regular examiner would look at and make sure that they're doing things in a sound manner.
Q. Okay. And what about capital levels, how did that relate to soundness?
MS. HOSFORD: Objection; lack of foundation.
THE WITNESS: Well, the capital levels, the solvency aspect of that regulation was suspended shortly after the enterprises were -- or around when they were put into conservatorship.

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BY MR. THOMPSON:
Q. But does capital have to do with soundness as well?
A. Well, it does. But there was no capital, so it was suspended.
Q. When you were thinking about the future profitability of Fannie and Freddie in the first three-quarters of 2012, did you assume that the companies were going to be operated consistent with the -- consistent with the Administration's plans for them?
MS. HOSFORD: Objection; lack of foundation.
THE WITNESS: You know, I -- I don't know what the Administration's plans exactly were for them. I mean, the Administration had three years to come up with a plan for them.
And, in my view, I think, in Acting Director DeMarco's view, that plan needed to be a legislative solution. I didn't see any legislative solutions from the Administration. I saw a white paper that had three options that everybody knew what

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those options were. So it was not a -- there was not a plan for them that I -- that I saw. So consistency with a plan, no.
MR. THOMPSON: Ms. Hosford, I'm happy to keep going, but we've kind of got into a natural break point in my questioning. So I don't know if you want to take lunch now or ...
MS. HOSFORD: Well, we had talked about 12:45, but if Mr. Ugoletti is fine with lunch now, then I am fine with lunch now.
THE WITNESS: I'm a little hungry.
MR. THOMPSON: Okay. So we're off the record.
THE VIDEOGRAPHER: We're off the record. The time on the video is 12:30 p.m.
(Recess taken.)
THE VIDEOGRAPHER: We're back on the record. The time on the video is 1:34 p.m.
BY MR. THOMPSON:
Q. Now, sir, welcome back.
A. Thank you.
Q. And wanted to do, to do a little bit of

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cleanup before we got to some new topics.
With respect to the periodic commitment fee, do you know if anyone at FHFA ever tried to calculate what the value of it would be?
A. No.
Q. Okay. And do you know if anyone at Treasury ever tried to calculate the value of it?
MS. HOSFORD: Objection; calls for speculation during a particular time period.
THE WITNESS: Not that I'm aware of.
BY MR. THOMPSON:
Q. Okay. What is the basis for your statement that it would be incalculably large if no one calculated it?
A. Right, I think I went through a fair amount of that at, at the last round, but, I mean, my basis for that is it is to fully compensate Treasury for the value of the guarantee they are providing and a market value. And I do not think that there was any market value you could have put on, given their financial condition, the 100 billion that we started out, I don't even think -- I think it was very

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difficult on that. Doubling it to 200 billion and then taking on an unlimited commitment, I just don't, I don't see a market value that corresponds to that, that anybody would even come up with a price that anybody would be willing to put that amount of capital at risk in those situations.
Q. Did you discuss your view that it was an incalculably large fee or would have been with anyone at Treasury?
A. Not that I recall.
Q. Anyone at FHFA?
A. Not that I recall. The issue did not -- wasn't coming up.
Q. Yeah. And did you --
A. Nobody was looking to calculate it, so ...
Q. Okay. And at the time of the Net Worth Sweep, I'm not talking about afterwards but I'm --
A. Yeah.
Q. -- talking about at the time, had you given any thought to what the value of the periodic commitment fee would be? I mean, I understand now you're saying you think it would be incalculably

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large, but I'm saying back in August 2012 were you thinking about the size of the commitment fee?
A. Well, I don't recall any of those discussions, but I, I think that -- I mean, you may -- there was a trade-off made in the third amendment, right? The third amendment traded off a waiver, the periodic commitment fee for the Net Worth Sweep --
Q. Yep.
A. -- right?
Going back, I mean, the compensation that Treasury got prior to the third amendment -- we talked about this before -- was liquidation preference, 10 percent dividend, periodic commitment fee, warrants. After the third amendment, they got Net Worth Sweep, warrants were still out there, and their liquidation preference was still in place.
So I don't know if anybody shared that particular view, but, to me, that, the swapping out of those things, indicates that it was an incalculably large amount; and the only way that you could come up with something that approached an incalculably large amount was the earnings of the

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companies.
Q. And I'm sorry if you've answered this --
A. Yeah.
Q. -- and I'm too dense to pick up on it, but just to be clear on the record, are you -- in August of 2012, prior to the Net Worth Sweep, were you thinking along these lines? Were you thinking, You know, that periodic commitment fee is incalculably large?
MS. HOSFORD: Objection; vague question.
THE WITNESS: I -- I think that -- that's how you get from waiving -- waiving the periodic commitment fee if -- there's two different forms of compensation, periodic commitment fee that could be set -- could be set at what it was set in the third amendment at or the Net Worth Sweep. I mean, so ...
BY MR. THOMPSON:
Q. But was that, in fact, how you were looking at it? I understand you're saying, you know, you could look at it that way; but I'm saying, in fact, did you look -- you have these thoughts in August of 2012?

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A. Well --
MS. HOSFORD: Objection; ask- -- asked and answered.
THE WITNESS: -- I can't -- I can't sit here and say what I was thinking in August of 2012. That's, like, a long time ago, in August of 2012. But I don't think the view that I am -- that I've just stated about how you would think about the periodic commitment fee wasn't something I came up with after August of 2012.
BY MR. THOMPSON:
Q. When did you come up with it?
A. I don't know, but, I mean, it was something that was embedded in the whole sort of nature of the PSPAs and the substantial financial commitment that Treasury made.
Q. Now, let me ask you -- I also want to make sure the record is crystal clear on another thing that we did discuss --
A. Um-hmm.
Q. -- which was the alternatives.
If -- if we're looking at a funding

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commitment that could be diminished --
A. Yep.
Q. -- and we're thinking about alternatives, I want to make sure the record is clear as to what alternatives were considered to deal with that situation. One is the Net Worth Sweep --
A. Yep.
Q. -- correct?
Okay. A second that you described was, well, having a Net Worth Sweep but having it kick in at, you know, a particular dollar level, whether it's a hundred billion or something like that, correct?
A. That's correct.
Q. Okay. Were there any other alternatives that were discussed either internal at FHFA or at Treasury?
A. Not that I'm aware of.
Q. Okay. Was the PIK, the option of letting the companies do a payment in kind to preserve the funding commitment, discussed?
MS. HOSFORD: Objection; vague.
Considered by, discussed by whom? What

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PIK are you talking about?
BY MR. THOMPSON:
Q. Do you want me to repeat the question?
A. Yeah, that would be good.
Q. Yeah, yeah.
Was the option of preserving the funding commitment --
A. Yeah.
Q. -- by having the companies pay a 12 percent payment-in-kind dividend, was that something that was discussed at FHFA, you know, in the leadup to the Net Worth Sweep?
A. Not that I recall and for the reasons that we talked about. I mean, one of them was the basic 10 percent versus 12 percent, that it just -- that had been -- unless there was some economic aspect that would make that an economic transaction, it wasn't even part of the discussion.
So that's -- that's one that I would point to at FHFA. So it really wasn't -- it just never was on the table.
Q. Okay. Now, when you -- you've stated

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under oath that the periodic commitment fee was incalculably large in your view, right?
A. Um-hmm.
Q. And was that a phrase that you came up with or a lawyer came up with?
MS. HOSFORD: Objection. Instruct you not to answer to the extent that it involves discussions with Counsel about obtaining legal advice.
BY MR. THOMPSON:
Q. So did -- did you come up --
A. Wait, wait. I don't understand. I was instructed not to answer, right? Or --
Q. So let me -- let me --
A. You're --
Q. -- try to ask the question --
A. I want -- I want to understand the process.
Q. Sure.
A. When she says not to answer, I don't -- I don't answer; and you're trying to do another question on this.
Q. Well, you can answer, but in any event --

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MS. HOSFORD: No. I instructed you not to answer.
THE WITNESS: I've been instructed not to answer.
BY MR. THOMPSON:
Q. Okay. But -- but just, let me -- was that a phrase that you came up with, with -- wholly apart from what the lawyers told you to say, was that a phrase you came up with?
Now, if you can't answer, you can't answer.
MS. HOSFORD: Objection; calls for attorney-client privileged discussions.
I instruct you not to answer.
BY MR. THOMPSON:
Q. So I don't want to know anything about what the lawyers told you, okay? But did you independently come up with that?
MS. HOSFORD: You may answer.
THE WITNESS: I may answer?
I had another word that was similar.
BY MR. THOMPSON:

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that particular meeting was about.
BY MR. THOMPSON:
Q. Okay. Now, you did not raise the topic of the Net Worth Sweep with the companies until just a couple of days before August 17th; is that right?
MS. HOSFORD: Objection; assumes facts not in evidence.
THE WITNESS: I do not recall ra- -- I did not raise the topic with them. I'm not sure when Acting Director -- I can't, on this time line, I can't recall when Acting Director DeMarco actually -- and I'm pretty sure he called both companies and talked them through it. They did get a copy of what became close -- what became the final version to review. But that's, that's -- in terms of the time line, that's as far as I can remember.
BY MR. THOMPSON:
Q. But they weren't involved in the negotiations over the Net Worth Sweep, were they?
A. No. They weren't involved in negotiations over the PSPAs or any of the amendments to the PSPAs, or this amendment to the PSPA.

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Q. But this amendment to the PSPA was driven by a perceived problem, right?
MS. HOSFORD: Objection; assumes facts not in evidence.
BY MR. THOMPSON:
Q. A problem that their funding commitment might be exhausted, right?
A. Right, and you've showed me enough of their views on what they thought the base case looked like, so why -- what -- so I understand what their views were.
Q. Okay. But my question is: Why not talk to them and see if they have thoughts on whether there are different alternatives to solve this problem?
A. Just not an issue that we would talk to the companies about.
Q. You didn't value their opinion?
MS. HOSFORD: Objection; argumentative.
THE WITNESS: We valued their opinion and, their opinion and understand what their opinion is, I understand it.

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BY MR. THOMPSON:
Q. Okay. What was their reaction when they told all of their income would be swept to the federal government?
MS. HOSFORD: Objection; misstates the facts.
THE WITNESS: I don't, I don't recall a specific reaction that I could sit here and say --
BY MR. THOMPSON:
Q. Well, a --
A. -- this, this CEO said that, that CEO said that, I don't recall, I don't recall a specific one.
Q. Do you have a recollection of the general reaction?
A. Well, I think their general reaction was they probably were not too happy about it.
Q. Why not?
A. Well, in many camps within Fannie Mae and Freddie Mac, I mean, I think there were people, they, they certainly never liked the Treasury Department saying that they were going to be wound down. They didn't want to be wound down, right. You don't want

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to be wound down. You want to be Fannie Mae and Freddie Mac.
So to the extent that they perceived this as further somehow taking that possibility away, they might not have been very happy about it.
Q. And it did make it more remote that they would be rehabilitated because they'd never be able to build their capital under the Net Worth Sweep; is that right?
MS. HOSFORD: Objection; misstates the testimony.
THE WITNESS: Well, again, I will go back to, back to 2008 and say that if they, if they weren't, if they weren't put into conservatorship with the PSPAs, the employees would be working for our firms right now, so ...
BY MR. THOMPSON:
Q. I, I understand that, but --
A. Yeah.
Q. -- if we put ourselves and we compare Fannie Mae and Freddie Mac on August 16th, the day before the Net Worth Sweep, and August 18th, the day

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after the Net Worth Sweep, it was less likely they were going to be rehabilitated because they weren't going to be able to rebuild capital; isn't that right?

A. I don't generally believe that because the solution to this whole issue all along, in my view, needed to be a legislative solution. So if the Congress of the United States says, you know, this is all that's happened, this is all the draws, this is all the dividends, this is everything that happened, and we think Fannie Mae and Freddie Mac should be rehabilitated under this structure, and this is the housing system that we want for the next 30 years, you have a good chance to do that.

Q. Well, but, wait a minute, when you -- when the, when the Net Worth Sweep was entered into, you knew that because the companies were going to have the capital taken out of them, that when Congress eventually turned to this situation, they're going to be looking at two companies with no capital?

MS. HOSFORD: Objection. Can you tell me where in the Court's order this type of questioning

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is authorized. It seems beyond the scope of the Court's order. I'm going to direct him not to answer unless you can find --

MR. THOMPSON: Let me --

MS. HOSFORD: -- you can persuade me.

MR. THOMPSON: Let me try to tie this to the Court's order.

BY MR. THOMPSON:

Q. Do you know whether Treasury wanted to ensure that these companies did not reemerge well capitalized in the form that they had had before 2008?

MS. HOSFORD: Objection; calls for speculation.

THE WITNESS: Well, I'll speculate on that. I think Treasury had been pretty clear that they -- I mean, they were pretty clear all along from a legislative perspective that they wanted to see a wind-down and they wanted to see a new housing finance structure. I think Secretary Paulson was clear before that.

BY MR. THOMPSON:

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Q. And was that an objective that FHFA shared?

A. FHFA also believed, and I think Director DeMarco said this many times, the, the strategic plan, the second strategic plan was the next chapter in a story that needs an ending, right. The ending was for Congress to pass legislation. The ending was not for Fannie and Freddie Mac to emerge from conservatorship.

Q. And did the Net Worth Sweep further that goal?

MS. HOSFORD: Objection; calls for speculation.

THE WITNESS: I'll speculate. And, and the speculation I will give you is the answer I gave you not that long ago which was, emerging from conservatorship under the structure of the PSPAs is going to be very difficult, right. And we can recall, and we can go through that whole process again where, if they were going to emerge from conservatorship, they would have to go out and raise private equity of a hundred and 87.5 billion total

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and whatever the two were split up, 116 and 75. Raise private equity. Pay off the liquidation preference. Raise enough private equity to be able to dilute the 79,9 warrants from Treasury and raise enough private equity to do all that and become a well-capitalized institution under regulatory standards that, by the way, had changed fundamentally from when HERA was passed, because I would think in any corner of the world, if they were going to be in any corner of the United States, if there was going to be companies these -- this large, they were likely going to be systemically important financial institutions under Dodd-Frank and they were going to have to hold capital well in excess of anything that HERA or at least that pre-HERA envisioned, well in excess in anything of that. So the, the amount would have been huge.

And the PSPAs also have a provision that, given that, they don't go away. If you exit conservatorship under the PSPAs as, as you were before, the financial commitment from Treasury goes with you. That's, that's how it works. And so there

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was a provision in there that even if, even if they did all those things I talked about, and FHFA finally put the stamp of approval on them and said, By God, you did it, you've made the capital, you raised all that money, and even if we had the SIFI standard, you would meet it, and the Federal Reserve won't have to supervise you, Treasury still has to approve them coming out of conservatorship because it's still the financial backing of the PSPAs goes with them.

