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

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| BERKLEY INSURANCE CO., *et al*.,<br><br>Plaintiffs,<br><br>v.<br><br>FEDERAL HOUSING FINANCE AGENCY, *et al.*,<br><br>Defendants. | Civil No. 13-1053 (RCL) |
| In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations<br><br>_____<br><br>This document relates to:<br>ALL CASES | Miscellaneous No. 13-1288 (RCL) |

**PLAINTIFFS' MOTION FOR LEAVE TO SERVE SUPPLEMENTAL EXPERT REPORTS AND INCOROPRATED MEMO OF SUPPORTING POINTS AND AUTHORITIES**

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## INTRODUCTION

Plaintiffs seek leave to serve supplemental expert reports authored by Professor Bala Dharan and Professor Joseph Mason. The supplemental reports address evidence or argument advanced by Defendants during the October 2022 trial regarding the opinions and testimony that Professors Dharan and Mason provided previously in this case. The reports have already been provided to Defendants, and this motion merely seeks the Court's approval to permit their service and use as disclosure of expected trial testimony. The parties have separately agreed on a schedule for briefing of this motion, and for submission of rebuttal reports and expert depositions that would apply if the Court grants the motion (or that will apply if the motion remains pending).

Case law holds that experts may supplement their reports to support their prior opinions so long as there is no prejudice to the other side. That includes allowing supplemental expert reports after a mistrial and before a retrial—indeed, while not requested here, courts allow parties to present entirely new experts and new expert opinions before a retrial. Here, the supplemental reports merely address facts and issues underlying the same opinions already provided at the first trial. Indeed, Plaintiffs believe the expert testimony disclosed in these supplemental reports would be admissible at trial even if no supplemental reports were provided. Plaintiffs provide the supplements in an abundance of caution and to ensure clarity well in advance of trial as to the opinions advanced, materials relied on, and the role that the materials play in those opinions. Defendants will suffer no prejudice from allowing these supplements because the reports merely provide supplemental support for previously disclosed opinions, they are narrow in scope, Defendants will have ample time to depose the experts on the points addressed in the supplements, and Defendants may have their experts disclose any responsive reports.

Pursuant to an overall scheduling plan the parties have negotiated, Plaintiffs provided the two supplemental reports to Defendants on Friday, February 10, 2023. On Tuesday, February 14,

2023, Defendants informed Plaintiffs they do not consent to Plaintiffs' request to allow for the supplements. This motion is therefore contested.[1]

**ARGUMENT**

As this Court has recognized, Rule 26(e) "anticipates that in complex litigation an expert witness may 'refine ... his or her opinion as he or she prepares for trial.'" *Capitol Justice LLC v. Wachovia Bank N.A.*, 706 F. Supp.2d 34, 38 (D.D.C. 2009) (citing *Nnadili v. Chevron, U.S.A., Inc.*, Civ. No. 02–1620, 2005 WL 6271043, at *1 (D.D.C. Aug. 11, 2005)); *see also* MOORE'S FEDERAL PRACTICE 3D § 26.131[2]. This principle has been applied to permit an expert to serve a supplemental report before a retrial following a trial's vacated verdict. *Mondis Tech. v. LG Elecs.*, Civil Action 15-4431 (SRC), 2021 WL 4077563, at *1 (D.N.J. Sep. 8, 2021) ("After this Court vacated the jury's damages verdict, and ordered a retrial on damages, [Plaintiff] was permitted to submit a supplemental expert report on reasonable royalty damages.") (but excluding report under Rule 702). Indeed, some courts have held that after a mistrial, parties are permitted to present a ***new expert*** with a ***new expert opinion*** in the retrial. *See White v. McDermott*, No. 08-CV-634, 2010 WL 4876025, at *2 (D. Conn. Nov. 19, 2010) (permitting testimony of new expert witness at retrial); *Hoffman v. Tonnemacher*, 2006 WL 3457201, at *2 (E.D. Cal. Nov. 30, 2006) (permitting new expert witness to testify at retrial); *Yong ex rel. Yong v. The Nemours Found.*, 432 F. Supp. 2d 439, 441 (D. Del. 2006) (permitting new expert to testify at retrial).

It is Plaintiffs' position that Professors Dharan and Mason could testify at the second trial regarding the opinions set forth in their supplemental reports without any supplemental disclosure—or at most, with regards to certain portions of their supplements, by simply identifying additional materials considered. Nevertheless, in an abundance of caution, Plaintiffs have asked

[1] Professor Dharan's supplemental report is attached as Exhibit 1 to this motion, and Professor Mason's supplemental report is attached as Exhibit 2.

their experts to prepare the supplemental disclosures to leave no doubt as to the anticipated scope of testimony and to ensure that Defendants have ample notice and opportunity to respond. As the Court will see, the supplemental reports are limited to supporting the original opinions offered by Professors Dharan and Mason at trial by specifically addressing trial testimony by Defendants' expert, as well as questioning and argument from Defendants' counsel at trial, and considering additional materials previously produced by Defendants and Treasury as they relate to previously offered opinions. Such supplementation is permitted under Rule 26(e). *See, e.g., Johnson v. H.K. Webster, Inc.*, 775 F.2d 1, 7 (1st Cir. 1985) (holding that Rule 26(e) does not "foreclose[] an expert from revising or further clarifying opinions during redirect examination or surrebuttal in response to points raised by the opposing party during its cross-examination or the presentation of its case"). Because the supplemental expert reports do not advance any new opinions, or "wholly change…the substance of their contentions," supplementation is proper. *Capitol Justice LLC,* 706 F. Supp.2d at 38-39.

Defendants will suffer no prejudice from the Court's permitting the supplemental reports. "Rule 26 was designed to 'prevent unfair surprise at trial and to permit the opposing party to prepare rebuttal reports, to depose the expert, and to prepare for depositions and cross-examinations at trial." *Dormu v. District of Columbia*, 795 F. Supp.2d 7, 28 n.16 (D.D.C. 2011). According to this Court, the "central inquiry is 'whether [a party's] supplemental report comes so late in the game that [the opposing party] has no meaningful opportunity to respond or prepare for deposition or trial.'" *Capitol Justice LLC*, 706 F.Supp.2d at 39.

Here, the proffered supplements give Defendants ample time to respond. They also are designed to reduce the likelihood of surprise and to eliminate any conceivable surprise, confusion, and potential for prejudice that could otherwise occurred for either side. Defendants will have a

meaningful opportunity to respond to the supplemental reports, to the extent they conclude a response is needed or warranted. The Court recently scheduled the retrial to begin on July 24, 2023, over five-and-one-half months away. *Richardson v. Korson*, 905 F. Supp.2d 193, 200 (D.D.C. 2012) (stating that the exclusion of evidence is an "extreme sanction" where "there is sufficient time" to cure any potential prejudice). Plaintiffs do not oppose Defendants filing rebuttal expert report(s) or deposing Drs. Mason and Dharan on the supplemental reports, which will "ensure the [defendants] a fair opportunity to respond to the plaintiffs' reports." *Barnes v. District of Columbia*, 289 F.R.D. 1, 13 (D.D.C. 2012). These actions may be accomplished well in advance of trial, and well in advance of any motions practice regarding the substance of the supplemental reports, thus resulting in no prejudice to Defendants. *See Dormu*, 795 F. Supp.2d at 28 n.16 (finding that any purported harm "did not justify striking the supplemental affidavit" where the plaintiff's motion "comes several months prior to trial, leaving defendants with sufficient time to adjust their trial preparation" and that "[a]ny harm they do experience…can be minimized by allowing defendants to depose the expert if they so choose"); *Nnadili*, 2005 WL 6271043, at *1 (finding no prejudice where the defendants "will have had the supplemental report for just over six months").

Finally, as shown in the brief descriptions below, the substance of the supplemental reports is important to furthering the interests of justice in this case.

## I. Professor Dharan's Supplemental Report Should Be Permitted.

### A. The Supplemental Report Addresses Topics Covered in Dr. Dharan's Prior Expert Reports and Trial Testimony.

Dr. Dharan's supplemental report addresses four topics covered in his prior expert reports and trial testimony, which support his overall opinion that the Net Worth Sweep was not reasonably necessary to address the alleged concern that the practice of circular draws to pay the

10% dividend would materially erode the Treasury Commitment once caps on that Commitment were imposed as of December 31, 2012, and which respond to Defendant arguments or expert testimony at the trial.

First, Dr. Dharan provides additional analysis regarding the payment-in-kind (PIK) option that he addressed in his initial expert report and testified about at trial. *See* Dharan Rebuttal Rpt. at 17-18; Tr. 1256:25-1257:20; 2311:25-2314:17.[2] Dr. Dharan's supplement specifically addresses the trial testimony of Defendants' expert Dr. Attari that the PIK option would have made the GSE's situation "worse." Exhibit 1 (Dharan Supp. Rpt.) ¶¶3–4, 8 (citing Tr. 1964:7-9). Dr. Dharan's supplement explains that this assertion is incorrect, and that the PIK option never makes the GSEs' situation worse than the Net Worth Sweep; he further explains that under all scenarios, the PIK option was at least as protective as the Net Worth Sweep of any possible concerns that bond and MBS investors may have had about circular dividends causing an erosion of the Treasury Commitment (and was superior in addressing those concerns under some scenarios), and that under any scenario involving significant future profits, the PIK option would have been vastly superior for the GSEs and private shareholders than the Net Worth Sweep. His Exhibit A illustrates that if the PIK option had been used instead of the circular dividend practice from 2008-12, the GSEs' would have been in a better financial position. All of this is proper rebuttal testimony that would be permissible even without a supplemental report, and thus cannot be objected to as part of a supplemental report many months before the retrial. *See, e.g., United States v. Phillip Morris USA, Inc.*, 2022 WL 1101730, at *5 (D.D.C. April 13, 2022) ("Rebuttal testimony is proper if it "explain[s], repel[s], counteract[s], or disprove[s] evidence of the adverse party.") (citations

[2] Citations to "Tr.__" are to the trial transcript for the trial conducted in this case in October 2022.

omitted); *United States v. Gatling*, 96 F.3d 1511, 1523 (D.C. Cir. 1996) (permitting new expert testimony at trial to directly refute testimony of a defendant).

Dr. Dharan also refers to a document admitted at trial (PX-210) as support for his "opinion that the PIK alternative was a viable and superior option for addressing concerns in situations where the GSEs did not have the ability to pay a cash dividend without drawing on the Treasury Commitment." Exhibit 1 (Dharan Supp. Rpt.) ¶13. *See, e.g., Tedder v. American Railcar Indus., Inc.*, 739 F.3d 1104, 1109 (8th Cir. 2014) (stating that an expert may rely on data learned at trial in connection with rendering an opinion, citing Rule 703); 3 FEDERAL EVIDENCE §7.15 ("an expert may testify on the basis of 'facts or data' that the expert 'has been made aware of' at the trial or hearing or trial, or has 'personally observed'").