So did the third amendment change any of that stuff? No. Very little.

MR. THOMPSON: Now, Ugoletti 29 has a Bates number of FHFA 103596.

(Exhibit No. 29 marked.)

MS. HOSFORD: Mr. Thompson, would it be okay if we took a, like a three-minute break?

MR. THOMPSON: Sure.

THE VIDEOGRAPHER: This concludes Disk No. 3 in the video deposition of Mario Ugoletti. The time on the video is 4:44 p.m. We are off the record.

(Recess taken.)

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THE VIDEOGRAPHER: This begins Disk No. 4 in the video deposition of Mario Ugoletti. The time on the video is 4:53 p.m. We are on the record.

MS. HOSFORD: Counsel, a question: What is this document that you've handed us?

MR. THOMPSON: Oh, yeah. So your colleague had requested something that was verifiable with a URL. The prior screenshot we gave you, I believe, was from Bloomberg, and that's not -- there's no URL, you have to be a subscriber; so we wanted to give you something that had an Internet source for the same information. We've given you a CNN.com, we could also give you a Google Finance if you want.

MS. HOSFORD: But how does this document relate to this document?

MR. THOMPSON: It's the same information.

MS. HOSFORD: How did this document get created then? Is this a screenshot from the same site as this?

MR. THOMPSON: It's, it's -- it's stock price information, so you could get it from Google

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Finance, you could get it from CNN, you can get it from Bloomberg. So your colleague requested a URL, there is no URL for Bloomberg, it's a proprietary service, so what we're instead giving you is the information.

MS. HOSFORD: All right.

MR. THOMPSON: We're trying to be helpful. If it's not helpful, I apologize, and you can disregard it.

MS. HOSFORD: But I don't understand, I mean, there's different dates, different data, how -- there seems to be no relationship between this and this except --

MR. THOMPSON: Other than it's the same stocks, and the one that you have in your right hand is inclusive of all the information in your left hand.

MS. HOSFORD: So but why did you not -- why did you not give us a URL for this one?

MR. THOMPSON: It doesn't exist.

MS. HOSFORD: Well, how --

MR. THOMPSON: It's not available on the

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Internet. You have to pay Bloomberg, and so I can't give you a URL for it.

MS. HOSFORD: Oh, so you're trying to --

MR. THOMPSON: I'm trying to be helpful. Your colleague said, We'd like something we could verify. So I tried to give you something that was verifiable.

MS. HOSFORD: So you're trying to give me something that, that --

MR. THOMPSON: Verifies the information that we provided to the witness in a way --

MS. HOSFORD: Or this has some of the same information. It's not verifying this.

MR. THOMPSON: It has all of the same information. And if it's not helpful, I apologize. We weren't obligated to do this. We did it in a.

Spirit to try to be helpful.

Was it helpful to you, Mr. Dintzer?

MR. DINTZER: No, actually, it wasn't. But, I mean, I -- you hand -- you handed something to the witness, and you represent it's whatever -- actually, it doesn't even represent, you said it

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THE WITNESS: No, not -- not to my knowledge it had anything to do with that. I mean, my -- my take from this is, you know, we had done, as we went through earlier today, a lot of back and forth with negotiation on Treasury on these potential third PSPA amendments back in June.

And the Treasury Department has a whole process that they need to go through to try to get something that they're ready to complete. So, I mean, I just had taken it that, you know, they're working their process and, you know, when they get something that's -- they think they're ready to go, they'll let us know.

BY MR. THOMPSON:

Q. And, I'm sorry, so -- so why were they -- why was there a renewed push?

MS. HOSFORD: Objection; asked and answered.

THE WITNESS: Yeah, I -- I mean, I -- I took this to be that -- you know, we had done a lot of work on this on June. We had worked on the language in June. And, you know, the Treasury

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Department, to get a document all the way through to the Secretary and to get all their other ducks lined up in a row, it takes some time. So I figured it's somewhere over there and -- and they're working the process.

MR. THOMPSON: Okay. This next one is going to be Ugoletti 30. It has a Bates number of FHFA 102247.

(Exhibit No. 30 marked.)

BY MR. THOMPSON:

Q. So the top email is from Ms. Tagoe to you and to others, August 9th, 2012. And at the bottom is an email from a reporter with the American Banker. And this reporter, Mr. Horwitz, says in the second sentence of his email "It looks like the GSEs are vastly outperforming even the most optimistic outcome listed."

Was that true; were they "vastly outperforming even the most optimistic outcome listed"?

A. I'm not going to parse adjectives here in terms of "vastly," or whatever, but they were. I

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mean, we've talked about this numerous times. These were projections based on various -- various sources; in this case, Moody's opinion on house prices. And if Moody's was, even in the base case, if -- if markets performed better than that, they were likely to have an outperformance.

Q. Okay.

A. So, I mean, that's ...

Q. Now, Treasury had experience with writing --

A. Are you done with this?

Q. Yes, sir.

-- had experience with writing up deferred tax assets insofar as earlier in 2012, were you aware that Treasury had written back up AIG's deferred tax assets?

MS. HOSFORD: Objection; lack of foundation, also not within the scope of the Court's discovery order.

MR. THOMPSON: The deferred tax assets absolutely are, and I'm entitled to ask him if he knew whether Treasury had written up AIG's.

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MS. HOSFORD: Objection; speculative, and it has nothing to do with this case.

You may answer.

THE WITNESS: No.

BY MR. THOMPSON:

Q. Okay. FHFA reviewed Fannie and Freddie's 10-Ks and 10-Qs; is that right?

A. That is correct.

Q. Okay.

This next one is going to be Ugoletti 31. It has a Bates number of FHFA 3584 through 3738.

(Exhibit No. 31 marked.)

BY MR. THOMPSON:

Q. We have -- this is the 10-Q -- we have produced select pages. If you or DOJ wants the full 400 pages, we can print it out.

MS. HOSFORD: I'm just going to object that this is not going to represent the full document; and to the extent that Mr. Ugoletti attempts to interpret any information in this document, it will not be reliable.

BY MR. THOMPSON:

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Q. Now, sir, if we look at this document and you turn to page -- it's hard to read, but --
A. That's why I have my glasses.
Q. -- 3737, "Deferred Taxes Asset, Net," it says "Our valuation allowance decreased by $989 million to $34.7 billion during the six months ended June 30, 2012 primarily due to a decrease in deferred tax assets. After consideration of the" value "allowance, we had a net deferred tax asset of $3.1 billion, primarily representing the tax effect of unrealized losses on our available-for-sale securities. We continue to be in a tax loss carryforward position."
This reflects the fact that the companies were, in fact, decreasing their valuation allowance right on the eve of the Net Worth Sweep; isn't that right?
MS. HOSFORD: Objection; lack of foundation, assumes facts not in evidence.
THE WITNESS: I'm not the accounting expert here on -- on how -- how the deferred tax asset is -- how the valuation allowance is

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constructed, but there may be, in my recollection, that there are some portions of it that have different rules than other portions of it, but my under- -- my recollection was that when you make a determination, it is closer to an all-or-nothing determination for certain portions of it, for the large portion of it. But that's -- I'm not an accounting expert.
BY MR. THOMPSON:
Q. But FHFA would have been aware that the valuation allowance was, in fact, being reduced by 989 million?
A. Yeah, but --
MS. HOSFORD: Objection; lack of foundation, calls for speculation.
THE WITNESS: Right, and it doesn't say why it was being reduced there. I -- I don't know what portion of the rules in the deferred tax asset world that portion of the valuation allowance was being decreased by.
I don't know, maybe some of them expired, couldn't use them anymore. I -- I don't know. I

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don't know what the -- what the rationale was.
BY MR. THOMPSON:
Q. Now, if they had positive inc- -- they had positive income in the second quarter of 2012; Freddie did, right?
MS. HOSFORD: Objection; assumes facts not in evidence.
THE WITNESS: Yeah, they had positive income, but the general rules, as I understand them, on reversing a valuation allowance of a deferred tax asset require that sometime in the future you've accumulated enough income that you can do a reversal.
So whether this was for some portion of that or whether this was from -- from some other aspect of that account, all it says is, We reversed this. It doesn't say why, it doesn't say what portion of it it was, or anything else about it. So I don't know why they did it there.
BY MR. THOMPSON:
Q. Now, do you know that the Audit Committee of Fannie and Freddie every quarter were looking at the deferred tax assets in assessing whether it

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needed to be -- the valuation allowance needed to be reversed --
A. I'm generally aware of that, yes.
Q. Okay.
And the next document is going to be Ugoletti 32.
MS. HOSFORD: Thank you.
(Exhibit No. 32 marked.)
BY MR. THOMPSON:
Q. This says "Grant Thornton Questions for Fannie Mae Forecasting Group." It's got a Bates number of FHFA 95951, so it was produced to us out of the FHFA's own files. It's dated July 26, 2012.
"Fannie Mae Forecasting Group," do you know what that was?
MS. HOSFORD: Objection; lack of foundation.
THE WITNESS: Well, again, I think I described this process earlier, right, that, you know, Grant Thornton -- we went through a Grant Thornton document -- Grant Thornton, you know, does the Treasury financial statements, so every year they

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have to come in and do their valuation assessments of Treasury's holding. We went through one of those documents, so --
BY MR. THOMPSON:
Q. Okay.
A. -- as part of that process, Treasury asked FHFA if Grant Thornton can come over and talk to, I believe it was, FHFA and Fannie Mae to get information so they can help improve their calculation for Treasury's financial statements.
So I, I don't -- I don't -- I couldn't tell you now who is on the Forecasting Group, but that's the general framework. And so it was some combination, I would think, of those folks for that purpose.
Q. Okay. And if we look at this document on the second page under --
A. Let me read the first page first.
Q. Oh, take your time.
You tell me when you're ready.
A. Okay.
Q. All right. By the way, would Ms. Tagoe

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have been likely to have been a member of the Forecasting Group?
A. Either her or someone on her -- her staff, more likely.
Q. Okay. Do you know who on her staff would --
A. No, because there's people -- people have moved around and --
Q. Okay.
A. -- some people have left, so I'm not sure who -- who at this time would have been --
Q. Fair enough.
A. -- would have been that person.
Q. Okay. Well, if we look at 4, "Other Items" --
A. Yes.
Q. -- and we look at b, it says "What are the plans for the DTA?"
So that tells us that on the eve of the Net Worth Sweep, FHFA was in discussions with Fannie Mae and Grant Thornton about what -- about the DTA; is that right?

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MS. HOSFORD: Objection; lack of foundation.
THE WITNESS: Yeah, I wouldn't read it as that. I mean, you -- you just -- you just said that, I mean, they go through this process on a regular basis on evaluating what to do about the DTA. I think Grant Thornton just wants to know where they're at in that process and what they're thinking about, what -- what the -- I mean, this is -- this is a document -- a lot of these documents are taking -- like if you -- if you go up to 3.a., "What are the components of 'guaranty fee income' and 'fee and other income'?"
So Grant Thornton has a line item on Fannie Mae's balance sheet, these two line items; and they're trying to figure out, well, what's all in that line item? You know, so they're just -- they're trying to take what -- you know, a lot of what Fannie Mae has in their published information and in other materials that they have as to how are they developing things. And so this is an issue, so they want to know what the process is and what the

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thinking is on it.
BY MR. THOMPSON:
Q. And what was the --
A. My -- my --
Q. What was the thinking of Fannie Mae on --
MS. HOSFORD: Objection.
BY MR. THOMPSON:
Q. -- July 26, 2012?
MS. HOSFORD: Lack of foundation, calls for speculation.
THE WITNESS: I do not know what Fannie Mae's thinking was on July 26th. I was not part of this meeting. I did not really hear much about this issue until January or early February of the next year when the first quarter results were about to come out.
BY MR. THOMPSON:
Q. And they wanted to reverse the valuation allowance?
A. That's right.
Q. You have said that the conservator did not envision that the deferred tax assets were going to

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be written back up in 2013, right?
MS. HOSFORD: Objection; misstates prior testimony.
THE WITNESS: I think you'd have to, you'd have to go through --
BY MR. THOMPSON:
Q. Well, let me ask you: Did the conservator, on the eve of the Net Worth Sweep, envision that the deferred tax assets would be written back up in 2013?
A. As I just stated, I did not really think that this was a possibility anytime in the near future. And 2013, the early part of 2013 when this became an issue, it became an issue because, well, house prices are continuing to go up and we're going to take -- release more loss reserves, and it looks like it's more probable than not, which is a very low standard, more probable than not, that we're going to have to release the valuation allowance on the deferred tax asset.
So that is when it really came home that this was a possibility.

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Q. To you?
A. To me.
Q. Okay. But I'm asking: Do you have an opinion on whether FHFA, as conservator, knew that the deferred tax assets might be written back up in 2013?
MS. HOSFORD: Object -- objection; vague as to time period.
BY MR. THOMPSON:
Q. On the eve of the Net Worth Sweep.
MS. HOSFORD: Lack of foundation.
THE WITNESS: I, I don't know who else in FHFA or what they knew about the potential for that, but, as we've gone through here, there were -- our accountants were monitoring this situation, they were monitoring how they were doing about doing their potential, whether to revalue, they had to do it all the time, revalue or not revalue, and I do not recall knowing about that this was going to be an issue until really '13 when it became imminent that, oh, this has to happen now, and I don't know what anybody else thought about it.

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BY MR. THOMPSON:
Q. Do you know what Treasury thought about it?
MS. HOSFORD: Objection; calls for speculation.
THE WITNESS: I do not.
BY MR. THOMPSON:
Q. Okay. Now, you did know that one of the factors you look at is whether there's a three-year cumulative loss, right?
MS. HOSFORD: Objection; mischaracterizes testimony, assumes facts not in evidence.
THE WITNESS: I just said, I knew there were some tests that related to how much income, I can't -- I don't know if it was a three-year, I mean, but there was some test that you had to meet that you were going to pass this threshold and that you expected to continue to generate net income in the future to be able to use the tax asset. That's the condition for revaluing it.
BY MR. THOMPSON:
Q. And we looked at the Grant Thornton

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September 2011 projections, you recall that, for Freddie?
A. Yeah.
Q. I know it was a long time ago. Yeah.
A. Yeah.
Q. And it showed projections of roughly 5 1/2 billion out over the next 10 years; you remember that?
MS. HOSFORD: Objection; lack of foundation.
THE WITNESS: I would have to go back if you want the actual numbers, but, I mean, it showed, it showed net income being positive, I mean.
BY MR. THOMPSON:
Q. Yeah, and if, and if that condition persisted for some period of time, then -- and, and Freddie, for example, was making $5 billion a year, year after year, then the deferred tax asset would be written back up; is that right?
A. That's an accounting determination that the companies have to make.
Q. Yes.

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A. Because they have to sign their financial statements, so the companies have to go through the process of evaluating this accounting question on a regular basis, and between the co- -- the companies and their auditors, when they think they are in a place where they've hit the thresholds for reversing a valuation off or putting one on, they are going to follow GAAP because that is what they do.

Q. But did you ha- -- I understand you're saying that's an accounting issue for the companies. Did you have an opinion on that, as to whether if Freddie, for example, made $5 billion year after year, whether the deferred tax asset would be written back up?

A. It's not --

MS. HOSFORD: Objection; asked and answered.

THE WITNESS: Yeah, I'm not an accountant.

BY MR. THOMPSON:

Q. So you didn't have an opinion on that?

A. No, I don't have an accounting opinion on, on the DTA and the finer points of the DTA about when

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you would actually hit this trigger and what the triggers are. I generally understand what they are, but I don't have the, I'm not an accountant, I don't have the -- it -- it's not my profession.

Q. Yeah, and I don't mean to be difficult, I don't mean to be difficult, but I want to make sure the record's complete. Even if you didn't have a precise understanding of every little test to know exactly what quarter it would be written up, did you have a rough sense as to, you know, if they make 5 billion a year, year after year, that yeah, at some point in the next two, three years they're going to write it back up?

MS. HOSFORD: Objection; asked and answered, mischaracterizes prior testimony.

THE WITNESS: Yeah, and the only thing I would highlight in what you just asked me is, you said "if."

BY MR. THOMPSON:

Q. Yeah.

A. So, if they didn't, they wouldn't write it up.

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Q. Okay. But if they did, they would, right?

MS. HOSFORD: Objection; asked and answered.

THE WITNESS: Asked that -- they're going to follow what the accounting rules say and they're going to make a judgment based on what they think the accounting rules tell them to do in terms of a probability more likely than not to use that asset to write it up.

BY MR. THOMPSON:

Q. Now, were you aware that there were market commentators after the release of the second quarter profits who were saying that Fed -- Freddie and Fannie had made a convincing return to profitability?

MS. HOSFORD: Can you -- objection. Can you please put a time frame of when those statements were made. After the second quarter profits is insufficient to tell whether it's in the scope of the Court's order.

MR. THOMPSON: Within the next two or three days.

MS. HOSFORD: Within the next two or three

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days after what?

MR. THOMPSON: The release of the second quarter earnings.

MS. HOSFORD: When were the second quarter earnings released?

MR. THOMPSON: I believe it was the 6th and 7th; it might have been the 8th and 9th.

MS. HOSFORD: Of August?

MR. THOMPSON: Yes.

MS. HOSFORD: Thank you.

THE WITNESS: No, I wasn't following what the market commentators were saying. It was a good quarter. That's, that's good. We were hap- -- we were happy it was a good quarter, their underwriting had improved, they were starting to earn some income. But because the market commentators said they had a good -- good quarter and something else is, is a response. That's nice to know. But, I mean, I'm going to ...

MR. THOMPSON: Okay. Let's look at the next one, which will be Ugoletti 32, FHFA --

THE WITNESS: 33.

EXHIBIT E

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

\- - - - - - - - - - - - - - - - - X

FAIRHOLME FUNDS, INC., et :

al., :

Plaintiffs, : Case No. 13-465C

v. :

THE UNITED STATES, :

Defendant. X

\- - - - - - - - - - - - - - - - -

Washington, D.C.

Tuesday, July 14, 2015

Deposition of JEFFREY ALAN FOSTER, a witness herein, called for examination by counsel for Defendant in the above-entitled matter, pursuant to notice, the witness being duly sworn by MARY GRACE CASTLEBERRY, a Notary Public in and for the District of Columbia, taken at the offices of Cooper & Kirk, 1523 New Hampshire Avenue, N.W., Washington, D.C., at 8:00 a.m., Tuesday, July 14, 2015, and the proceedings being taken down by Stenotype by MARY GRACE CASTLEBERRY, RPR, and transcribed under her direction.

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payment based on positive net worth."
Do you see that?
A. Yes.
Q. How did that idea come to be part of this document?
A. That related to the fact that --
MR. DINTZER: And I'm going to instruct the witness that to the extent that your answer would involve any communications with members of the White House or the NEC or would involve attorney-client communications, I'll instruct the witness not to answer. Otherwise, you may answer the question.
THE WITNESS: The reason why I believe this was part of the transition plan was that, as these steps were initiated, the profitability of Fannie Mae and Freddie Mac might have been impacted.
BY MR. PATTERSON:
Q. And had Treasury done any projections to test that concern that you just articulated?
MR. DINTZER: Objection. Vague.
THE WITNESS: I'm not -- can you be more specific?

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BY MR. PATTERSON:
Q. Yes. You said that this could impact the reform -- did you say that the reform proposal here could impact Fannie and Freddie's profitability potentially?
MR. DINTZER: Objection.
THE WITNESS: Potentially.
BY MR. PATTERSON:
Q. And was that concern based on any projections that Treasury did then?
MR. DINTZER: Objection. Confusing.
THE WITNESS: We knew that there was a circularity in the PSPAs that would over time result in reduced funding capacity and would make it more challenging to be able to gradually wind down the GSEs.
BY MR. PATTERSON:
Q. And how did you know that?
A. From modeling work that we had done.
Q. And which modeling work was that?
A. Where we forecast and using assumptions from FHFA and Grant Thornton that that earnings

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capacity would not be sufficient to cover expected dividend payments.
Q. Now, when did Treasury come up with this idea to restructure the PSPAs to allow for variable dividend payment?
MR. DINTZER: Objection. Vague.
THE WITNESS: Can you be more specific?
BY MR. PATTERSON:
Q. When did Treasury first have the idea to restructure the PSPAs to allow for variable dividend payment based on positive net worth as stated in this document?
A. I don't know when Treasury came up with that idea. I began discussing it with colleagues in 2010.
Q. And with whom did you discuss that?
A. Counsel, Jeffrey Goldstein, Mary Miller, Tim Bowler, others within the department.
Q. Do you remember specifically who else within the department?
A. It went from a small group to a larger group over time. So at some point it included the

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broader housing finance reform team.
Q. And was this your idea?
MR. DINTZER: Objection. Vague and confusing.
THE WITNESS: I don't know. Other people may have had this idea as well, but I had this idea.
BY MR. PATTERSON:
Q. And how did you come up with this idea?
MR. DINTZER: Objection. Vague. Confusing.
THE WITNESS: The original idea generated from a phone conversation between me and Mario Ugoletti about the challenges of the circularity of drawing to pay ourselves.
BY MR. PATTERSON:
Q. And when did that conversation take place?
A. Sometime in 2010.
Q. And did you discuss the idea of allowing for a variable dividend payment based on positive net worth with Mario Ugoletti at that point?
A. Yes.
Q. And what was Mr. Ugoletti's reaction to

that?

MR. DINTZER: Objection, Counsel. I've allowed a few questions, but if you could keep your questions within the time frame allowed by the Court, please.

MR. PATTERSON: So your position is that I cannot ask him questions about FHFA's reaction to the net worth sweep dividend if they're outside the time period?

MR. DINTZER: My question to you is, if you could identify how your previous question, the one you just asked, fits into the Court's order allowing for specified limited discovery.

MR. PATTERSON: Well, one of the key topics is whether and what extent FHFA was acting as the United States.

MR. DINTZER: Right.

MR. PATTERSON: And, you know, FHFA's response to Treasury's proposal, I think, would fit well within that.

MR. DINTZER: So if you want to ask about that within the time frame, I have no problem with

that.

MR. PATTERSON: So my question to you is, since that conversation took place outside of the time frame, is it your position that I cannot ask about that conversation?

MR. DINTZER: That would not fit within the time frame, that is correct.

MR. PATTERSON: So you would instruct the witness not to answer my question of how Mr. Ugoletti responded to that.

MR. DINTZER: In 2010?

MR. PATTERSON: Yes.

MR. DINTZER: Yes.

MR. PATTERSON: Well, we obviously reserve the right to challenge that instruction.

BY MR. PATTERSON:

Q. So in addition to Mr. Ugoletti, did you have discussions with anyone else outside of Treasury about your idea to allow for a variable dividend payment based on positive net worth?

MR. DINTZER: If you could put a time frame on that, Counsel.

MR. PATTERSON: And again, we don't agree with your instruction, but for purposes of this, I will put a time frame on it. Beginning on June 1st, 2011 through August 17th, 2012.

THE WITNESS: Again, I wouldn't say it was my idea and no, I don't recall having conversations outside the Administration.

BY MR. PATTERSON:

Q. And how about other agencies of the government outside of Treasury?

MR. DINTZER: Objection. Vague. Incomplete.

THE WITNESS: Can you be more specific?

BY MR. PATTERSON:

Q. Were there any agencies of the government outside of Treasury that you had discussions or communications with about the idea to allow for a variable dividend payment based on positive net worth from June 1st, 2011 through August 17th, 2012?

A. Yes.

Q. And which agencies were those?

A. The White House. And I don't recall if

there were others.

Q. With whom at the White House did you have discussions about that topic?

MR. DINTZER: Objection. Calls for Presidential communication privilege. But you can identify the name.

MR. PATTERSON: Yeah. That's all I asked.

MR. DINTZER: The name. That's it.

THE WITNESS: Jim Parrot and Brian Deese.

BY MR. PATTERSON:

Q. When was the first time after June 1st, 2011 that you had discussions with Jim Parrot and Brian Deese about the variable dividend payment idea?

MR. DINTZER: And I'm going to instruct you not to answer on Presidential communication privilege.

MR. PATTERSON: So he can't answer when he had communications with them?

MR. DINTZER: That's correct.

MR. PATTERSON: And, again, we reserve the right to challenge that instruction.

MR. DINTZER: And if you, Counsel, can

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explain how that relates to the limited scopes of discovery, I would appreciate it.

MR. PATTERSON: The whole process of how the net worth sweep idea was conceived, proposed, agreed to goes to the purposes and how FHFA was acting at the time it entered the net worth sweep.

MR. DINTZER: So it's your position that if somebody from the White House talked him as opposed to somebody from some other agency, that that affected the relationship between FHFA and Treasury?

MR. PATTERSON: It's our position that the whole process of the consideration and adoption of the net worth sweep informs the evaluation of what FHFA was doing when it agreed to it and in what capacity was acting.

MR. DINTZER: And it is your understanding that the evaluation of how FHFA -- what it was doing, that that was in the scope of the Court's discovery order?

MR. PATTERSON: Within the scope of this Court's discovery order is whether and to what extent FHFA was acting as the United States when it entered

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the net worth sweep. So it's our position that the process of how the net worth sweep got adopted is relevant to that question.

And so I think I had asked when he had first had communications with Mr. Parrot and Deese on this issue. You had instructed not to answer and so you're standing by that instruction?

MR. DINTZER: And I'm going to add to it I'm instructing not to answer on the scope as well.

MR. PATTERSON: Again, we take issue with that instruction.

BY MR. PATTERSON:

Q. So starting June 1st of 2011 through August 17th, 2012, did you have any communications with FHFA about the proposal to allow for a variable dividend payment under the PSPAs?

A. Yes.

Q. And with whom did you have communications on that topic at FHFA?

A. Mario Ugoletti and Ed DeMarco.

Q. And what was Mr. Ugoletti and Mr. DeMarco's response to this idea starting June

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1st, 2011?

A. I don't remember when the first conversation in that time period happened.

Q. But just in general, during that time period, what was FHFA's response to the proposal to change PSPAs to allow for variable dividend payment?

MR. DINTZER: Objection. Vague. Confusing.

THE WITNESS: I think you would have to ask FHFA.

BY MR. PATTERSON:

Q. Did FHFA express any concerns to you about the proposal to allow for variable dividend payment under the PSPAs?

A. Yes. They stated a number of concerns and questions throughout the conversation and discussion.

Q. And what were those concerns?

A. Primarily related to mechanics and how such a proposal would work. I don't remember the specifics.

Q. Did FHFA ever propose any alternatives to the proposal to allow variable dividend payment based

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on positive net worth starting June 1st, 2011?

A. Our original proposal was to modify the PCF, which was not ultimately adopted as a variable payment. And that was not the final structure of the reform. And there was a back-and-forth conversation between FHFA and Treasury on the appropriate way to support the funding capacity and maintain the financial stability of Fannie and Freddie on an ongoing basis.

Q. And when was that proposal to modify the PCF made?

A. I don't remember. I don't think a formal proposal was made. There was a discussion that was initiated.

Q. And earlier I think you said that the reason it was not adopted had to do with discussions with counsel, is that correct? That proposal to change the PCF.

MR. DINTZER: Objection. Vague.

THE WITNESS: I don't know why it wasn't ultimately adopted, but my advice from counsel was a reason.

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A. I don't recall what modifications, if any, we made.
Q. If we can turn to slide 9, the slide marked number 9. This slide has the title PSPAs key terms. And do you see the section of this slide titled core terms?
A. Yes.
Q. There is a row for dividend rate. Do you see that?
A. Uh-huh.
Q. And this row says, "Cash, 10 percent. If elected to be paid in kind, pick 12 percent."
What does this mean when it says, "if elected to be paid in kind"?
MR. DINTZER: Objection. Vague.
THE WITNESS: Can you be more specific?
BY MR. PATTERSON:
Q. This says one of the core terms of the dividend rate, it says, "If elected to be paid in kind, pick 12 percent:
What's your understanding of what that means?

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A. I think that refers to in the event that the GSEs fail to pay their cash rate, that a paid-in-kind rate would then be put in place at a higher rate.
Q. And what is a paid-in-kind rate?
A. Instead of paying cash, you pay in kind for -- with other securities. I think that's a shorthand for any construct where, in this circumstance, the liquidation preference would be increased by 12 percent of the amount outstanding versus paid out in cash.
Q. And Fannie and Freddie had the option to elect to pay in kind, correct?
MR. DINTZER: Objection. Calls for a legal conclusion. Foundation.
THE WITNESS: I'm not a lawyer, so I don't know if I can answer that.
BY MR. PATTERSON:
Q. In your nonlawyer understanding, was it your understanding that Fannie and Freddie had the ability to elect to pay the dividends in kind under the PSPAs?