Second, Dr. Dharan identifies supplemental support in response to Dr. Attari's event study by showing the absence of concern among GSE bond and MBS investors, a topic that Dr. Dharan addressed in his Rebuttal Report. Dharan Rebuttal Rpt. at 19-21. This section of the supplemental report refers to specific documents refuting Dr. Attari's conclusions, all of which either were admitted at trial, referenced in Dr. Mason's report, or produced by Defendants in discovery. Exhibit 1 (Dharan Supp. Rpt.) ¶¶15–24. Dr. Dharan also refers to his prior observation that bond yield spreads had been "tightening *all year* due to investors designating them as safe asset cohorts to Treasuries," *id.* ¶20, and states that he confirmed the information in PX-444 and PX-445—charts prepared by Dr. Mason depicting narrowing yield spreads prior to the Net Worth Sweep that were admitted at trial. *Id.* ¶¶20–21 & Exs. B1, B2. In addition, Dr. Dharan describes the absence of any change to the GSE credit ratings, ratings outlooks, or ratings watch status of the GSE bonds by credit agencies, which responds to Dr. Attari's trial testimony that MBS investors had cause for concern. *See* Tr. 2192:9-2198:17. Finally, Dr. Dharan prepared a chart depicting GSE MBS

issuance from 2008-2012 drawn directly from data published by the FHFA that is otherwise admissible at trial. Exhibit 1 (Dharan Supp. Rpt.) ¶¶25–26 & Ex. C. The publicly-available MBS data further supports Dr. Dharan's preexisting opinion that the Net Worth Sweep was not necessary to reassure MBS investors. *See* Dharan Rebuttal Rpt. at 21.

Third, Dr. Dharan refers to multiple documents admitted as trial, as well as additional documents produced by FHFA and Treasury, supporting his preexisting opinion that the Net Worth Sweep was not reasonably needed to address any concerns over circular draws eroding the Treasury Commitment. Exhibit 1 (Dharan Supp. Rpt.) ¶¶27–37.

Fourth, Dr. Dharan supplements his trial testimony about "the outsized role played by non-cash accounting adjustments on the GSEs' financial performance between 2008 and 2021, particularly 2008 to 2013," in support of which he presented data (at trial) showing the impact that DTA valuation allowances and loan loss reserves (non-cash accounting adjustments) had on the GSEs' reported comprehensive income. Exhibit 1 (Dharan Supp. Rpt.) ¶38 & Ex. D (reproducing Dharan Trial Demonstrative, Slide 17). In his supplemental report, Dr. Dharan includes a reference to a Fannie Mae document, admissible at trial, that is consistent with that prior analysis. Exhibit 1 (Dharan Supp. Rpt.) ¶38. Dr. Dharan also responds specifically to Dr. Attari's trial testimony and defense counsel arguments and assertions, addressing the proposition that cash invested by private preferred shareholders was "lost" or "gone" by the end of 2008. Exhibit 1 (Dharan Supp. Rpt.) ¶39.

**B. Dr. Dharan's Supplemental Report Will Not Prejudice Defendants**

As set forth above, each topic addressed in Dr. Dharan's supplemental report was covered in his prior expert reports and trial testimony. Dr. Dharan does not express any new opinions, but rather he responds to specific defense testimony and trial exhibits in a manner consistent with proper rebuttal testimony at trial. *See, e.g.*, *Johnson*, 775 F.2d at 7. Such testimony should be

permitted even without a supplemental report. Further, Defendants will suffer no prejudice—they will have Dr. Dharan's supplemental report for over five-and-one-half months in advance of trial, may depose him, and may offer a rebuttal report. *See* pages 3-4, *supra*. Further, Dr. Dharan's supplement will ensure a complete presentation of these important topics to the jury while eliminating any risk or claim of unfair surprise or juror confusion, either as to Dr. Dharan's testimony or to any rebuttal testimony.

## II. Dr. Mason's Supplemental Report Relates to His Pre-existing Opinion That There Was At Least $1.6 Billion in Damages and to Defense Counsel's Unfounded Suggestion That There Was a "Recovery" of the Value Lost Due to The Net Worth Sweep.

### A. Background of Dr. Mason's Testimony

At trial, Dr. Mason testified that he confirmed the results of the event study performed by Dr. Attari and opined that "the measure of damages to the plaintiffs from the net worth sweep" was $1.61 billion. Tr. 1515:24-1516:7. In forming that opinion, Dr. Mason did not just review PowerPoint slides prepared by Dr. Attari; rather, Dr. Mason reviewed multiple spreadsheets and source code data underlying the event study, which were admitted as evidence at trial. *See* Tr. 1488:12-19 (admitting PX-495-2, 496-2, 497-2, 497-3, 497-4, and 497-5); Tr. 1501:15-1506:14 (testimony that Dr. Mason's review of the statistical model and computer code, the model inputs, stock price movements, and regression results spanning January 2012 through December 2012 related directly to his opinion). Dr. Mason also testified that he specifically examined "whether share prices moved with response to ***other information***," i.e., information unrelated to the net worth sweep ("Net Worth Sweep"). Tr. 1507:22-1508:4 (emphasis added).

Based on his "years of experience of performing event studies," Dr. Mason characterized the magnitude of the stock decline in response to the Net Worth Sweep as "dramatic" and "massive" and "the kind of declines that, in my opinion, one would expect to see from an

announcement that said that the Treasury was going to take all the profits of Fannie Mae and Freddie Mac so that the companies couldn't use those at all and the shareholders would derive no benefit from those whatsoever." Tr. 1509:20-1510:1. Dr. Mason testified further (without objection) that the Net Worth Sweep had an ongoing impact on the GSEs. For example, Dr. Mason explained that the Net Worth Sweep would "take every dollar of profit the GSEs earned going forward." Tr. 1538:15-21. Dr. Mason also stated that the Net Worth Sweep "prevented the companies from building capital." Tr. 1539:4-6. And Dr. Mason described how the net worth sweep "insured that shareholders would receive little to no benefit from any future positive financial performance by the GSEs." Tr. 1539:7-10.

On cross-examination, defense counsel asked Dr. Mason three questions relating to the event study's accompanying PowerPoint presentation. First, defense counsel read to the jury a single sentence from the PowerPoint stating that the "Price of the common stock ***recovered*** in September 2012 and that of the junior preferred stocks ***recovered*** during October 2012," and then asked Dr. Mason, "Did I read that correctly?" Tr. 1524:1-7 (emphasis added). Defense counsel then asked whether "September 2012 was…the month after August 2012, when the Third Amendment was announced. Correct?" Tr. 1524:11-14. Finally, defense counsel asked whether "October 2012 was the month after that, the one right after September. Correct?" Tr. 1524:15-17.

On redirect, Plaintiffs' counsel referred to the cross-examination questions "about the stock quote recovering in September for the common and October for the junior preferred," and asked: "Do you believe, as a financial economist, that those price increases that occurred in October recovered the $1.6 billion of losses that occurred when the net worth sweep was announced?" Tr. 1535:2-7. Defense counsel objected that the question exceeded the scope of Dr. Mason's expert

report, Tr. 1535:8-1536:5, and claimed, incorrectly, that an answer would yield "an entire new line of expert opinions that we have heard nothing about until literally right now." Tr. 1537:1-4. The Court sustained the objection. Tr. 1537:25.

In Defendants' closing argument, counsel commented on the purported recovery, stating that "shareholders didn't lose that one-day reduction in share price for 10 years, as plaintiffs claim. The share prices started to increase immediately in 2012." Tr. 2688:3-8.

**B. Dr. Mason's Supplemental Report Describes Why He Previously Concluded There Was No Value "Recovery" Tied to the Net Worth Sweep**

Defendants' objection to Dr. Mason's testimony was misplaced. As represented explicitly in the supplemental expert report, Dr. Mason

> considered the entirety of Dr. Attari's analysis summarized in the presentation of his equity event study results, including the statements pertaining to changes in GSE share prices (among them, the statement regarding the "recovery") and the corresponding backup materials to weigh Dr. Attari's analysis in its entirety. Implicit in my opinion, therefore, was the conclusion that the so-called price "recovery" noted by Dr. Attari in no way mitigated the harm the Net Worth Sweep caused GSE shareholders or the damages resulting from that harm through the remainder of 2012, the period analyzed by Dr. Attari.

Exhibit 2 (Mason Supp. Rpt.) ¶ 6. In other words, Dr. Mason would not have testified that damages were $1.61 billion had he concluded that a purported "recovery" mitigated *any* harm caused by the Net Worth Sweep. As Dr. Mason explains in his supplemental report, any statement in the PowerPoint about a purported "recovery" is "irrelevant to damages in this case" because any stock price changes "are unrelated to any new developments about the Net Worth Sweep that would offset or mitigate damages..." *Id.* ¶12.

The Court itself acknowledged prior to trial that it was Dr. Mason's opinion that the $1.61 billion in damages "understates damages because it does not fully encompass the shares' fundamental value." *Fairholme Funds, Inc. v. Federal Housing Finance Agency*, 2022 WL

11110548, at *2 (D.D.C. Oct. 19, 2022) (emphasis added).[3] At trial, Dr. Mason testified about the Net Worth Sweep's ongoing impact on GSEs and private shareholders, including how it swept "every dollar of profit the GSEs earned going forward," "prevented the companies from building capital," and "insured that shareholders would receive little to no benefit from any future positive financial performance by the GSEs." Tr. 1538:15-1539:10. The supplemental report clarifies how the GSEs' performance makes the $1.61 billion measure of damages conservative, as an increase in GSE assets or a decrease in the liquidation preference (each of which would have occurred absent the Net Worth Sweep) would have increased the value of GSE shares. Exhibit 2 (Mason Supp. Rpt.) ¶¶17; *see also* ¶¶14-16, 18-19. The Court recognized as much in its order denying Defendants' motion to dismiss, explaining that the large transfers of GSE net worth to Treasury would have, at minimum, "increase[d] the value of Plaintiffs' underlying securities either by way of reinvestment into the company or reduction of debt." *Fairholme Funds, Inc. v. Federal Housing Finance Agency*, 2018 WL 4680197, at *14 (D.D.C. Sept. 28, 2018).

Thus, the supplemental report does not set forth a "new opinion" or "blindside defendants with new information." *Dormu*, 795 F. Supp.2d at 28 n.16. If anything, the supplemental report "produce[s] a more complete and accurate" rendition of Dr. Mason's preexisting opinion and trial testimony, a permissible purpose to supplement in response to trial testimony and argument several months prior to trial. *Capitol Justice LLC,* 706 F. Supp.2d at 39 (permitting supplemental expert

[3] Plaintiffs do not seek reconsideration of the Court's earlier ruling denying Dr. Mason from quantifying the extent of the additional harm. Rather, the supplemental report makes clear what was, at the very least, implicit in Dr. Mason's rebuttal report and what he would have testified at trial: there was no mitigation in the damages caused by the Net Worth Sweep because the Net Worth Sweep remains in existence and has caused continuing harm. *See* Exhibit 2 (Mason Supp. Rpt.) ¶ 9.

report where an expert "used the same methodology in his revised report as in his initial report" to "produce a more complete and accurate report").