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A. I don't think they had the ability to elect. It was if they failed to be able to pay the 10 percent. In that circumstance, if that failure occurred, the liquidation preference would automatically increase at an annual rate of 12 percent.
Q. Now, this document says, "If elected to be paid in kind," correct?
A. That's what it says.
Q. So it's your position this document is incorrect?
MR. DINTZER: Objection. Vague.
THE WITNESS: This document was designed to be a shorthand summary, not necessarily a definitive legal conclusion of the documents, the legal documents themselves.
BY MR. PATTERSON:
Q. So then in your understanding, what is "elected" shorthand for?
MR. DINTZER: Objection. Confusing.
THE WITNESS: I don't necessarily think it was shorthand for anything. I think it may have been

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misstated.
BY MR. PATTERSON:
Q. And did you review this document?
MR. DINTZER: Objection.
BY MR. PATTERSON:
Q. Did you raise any concerns about this dividend rate provision being misstated at the time you reviewed it?
MR. DINTZER: Objection. Vague as to time.
THE WITNESS: Again, I'm not a lawyer, so I was not looking for its legal accuracy.
BY MR. PATTERSON:
Q. Now, if Fannie and Freddie paid the dividends in kind, they would not have been required to make a draw to pay Treasury's dividends, correct?
MR. DINTZER: Objection. Assumes facts. Calls for a legal conclusion.
THE WITNESS: I don't know if that would have been true or not. My understanding would be that it would increase the liquidation preference and further reduce the net worth outstanding.

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BY MR. PATTERSON:
Q. How would it further reduce the net worth outstanding?
A. Because it would increase the liquidation preference to offset the loss on the balance sheet.
Q. And how would increasing the liquidation preference reduce the net worth outstanding?
A. Actually, I'm sorry. That's not right. It would not impact the net worth, but it would increase the liquidation preference for the preferred stock.
Q. We're going to come back to this exhibit, but in the meantime, I'll mark another exhibit.
(Foster Exhibit No. 23 was marked for identification.)
BY MR. PATTERSON:
Q. You've been handed an exhibit marked Foster 23. This is an email from 2008 marked FHFA 00083259. Do you see that?
A. Yep.
Q. And on the first page -- or actually, let's turn to the second page of this email. And

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there is questions for both GSEs. Do you see that?
A. Okay.
Q. And number 4 says, "Did the GSEs intend to pay cash at 10 percent or accrue at 12 percent as a matter of policy?" Do you see that?
A. I do.
Q. Now, during the time you were at Treasury, FHFA always paid the dividends in cash; is that correct? Or Fannie and Freddie always paid the dividends in cash; is that correct?
A. During my --
Q. During your tenure at Treasury.
A. During my tenure, yes.
Q. Did you have any discussions during your tenure at Treasury about the option of accruing dividends at 12 percent versus paying dividends in cash?
MR. DINTZER: Objection. That's a really broad question, Counsel. Objection to the extent it calls for conversations with counsel and instruct you not to answer; objection to the extent that it calls for conversations with anybody at the White House,

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then I instruct you not to answer; to the extent that it calls for conversation outside of that, to the extent that it's beyond the time period specified, we have a scope problem. So I just ask counsel if you could make it a more narrow question.
BY MR. PATTERSON:
Q. And again, we don't agree with the scope objection or necessarily the other objections, but for the purposes of moving along today, we'll say from June 1st, 2011 through adoption of the net worth sweep on August 17th, 2012, did you have any discussions outside of discussions with counsel or the White House about the option that Fannie and Freddie had of accruing dividends at a 12 percent rate?
MR. DINTZER: Is this a question about the document itself or just in general?
MR. PATTERSON: In general.
MR. DINTZER: You can set aside the document. And I'm going to object to vague.
THE WITNESS: I don't recall having discussions about having the GSEs accrue at a 12

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percent rate.
BY MR. PATTERSON:
Q. Do you recall having any discussions that related in any way to the option to have the dividends be paid in kind that we've discussed, with all the time period and other caveats that I listed in my prior question?
MR. DINTZER: Objection. Vague.
THE WITNESS: I recall having a conversation around the implications of if the GSEs paid 10 percent, but it was never considered as an option that we would support or want to pursue.
BY MR. PATTERSON:
Q. And when did you have that conversation?
A. Had that conversation with Tim Bowler.
Q. And when did you have that conversation with him?
A. I don't recall.
Q. And what was discussed at that conversation in connection with --
A. The negative implications and signaling that would come from Fannie or Freddie failing to pay

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10 percent and moving to -- and accruing and paying a higher interest rate through a kind of -- create a liquidation preference or paid in kind and the negative implications that that would signal to the market.

Q. And what would those negative implications be?

MR. DINTZER: Objection. Vague.

THE WITNESS: That the government support for Fannie and Freddie was more limited and that an ever-increasing liquidation preference would be confusing to explain.

BY MR. PATTERSON:

Q. And how would that have the implication of Treasury's support being more limited?

MR. DINTZER: Objection. Confusing.

THE WITNESS: Because if effectively we were saying -- because the way that I recall the PSPAs were constructed were that the 12 percent only took into account if the GSEs failed to pay the 10 percent cash and there was concern that simply dealing a PIK or instructing the GSEs or having FHFA

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instruct the GSEs to accrue it or PIK at 12 percent would be perceived as bad by the markets.

BY MR. PATTERSON:

Q. What was your basis for thinking that would be perceived as bad by the markets?

A. That it would be confusing and that effectively, it would be a failure to pay the specified dividend that was outlined in the original document.

Q. And you used PIK as a shorthand for the payment-in-kind option. Is it okay if I use that terminology as well?

A. I'm okay with that.

Q. So are PIK provisions unusual provisions in equity securities?

MR. DINTZER: Objection. Beyond the scope of the Court's identified discovery topics. And lack of foundation.

THE WITNESS: PIK instruments are associated with a variety of different securities. The senior preferred stock, while structured as preferred stock, had more -- had features and

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mechanics that were more similar to a debt security than to an equity.

BY MR. PATTERSON:

Q. And what were those features?

A. Fixed interest rate, senior position and in many ways more structured like a bond.

Q. And what was your basis for thinking moving to a PIK would be confusing?

A. One, the liquidation preference would continue to accrete; two, you would be switching from the normal rate to effectively something that could be perceived as a penalty rate.

Q. And what about that is confusing?

A. So if you have an increasing liquidation preference, it would have required additional and more complicated messaging to the market.

Q. Why would it have been -- you've explained it here to me in a pretty straightforward way. Why would it have been confusing to the market?

MR. DINTZER: Objection. Argumentative.

THE WITNESS: I think that was my judgment based off of my experience.

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BY MR. PATTERSON:

Q. Now, you said you were concerned about the circular dividend issue; is that correct?

A. Yes.

Q. The PIK option would have solved that issue, right?

MR. DINTZER: Objection. Calls for a legal conclusion. Lack of foundation.

THE WITNESS: I never explored this option in the full kind of -- in the full extent as to whether it would have fully solved that problem or not. It still had the -- it still continued to accrete at a higher rate, but I don't know if it would have fully solved the problems of the circularity.

BY MR. PATTERSON:

Q. What problems of the circularity would have remained had the PIK option been adopted?

MR. DINTZER: Objection. Calls for speculation.

THE WITNESS: I'm not sure.

BY MR. PATTERSON:

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Q. Are you aware of any other company that has drawn on a line of credit to pay dividends?

MR. DINTZER: Objection. Vague.

THE WITNESS: Not that I can think of.

BY MR. PATTERSON:

Q. Can you think of any preferred stock instruments that have a dividend rate based on the net worth of a company other than Fannie and Freddie's preferred stock that Treasury owns after the net worth sweep?

MR. DINTZER: And I'm going to instruct the witness not to answer as beyond the scope.

MR. PATTERSON: And why is that beyond the scope?

MR. DINTZER: Actually, if you can go ahead and explain to me how it's in the scope, that'd be great.

MR. PATTERSON: This is all in the line of considerations that were made in connection with adopting the net worth sweep.

MR. DINTZER: I didn't hear about -- I'm sorry, I didn't mean to interrupt you, Counsel.

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MR. PATTERSON: As I explained earlier, our position is that issues related to the consideration and adoption of the net worth sweep are relevant to the topic of whether FHFA was acting as the United States.

MR. DINTZER: Right. And the question was, "Can you think of any preferred stock instruments" -- now, that would presumably be ever in the history of man -- "that have a dividend rate based on the net worth of a company?" So you're asking about everything ever.

MR. PATTERSON: Yes.

MR. DINTZER: And you think that that's within the scope of the Court's order?

MR. PATTERSON: I'm just trying to probe into the understanding of how this net worth sweep idea was proposed, what was thought about it.

MR. DINTZER: I completely understand. I'm just asking you, is your question, the breadth of your question, are there any preferred stock ever issued that he's ever heard of, that that's within the Court's order?

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MR. PATTERSON: That is my position. Let me ask it another way and see if you'll allow him to answer.

BY MR. PATTERSON:

Q. During the time that the net worth sweep proposal was under consideration, were you aware of other preferred stock instruments that had a net worth dividend component based on a company's net worth?

MR. DINTZER: Objection. Vague. Confusing.

THE WITNESS: There are no other companies that were in conservatorship or that the federal government invested in that I knew of that had preferred stock variable payments.

BY MR. PATTERSON:

Q. How about other private companies outside of conservatorship or that Treasury had invested in?

MR. DINTZER: Objection. Vague. Confusing.

THE WITNESS: Not that I know of, but none that were comparable to the investment that Treasury

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made in Fannie and Freddie.

BY MR. PATTERSON:

Q. Now, if you go back to this SEC presentation that we were looking at before, I would like you to turn to slide 17.

MR. DINTZER: Which exhibit number are we looking at,

MR. PATTERSON: This is 22.

BY MR. PATTERSON:

Q. Now, this slide is titled Freddie Mac base case PSPA forecast. Do you see that?

A. Yes.

Q. And there is a row in here for remaining PSPA funding capacity, which is above the last gray box there on the page. Do you see that?

A. Yes.

Q. Now, in fiscal year 2023, this shows Freddie Mac having $137.1 billion in remaining funding capacity; is that correct?

A. That's what it says, yes.

Q. If we turn to the next slide, which is the Freddie back downside PSPA's forecast, it projects in

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fiscal year 2023 a remaining PSPA funding capacity of 102.6 billion, correct?

A. That's what it says, yes.

Q. So in light of these projections, was there any risk of Freddie Mac exhausting Treasury's funding commitment at least in the near term?

MR. DINTZER: Objection. Calls for an expert analysis and vague. You can answer. And calls for speculation.

THE WITNESS: Can you ask the question again?

BY MR. PATTERSON:

Q. Given these projections --

MR. PATTERSON: Well, actually, read back the question, please.

THE REPORTER: "Question: So in light of these projections, was there any risk of Freddie Mac exhausting Treasury's funding commitment at least in the near term?"

MR. DINTZER: Same objection.

THE WITNESS: The concern -- so in the outward projection year, the circularity of the

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dividend continued to remain and the funding capacity continued to go down over time.

BY MR. PATTERSON:

Q. Do you remember what my question was?

A. Yes.

Q. Okay. I don't think that answered the question, so I --

MR. DINTZER: Objection. Argumentative.

MR. PATTERSON: If you could read back the question.

THE REPORTER: "Question: So in light of these projections, was there any risk of Freddie Mac exhausting Treasury's funding commitment at least in the near term?"

THE WITNESS: Again, the funding capacity -- so there was a risk that the market would perceive that, under this scenario, that eventually the funding capacity would be exhausted as draws and dividends exceeded net income, which could have resulted in an increase in debt funding costs, which would have further reduced net income, so it could have actually had a more detrimental impact if the

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market would have believed that the funding capacity would eventually be exhausted, which could have accelerated the problem sooner. So there was a risk in the near term.

BY MR. PATTERSON:

Q. That the funding capacity would be exhausted?

A. That the funding capacity could be at risk.

Q. How about whether the funding capacity could be exhausted?

MR. DINTZER: Objection. Vague. Confusing.

THE WITNESS: Again, I don't want to speculate as to what the risks were as to whether it could be exhausted or not, but there was a risk from this outcome, this forecast.

BY MR. PATTERSON:

Q. And please turn to slide 20, which is labeled -- strike that. I'll just keep going here. So you said the goal was to --

MR. DINTZER: I'm sorry, just what page

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are you on?

MR. PATTERSON: Stay on this page, 18. That's fine. We don't need to move to 20.

BY MR. PATTERSON:

Q. So you were saying that the risks still existed that the funding capacity could be exhausted in light of these projections; is that correct?

MR. DINTZER: Objection. Vague. Confusing.

THE WITNESS: I think I answered the question earlier.

BY MR. PATTERSON:

Q. Okay. Now, could the circularity issue have been addressed by having the net worth sweep dividend structure come into place if Treasury's commitment about got below $100 billion, but not before that time?

A. Can you repeat the question?

Q. Yes. Could the concern about the circular dividend payments putting Treasury's funding commitment at risk been addressed by having a net worth sweep dividend kick in only when Treasury's

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MR. DINTZER: Objection. Mischaracterizes. You're saying other than the conversations that were had either with counsel or that contained advice provided by counsel? Is that what you're asking?

MR. PATTERSON: Yes. I'm asking about policy discussions, which I'm assuming would be separate from discussions of the legal ramifications.

MR. DINTZER: I just want to make sure I understand the context.

MR. PATTERSON: Yes.

THE WITNESS: It's hard for me to separate what was supported by counsel or what was directly related to counsel.

MR. DINTZER: Do you want to talk? Anything that counsel told you that you consulted with counsel on, anything that conveys what counsel told you.

THE WITNESS: Can I just take two seconds?

MR. PATTERSON: Sure.

(Discussion off the record.)

THE WITNESS: I also just want to clarify

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the question in terms of my answer around if I ever had conversations with anyone at Fannie Mae or Freddie Mac. Employees from Fannie Mae and Freddie Mac regularly asked Treasury if we were ever going to do X, Y or Z related to the dividend or make any changes and those were typically -- or those were almost always one-way conversations.

BY MR. PATTERSON:

Q. And what do you mean by "one-way conversations"?

A. Meaning that they would ask, what are you guys -- are you guys thinking about this, or are you doing something about this, or are you going to consider this? And the answer was effectively, we know this is something -- this is something we're looking at.

Q. Okay.

A. But it was not a conversation or discussion around what we might do or what we might not do.

Q. And were there specific alternatives with respect to the dividend structure that Fannie and

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Freddie employees raised in those communications?

A. Not that I specifically recall.

Q. Generally, do you recall?

A. Inferences to cutting the dividend or changing the dividend structure, but we never would engage in those conversations.

Q. And were the things that Fannie and Freddie suggested considered by Treasury as it was considering altering the dividend structure?

MR. DINTZER: Objection. Vague. Calls for speculation.

THE WITNESS: I did not -- that wasn't -- those conversations did not contribute to my thinking other than to provide another data point of market concern about the unsustainability of the dividend structure.

BY MR. PATTERSON:

Q. And do you know if they contributed to anyone else's thinking?

A. You'd have to ask someone else.

Q. And now to get back to the --

A. Sorry.

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Q. No, that's fine. So there was a question pending. I don't know if you want to read it back.

MR. DINTZER: Could you?

THE REPORTER: "Question: So you didn't have any policy discussions about situations in which Treasury could envision Fannie and Freddie exiting conservatorship??"

THE WITNESS: Yes, we did.

BY MR. PATTERSON:

Q. And what was the content of those discussions?

A. We considered what circumstances Fannie or Freddie could exit conservatorship and what the mechanics of -- what the implications of that may or may not be.

Q. And did Treasury come to a conclusion about whether and in what circumstances it would permit Fannie and Freddie to exit conservatorship into private control under its existing charters? Under their existing charters?

MR. DINTZER: Objection. Confusing. Calls for speculation.

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THE WITNESS: My perspective was that consistent with the Administration policy to wind down Fannie Mae and Freddie Mac gradually over time and not allow them to continue to operate under the form of their existing charters, that exiting conservatorship as private companies would not be appropriate.
BY MR. PATTERSON:
Q. And that was a view shared in Treasury generally in light of that policy that you've just mentioned; is that correct?
MR. DINTZER: Objection. Calls for speculation.
THE WITNESS: I wouldn't want to speculate what others at Treasury felt or believed about that policy. I can only speak to how I interpreted and what I believed.
BY MR. PATTERSON:
Q. Did anyone at Treasury that you know of disagree with you on this issue?
MR. DINTZER: Same objection.
THE WITNESS: You would have to ask

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someone else at Treasury.
BY MR. PATTERSON:
Q. Do you know whether anyone else at Treasury disagreed with you?
MR. DINTZER: Disagreed.
MR. PATTERSON: Disagreed.
MR. DINTZER: Same objection.
THE WITNESS: In what time period?
BY MR. PATTERSON:
Q. While the net worth sweep was under consideration.
MR. DINTZER: Objection. Vague.
THE WITNESS: I'm not really sure how to define the time period the net worth sweep was under consideration.
BY MR. PATTERSON:
Q. Let's say June 1st, 2011 to August 17th, 2011. Or 2012, I'm sorry.
A. Not that I can recall.
Q. Do you recall someone disagreeing with you on that outside of that time period?
MR. DINTZER: Objection. Vague.

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Confusing.
THE WITNESS: Yes.
BY MR. PATTERSON:
Q. And who was that?
A. Jim Millstein.
Q. And what was his view?
A. That --
MR. DINTZER: Objection. Counsel, if you can just identify what period of time you're asking about.
BY MR. PATTERSON:
Q. Well, when did Jim Millstein communicate this disagreement to you? Or when did you become aware of this disagreement from Jim Millstein?
A. Prior to June 1st, 2011.
Q. Do you remember when any more precisely than that?
A. Sometime in Q1, Q2.
Q. What was your understanding of Mr. Millstein's disagreement with you?
MR. DINTZER: Objection. Vague and confusing.

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THE WITNESS: I wouldn't say it was a disagreement with me per se. Jim had a more positive view towards bringing the GSEs out of conservatorship.
BY MR. PATTERSON:
Q. And other than Jim, did anyone else that you recall have that more positive view about bringing Fannie and Freddie out of conservatorship?
A. Not that I can recall.
(Foster Exhibit No. 32 was marked for identification.)
BY MR. PATTERSON:
Q. We're on Foster 32. And this is an email from Ankur Datta to you and some others at Treasury, August 16th, 2012, UST 00505921 on the bottom of the first page.
And the top email here says, "Attached is the latest draft of the tick-tock, incorporating edits from Beth, Megan and Tim." And if we turn to the attachment, it says, "PSPA amendment announcement tick-tock - August 16th to 17th."
So what was this document?

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A. This was a rundown of the folks or the people that Treasury would reach out to to provide context for or an in-color explanation around the PSPA announcement.

Q. So then you see on Friday, August 17th at 8:00 a.m., it says, "Press release goes live." So entries before that time would be things that would be done before the third amendment was announced publicly; is that correct?

A. I presume so.

Q. And under Thursday, the last entry is "Outreach to Hill staff, Representatives Frank and Johnson." Do you know if before this time there had been any communications from Treasury to Congress about switching to a variable dividend under the PSPAs?

A. Not to my knowledge. I don't know.

Q. And do you know why it was the staff or Representatives Frank and Johnson that were being informed?

MR. DINTZER: Objection. Calls for speculation.

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THE WITNESS: I can only speculate.

BY MR. PATTERSON:

Q. If you had to, what would you say?

MR. DINTZER: Same objection.

THE WITNESS: If I had to speculate, those were ranking Democrats on the Hill. But I don't know if this was exhaustive either. So I don't know who all Megan Moore contacted.

BY MR. PATTERSON:

Q. So there may have been other Hill staff that she contacted; is that what you're --

A. You would have to ask Megan Moore.

Q. And then an entry above that is "Nick Timiraos from The Wall Street Journal."

Do you know why Treasury was contacting him before the public announcement of the net worth sweep?

A. You would have to ask Matt Anderson.

Q. So you weren't involved in that decision at all?

A. I was not involved in that decision.

Q. Did Treasury communicate with any other

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equity shareholders in Fannie and Freddie in connection with the PSPA amendment announcement?

MR. DINTZER: Objection. Vague. Foundation.

THE WITNESS: When?

BY MR. PATTERSON:

Q. Either in the time leading up to the net worth sweep or shortly thereafter.

A. We were contacted by some stakeholders the day of.

Q. And who were those stakeholders?

A. A number of different market participants reached out to folks at Treasury.

Q. Do you remember who any of those market participants were?

A. I remember speaking to a few different market participants that called me that day.

Q. Who were they?

A. Richard Perry at Perry Capital. I think I spoke to someone from Deutsche Bank and from Goldman Sachs. I don't remember who else I spoke to.

Q. And what was the reaction of those market

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participants to the net worth sweep announcement?

MR. DINTZER: Objection. Foundation.

THE WITNESS: As I recall, they were simply trying to ask questions to understand what the change had done.

BY MR. PATTERSON:

Q. So what sorts of questions were those?

A. I don't recall the specifics. It was my last day at Treasury.

Q. Is there a reason why that was your last day at Treasury, or was that just a coincidence?

A. More or less coincidental. It was coincidental.

Q. Anything about it that was not coincidental?

A. No.

Q. Had any market participants been informed of the net worth sweep prior to its public announcement?

MR. DINTZER: Objection. Foundation.

THE WITNESS: Not to my knowledge.

(Foster Exhibit No. 33 was

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marked for identification.)

BY MR. PATTERSON:

Q. I apologize in advance. This is very small, but you've been handed an exhibit marked Foster 33 and this is a Treasury press release from August 17th, 2012. "Treasury Department announces further steps to expedite wind-down of Fannie Mae and Freddie Mac." And if you look toward the bottom of this, there are some bullets at the very bottom. Above that it says, "This will achieve several important objectives including --"

MR. DINTZER: And it says, "This will help."

BY MR. PATTERSON:

Q. Oh, "This will help achieve," thank you, "several important objectives, including," and then the third bullet says, "Acting upon the commitment made in the Administration's 2011 white paper that the GSEs will be wound down and will not be allowed to retain profits, rebuild capital, and return to the market in the prior form."

How did the net worth sweep help achieve

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the objective of ensuring that the GSEs would be wound down and would not be allowed to return to the market in their prior form?

MR. DINTZER: Objection. Foundation.

THE WITNESS: The net worth sweep and the third -- the third amendment supported the wind-down of Fannie Mae and Freddie Mac to allow the size and the scope of the portfolios and guarantee book to be shrunk gradually over time, which would lower/reduce their ability to generate net income, which would reduce their ability to cover fixed income dividend payments and, therefore, the net worth sweep would have supported the execution of that wind-down policy.

BY MR. PATTERSON:

Q. Just so I can make sure I'm clear on this, under this heading "Full income sweep of all future Fannie Mae and Freddie Mac earnings to benefit taxpayers for their investment," do you see that?

A. I do.

Q. And under that it says, "The agreements will replace the 10 percent dividend payments made to

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Treasury on its preferred stock investments in Fannie Mae and Freddie Mac with a quarterly sweep of every dollar of profit that each firm earns going forward."

Do you see that?

A. I do.

Q. And then it says that feature of the third amendment, I'm assuming says this will help achieve several important objectives, including the objective that we've discussed.

So I guess my question is, how would moving to the net worth sweep dividend advance the commitment that the GSEs would be wound down and not be allowed to return to the market in their prior form?

A. So in order to be able to wind down the GSEs in a safe and responsible manner, we needed to be able to reduce -- well, Congress or FHFA would have needed to reduce the size and the footprint of the GSEs or Fannie Mae and Freddie Mac's retained portfolio and guarantee books. That reduction in footprint would reduce their ability to generate net income. Reduce net income generation capacity would

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reduce its ability to meet any fixed income dividend payments under a variety of -- almost under any scenario and, as a result, to be able to support the wind-down, a more flexible dividend structure supported that.

(Foster Exhibit No. 34 was marked for identification.)

BY MR. PATTERSON:

Q. You've been handed Foster 34. This is a document produced to us by Fannie. It's marked FM_Fairholme_CFC-00003013 on the first page. And from the context of this document, it's apparent that it's discussing the net worth sweep.

And under Roman numeral (ii)3.B, it says, "Friday Treasury press release emphasized wind down but changes are positive." And then B says, "Pay back money faster."

Did Treasury anticipate, at the time of the net worth sweep, that it would result in Fannie and Freddie paying them back faster for the amount that Treasury had invested in those companies?

MR. DINTZER: Objection. No foundation.

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Confusing.
THE WITNESS: I have no idea what this document is or what this means. So I don't know if -- I don't know what that means.
BY MR. PATTERSON:
Q. Apart from this document, did you --
MR. DINTZER: So are you done with the document?
MR. PATTERSON: I may return to it, but this question is apart from the document.
BY MR. PATTERSON:
Q. Apart from the document, at the time of the net worth sweep, did you anticipate that the sweep would result in Fannie and Freddie increasing the amount they would pay in dividends to Treasury?
MR. DINTZER: Objection. Vague.
THE WITNESS: Did I anticipate that?
BY MR. PATTERSON:
Q. Yes.
A. No.
Q. Do you know whether anyone else at Treasury anticipated that?

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A. Not to my knowledge.
Q. Did you consider whether or not that would be a result of the net worth sweep?
MR. DINTZER: Objection. Confusing.
THE WITNESS: I considered it.
BY MR. PATTERSON:
Q. And how was that considered?
MR. DINTZER: Objection. Vague and confusing.
THE WITNESS: Just through the general analysis as to whether or not this change would result in more profitability, more proceeds over time, and the conclusion was that it would not as we wound down. And so no, the conclusion -- my conclusion was that it would not.
BY MR. PATTERSON:
Q. And what was the basis for that conclusion?
A. Based off of forecasts and analysis that was done prior to the third amendment.
Q. And that conclusion is --
A. Based on the information we had available.

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Q. And that conclusion is proven incorrect at least as of today, wouldn't you agree?
MR. DINTZER: Objection. Mischaracterizes and calls for speculation. And also, if you could explain how this is within the scope, asking how what happened today is relevant.
MR. PATTERSON: I'm just trying to get a better understanding of the sources of his understanding at the time and then depending on his answer, I may ask some follow-up questions about if he anticipated those possibilities at the time, what could contribute to that different result, things of that nature.
MR. DINTZER: So your question is, "And your conclusion is proven incorrect at least as of today?"
MR. PATTERSON: Yes.
MR. DINTZER: So your understanding of the scope of the Court's order is that information about what actually happened in 2014-2015 is within the scope of the Court's discovery order; is that correct?

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MR. PATTERSON: Yes, at least to the extent that it informs the decision made at that time, at the time of the net worth sweep.
MR. DINTZER: So what happened in 2014 and 2015, how it informed decisions made in 2012.
MR. PATTERSON: There could be potential follow-up from what has happened since then that could get back to what was considered at that time.
MR. DINTZER: Go ahead and ask your question again, please.
THE REPORTER: "Question: And that conclusion is proven incorrect at least as of today, wouldn't you agree?"
MR. DINTZER: I'm going to object. Beyond the scope. Instruct not to answer.
MR. PATTERSON: And the reason for your objection?
MR. DINTZER: Because you're asking about 2015.
MR. PATTERSON: Well, of course we reserve the right to challenge that objection.
BY MR. PATTERSON:

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marked for identification.)
BY MR. PATTERSON:
Q. You've been handed an exhibit marked Foster 36. This is an information memorandum for Secretary Geithner dated January 4th, 2011, a memo from Jeffrey A. Goldstein, and the subject is housing finance reform plan. Is this something that you've seen before?
A. Yes.
Q. If you turn to page 3, heading number 4 says, "Affirm our current obligations." Do you see that?
A. Yes.
Q. And there is a bullet point that says, "Ensure $275 billion of funding capacity available after 2012 is not used to pay dividends. This may require converting preferred stock into common or cutting or deferring payment of the dividend under legal review."
Now, was the option of converting preferred stock into common stock an alternative that you considered as a way to modify the dividend

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obligation?
MR. DINTZER: Objection. Vague.
THE WITNESS: Yes.
BY MR. PATTERSON:
Q. And how did you consider that possibility?
A. We explored that option. But quickly dismissed that as a viable option under advice of counsel and other factors.
Q. What were the factors other than the advice of counsel?
A. That it would have required going through -- that the logistical requirements as posed by counsel would not have been acceptable.
Q. And why would they not have been acceptable?
MR. DINTZER: Hang on just because I'm hearing -- I instruct the witness to the extent that your answer requires divulging anything that you said to counsel or counsel said to you, I'm going to instruct you not to answer. If there are things beyond that, you can answer.
THE WITNESS: I don't recall the specifics

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of the mechanics or the difficulties with executing such a position, but my understanding is that it would have required the GSEs to go through -- either exit conservatorship or go through receivership and also would have compromised -- could have constituted as a compromise of claim.
BY MR. PATTERSON:
Q. And how would converting the preferred into common have addressed the circular dividend issue that you were concerned about?
A. Again, this was not an option that we seriously considered or that we spent -- it's not an option that we spent significant time considering. But my understanding is that if we would have converted the preferred stock into common, that would have eliminated or could have eliminated, depending on the ultimate structure, the need for fixed dividend payments.
Q. And why would that have been?
MR. DINTZER: And again, I'm going to instruct you not to answer to the extent that it involves conversations with counsel.