Supplementation will also ensure that the jury is not led astray by misleading suggestions of stock price "recovery." As Dr. Mason makes clear, such suggestions are economically unsound and unsupported by any expert testimony, including that of Defendant's own expert. It was defense counsel that introduced this concept through the misleading cross-examination surrounding the purported "recovery," as well as defense counsel's argument incorrectly suggesting there was no continuing harm to the value of the shares, when in fact the shares would be worth at least $1.6 billion more than their traded prices had there never been any Net Worth Sweep (and likely far more than that amount). If Defendants wish to contend that their suggestions of a "recovery" of the damage caused by the Net Worth Sweep were *not* economically unsound, they will have ample opportunity to do so via the opportunity to depose Dr. Mason on this subject and through a rebuttal report by the creator of the event study on which Dr. Mason relies (i.e., Dr. Attari).

Defendants will suffer no prejudice given the "very narrow" scope of the supplemental report, *Korson*, 905 F. Supp.2d at 200-01. Defendants will also have sufficient time to depose Dr. Mason and prepare a rebuttal report well in advance of trial. *Dormu*, 795 F. Supp.2d at 28 n.16. Under either scenario the most that would be lost to Defendants is the opportunity to offer misleading attorney argument and questioning without any supporting expert testimony to back it up. That, to put it mildly, is not the type of prejudice that the law views to be meaningful. Finally, supplementation will ensure that there is a full airing before the jury of this important issue related to class-wide harm, and it will eliminate any risk of, and disputes over, claims of unfair surprise.

## CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully ask the Court to grant this motion and permit Plaintiffs to serve the supplemental expert reports of Dr. Mason and Dr. Dharan.

Dated: February 17, 2023

Respectfully submitted,

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# EXHIBIT 1

**UNITED STATES DISTRICT COURT**
**DISTRICT OF COLUMBIA**

| | |
|---|---|
| **In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations** | **Misc. Action No. 13-mc-1288 (RCL)**<br><br>CLASS ACTION |
| **THIS DOCUMENT RELATES TO: ALL CASES** | |

Supplemental Expert Report of

**BALA G. DHARAN, PH.D., CPA**

February 10, 2023

**Confidential and Subject to Protective Order**

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## I. Introduction and Summary of Supplemental Support for Opinions

1. I submitted my initial report in this matter on August 12, 2021 ("Initial Report"), and a rebuttal report on March 1, 2022 ("Rebuttal Report"). I am producing this supplemental report to identify supplemental support for opinions and testimony I have previously given.

2. The opinions on which I am identifying supplemental support are as follows:[1]

(a) I previously testified that the payment-in-kind ("PIK") option set forth in the Certificates of Designation for Treasury's Senior Preferred Stock ("Certificates") was a viable alternative to the Net Worth Sweep ("NWS"). Dr. Attari testified that the PIK option would have made the GSEs' situation "worse,"[2] would not have "solved the circular dividend problem,"[3] and would have eroded the Treasury Commitment that FHFA used to justify the NWS.[4] Dr. Attari's testimony is incorrect. The use of the PIK option by the GSEs in lieu of drawing down on the Treasury Commitment would have prevented it from being used to pay dividends and thus would have fully addressed any possible concerns about such erosion on the part of bond or MBS investors. At the same time, using the PIK option would have been vastly better for both the GSEs and the private shareholders, as it would have allowed the GSEs to build their net worth if (as proved to be the case) they were profitable. An analysis of what the PIK option would have done if used between 2008-2012 helps illustrate this. *See* Section II, below.

(b) I previously opined that Dr. Attari's event study of bond yield spreads in August 2012 does not shed any light on any relevant issue and that yield spreads, if anything, support my opinion concerning the NWS.[5] According to Dr. Attari, his bond event study showed a narrowing of yield spreads, and he attributes this narrowing to increased confidence in the GSEs' creditworthiness based on the NWS dividend. There is no sound basis for this opinion, and it is contradicted by various contemporaneous documents that attribute the narrowing of yield spreads to investors viewing the Third Amendment as reducing the future supply of GSE bonds (thus

[1] Exhibit E, attached hereto, lists the documents considered for my supplemental support. All defined terms in the Initial Report and Rebuttal Report are incorporated herein.

[2] Trial Tr. 1964:7-9.

[3] Trial Tr. 1961:9-13.

[4] Trial Tr. 1939:19-1940:5.

[5] Dharan Rebuttal Report, pp. 19-21.

leading to a price increase and a narrowing of yield spreads). Moreover, the yield spreads in 2012 were low and declining throughout the year, and nothing in the yield spread data suggests that investors' confidence in the GSE bonds was waning as the re-imposition of the Treasury caps approached. Also, the GSEs were able to *increase* their issuances of MBS in 2012 considerably compared to 2011, which undermines the contention that the impending Treasury caps were causing concerns among MBS investors, much less concerns that could have justified the NWS.[6] *See* Section III, below.

(c) I previously opined in my Initial Report and testified that the NWS was not reasonably necessary to address any alleged concern about future circular dividends causing a material erosion of the Treasury Commitment.[7] Various Treasury documents from government officials knowledgeable about the NWS negotiations provide supplemental support for that opinion. *See* Section IV, below.

(d) I previously testified that the GSEs' profits and losses from 2008 through 2012 were most heavily affected by non-cash accounting adjustments, such as asset write downs and write ups.[8] A contemporaneous 2012 document prepared by Fannie Mae provides additional support for that opinion.[9] A review of the cash position of the GSEs provides further support for that opinion. This evidence, along with a review of the GSE balance sheets, rebuts testimony by Dr. Attari wrongly suggesting that investments by preferred shareholders did not assist the GSEs in conservatorship. *See* Section V, below.

## II. Supplemental Support for the Viability of the PIK Option

3. Dr. Attari's rebuttal report did not address the viability of the PIK option provided in the Certificates for potential use by GSEs. Nevertheless, he testified at trial that using the PIK option

[6] FHFA 2012 Report to Congress, available at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2012_AnnualReportToCongress_508.pdf, Table 2 and Table 11.

[7] Dharan Initial Report, pp. 25, 29-31, 81-82.

[8] See Dharan Trial Demonstratives, slide 17, titled "Provisions, Write-Downs and Write-Ups". A version of it is reproduced herein as Exhibit D.

[9] See PX-0180 (FM_Fairholme_CFC-00002895 to 2897).

would not have "solved the circular dividend problem,"[10] and would instead have made the GSEs' situation "worse."[11]

4. Dr. Attari's testimony on this issue is incorrect. The use of the PIK option would have fully addressed any alleged concern about circular dividends without having to give away 100% of the GSEs' profits in perpetuity (as in the case of the NWS). The PIK option does not use any of the Treasury Commitment to pay dividends. Under all circumstances, it is at least as effective as the NWS in ensuring no erosion of the Treasury Commitment caused by circular dividends.

5. Moreover, under some circumstances, the PIK option is clearly more effective than the NWS in protecting against erosion of the Treasury Commitment. In a scenario where the GSEs are first profitable for some periods of time (as they were in 2012 and thereafter), and thereafter suffer significant losses (such as if a severe "stress" scenario were to occur), the NWS results in the GSEs having to draw down on the Commitment. That is because the GSEs will have transferred all their net worth increases to the Treasury during the profitable time period, and will not have any capital (other than the small and shrinking reserve provided for in the Third Amendment). Thus, if there is subsequently a severe business downturn with losses (such as in a stress scenario), the GSEs would have no capital to absorb the losses, and instead must draw from Treasury's Commitment to cover losses and avoid a negative net worth. Under such a scenario, the PIK alternative would be far better at protecting against erosion of the Treasury Commitment because the PIK option would allow the GSEs to build capital when profitable. Then, if a subsequent stress scenario emerges, there will be more capital to absorb losses, and thus less need to draw down on the Commitment as compared to under the NWS.

[10] Trial Tr. 1961:9-13.

[11] Trial Tr. 1964:7-9.

6. Similarly, the PIK option would be more advantageous than the NWS in a scenario where expected profitability first caused the GSEs to release the DTA valuation allowances fully (increasing the net worth, as happened in 2013), followed by a stress scenario that was severe enough to require the GSEs to make a new provision for the DTA valuation allowance. Under the NWS, the GSEs first increase net worth when the DTA allowances are reversed, thus transferring a huge amount cash to the Treasury (as happened in 2013); then, when new DTA allowances are taken, that causes a loss, leading to additional drawdowns from the Treasury (there being no capital buffer accumulated from the profitable years). The PIK option would avoid that: opting to rely on the PIK for any problem paying cash dividends, the GSEs would be able to accumulate net worth during good years that would allow the GSEs to absorb any new DTA valuation allowance without having to use the Treasury Commitment.

7. Further, the possibility that the PIK option might result in a higher Liquidation Preference for the Treasury than use of the NWS does not change the risks for GSE bond and MBS investors since these investors would have priority of payment over preferred and common stockholders in case of a liquidation, including over the Treasury's Liquidation Preference. Thus, the increase in the Treasury's Liquidation Preference does not cause any concern or risk increase for such investors. Additionally, the Certificates provide that the GSEs have the right to pay down the increases in Liquidation Preference attributable to the PIK option and thereby return of the dividend rate to 10%. This feature of the PIK option is not something Dr. Attari addressed in his prior testimony.

8. The PIK option was far preferable to the NWS from the perspective of both the GSEs and the private shareholders. Under the NWS, 100% of all future profits were transferred to the Treasury, no matter how large those profits might be. That means the NWS guaranteed that the

GSEs could never build capital, return to a sound and solvent condition, return to normal business operations, and exit conservatorship. Under the PIK option, by contrast, the GSEs would have had the opportunity to build capital in periods of high profits and pay down any additions to the Liquidation Preference caused from use of the PIK. That would have been better for the GSEs and their shareholders. The PIK option would therefore have allowed for the possibility of the GSEs building capital, returning to sound and solvent condition, and returning to normal business operations, and potentially having the ability to exit conservatorship, consistent with FHFA's stated goals of the conservatorship.[12] Dr. Attari is incorrect in saying the PIK option and the 12% dividend rate would have made the GSEs' situation "worse."[13]

9. An obvious illustration is what happened in 2013 where the GSEs generated far more in comprehensive income than the 10% dividend amount. Under the NWS, the GSEs had to pay dividends of over $130 billion to the Treasury, roughly $111 billion more than they would have paid under the 10% dividend. Had the GSEs resolved to use the PIK to avoid any Commitment drawdowns, they would not have had to do anything more than pay the 10% dividend.