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THE WITNESS: My understanding was informed via conversations with counsel.
BY MR. PATTERSON:
Q. So your understanding of how converting the preferred into the common would have addressed the circular dividend issue is informed by conversations with counsel?
A. Again, we did not spend significant time looking at -- I don't remember all the analysis or work we did around this option and to the work -- to the extent that we did work, it was done in consultation and conversation with counsel as to how this option would mechanically work.
Q. So just so the record is clear, in your understanding -- if you don't know, you can say you don't know -- how would have converting the preferred into common have addressed the circular dividend issue?
MR. DINTZER: Since he's indicated that that at a minimum touches on or encompasses his conversations with counsel, what I would suggest is why don't we take our break now and I'll get a chance

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to talk with the witness and make sure I understand the scope of what you're asking and then we'll come back.

MR. PATTERSON: Okay. I think that should be fine.

(Recess.)

THE REPORTER: "Question: In your understanding, how would have converting the preferred into common have addressed the circular dividend issue?"

THE WITNESS: Converting a portion of the preferred stock into common would have -- might have eliminated the 10 percent dividend requirement on the portion that had been converted.

BY MR. PATTERSON:

Q. And how would that address the circular dividend issue?

A. If such action would have been taken, which we did not pursue, reducing the fixed dividend requirement would have -- might have made the total amount necessary to be paid to Fannie and Freddie or paid to the Treasury on an annual basis lower, and

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even a reduced and lowered normalized net income for Fannie and Freddie as they were wound down might have been sufficient to cover those fixed payments and fixed obligations.

Q. So what portion of the preferred stock did Treasury consider converting into common?

MR. DINTZER: Objection. Mischaracterizes.

THE WITNESS: I don't recall if we -- to what degree and what portion, if at all, we considered it.

(Foster Exhibit No. 37 was marked for identification.)

BY MR. PATTERSON:

Q. You've been handed an exhibit marked Foster 37. And this is minutes of the audit committee of the board of directors of Fannie Mae from September 13th of 2012. I know this date is after August 17th, 2012, but I'm going to ask questions that relate to the time period up to and including August 17th.

Now, if you turn to the second page of

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this document, it's entitled Chief Financial Officer Report. It says, "In response to questions regarding the deferred tax asset considerations presented in advance materials, CFO McFarland explained that timing will impact the estimates regarding the amount of the deferred tax asset valuation allowance, and the related accounting for it."

So my question is, during the time, you know, starting June 1st, 2011, leading up to August 17th, 2012, did you consider the possibility that Fannie or Freddie would at some point release their deferred tax assets valuation allowance?

MR. DINTZER: Objection. Foundation. Confusing.

THE WITNESS: Can you repeat the question?

THE REPORTER: "Question: During the time starting June 1st, 2011, leading up to August 17th, 2012, did you consider the possibility that Fannie or Freddie would at some point release their deferred tax assets valuation allowance?"

MR. DINTZER: Objection. Vague.

THE WITNESS: I was aware that that was a

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possibility at some point in time.

BY MR. PATTERSON:

Q. And what was the basis of your awareness of that being a possibility at some point in time?

A. That had been flagged for me by -- I'm trying to remember what the basis for that was. I don't recall what the basis for that was. I knew that the DTAs had been written down because the expectation of income generation didn't exist and from an accounting perspective, they had not been written up or released.

Q. Did you have any sense of the timing of when the deferred tax asset valuation allowances potentially could be released at the time of the net worth sweep?

MR. DINTZER: Objection. Vague.

THE WITNESS: I'm not an auditor and that's really more of a question for an auditor.

BY MR. PATTERSON:

Q. Did you have any understanding of that, though?

A. No.

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Q. And did you discuss with anyone else at Treasury from June 1st, 2011 through August 17th, 2012 the possibility that Fannie and Freddie could at some point release their deferred tax assets valuation allowance?
A. That was discussed with -- I discussed that between myself and Tim Bowler, and I think that was raised in consideration with Mario Ugoletti at one point, but I don't remember when.
Q. And what impact would the release of the valuation allowance have on Fannie and Freddie's net worth did you anticipate at that time?
A. I didn't anticipate that they would be released or that there would be an impact.
Q. But in the event they were, did you have a sense for how large the valuation allowances were?
MR. DINTZER: Objection. Vague. Hypothetical.
THE WITNESS: I was not aware -- I wasn't an accountant, so I wouldn't -- I didn't have an informed view on what the size would be if they were released.

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(Foster Exhibit No. 38 was marked for identification.)
BY MR. PATTERSON:
Q. You've been handed an exhibit marked Foster 38. And this is an email from Adam Chepenik to individuals including you on April 13th, 2012. It's marked UST 00437857.
And it says, "Attached please find the final GSE cost memorandum and attachments for Secretary Geithner."
If you turn to the attachment, this is entitled CEO's budgetary treatment of Fannie Mae and Freddie Mac. Do you see that?
A. Uh-huh.
Q. Now, please turn to the preface which is the first page containing text in this report.
A. Preface?
Q. Yes.
A. Okay.
Q. Are you there?
A. Yes.
Q. Okay. So now it reads, "After the U.S.

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Government assumed control in 2008 of Fannie Mae and Freddie Mac, two federally chartered institutions that provide credit guarantees for almost half of the outstanding residential mortgages in the United States, the Congressional Budget Office (CBO) concluded that the institutions had effectively become government entities whose operations should be included in the federal budget."
Now, starting on June 1st, 2011 through the net worth sweep on August 17th, 2012, were you aware that the CBO had concluded that Fannie and Freddie should be included in the federal budget?
MR. DINTZER: Objection. Vague. Confusing.
THE WITNESS: Had I concluded that?
BY MR. PATTERSON:
Q. Were you aware that CBO had concluded that?
A. Yes.
Q. And Treasury made a different determination, correct?
MR. DINTZER: Objection. Vague.

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THE WITNESS: I think the distinction that Treasury had made was consistent with its accounting principles. CBO accounting and OMB accounting are different from my understanding.
BY MR. PATTERSON:
Q. And I guess my question was a simpler one than that. Did Treasury agree with CBO that Fannie and Freddie should be included in the federal budget?
A. I think the treatment that Treasury had for its investments in our -- I believe Treasury's investments and commitments to Fannie Mae and Freddie Mac were included in the budget.
Q. Treasury's investments were included in the budget; is that what you said?
A. Yes.
Q. Were Fannie and Freddie's assets and liabilities included in Treasury's budget?
MR. DINTZER: Objection. Calls for speculation. Foundation.
THE WITNESS: I'm not a budget expert, so I wouldn't want to opine on what was in or what was not in the official federal budget.

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BY MR. PATTERSON:
Q. So you don't know whether Fannie and Freddie's assets and liabilities were included in the federal budget?
A. I don't believe so.
Q. You don't believe they were or you don't believe that you know? I'm sorry, I just want to make the record clear.
MR. DINTZER: Objection. Foundation.
THE WITNESS: Again, I'm not a government accounting expert, but my understanding was that the assets and liabilities were not included on the balance sheet, but all of the costs and inflows and outflows of capital were included.
BY MR. PATTERSON:
Q. Now, in connection with considering the net worth sweep, did Treasury consider whether adoption of the sweep would require the assets and liabilities of Fannie and Freddie to be included in the federal budget?
MR. DINTZER: Objection. Calls for speculation. And Counsel, if you could explain how

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that question fits within the scope.
MR. PATTERSON: Well, whether Fannie and Freddie are part of the government of the United States, to the extent that they're included in the budget of the United States, would affect the capacity in which FHFA and Treasury were acting at the time they entered the third amendment.
MR. DINTZER: How?
MR. PATTERSON: Well, if the action had the result of Fannie and Freddie being included in the budget of the United States to the same extent as agencies of the federal government, that would indicate that they were acting on behalf of the United States.
MR. DINTZER: So what's your question?
BY MR. PATTERSON:
Q. The question is, in connection with the net worth sweep, did Treasury consider whether entering the net worth sweep would require the assets and liabilities of Fannie and Freddie to be included in the federal budget?
MR. DINTZER: Objection. Calls for

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speculation.
THE WITNESS: I don't recall.
BY MR. PATTERSON:
Q. Did you have any discussions on that issue with anyone in connection with considering the net worth sweep?
A. I don't recall this being a specific issue that came up as part of the third amendment. There were questions that were asked generally that I recall related to the budgetary treatment of Fannie and Freddie, but I don't recall being mentioned in connection specifically with the third amendment.
Q. Were those discussions related in any way to the variable dividend that was being considered?
A. Not that I recall.
Q. You can put aside that exhibit. While you were at Treasury, did you have access to the Treasury secure data network?
A. No.
MR. PATTERSON: Would it be okay if we take a break?
MR. DINTZER: Sure.

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(Recess.)
BY MR. PATTERSON:
Q. I just had a few things I wanted to wrap up on. First, from June 1st through August 17th, 2012, who at Treasury other than yourself was working on issues relating to the PSPAs?
MR. DINTZER: Objection. Calls for speculation.
THE WITNESS: There were a number of people that were working on the PSPAs.
BY MR. PATTERSON:
Q. And who were they?
A. To my knowledge, myself, counsel, Tim Bowler, Michael Stegman, Mary Miller and Adam Chepenik, Beth Mlynarczyk. There were many people working on it.
Q. And do you know if any of these individuals, did they use email accounts other than their Treasury accounts when working on official Treasury matters?
A. I don't know.
Q. And did you have discussions with anyone

EXHIBIT F

Freddie Mac

Table 1

Income, Assets, and Equity, 2003 to June 30, 2011

($ in millions)

Year	Net Income (Loss)	Assets	Equity (Shareholder Deficit)	SP Stock	10% of SPS
2003	4,816	803,449	31,487	-	-
2004	2,937	795,284	31,416	-	-
2005	2,113	806,222	25,691	-	-
2006	2,327	804,910	26,914	-	-
2007	(3,094)	794,368	26,905	-	-
2008	(50,119)	850,963	(30,634)	14,800	1,480
2009	(21,553)	841,784	4,372	51,700	5,170
2010	(14,025)	2,261,780	(401)	64,200	6,420
2011	(5,266)	2,147,216	(146)	72,171	7,217
Q1 2012	577	2,114,944	(18)	72,317	7,232

If NI = taxable income

— 51 B → 2017 is about when Net Loss Carryforwards based on our projections and the figures in the 10K. (per discussion w/Dan Golub)

— Internal tax department → what ~~are~~ do their book-to-tax projections look like

Find out who is responsible - internal or external

General Rule $\boxed{\Sigma \text{ of the 3 yrs} > 0}$

3 yrs of cum. ~~[illegible]~~ profits → you start to think about ~~the~~ ~~the~~ releasing the valuation allow.

→ the valuation allow. → when

probably 2013, 2014

GT005322

EXHIBIT G

Fannie Mae Update

Treasury Meeting

August 9, 2012

FannieMae

Agenda

- Introduction of Fannie Mae Management Team
- Corporate Financial Update
- Status of Key Initiatives
- Discussion

FannieMae

Fannie Mae Corporate Update

The Fannie Mae forecasts included in these materials are forward-looking statements, and actual outcomes may differ materially from these forecasts as a result of numerous factors, including the assumptions contained in this analysis, changes in macro-economic variables, government policy, the housing and credit markets, and actions we take in the future and the success of those actions, as well as those discussed in Fannie Mae's most recent Form 10-Q and Form 10-K filed with the Securities and Exchange Commission.

FannieMae

2012 Quarterly Earnings

($'s in billions)

10 bp pyto ref fee)

	Actual				Forecast [1]		
	Q3 2011	Q4 2011	Q1 2012	Q2 2012	Q3 2012	Q4 2012	Full Year 2012
Net interest income - portfolio and other	3.9	2.7	3.7	3.7	3.5	3.3	14.2
Net interest income - MBS guaranty fee	1.3	1.5	1.5	1.8	1.6	1.7	6.5
Other revenues	0.3	0.4	0.4	0.4	0.3	0.3	1.3
Net revenues	**$ 5.5**	**$ 4.5**	**$ 5.6**	**$ 5.8**	**$ 5.4**	**$ 5.2**	**$ 22.1**
Credit losses	(4.5)	(5.2)	(5.1)	(3.9)	(4.5)	(5.2)	(18.6)
(Build) / reduction in allowance	(0.9)	(1.3)	2.3	6.6	2.6	(0.5)	11.0
SOP 03-3	0.5	1.0	0.4	0.4	0.5	0.4	1.7
Credit-related (expenses) / benefit	**$ (4.9)**	**$ (5.5)**	**$ (2.3)**	**$ 3.1**	**$ (1.4)**	**$ (5.3)**	**$ (5.9)**
Other expenses	(1.2)	(0.7)	(0.8)	(1.4)	(1.1)	(1.1)	(4.3)
(Loss) / earnings before mark-to-market activity	**$ (0.6)**	**$ (1.7)**	**$ 2.4**	**$ 7.6**	**$ 3.0**	**$ (1.1)**	**$ 11.9**
Fair value (losses) / gains, net	(4.5)	(0.8)	0.3	(2.4)	0.1	0.1	(1.9)
Accumulated other comprehensive income change	(0.2)	0.5	0.4	0.3	0.1	0.1	0.9
Mark-to-market	(4.7)	(0.3)	0.6	(2.1)	0.2	0.2	(1.0)
Total comprehensive (loss) / income	**$ (5.3)**	**$ (1.9)**	**$ 3.1**	**$ 5.4**	**$ 3.2**	**$ (0.9)**	**$ 10.9**
Cumulative infusion received, plus new draw	$ 111.6	$ 116.1	$ 116.1	$ 116.1	$ 116.1	$ 116.8	$ 116.8
Dividends	$ (2.5)	$ (2.6)	$ (2.8)	$ (2.9)	$ (2.9)	$ (2.9)	$ (11.6)

1 Forecast periods reflect July 2012 BoD corporate forecast updated for actuals through June 2012

Note Numbers may not foot due to rounding.

FannieMae

2012 – 2016 Annual Earnings

($'s in billions)

	2012	2013	2014	2015	2016
			Forecast [1]		
Net interest income - portfolio and other	14.2	12.5	11.3	10.3	8.9
Net interest income - MBS guaranty fee	6.5	7.0	7.5	8.0	8.6
Other revenues	1.3	1.0	0.9	0.9	1.0
Net revenues	**$ 22.1**	**$ 20.5**	**$ 19.8**	**$ 19.3**	**$ 18.4**
Credit losses	(18.6)	(19.0)	(17.7)	(13.3)	(9.5)
Reduction in allowance	11.0	7.5	11.0	9.0	7.7
SOP 03-3	1.7	1.9	1.6	1.1	0.8
Credit-related expenses	**$ (5.9)**	**$ (9.6)**	**$ (5.1)**	**$ (3.2)**	**$ (1.0)**
Other expenses	(4.3)	(3.9)	(4.1)	(4.2)	(4.1)
Earnings before mark-to-market activity	**$ 11.9**	**$ 6.9**	**$ 10.5**	**$ 11.9**	**$ 13.4**
Fair value (losses) / gains, net	(1.9)	0.5	0.5	0.5	0.4
Accumulated other comprehensive income change	0.9	0.1	0.1	0.1	0.1
Mark-to-market	(1.0)	0.6	0.5	0.5	0.5
Total comprehensive income	**$ 10.9**	**$ 7.5**	**$ 11.0**	**$ 12.5**	**$ 13.9**
Cumulative infusion received, plus new draw	$ 116.8	$ 121.2	$ 122.4	$ 122.4	$ 122.4
Dividends	$ (11.6)	$ (11.8)	$ (12.2)	$ (12.3)	$ (12.3)

[1] Forecast periods reflect July 2012 BoD corporate forecast updated for actuals through June 2012

Note: Numbers may not foot due to rounding.

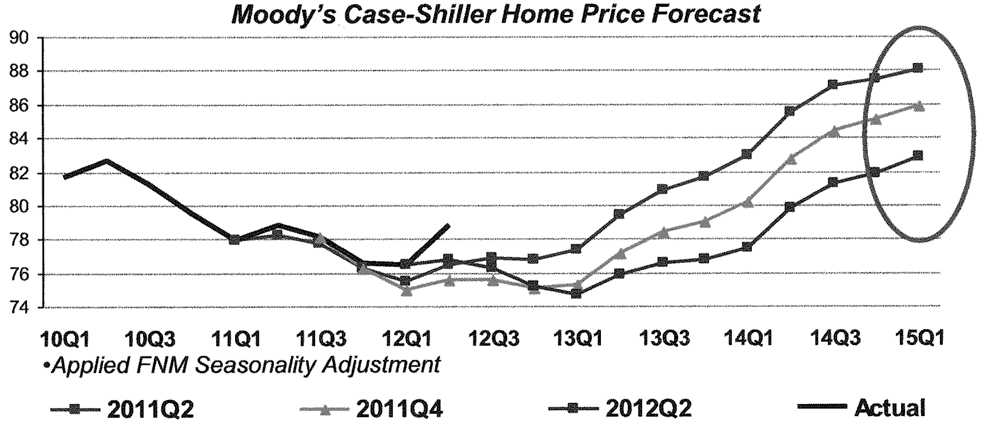
assumes
no mks on derivat
no taxes

no hedge
accounting
volatility
means same
thus drawing
more + higher
pay'g dividends)

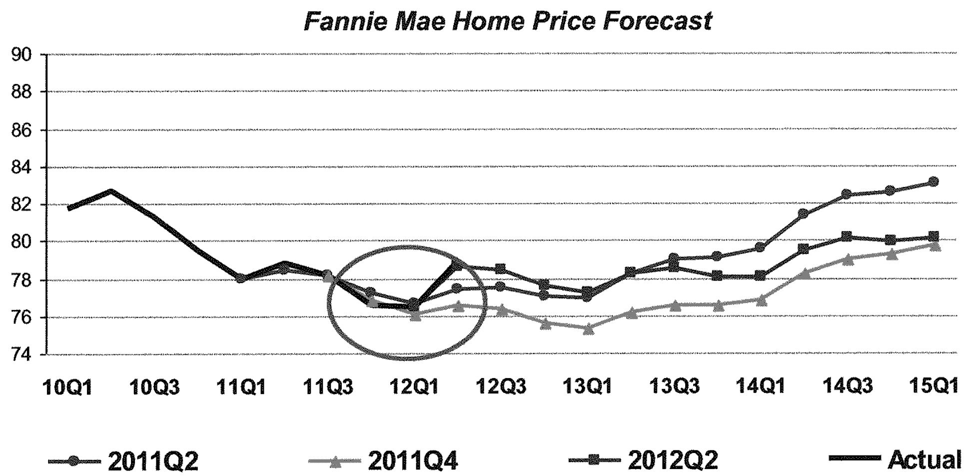
FannieMae

UST00532141

Fannie Mae vs. Moody's Case-Shiller Home Price Forecasts

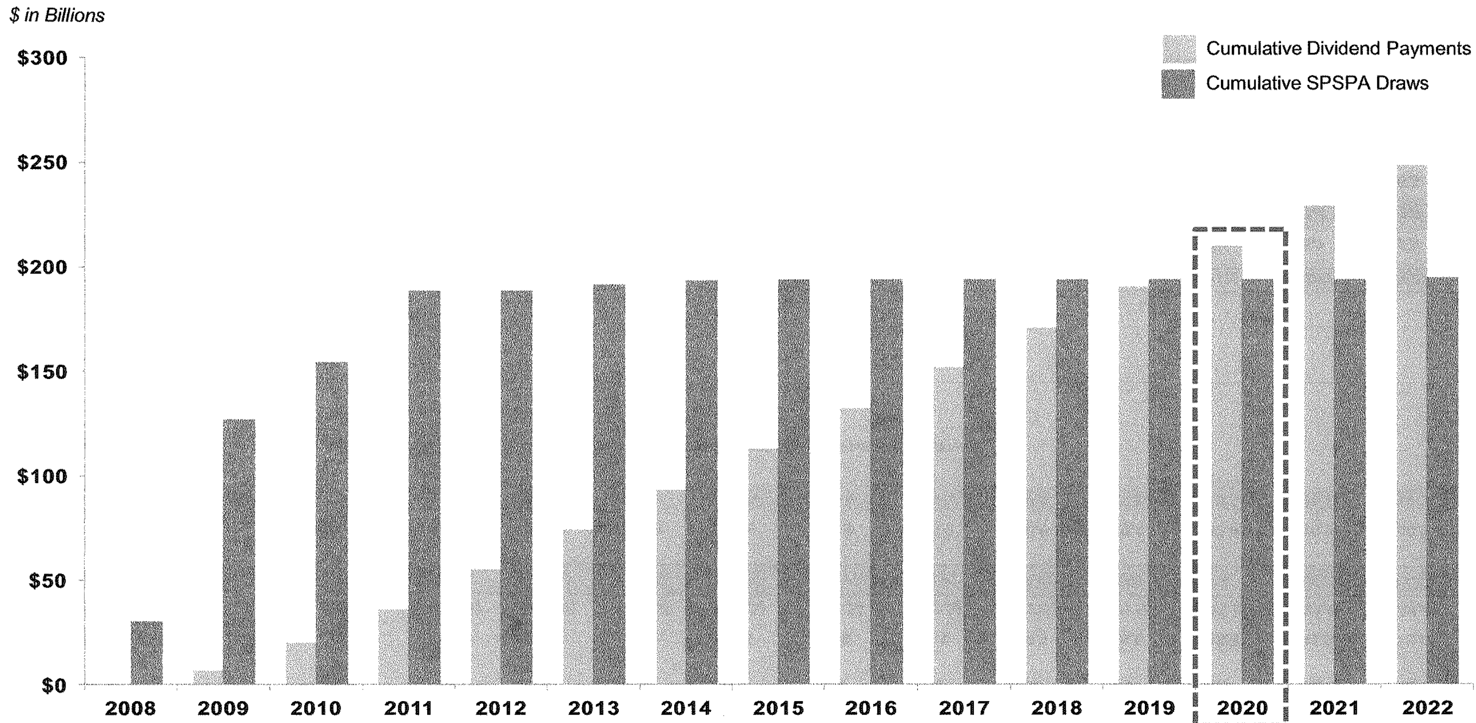


Case-Shiller forecast updates reflect significant variability



With more up to date data, FNM is able to capture the most recent trends

Cumulative GSE Dividend Payments vs. Cumulative SPSPA Draws



	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
SPSPA Draws Less Dividends ($B)	($30)	($120)	($134)	($152)	($134)	($118)	($100)	($81)	($61)	($42)	($22)	($2)	$17	$36	$53
Residual Equity ($B)	-	-	-	-	$0	$0	$2	$4	$7	$10	$11	$10	$8	$7	$6

Note: Figures above based on extended earnings forecast for both Fannie Mae and Freddie Mac. Forecast incorporates actual results through May 2012 for Fannie Mae and through 2011 for Freddie Mac.

FannieMae

Annual Detail of Cumulative Dividends and SPSPA Draws

Fannie Mae

($ in Billions)	2008-2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Comprehensive Income		11.6	7.5	11.0	12.5	13.9	13.2	12.2	11.4	10.9	10.5	10.5
Preferred Dividend Payment	19.8	11.6	11.8	12.1	12.2	12.2	12.2	12.2	12.2	12.2	12.3	12.5
Residual Equity	0.0	0.0	0.0	0.0	0.2	1.8	2.8	2.7	1.9	0.5	0.0	0.0
Cumulative Dividends	19.8	31.4	43.2	55.3	67.6	79.8	92.1	104.3	116.6	128.8	141.1	153.6
Cumulative SPSPA Draws	(116.1)	(116.1)	(119.0)	(121.2)	(121.5)	(121.5)	(121.5)	(121.5)	(121.5)	(121.5)	(122.9)	(124.8)
Cumulative Dividends Less Draws	*(96.3)*	*(84.7)*	*(75.8)*	*(65.9)*	*(53.9)*	*(41.7)*	*(29.4)*	*(17.2)*	*(4.9)*	*7.3*	*18.3*	*28.8*
SPSPA Funding Cap	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9
Remaining Funding under SPSPA	124.8	124.8	122.0	119.7	119.5	119.5	119.5	119.5	119.5	119.5	118.1	116.1

Note: 2012-2016 figures from Fannie Mae July BOD corporate forecast. 2017-2022 figures are based on simplifying assumptions derived from trends observed within the 2012-2016 horizon.

Freddie Mac

($ in Billions)	2008-2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Comprehensive Income		11.6	7.5	8.2	8.6	9.0	8.7	8.3	7.7	7.1	6.7	6.5
Preferred Dividend Payment	16.3	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
Residual Equity	0.0	0.0	0.4	1.7	3.5	5.6	6.9	7.9	8.1	7.9	7.2	6.3
Cumulative Dividends	16.3	23.7	31.1	38.4	45.8	53.2	60.6	68.0	75.4	82.8	90.2	97.6
Cumulative SPSPA Draws	(72.2)	(116.1)	(73.0)	(73.0)	(73.0)	(73.0)	(73.0)	(73.0)	(73.0)	(73.0)	(73.0)	(73.0)
Cumulative Dividends Less Draws	*(55.9)*	*(92.4)*	*(41.9)*	*(34.5)*	*(27.1)*	*(19.7)*	*(12.3)*	*(4.9)*	*2.5*	*9.9*	*17.3*	*24.7*
SPSPA Funding Cap	220.5	221.3	221.3	221.3	221.3	221.3	221.3	221.3	221.3	221.3	221.3	221.3
Remaining Funding under SPSPA	148.3	105.2	148.3	148.3	148.3	148.3	148.3	148.3	148.3	148.3	148.3	148.3

Note: 2012-2022 figures are based on simplifying assumptions derived from Fannie Mae forecast trends and observed relationships between key Fannie Mae and Freddie Mac performance metrics. Reported 2011 results re-aligned as necessary to correspond to Fannie Mae management reporting.

Note: Numbers may not foot due to rounding

FannieMae

Status of Key Initiatives

Status of Key Initiatives

Securitization and Pooling & Servicing Agreement

Fannie Mae and Freddie Mac will draft a white paper for public comment. A plan for a securitization platform and model PSA will be completed by both Enterprises incorporating the resulting industry commentary by the end of the year.

REO Sales

Obtained bids for potential REO joint venture deal and presented to Pricing Committee, FHFA and the US Treasury in June. FHFA announced the winning bidders on July 3, 2012. Targeted execution of REO joint transaction in Q3 2012 (dependent upon FHFA approval).

Credit Risk Transfer

Currently projecting to complete first transaction in early 2013.

Non-Performing Loan Sales

Preparing a pilot transaction for the competitive disposition of NPA and announcing transaction to the market by the end of 2012.

Credit Pricing Update

Focused on a 10bps average guaranty fee price increase across both Enterprises.

Rep & Warrant Changes

Selling Rep & Warrant framework, expected to become effective January 1, 2013, eliminates liability after 36 months of timely payments.

HARP 2.0

Significant increase in volume in June and July is attributable to the release of the MBS execution for the greater-than 125 LTV category, resulting in 35K loans delivered in this bucket for June and July, representing 31% of total volume in these months.

FannieMae

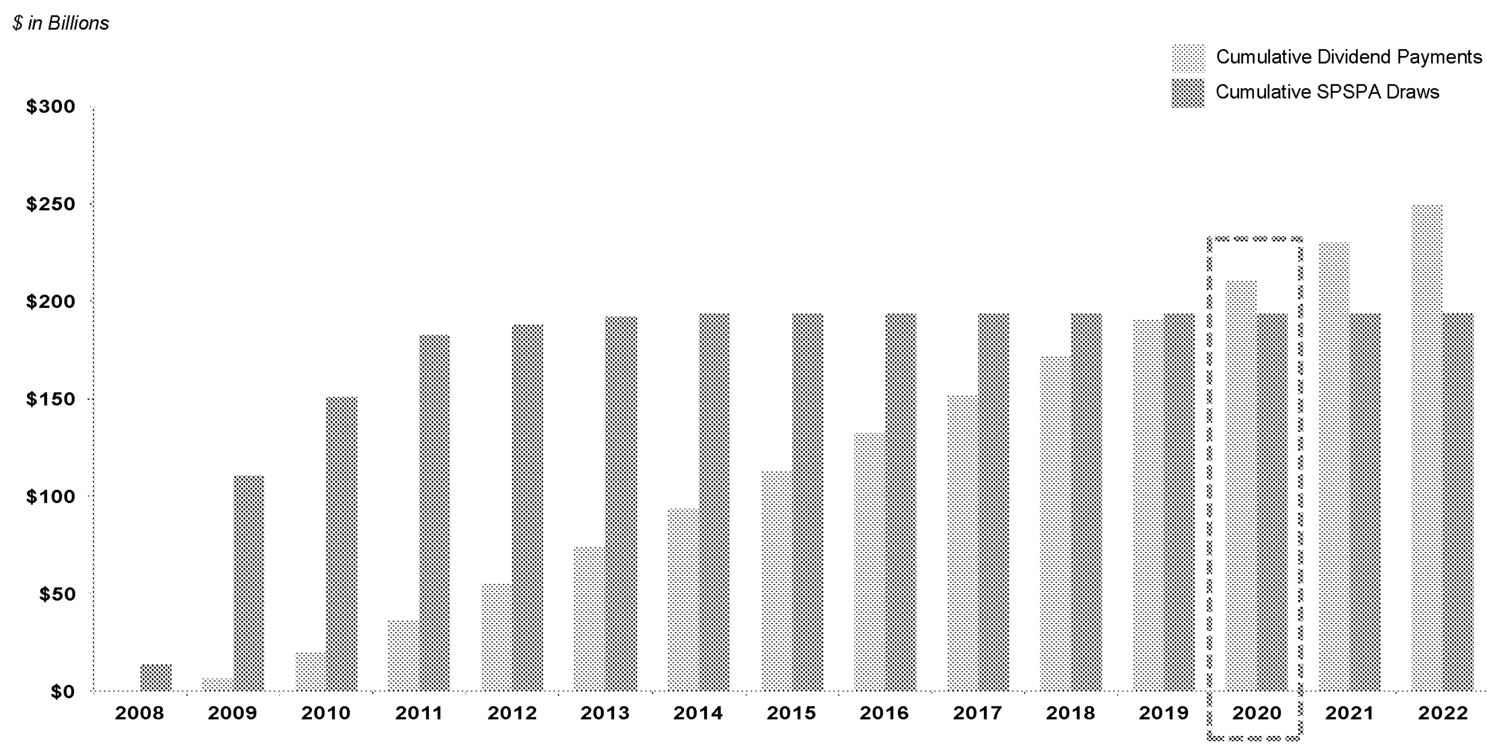
EXHIBIT H

From: Benson, David C <david_c_benson@fanniemae.com>
Sent: Saturday, August 11, 2012 12:16 PM
To: Bowler, Timothy
Subject: Fw: Corrected data with assumptions
Attachments: GSE model_Aug 2012.pdf