10. In his trial testimony, Dr. Attari asserted that the use of the PIK option in 2013 would have required Fannie Mae (as an example) to pay a $14 billion dividend rather than a $12 billion dividend followed by steadily increasing Liquidation Preference amounts that would lead to increasing dividend amounts.[14] In making these assertions, Dr. Attari ignores that (1) the relevant comparison should be the PIK option in 2013 versus the NWS in 2013, and (2) the GSEs would never have needed to use the PIK option in 2013 because their comprehensive income in 2013 vastly exceeded the 10% dividend amount, allowing them to pay the cash dividend without any

[12] Dharan Initial Report, p. 10.

[13] Trial Tr. 1964:7-9.

[14] Trial Tr. 1962-1964.

circular draw. Further, this was foreseeable as of August 2012 because, by that time, the GSEs had earned substantial profits for two quarters and were returning to sustained profitability that made it reasonably likely they would be able to reverse the valuation allowances on the DTAs, which would significantly increase their net worth and eliminate any future need to draw down on the Treasury Commitment.[15] As events actually unfolded, both GSEs indeed released the DTA valuation allowances in their entirety in 2013 and thus it would not ever have been necessary to use the PIK option beyond August 2012.[16]

11. It is illustrative of Dr. Attari's failure to understand or analyze the PIK option that he has ignored the extent to which the PIK option would have been superior to the GSEs' practice of drawing on the Treasury Commitment to pay dividends during 2008 to 2012. This can be seen by examining what would have occurred if the GSEs had used the PIK option in lieu of drawing on the Treasury Commitment to pay cash dividends to the Treasury from 2008 to 2012. I have provided such an analysis, presented in Exhibit A to this report. The analysis shows that, had the GSEs used the PIK option during those years, they would have paid *less* in cash dividends to the Treasury, and at the same time the Liquidation Preference owed to the Treasury would have been *lower* at the end of 2012 compared to what actually happened by not using the PIK option.

12. Given these considerations, there is no basis in economics, finance, or accounting for FHFA not to have used the PIK option to address any asserted concerns on the part of bond and MBS investors that it claims justified the NWS. The trial testimony of Messrs. DeMarco[17] and Ugoletti[18] indicated that they did not consider this option and were either unaware of it or did not

[15] Dharan Initial Report, pp. 33, 45.

[16] Dharan Initial Report, p. 47.

[17] Trial Tr. 751:10-19.

[18] Deposition of Mario Ugoletti dated May 15, 2015, pp. 55-56.

understand that it would fully protect the Treasury Commitment from any erosion caused by an inability to pay the 10% cash dividend. Mr. Ugoletti, in fact, said "it doesn't make economic sense to pay in kind when you can pay in cash."[19] The failure to consider the PIK option given its obvious benefits supports my prior opinion that the process leading up to the NWS was inconsistent with what reasonable shareholders would expect for such a major transaction.

13. Additional documents support my opinion that the PIK alternative was a viable and superior option for addressing concerns in situations where the GSEs did not have the ability to pay a cash dividend without drawing on the Treasury Commitment. For example, in a memo prepared for Treasury Secretary Geithner to use in preparing to testify before Congress, the following question "Has the Administration considered modifying the PSPA agreements before the capacity becomes fixed at the end of 2012?" is posed, and the following response is provided: "To the extent that required dividend payments exceed net income, FHFA, as conservator, could consider not declaring dividends pursuant to the certificates of designation for the preferred shares, so that draws on the PSPAs are not used to pay dividends, preserving as much funding as possible to cover any unanticipated losses at Fannie Mae and Freddie Mac."[20]

## III. Supplemental Support Regarding Dr. Attari's Event Study and His Opinions Regarding Investor Concerns

### a. Supplemental data relating to debt investors.

14. In his report and at trial, Dr. Attari claimed that an event study he conducted of bond price yield spreads showed that investors believed the Third Amendment reduced the risk of default on GSE debt, reduced concerns about GSE creditworthiness, and signaled that GSE debt was more "safe." Dr. Attari also linked his event study with his use of analyst reports by

[19] Deposition of Mario Ugoletti dated May 15, 2015, p. 56.

[20] PX-0210, p. 10 (UST00061557 to 1607 at 1567).

explaining that those were the "two ways" he used to look "at how market participants viewed the commitment."[21] His discussion of the analyst reports claimed that the narrowed yield spreads reflected reduced concern about the erosion of the Treasury Commitment and that the NWS was the source of that reduced concern.[22] I have previously critiqued this opinion of Dr. Attari,[23] which I believe to be unfounded and inaccurate, and there are additional data and documents that supplement and support my critique.

15. First, as I stated previously, Dr. Attari, without any basis, attributes the price increase in GSE bonds to a perceived improvement in GSE creditworthiness attributable to the NWS. In doing so, he ignores confounding factors that would affect bond prices, including most obviously the market's expectation that the Third Amendment would result in a decrease in the supply of GSE bonds.[24] An expected decrease in the supply (without a change in demand) would be expected to result in an increase in the price of bonds.

16. The Third Amendment would reasonably have been perceived as likely to result in a substantial decrease in the supply of GSE bonds. It accelerated the annual rate at which the GSEs were required to shrink their investment portfolios to 15%, compared to a 10% rate before the Third Amendment.[25] The GSEs generally issued bonds to raise funds and finance the investment portfolio, and so a shrinkage of the investment portfolio would mean a decreased supply of GSE bonds. In its press release announcing the Third Amendment and its NWS, the Treasury stated

[21] Trial Tr. 1964:14-21.

[22] Trial Tr. 1917:17-1930:15.

[23] Dharan Rebuttal Report, p. 19-22; Trial Tr. 2314:24-2318:18.

[24] Dharan Rebuttal Report, p. 21. I also observe that Dr. Joseph Mason reached the same conclusion. Additionally, at trial, Dr. Attari acknowledged his deposition testimony, particularly that a change in supply could be a factor in declining bond yield spreads. Trial Tr. 2119:1-23.

[25] PX-0003-A4, p. 6 (FHFA-DDC-0054967 to 4974 at 4972); PX-0003-B4, p. 6 (FHFA-DDC-0054959 to 4966 at 4964).

that this would "help expedite the wind down of Fannie Mae and Freddie Mac."[26] The expectation of an expedited wind down of the GSEs would mean a greater market expectation of a major decrease in the supply of GSE bonds. The expectation of supply reduction would thus be a key confounding factor that would affect bond prices and thus could explain the increase in the bond price (and therefore the declines in GSE bond yields). Dr. Attari did not consider this confounding factor in his interpretation of the event study results.[27]

17. Contemporaneous FHFA documents I have reviewed support my opinion by specifically attributing the narrowing of yield spreads to the market's expectation that there would be a lower supply of GSE debt both before and following the Third Amendment.

18. For example, a June 5, 2012 FHFA Weekly Report issued two months before the Third Amendment stated, "Spreads may have been helped by the fact there will be no new supply to absorb this week following Fannie Mae's decision to pass on its calendar date to price a Benchmark Note."[28] Furthermore, FHFA's Office of Systemic Risk and Market Surveillance commented in its Capital Markets Weekly Report dated August 19, 2012, on the debt market's reaction to the Third Amendment and stated that "the tightening was caused by the Treasury Department's announcement that it would accelerate the wind-down of the Enterprises. For agency debt investors that points to fewer remaining new issues since the lifespan of Fannie/Freddie just got shorter."[29] This FHFA report further stated, "Agency spreads *have been tightening all year* due to investors designating them as safe asset cohorts to Treasuries but the

[26] Dharan Initial Report, p. 17.

[27] Trial Tr. 2130:3-16. Dr. Attari stated at trial that supply "is not a reason that is typically looked at", but did not otherwise explain how he ruled out an anticipated shrinking of supply, a factor he acknowledged during his testimony could cause declining yield spreads. Trial Tr. 2119:18-23.

[28] FHFA-DDC-0319690 to 9694 at 9693.

[29] FHFA-DDC-0320331 to 0334 at 0334.

prospect of fewer years of new issues remaining served as a 'last call' of sorts, particularly for longer maturities that may not be tapped again."[30] FHFA itself thus specifically (and contemporaneously) attributed narrowed yield spreads for longer-term bonds that were the subject of Dr. Attari's event study to anticipated reductions in supply of the bonds—*not* to a change in alleged market concern about the risk of GSE default.

19. Numerous other documents further support this explanation by recognizing that the Third Amendment was perceived as very likely to reduce supply of GSE debt, thus increasing prices and reducing yield spreads.[31] They confirm Dr. Attari lacks a reliable basis for contending the narrowing of yield spreads shows the NWS was a reasonable response to alleged concerns about GSE creditworthiness in light of the impending reinstatement of Treasury Commitment caps.

20. Instead, as I explained in my Rebuttal Report, a review of GSE bond yield spreads in 2012 demonstrates that the market was not concerned that the risk of circular dividends could materially erode the very generous caps on the Treasury Commitment that would come into effect on December 31, 2012, and did not perceive any serious risk of GSE debt default.[32] GSE spreads were "tightening *all year* due to investors designating them as safe asset cohorts to Treasuries."[33] This can be seen in the charts in Exhibit B attached to this report, which were prepared by Dr. Mason, but which I have reviewed and agree with.[34]

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[30] FHFA-DDC-0320331 to 0334 at 0334. [Emphasis added.]

[31] FM_Fairholme_CFC_00000939 to 0940 at 0939; Fairholme-DDC-0009617 to 9618 at 9617; FHFA-DDC-0425927 to 5931 at 5927; TREASDDC00057122 to 7126 at 7122; FHFA00102594 to 2596 at 2594; FHFA-DDC-0119071 to 9076 at 9071; PX-0282, p. 2 (FHFA-DDC-0410592 to 0595 at 0593).

[32] Dharan Rebuttal Report, pp. 19-21.

[33] FHFA-DDC-0320331 to 0334 at 0334. [Emphasis added.] *See also* FHFA-DDC-0319690 to 9694 (June 5, 2012 FHFA Weekly Report) at 9693 ("Agencies remain a safe harbor destination for investors, evidenced by the outperformance of the Freddie Mac 10YR Reference Note vs. its Treasury benchmark in recent days.")

[34] Exhibit B1 shows the 2012 bond yield data through the end of 2012 for the GSE bonds' yield spreads – based on the weighted average yield spreads on the four benchmark bonds for Fannie Mae and the three reference notes for

21. Both Exhibit B charts show that GSE debt traded throughout 2012 at much lower yields (i.e., much higher prices) than AAA corporate bonds, the safest rated debt issued by private corporations. Additionally, they show that the GSE debts' yield spreads were generally steady or declining throughout 2012. The yield spreads on bonds that Dr. Attari analyzed on GSE debt thus showed declines even prior to the announcement of the NWS.[35] That the yield spread of GSE debt was either steady or going *down* generally throughout 2012 is *the opposite* of what one would expect if bond investors viewed GSE debt as becoming increasingly risky due to the anticipated re-imposition of caps on the Treasury Commitment.

22. Further, as stated above, the approximately one-tenth of one percent decline of the yields for the long-term bonds used by Dr. Attari on the date of the NWS was plausibly attributed by contemporaneous commentators (including FHFA) to the anticipated decline in supply, not increased confidence in the GSEs' creditworthiness.[36] Accordingly, there is no reliable basis for using this decline to conclude there was concern among bond investors that needed to be addressed, much less that the NWS was required to address it.

23. Additional data showing the lack of concern relating to GSE debt during 2012 can be found in the absence of any change by credit rating agencies to the GSE bonds' credit ratings, ratings outlook, or ratings watch status. During 2012, as the date for the reimposition of the caps on the Treasury Commitment approached, none of the three main credit rating agencies, S&P,

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Freddie Mac evaluated by Dr. Attari – with a vertical line marking the date of Third Amendment announcement. Exhibit B2 shows the same data for 2012 but up to August 15, 2012, before the Third Amendment announcement.

[35] *See also*, Dharan Rebuttal Report, p. 20.

[36] Dharan Rebuttal Report, p. 21. For Fannie Mae, the weighted average yield spread on the bonds evaluated by Dr. Attari was as high as 138 basis points during the first week of January 2012, and had declined to about 121 basis points on August 14, 2012. It ended 2012 at about 112 basis points. Thus, more than half of the decline in Fannie Mae bonds' yield spread took place prior to the Third Amendment. The yield spread for Freddie Mac's reference notes evaluated by Dr. Attari was as high as 143 basis points at the start of 2012 and had declined to 126 basis points by August 14, 2012. It was about 116 basis points at the end of 2012. Once again, more than half of the decline took place prior to the Third Amendment.

Moody's, and Fitch, made any changes to the credit rating on GSE bonds. The ratings on GSE debt remained at extremely high levels reserved for the safest debt on the market. In 2012, the GSEs' debt was rated as AAA by Fitch[37] and AA+ by S&P.[38] The Aaa rating for the GSE debt issued by Moody's in 2011 remained unchanged in 2012.[39] Each of those ratings represents the same level of expectation of default risk as for the United States government debt.

24. Further, during this 2012 time period, as the date for the reimposition of the caps on the Treasury Commitment approached, none of the three credit rating agencies made any change to the ratings outlooks or ratings watches for GSE debt to signal they might be considering a credit downgrade. When a credit rating agency has concerns about changes in the risks associated with a debt instrument, the agency will notify the public of that fact by either changing the ratings outlook for the debt or issuing a "ratings watch."[40] In 2012, no new rating outlooks or rating watches were issued by any of the rating agencies for the GSEs.[41]

**b. Supplemental data re MBS investors.**

25. As explained in my Rebuttal Report, there is no quantitative support for Dr. Attari's conclusion that the MBS market needed reassurance as to the GSEs' creditworthiness in August

[37] https://www.fitchratings.com/entity/fannie-mae-80089159; https://www.fitchratings.com/entity/freddie-mac-80089158.

[38] Ratings data obtained from Capital IQ.

[39] https://www.moodys.com/credit-ratings/Federal-National-Mortgage-Association-credit-rating-276550/ratings/view-by-class; https://www.moodys.com/credit-ratings/Federal-Home-Loan-Mortgage-Corp-credit-rating-276455/ratings/view-by-class.

[40] Fitch issues an outlook which indicates "the direction a rating is likely to move over a one- to two-year period," and if there is a heightened probability of a rating change, it would issue a report outlining the rating watch. *See*, PX-0516, pp. 7-8. Moody's issues a rating outlook when the possibility of a rating change exists. *See*, PX-0515, p. 29.

[41] https://www.fitchratings.com/entity/fannie-mae-80089159; https://www.fitchratings.com/entity/freddie-mac-80089158.

2012.[42] Further, data from FHFA show that the GSEs were able to significantly increase their issuance of MBS in 2012, including in the quarters before the NWS. FHFA data on MBS issuances by the GSEs are summarized in Exhibit C below. As reflected in this Exhibit, while the MBS issuances by the GSEs had declined from 2009 to 2010 and from 2010 to 2011, the issuances increased significantly in 2012. Total MBS issuances by each of the GSEs in each quarter of 2012 was much higher than the amounts issued in the corresponding quarter in 2011.

26. The above data are inconsistent with, and do not support, Dr. Attari's contention that investors in the GSEs' MBS were increasingly concerned over the implementation of caps on the Treasury Commitment on December 31, 2012.

## IV. Supplemental Support from Documents Showing the NWS was Not Reasonably Needed to Address Concerns Over Circular Dividends Eroding the Commitment

27. I have considered additional internal government documents that provide further support for opinions I have previously offered. I discuss these documents below.

28. A set of draft Questions and Answers dated July 9, 2012 (just over one month prior to the NWS) to prepare the Secretary of the Treasury for Congressional Testimony contains the question "Has the Administration considered modifying the PSPA agreements before the capacity becomes fixed at the end of 2012?"[43] The response stated for the posed question is that "Under the conservative baseline stress test forecasts conducted by FHFA, both Fannie Mae and Freddie Mac are expected to have positive net income in 2013. This means that the Treasury is not expected to need to fund any operating losses at Fannie Mae and Freddie Mac after the expiration of the PSPA funding commitment." This document further states the expectation that

[42] Dharan Rebuttal Report, p. 21; *see*, PX-0282, p. 2 (FHFA-DDC-0410592 to 0595 at 0593) ("The reaction in MBS trading has been almost a non-event.")

[43] PX-0210, p. 10 (UST00061557 to 1607 at 1567).

"$275 billion, nearly twice the amount of net funding provided by Treasury to date, will provide a substantial cushion for any unexpected losses and should give market participants confidence about the government's commitment to these institutions."[44]

29. This document reinforces my opinions. It shows there was no imminent risk that the Treasury Commitment would need to be used to fund operating losses. Further, as discussed above, it reflects that even if dividends were at some point to exceed comprehensive income, the GSEs could simply not declare a dividend "pursuant to the certificates of designation" (which means using the PIK option), avoiding any need to draw down on the Commitment.

30. A July 31, 2012 email exchange between Treasury officials closely involved in the PSPA negotiations stated that the second quarter financial results were "much stronger" than they expected.[45] Treasury's Acting Assistant Secretary for Financial Stability, Timothy Bowler, responded to these positive earnings in excess of the 10% dividend, and the fact that the GSEs would now finally be starting to generate positive net worth, by writing: "Really makes sense to push the net worth sweep this quarter."[46] On August 6, 2012, Mr. Bowler sent an email to White House official Jim Parrott describing the term sheet with the NWS as "Now very timely."[47] Mr. Ugoletti testified that Mr. Bowler was the Treasury's point person in the NWS discussions.[48]

31. An internal FHFA email from Mr. Ugoletti to Mr. DeMarco and others reports a "renewed push" for the NWS shortly after the above Treasury emails, and Mr. DeMarco testified

[44] PX-0210, p. 10 (UST00061557 to 1607 at 1567).

[45] PX-0226 (TREASDDC00044338 to 4339 at 4338).

[46] PX-0226 (TREASDDC00044338 to 4339 at 4338). [Emphasis added.]

[47] PX-0227 (UST00504498 to 4500 at 4499).

[48] Deposition of Mario Ugoletti dated May 15, 2015, p. 151.

he understood this "renewed push" to come from the Treasury.[49]

32. These documents further support my opinion that the purported threat of circular dividends materially eroding the Treasury Commitment does not provide a reasonable basis for the NWS. Improved earnings in excess of the 10% dividend and the creation of a large, positive net worth (with the prospect for much more net worth additions in future) could not economically justify an increased urgency to "push" for the NWS to address an alleged concern over circular dividends eroding the Treasury Commitment.[50]

33. An FHFA accountant, James Griffin, stated in an email dated August 14, 2012, written just after a meeting with Mr. DeMarco and three days before the NWS was announced, that he did not believe it made sense to reverse the DTA allowance because the "amendments are designed to demonstrate wind down."[51] At trial, Mr. Nicholas Satriano (an accountant and the recipient of Mr. Griffn's email) testified that he understood the email as referring solely to the part of the Third Amendment that accelerated the decline in the GSEs' investment portfolio.[52] Mr. Satriano's explanation makes no sense as a matter of accounting. The investment portfolio, which is only one of many assets of the GSEs, was already being reduced at the rate of 10% per year even before the Third Amendment. From an accounting perspective, it does not make sense to consider an increase of this ongoing reduction to a modestly higher 15% rate as what was "designed to demonstrate wind down" in a Third Amendment that included the NWS. To the contrary, given the relative accounting impact of the various aspects of the Third Amendment,

[49] PX-0226 (TREASDDC00044338 to 4339); PX-0247 (FHFA00103596); Trial Tr. 1045:12-21; PX-0226 (TREASDDC00044338 to 4339 at 4338).

[50] PX-0226 (TREASDDC00044338 to 4339 at 4338).

[51] PX-0259.

[52] Trial Tr. 2235-36.

Mr. Griffin's email's reference to the Third Amendment as "designed to demonstrate wind down" only makes sense as a reference primarily, if not exclusively, to the NWS.

34. Additional government documents associate the NWS with a wind down of the GSEs, and thus support my opinions about the Griffin email and about the lack of any reasonable need for the NWS. A draft July 20, 2012, term sheet includes as a rationale for the NWS that the "GSEs are being wound down faster and will not return to their past state."[53] Another government document notes that the "GSEs will not be allowed to build capital and exit conservatorship in their prior form."[54] Another document circulated among Treasury personnel on August 15, 2012 states that with the announcement of the NWS, "we are accelerating the Administration's commitment to wind down the GSEs and end forever their flawed model of privatized benefits and socialized losses."[55] It further states, "By taking all of their profits going forward, we are making clear that the GSEs will *not* ever be allowed to return to profitable entities at the center of our housing finance system."[56] Similar statements are in the Treasury's public announcement on August 17, 2012, titled "Treasury Department Announces Further Steps to Expedite Wind Down of Fannie Mae and Freddie Mac."[57]

35. Further, on August 17, 2012, immediately following the NWS, a Bloomberg article quoted Peter Wallison, a former White House official working as a financial policy fellow studying the GSEs at a Washington DC think tank, stating that the "most significant issue" is "whether Fannie and Freddie will come back to life because their profits will enable them to re-

[53] UST00533618 to 3619 at 3618.

[54] UST00504498 to 4500 at 4499.

[55] PX-0270 (TREASDDC00044191 to 4193 at 4192).

[56] PX-0270 (TREASDDC00044191 to 4193 at 4192). [Emphasis in the original.]