Tim: See attached. I am away on vacation this week. Speak with you when I return. Dave

----- Original Message -----
From: DAVID BENSON [mailto:bensondavidc@aol.com]
Sent: Saturday, August 11, 2012 12:11 PM
To: Benson, David C
Subject: Corrected data with assumptions

Cumulative GSE Dividend Payments vs. Cumulative SPSPA Draws



	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
SPSPA Draws Less Dividends ($B)	($14)	($104)	($131)	($147)	($133)	($117)	($100)	($80)	($61)	($41)	($22)	($2)	$17	$36	$53
Residual Equity ($B)	-	-	-	-	$0	$1	$2	$4	$8	$10	$11	$11	$9	$8	$8

Note: Figures above based on extended earnings forecast for both Fannie Mae and Freddie Mac. Forecast incorporates actual results through May 2012 for Fannie Mae and through 2011 for Freddie Mac.

FannieMae

Annual Detail of Modeled Cumulative Dividends and SPSPA Draws

Fannie Mae

($ in Billions)	2008-2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Comprehensive Income		11.6	7.5	11.0	12.5	13.9	13.2	12.2	11.4	10.9	10.5	10.5
Preferred Dividend Payment	19.8	11.6	11.8	12.1	12.2	12.2	12.2	12.2	12.2	12.2	12.3	12.5
Residual Equity	0.0	0.0	0.0	0.0	0.2	1.8	2.8	2.7	1.9	0.5	0.0	0.0
Cumulative Dividends	19.8	31.4	43.2	55.3	67.6	79.8	92.1	104.3	116.6	128.8	141.1	153.6
Cumulative SPSPA Draws [1]	(111.6)	(116.1)	(119.0)	(121.2)	(121.5)	(121.5)	(121.5)	(121.5)	(121.5)	(121.5)	(122.9)	(124.8)
Cumulative Draws Less Dividends	*(91.8)*	*(84.7)*	*(75.8)*	*(65.9)*	*(53.9)*	*(41.7)*	*(29.4)*	*(17.2)*	*(4.9)*	*7.3*	*18.3*	*28.8*
SPSPA Funding Cap [2]	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9
Remaining Funding under SPSPA	124.8	124.8	121.9	119.7	119.4	119.4	119.4	119.4	119.4	119.4	118.0	116.1

1 Draw requests related to net deficit occurring in Q4 are included in the following year. Treasury draw requests do not include the initial $1B liquidation preference of Fannie Mae's senior preferred stock, for which Fannie Mae did not receive any cash proceeds.

2 Pursuant to the amended senior preferred stock purchase agreement, cash draws attributable to deficits occurring in 2010-2012 do not count against the $200B funding cap.

Note: Figures from Fannie Mae July BoD corporate forecast incorporate actual results through May 2012. 2017-2022 figures are based on simplifying assumptions derived from trends observed within the 2012-2016 horizon.

Freddie Mac

($ in Billions)	2008-2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Comprehensive Income		6.7	7.8	8.7	9.1	9.6	8.7	8.4	7.7	7.2	6.7	6.6
Preferred Dividend Payment	16.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3
Residual Equity	0.0	0.0	0.5	2.0	3.8	6.1	7.5	8.6	9.0	8.9	8.3	7.6
Cumulative Dividends	16.3	23.6	30.8	38.1	45.4	52.7	60.0	67.3	74.5	81.8	89.1	96.4
Cumulative SPSPA Draws [1]	(71.2)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)
Cumulative Draws Less Dividends	*(54.9)*	*(48.3)*	*(41.0)*	*(33.7)*	*(26.4)*	*(19.2)*	*(11.9)*	*(4.6)*	*2.7*	*10.0*	*17.3*	*24.6*
SPSPA Funding Cap [2]	220.6	221.1	221.1	221.1	221.1	221.1	221.1	221.1	221.1	221.1	221.1	221.1
Remaining Funding under SPSPA	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3

1 Draw requests related to net deficit occurring in Q4 are included in the following year. Treasury draw requests do not include the initial $1B liquidation preference of Freddie Mac's senior preferred stock, for which Freddie Mac did not receive any cash proceeds.

2 Pursuant to the amended senior preferred stock purchase agreement, cash draws attributable to deficits occurring in 2010-2012 do not count against the $200B funding cap.

Note: 2012-2022 figures are based on simplifying assumptions derived from Fannie Mae forecast trends and observed relationships between key Fannie Mae and Freddie Mac performance metrics. These figures incorporate actual results through 2011 only.

Note: Numbers may not foot due to rounding

Fannie Mae Annual Detail of Modeled Dividends, Draws, and Key Metrics

($ in Billions)

	2008-2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Comprehensive Income		11.6	7.5	11.0	12.5	13.9	13.2	12.2	11.4	10.9	10.5	10.5
Preferred Dividend Payment	19.8	11.6	11.8	12.1	12.2	12.2	12.2	12.2	12.2	12.2	12.3	12.5
Residual Equity	0.0	0.0	0.0	0.0	0.2	1.8	2.8	2.7	1.9	0.5	0.0	0.0
Cumulative Dividends	19.8	31.4	43.2	55.3	67.6	79.8	92.1	104.3	116.6	128.8	141.1	153.6
Cumulative SPSPA Draws [1]	(111.6)	(116.1)	(119.0)	(121.2)	(121.5)	(121.5)	(121.5)	(121.5)	(121.5)	(121.5)	(122.9)	(124.8)
Cumulative Draws Less Dividends	*(91.8)*	*(84.7)*	*(75.8)*	*(65.9)*	*(53.9)*	*(41.7)*	*(29.4)*	*(17.2)*	*(4.9)*	*7.3*	*18.3*	*28.8*
SPSPA Funding Cap [2]	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9	240.9
Remaining Funding under SPSPA	124.8	124.8	121.9	119.7	119.4	119.4	119.4	119.4	119.4	119.4	118.0	116.1
Market Metrics:												
SF First-Lien MDO Beginning ($B)		9,418	9,409	9,511	9,680	9,794	9,983	10,193	10,426	10,681	10,962	11,269
Total Market SF Originations ($B)		1,306	1,072	1,050	1,166	1,359	1,370	1,470	1,570	1,680	1,842	2,026
Total Market SF Liquidations ($B)		(1,315)	(969)	(881)	(1,053)	(1,170)	(1,160)	(1,238)	(1,314)	(1,399)	(1,535)	(1,690)
SF First-Lien MDO Ending ($B)		9,409	9,511	9,680	9,794	9,983	10,193	10,426	10,681	10,962	11,269	11,605
Annual MDO Growth Rate		-0.1%	1.1%	1.8%	1.2%	1.9%	2.1%	2.3%	2.5%	2.6%	2.8%	3.0%
Enterprise Metrics:												
SF Acquisition Volume ($B)		589	433	385	410	462	466	500	534	571	626	689
SF Market Share (Acquisitions/Originations)		45%	40%	37%	35%	34%	34%	34%	34%	34%	34%	34%
Total Mortgage Loans ($B)[3]		2,921	2,845	2,780	2,751	2,753	2,819	2,909	3,019	3,149	3,314	3,516
SF Charge-Fee on New Acquisitions, net (bps)[4]		30	31	32	33	33	35	35	35	35	35	35
SF Effective Guaranty Fee, net (bps)[4,5]		24	25	25	26	27	29	30	31	32	33	35

1 Draw requests related to net deficit occurring in Q4 are included in the following year. Treasury draw requests do not include the initial $1B liquidation preference of Fannie Mae's senior preferred stock, for which Fannie Mae did not receive any cash proceeds.

2 Pursuant to the amended senior preferred stock purchase agreement, cash draws attributable to deficits occurring in 2010-2012 do not count against the $200B funding cap.

3 Total Single-family and Multi-family conventional mortgage credit book of business.

4 Net of Temporary Payroll Tax Cut Continuation Act (TCCA) fee of 10bps. TCCA effective as of April 1, 2012.

5 Total guaranty fee income for the year divided by average SF credit book of business.

Note: Figures from Fannie Mae July BoD corporate forecast incorporate actual results through May 2012. 2017-2022 figures are based on simplifying assumptions derived from trends observed within the 2012-2016 horizon.

Note: Numbers may not foot due to rounding.

Freddie Mac Annual Detail of Modeled Dividends, Draws, and Key Metrics

Freddie Mac

($ in Billions)

	2008-2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Comprehensive Income		6.7	7.8	8.7	9.1	9.6	8.7	8.4	7.7	7.2	6.7	6.6
Preferred Dividend Payment	16.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3
Residual Equity	0.0	0.0	0.5	2.0	3.8	6.1	7.5	8.6	9.0	8.9	8.3	7.6
Cumulative Dividends	16.3	23.6	30.8	38.1	45.4	52.7	60.0	67.3	74.5	81.8	89.1	96.4
Cumulative SPSPA Draws [1]	(71.2)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)	(71.8)
Cumulative Draws Less Dividends	(54.9)	(48.3)	(41.0)	(33.7)	(26.4)	(19.2)	(11.9)	(4.6)	2.7	10.0	17.3	24.6
SPSPA Funding Cap [2]	220.6	221.1	221.1	221.1	221.1	221.1	221.1	221.1	221.1	221.1	221.1	221.1
Remaining Funding under SPSPA	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3	149.3
Market Metrics:												
SF First-Lien MDO Beginning ($B)		9,418	9,409	9,511	9,680	9,794	9,983	10,193	10,426	10,681	10,962	11,269
Total Market SF Originations ($B)		1,306	1,072	1,050	1,166	1,359	1,370	1,470	1,570	1,680	1,842	2,026
Total Market SF Liquidations ($B)		(1,315)	(969)	(881)	(1,053)	(1,170)	(1,160)	(1,238)	(1,314)	(1,399)	(1,535)	(1,690)
SF First-Lien MDO Ending ($B)		9,409	9,511	9,680	9,794	9,983	10,193	10,426	10,681	10,962	11,269	11,605
Annual MDO Growth Rate		-0.1%	1.1%	1.8%	1.2%	1.9%	2.1%	2.3%	2.5%	2.6%	2.8%	3.0%
Enterprise Metrics:												
SF Acquisition Volume ($B)		331	232	209	227	259	260	279	298	319	350	385
SF Market Share (Acquisitions/Originations)		25%	22%	20%	19%	19%	19%	19%	19%	19%	19%	19%
Total Mortgage Loans ($B) [3]		1,781	1,734	1,695	1,677	1,678	1,680	1,701	1,738	1,790	1,865	1,964
SF Effective Guaranty Fee, net (bps) [4,5]		21	22	23	24	25	27	29	30	31	32	34

1 Draw requests related to net deficit occurring in Q4 are included in the following year. Treasury draw requests do not include the initial $1B liquidation preference of Freddie Mac's senior preferred stock, for which Freddie Mac did not receive any cash proceeds.

2 Pursuant to the amended senior preferred stock purchase agreement, cash draws attributable to deficits occurring in 2010-2012 do not count against the $200B funding cap.

3 Total Single-family and Multi-family conventional mortgage credit book of business.

4 Freddie Mac does not disclose SF charged fees. As a result, the forecast of guaranty fee income is based on the forecast for Fannie Mae's effective guaranty fees, adjusted for the observed relationship between Freddie Mac and Fannie Mae historically. This is also presented net of the Temporary Payroll Tax Cut Continuation Act (TCCA) fee of 10bps. TCCA effective as of April 1, 2012.

5 Total guaranty fee income for the year divided by average SF credit book of business.

Note: 2012-2022 figures are based on simplifying assumptions derived from Fannie Mae forecast trends and observed relationships between key Fannie Mae and Freddie Mac performance metrics. These figures incorporate actual results through 2011 only.

Note: Numbers may not foot due to rounding.

EXHIBIT I

From: Ugoletti, Mario
Sent: Wednesday, October 15, 2008 10:45 AM
To: Lingebach, James
Subject: Re: Valuation of GSE Stock/Warrant/Commitment

Jim, I will back on monday october 20 , the afternoon would work, I will still be in south america on friday, mario.

From: Lingebach, James
To: Ugoletti, Mario
Cc: Carfine, Ken; Norton, Jeremiah; Winborne, Serita; Runnels, Al; Geiger, Donald; Wong, Chantale; Foster, Wesley; Legge, David
Sent: Wed Oct 15 10:17:52 2008
Subject: Valuation of GSE Stock/Warrant/Commitment

Mario,

I realize you are out of the office but we have an urgent need to schedule a meeting with you for this Friday, October 17.

We have engaged a contractor, Grant Thornton, to perform the valuation of the GSE preferred stock, common stock warrant, and Treasury's $200 billion preferred stock commitment in order to properly value these items in the Department's 9/30/08 financial statements. Grant Thornton wants to discuss several aspects of the preferred stock liquidity arrangement, such as whether we expect the GSEs to pay the preferred stock dividends in cash or to just accrue the payments, what the Department's future intent may for the preferred stock and common stock warrant, and other aspects of the agreement. A related question is whether the preferred stock really has any value if it is determined that we have a significant future liability under this commitment.

Please let me know at your earliest convenience what a good time is and we can work out the particulars.

Thanks,

Jim

James R. Lingebach
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Office of the Deputy Chief Financial Officer
Department of the Treasury
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