[57] PX-0278.

capitalize themselves and then it will look as though it is feasible for them to return as private companies backed by the government."[58] The article further quoted Mr. Wallison stating, "What the Treasury Department seems to be doing here, and I think it's a really good idea, is to deprive them of all their capital so that doesn't happen."[59] Treasury officials sent Mr. Wallison's Bloomberg quote to Mr. Parrott. Mr. Parrott was a White House official with responsibility for the GSEs and thus for the NWS negotiations.[60] Mr. Parrott responded by writing "Outstanding"[61] and also wrote directly to Mr. Wallison stating, "Good comment in Bloomberg – you are exactly right on substance and intent."[62] Thus, the above documents show that the White House official in charge of the amendments to the GSE agreements with the Treasury agreed that the goal of the NWS was to "deprive [the GSEs] of all their capital" so they cannot "come back to life" by using "their profits….to re-capitalize themselves," and so that it will not "look as though it is feasible for them to return as private companies backed by the government."[63]

36. These documents further support my opinion that the NWS was not reasonably necessary to address any concerns of circular dividends eroding the Commitment. The desire to demonstrate a wind down of the GSEs and show they will not be allowed to be profitable is far more consistent with pushing for the NWS at a time of large actual and expected profits than is the proffered circular dividend rationale.

[58] PX-0274 (TREASDDC00056921 to 6924 at 6921).

[59] PX-0274 (TREASDDC00056921 to 6924 at 6921).

[60] Deposition of Jim Parrott dated January 20, 2016, pp. 45-46, 71-72, 84-85.

[61] PX-0274 (TREASDDC00056921 to 6924 at 6921).

[62] PX-0279 (UST000503986 to 3987 at 3987).

[63] PX-0274; PX-0279.

37. Other documents demonstrate officials' expectation that "taxpayers" (i.e., the Treasury) would receive more from the NWS than from the 10% dividend.[64] The understanding that taxpayers would earn more from the NWS than under the 10% dividend is inconsistent with the understanding that the GSEs would consistently earn less than the 10% dividend and have to draw from the Treasury to pay circular dividends—further supporting my opinion.

## V. Supplemental Support for Testimony on Role of Non-Cash Accounting Adjustments

38. During the trial, I presented a slide with a table titled "Provisions, Write-Ups and Write-Downs," a version of which is reproduced as Exhibit D here.[65] The information in that chart is further supported by a May 8, 2012 memorandum prepared by Fannie Mae executive Anna Tilton and sent to Mr. Mayopoulos and Fannie Mae Chief Financial Officer Susan McFarland.[66] It explains that "if one examines what degree of cash infusion would have been required to keep Fannie Mae operating on a cash basis, the amount is much lower than the $116.2 billion GAAP measure."[67] The memo further describes that "Many of the losses under the GAAP measure are non-cash accounting losses [which] do not represent cash 'out the door.' If one examines what Fannie Mae's cash needs have been in conservatorship, the support needed from the Treasury would have been approximately $7 billion through the end of 2011 (not counting the Treasury dividend), or less than 10% of the GAAP measure."[68]

39. Further, I was asked by counsel to respond to Dr. Attari's suggestion at trial that the cash invested by private preferred shareholders did not help the GSEs during the years from 2008

[64] PX-0270 (TREASDDC00044191 to 4193 at 4192); PX-0227 (UST00504498 to 4500 at 4499).

[65] Dharan Trial Demonstratives, Slide 17.

[66] PX-0180 ((FM_Fairholme_CFC-00002895 to 2897) (Email from Anna Tilton dated May 8, 2012, subject "Revised Treasury Draw Analysis") (Anna Tilton was at the time Chief of Staff to CEO Tim Mayopoulos).

[67] PX-0180 (FM_Fairholme_CFC-00002895 to 2897 at 2896).

[68] PX-0180 (FM_Fairholme_CFC-00002895 to 2897 at 2896).

through 2012 and was "lost"[69] or "gone"[70] by the end of 2008. First, cash is fungible, and it is not accurate to say, as Dr. Attari had asserted at trial, that the cash from the private preferred stockholders was "gone" by 2008. In fact, Fannie Mae's balance sheet showed a cash balance[71] at the end of June 2008 of $13.5 billion, and Freddie Mac had a corresponding balance in cash of $43.6 billion.[72] The combined cash balance of the two GSEs at the end of June 2008 was approximately $57 billion. The corresponding total at the end of 2008 was $63.3 billion.[73] Given the fungibility of cash, it is incorrect to say that these large cash balances in 2008 did not include any cash raised from private preferred stockholders from 1996 to 2008.

40. Second, preferred stock is a component of a company's net worth and the private preferred stock issued by the GSEs is reported as part of the GSEs' balance sheet net worth at the end of 2008. Had the GSEs not raised the approximately $33 billion from private preferred stockholders from 1996 to 2008, their net worth at the end of 2008 would have been approximately $28 billion less,[74] and therefore they would have had to draw an equivalent amount of cash from the Treasury at the end of 2008 in order to keep their net worth positive and to meet their cash needs. This, in turn, would have cost approximately an additional $3 billion in each of the following years in the form of additional dividends to be paid to the Treasury. Likewise, if one examines only the investment made by private preferred shareholders in 2007

[69] Trial Tr. 1908:1-14.

[70] Trial Tr. 2180:11-16.

[71] The amounts reported include cash equivalents.

[72] Balance sheet cash data are taken from the GSEs' 2008 Q2 10-Q filings.

[73] Cash and cash equivalents in the balance sheet at the end of December 2008 was $17.9 billion for Fannie Mae and $45.3 billion for Freddie Mac, for a total of $63.3 billion. Balance sheet cash data are taken from the GSEs' 2008 10-K filings.

[74] Approximately $33 billion amount invested from 1996 through 2008 minus approximately $5 billion paid out to those private shareholders in dividends. See JX-0001, pp. 5-7, for total preferred stock issued by the GSEs and PX-0005-A-O.xls, tabs "FNMA Dividends" and "FMCC Dividends" for dividends paid to preferred stockholders.

and 2008, those investments saved the GSEs from having to draw down an additional $18.6 billion.[75] Thus, the investment by private shareholders significantly aided and contributed to the net worth position of the GSEs during the conservatorship.

41. Based on my review of the GSEs' balance sheets, the amounts invested by private preferred shareholders remained in the GSEs' capital structure at the end of 2008 as well as after 2008 – and continue to be reported in their net worth amounts in the balance sheets as of the end of 2022. For example, Fannie Mae's balance sheet as of the second quarter of 2012 reflects a preferred stock balance of $19.13 billion,[76] which remained the same as of the third quarter of 2022.[77] Similarly, Freddie Mac's balance sheet as of the second quarter of 2012 reflects a preferred stock balance of $14.109 billion,[78] which remained the same as of the third quarter of 2022.[79] If the private preferred shares had to be written off, the GSEs would have approximately a $33 billion shortage in net worth which it would have needed to replenish by drawing from the Treasury Commitment.

Respectfully submitted,

Bala G. Dharan

Bala G. Dharan, Ph.D., CPA

[75] $19.7 billion invested by private shareholders in 2007 and 2008 (JX-0001) minus $1.1 billion paid out in dividends on the shares issued for such investments during 2007 and 2008 (PX-0005-A-O.xls).

[76] Fannie Mae Form 10-Q for the Quarter ended June 30, 2012, p. 85.

[77] Fannie Mae Form 10-Q for the Quarter ended September 30, 2022, p. 73.

[78] Freddie Mac Form 10-Q for the Quarter ended June 30, 2012, p. 107.

[79] Freddie Mac Form 10-Q for the Quarter ended September 30, 2022, p. 51.

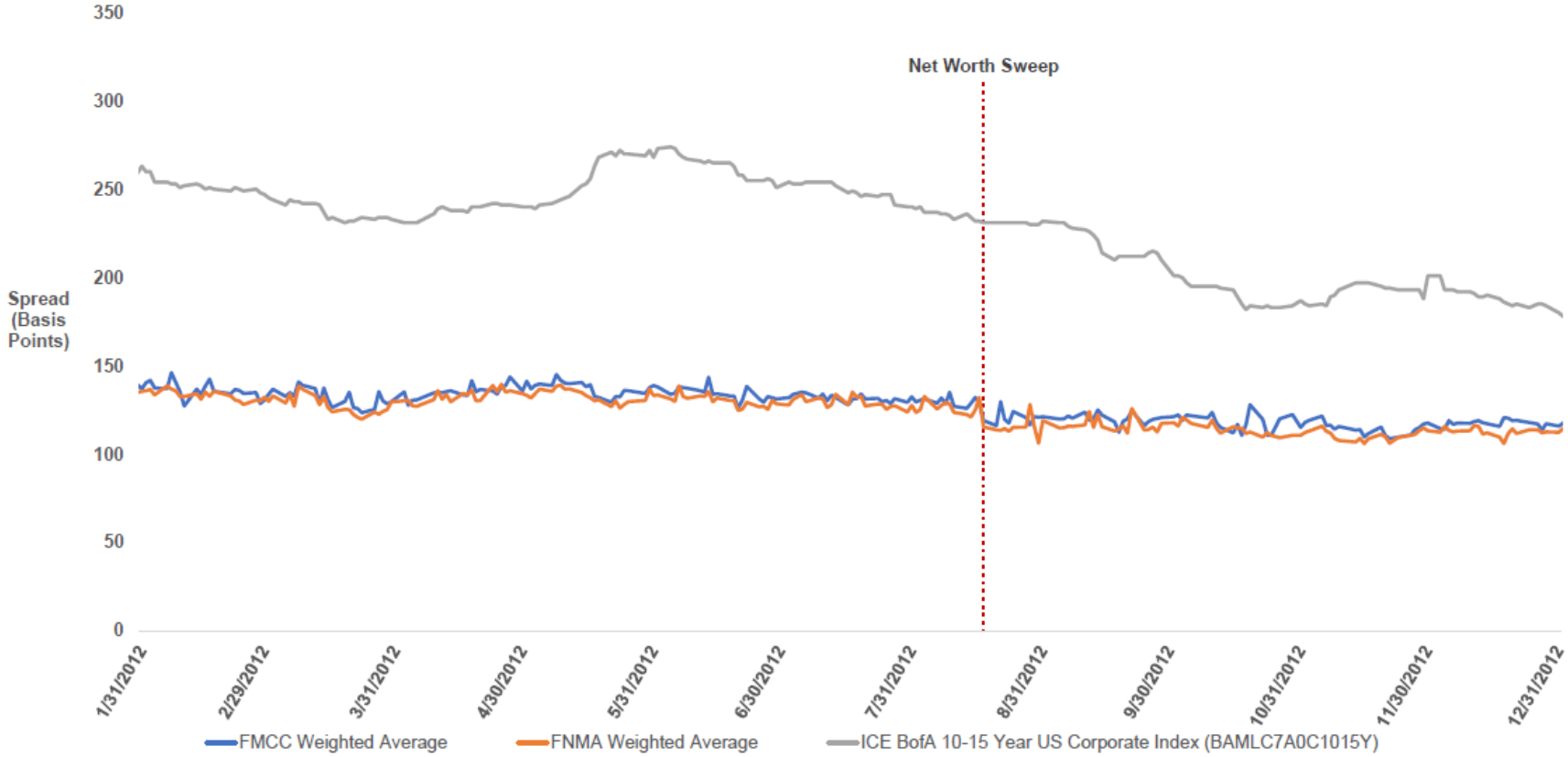
# Exhibit A
## Comparison of Using Payment-in-Kind Option from 2008 to 2012 vs. Actuals – Effect on Cash Dividends and Liquidation Preference
## Panel A – Fannie Mae

| | Actual ($ millions) | | | | Alternative: Pay Payment-In-Kind Dividends If Cash Dividend Would Erode Treasury Commitment ($ millions) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Year and Quarter | Net Worth (Actual) | Quarterly Draws (Actual) | Cash Dividends Paid (Actual) | Total Liquidation Preference (Actual) | Net Worth Before Dividend | Net Worth | Quarterly Draws to Cure Negative Net Worth | Interest Rate for Dividend (10% or 12%) | Cash Dividends Paid | Addition of Liquidation Preference Issued as Payment-In-Kind | Pay Down of Liquidation Preference Issued as Payment-In-Kind | Net Liquidation Preference Issued as Payment-In-Kind | Total Liquidation Preference |
| 3Q 2008 | $ 9,276 | $ - | $ - | $ 1,000 | $ 9,276 | $ 9,276 | $ - | | $ - | $ - | $ - | $ - | $ 1,000 |
| 4Q 2008 | $ (15,157) | $ - | $ 31 | $ 1,000 | $ (15,126) | $ (15,126) | $ - | 10% | $ - | $ 31 | $ - | $ 31 | $ 1,031 |
| 1Q 2009 | $ (18,929) | $ 15,200 | $ 25 | $ 16,200 | $ (18,873) | $ (18,873) | $ 15,200 | 12% | $ - | $ 31 | $ - | $ 62 | $ 16,262 |
| 2Q 2009 | $ (10,602) | $ 19,000 | $ 409 | $ 35,200 | $ (10,137) | $ (10,137) | $ 18,900 | 12% | $ - | $ 488 | $ - | $ 550 | $ 35,650 |
| 3Q 2009 | $ (14,960) | $ 10,700 | $ 886 | $ 45,900 | $ (13,609) | $ (13,609) | $ 10,200 | 12% | $ - | $ 1,069 | $ - | $ 1,619 | $ 46,919 |
| 4Q 2009 | $ (15,281) | $ 15,000 | $ 1,150 | $ 60,900 | $ (12,780) | $ (12,780) | $ 13,700 | 12% | $ - | $ 1,408 | $ - | $ 3,027 | $ 62,027 |
| 1Q 2010 | $ (8,371) | $ 15,300 | $ 1,527 | $ 76,200 | $ (4,343) | $ (4,343) | $ 12,800 | 12% | $ - | $ 1,861 | $ - | $ 4,888 | $ 76,688 |
| 2Q 2010 | $ (1,411) | $ 8,400 | $ 1,909 | $ 84,600 | $ 4,526 | $ - | $ 4,400 | 12% | $ 2,301 | $ - | $ 2,225 | $ 2,662 | $ 78,862 |
| 3Q 2010 | $ (2,447) | $ 1,500 | $ 2,118 | $ 86,100 | $ 1,082 | $ - | $ - | 12% | $ 1,082 | $ 1,284 | $ - | $ 3,946 | $ 80,146 |
| 4Q 2010 | $ (2,517) | $ 2,500 | $ 2,152 | $ 88,600 | $ 2,082 | $ - | $ - | 12% | $ 2,082 | $ 322 | $ - | $ 4,269 | $ 80,469 |
| 1Q 2011 | $ (8,418) | $ 2,600 | $ 2,216 | $ 91,200 | $ (3,685) | $ (3,685) | $ - | 12% | $ - | $ 2,414 | $ - | $ 6,683 | $ 82,883 |
| 2Q 2011 | $ (5,087) | $ 8,500 | $ 2,281 | $ 99,700 | $ 1,927 | $ - | $ 3,700 | 12% | $ 1,927 | $ 559 | $ - | $ 7,242 | $ 87,142 |
| 3Q 2011 | $ (7,791) | $ 5,100 | $ 2,495 | $ 104,800 | $ (209) | $ (209) | $ - | 12% | $ - | $ 2,614 | $ - | $ 9,856 | $ 89,756 |
| 4Q 2011 | $ (4,571) | $ 7,800 | $ 2,621 | $ 112,600 | $ 5,632 | $ - | $ 300 | 12% | $ 2,693 | $ - | $ 2,939 | $ 6,917 | $ 87,117 |
| 1Q 2012 | $ 268 | $ 4,600 | $ 2,819 | $ 117,100 | $ 7,658 | $ - | $ - | 12% | $ 2,614 | $ - | $ 5,044 | $ 1,873 | $ 82,073 |
| 2Q 2012 | $ 2,770 | $ - | $ 2,931 | $ 117,100 | $ 5,433 | $ 1,098 | $ - | 12% | $ 2,462 | $ - | $ 1,873 | $ - | $ 80,200 |
| 3Q 2012 | $ 2,412 | $ - | $ 2,929 | $ 117,100 | $ 3,669 | $ 1,664 | $ - | 10% | $ 2,005 | $ - | $ - | $ - | $ 80,200 |
| 4Q 2012 | $ 7,224 | $ - | $ 2,929 | $ 117,100 | $ 9,405 | $ 7,400 | $ - | 10% | $ 2,005 | $ - | $ - | $ - | $ 80,200 |
| | | $ 116,200 | $ 31,428 | | | | $ 79,200 | | $ 19,170 | $ 12,082 | $ 12,082 | $ - | |
| | | | | | | | | | | | | | |
| | | | | | | Treasury Commitment erosion prevented by using the payment-in-kind option: | | | | | | | $ 36,900 |
| | | | | | | Cash saved/(additional cash paid) by using the paid-in-kind option: | | | | | | | $ 176 |

# Exhibit A (Continued)
## Comparison of Using Payment-in-Kind Option from 2008 to 2012 vs. Actuals – Effect on Cash Dividends and Liquidation Preference
## Panel B – Freddie Mac

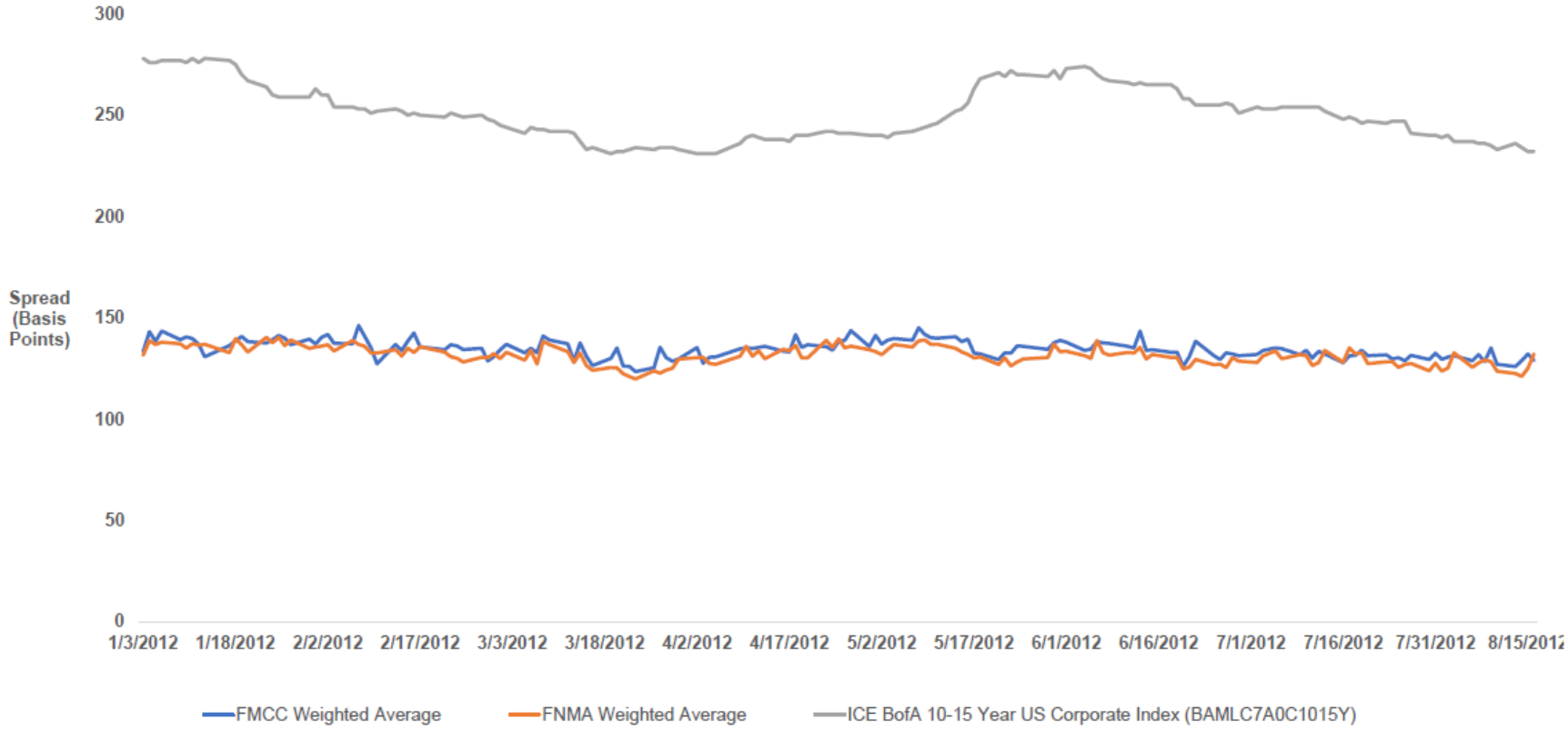
| | Actual ($ millions) | | | | Alternative: Pay Payment-In-Kind Dividends If Cash Dividend Would Erode Treasury Commitment ($ millions) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Year and Quarter | Net Worth (Actual) | Quarterly Draws (Actual) | Cash Dividends Paid (Actual) | Total Liquidation Preference (Actual) | Net Worth Before Dividend | Net Worth | Quarterly Draws to Cure Negative Net Worth | Interest Rate for Dividend (10% or 12%) | Cash Dividends Paid | Addition of Liquidation Preference Issued as Payment-In-Kind | Pay Down of Liquidation Preference Issued as Payment-In-Kind | Net Liquidation Preference Issued as Payment-In-Kind | Total Liquidation Preference |
| 3Q 2008 | $ (13,795) | $ - | $ - | $ 1,000 | $ (13,795) | $ (13,795) | $ - | | $ - | $ - | $ - | $ - | $ 1,000 |
| 4Q 2008 | $ (30,731) | $ 13,800 | $ 172 | $ 14,800 | $ (30,559) | $ (30,559) | $ 13,800 | 10% | $ - | $ 172 | $ - | $ 172 | $ 14,972 |
| 1Q 2009 | $ (6,008) | $ 30,800 | $ 370 | $ 45,600 | $ (5,466) | $ (5,466) | $ 30,600 | 12% | $ - | $ 449 | $ - | $ 621 | $ 46,021 |
| 2Q 2009 | $ 8,232 | $ 6,100 | $ 1,149 | $ 51,700 | $ 9,923 | $ 7,921 | $ 5,500 | 12% | $ 1,381 | $ - | $ 621 | $ - | $ 50,900 |
| 3Q 2009 | $ 10,406 | $ - | $ 1,294 | $ 51,700 | $ 11,389 | $ 10,117 | $ - | 10% | $ 1,273 | $ - | $ - | $ - | $ 50,900 |
| 4Q 2009 | $ 4,372 | $ - | $ 1,292 | $ 51,700 | $ 5,375 | $ 4,102 | $ - | 10% | $ 1,273 | $ - | $ - | $ - | $ 50,900 |
| 1Q 2010 | $ (10,525) | $ - | $ 1,292 | $ 51,700 | $ (9,503) | $ (9,503) | $ - | 10% | $ - | $ 1,273 | $ - | $ 1,273 | $ 52,173 |
| 2Q 2010 | $ (1,738) | $ 10,600 | $ 1,293 | $ 62,300 | $ 577 | $ - | $ 9,600 | 12% | $ 577 | $ 988 | $ - | $ 2,260 | $ 62,760 |
| 3Q 2010 | $ (58) | $ 1,800 | $ 1,561 | $ 64,100 | $ 3,241 | $ - | $ - | 12% | $ 1,883 | $ - | $ 1,358 | $ 902 | $ 61,402 |
| 4Q 2010 | $ (401) | $ 100 | $ 1,603 | $ 64,200 | $ 1,260 | $ - | $ - | 12% | $ 1,260 | $ 582 | $ - | $ 1,484 | $ 61,984 |
| 1Q 2011 | $ 1,237 | $ 500 | $ 1,605 | $ 64,700 | $ 3,243 | $ - | $ - | 12% | $ 1,860 | $ - | $ 1,383 | $ 101 | $ 60,601 |
| 2Q 2011 | $ (1,478) | $ - | $ 1,617 | $ 64,700 | $ (1,098) | $ (1,098) | $ - | 12% | $ - | $ 1,818 | $ - | $ 1,919 | $ 62,419 |
| 3Q 2011 | $ (5,991) | $ 1,500 | $ 1,618 | $ 66,200 | $ (3,993) | $ (3,993) | $ 1,100 | 12% | $ - | $ 1,873 | $ - | $ 3,791 | $ 65,391 |
| 4Q 2011 | $ (146) | $ 6,000 | $ 1,655 | $ 72,200 | $ 3,507 | $ - | $ 4,000 | 12% | $ 1,962 | $ - | $ 1,545 | $ 2,246 | $ 67,846 |
| 1Q 2012 | $ (18) | $ 100 | $ 1,807 | $ 72,300 | $ 1,935 | $ - | $ - | 12% | $ 1,935 | $ 100 | $ - | $ 2,347 | $ 67,947 |
| 2Q 2012 | $ 1,086 | $ - | $ 1,809 | $ 72,300 | $ 2,913 | $ - | $ - | 12% | $ 2,038 | $ - | $ 875 | $ 1,472 | $ 67,072 |
| 3Q 2012 | $ 4,907 | $ - | $ 1,809 | $ 72,300 | $ 5,630 | $ 2,146 | $ - | 12% | $ 2,012 | $ - | $ 1,472 | $ - | $ 65,600 |
| 4Q 2012 | $ 8,827 | $ - | $ 1,808 | $ 72,300 | $ 7,874 | $ 6,234 | $ - | 10% | $ 1,640 | $ - | $ - | $ - | $ 65,600 |
| | | $ 71,300 | $ 23,754 | | | | $ 64,600 | | $ 19,092 | $ 7,255 | $ 7,255 | $ - | |
| | | | | | | | | | | | | | |
| | | | | | Treasury Commitment erosion prevented by using the payment-in-kind option: | | | | | | | | $ 6,700 |
| | | | | | Cash saved/(additional cash paid) by using the paid-in-kind option: | | | | | | | | $ (2,593) |

**Exhibit B1**
**Corporate Bond Spreads and GSE Bond Credit Spreads, 2012 (Full Year)**




Source: PX-0444. The GSEs' yield spreads equal the weighted average yield spreads of the benchmark bonds of Fannie Mae and reference notes of Freddie Mac evaluated by Dr. Attari.

**Exhibit B2**
**Corporate Bond Spreads and GSE Bond Credit Spreads, 2012 (Until August 15, 2012)**




Source: PX-0445. The GSEs' yield spreads equal the weighted average yield spreads of the benchmark bonds of Fannie Mae and reference notes of Freddie Mac evaluated by Dr. Attari.

**Exhibit C**
**MBS Issuances by Fannie Mae and Freddie Mac**
Total of Single-Family and Multi-Family Mortgage-Backed Securities[80]

| Year/Quarter | Fannie Mae ($ Million) | Freddie Mac ($ Million) |
|---|---|---|
| 2008 to 2012 – Annual: | | |
| 2008 | $542,813 | $357,851 |
| 2009 | $807,853 | $475,412 |
| 2010 | $629,746 | $393,037 |
| 2011 | $598,672 | $317,261 |
| 2012 | $865,487 | $466,479 |
| | | |
| 2011 and 2012 – Quarterly: | | |
| 2011 Q1 | $175,254 | $98,716 |
| 2011 Q2 | $110,783 | $66,223 |
| 2011 Q3 | $119,564 | $70,430 |
| 2011 Q4 | $193,071 | $81,892 |
| | | |
| 2012 Q1 | $205,606 | $113,801 |
| 2012 Q2 | $182,585 | $106,611 |
| 2012 Q3 | $239,247 | $110,758 |
| 2012 Q4 | $238,049 | $135,309 |

[80] 2012 quarterly data in the table are from FHFA 2012 Report to Congress, available at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2012_AnnualReportToCongress_508.pdf. The report also contains annual data. 2011 quarterly data are from FHFA 2011 Report to Congress, available at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2011_AnnualReportToCongress_508.pdf. In both FHFA annual reports, Table 2 has the MBS issuance data for Fannie Mae and Table 11 has the corresponding data for Freddie Mac.

# Exhibit D
## Accounting Provisions, Write-Downs, and Write-Ups for Fannie Mae and Freddie Mac, 2008 to 2021

### Panel A: Fannie Mae

| | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Credit Losses Benefit / (Provision) | $ (28.0) | $ (72.6) | $ (24.9) | $ (26.7) | $ 0.9 | $ 8.9 | $ 4.0 | $ 0.8 | $ 2.2 | $ 2.0 | $ 3.3 | $4.0 | $ (0.7) | $ 5.1 |
| | ($152.2) | | | | $30.5 | | | | | | | | | |
| DTA Valuation Allowance Reversal / (Provision) | $ (30.8) | $ (21.9) | $ (3.6) | $ (7.8) | $ 5.2 | $ 58.4 | $ 0.3 | $0.2 | $0 | $0 | $0 | $0 | $0 | $0 |
| | ($64.1) | | | | $64.1 | | | | | | | | | |
| Comprehensive Income / (Loss) | $ (58.7) | $ (60.5) | $ (10.6) | $ (16.4) | $ 18.8 | $ 84.8 | $ 14.7 | $10.6 | $ 11.7 | $ 2.3 | $ 15.6 | $ 14.0 | $ 11.8 | $ 22.1 |
| | ($146.2) | | | | $206.4 | | | | | | | | | |

### Panel B: Freddie Mac

| | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Credit Losses Benefit / (Provision) | $ (16.4) | $ (29.5) | $ (17.2) | $ (10.7) | $ (1.9) | $ 2.5 | $ (0.1) | $ 2.7 | $ 0.8 | $ 0.1 | $ 0.7 | $ 0.7 | $ (1.5) | $ 1.0 |
| | ($73.9) | | | | $5.1 | | | | | | | | | |
| DTA Valuation Allowance Reversal / (Provision) | $ (22.4) | $ (2.7) | $ (8.3) | $ (2.3) | $ 4.0 | $ 31.7 | $0 | $0 | $0 | $0 | 0 | $0 | $0 | $0 |
| | ($35.7) | | | | $35.7 | | | | | | | | | |
| Comprehensive Income / (Loss) | $ (70.5) | $ (2.9) | $ 0.3 | $ (1.2) | $ 16.0 | $ 51.6 | $ 9.4 | $ 5.8 | $ 7.1 | $ 5.6 | $ 8.6 | $ 7.8 | $ 7.5 | $ 11.6 |
| | ($74.3) | | | | $131.0 | | | | | | | | | |

**Exhibit E**
**Supplemental Documents Considered / Relied Upon**

**Case Documents:**
Fairholme-DDC-0009617 to 9618
FHFA00102594 to 2596
FHFA-DDC-0119071 to 9076
FHFA-DDC-0319690 to 9694
FHFA-DDC-0320331 to 0334
FHFA-DDC-0425927 to 5931
FM_Fairholme_CFC_00000939
JX-0001
PX-0003-A4
PX-0003-B4
PX-0005-A-O.xls
PX-0033
PX-0034
PX-0180
PX-0205
PX-0210
PX-0226
PX-0227
PX-0247
PX-0259
PX-0270
PX-0274
PX-0278
PX-0279
PX-0282
PX-0444
PX-0445
PX-0515
PX-0516
DX-0412 (FHFA00050893 to 0900)
TREASDDC00057122 to 7126
UST00504498 to 4500
UST00517634 to 7635
UST00533618 to 3619
UST00538681 to 8683
Bala Dharan Trial Demonstratives
Trial Transcripts, Days 4, 5, 6, 7, 9 and 10

**Other Documents/Sources:**
Capital IQ
Fannie Mae Forms 10-Q and 10-K for various quarters and years
Freddie Mac Forms 10-K and 10-Q for various quarters and years

FHFA Annual Report to Congress, 2011
FHFA Annual Report to Congress, 2012
https://www.fitchratings.com/entity/fannie-mae-80089159
https://www.fitchratings.com/entity/freddie-mac-80089158
https://www.moodys.com/credit-ratings/Federal-National-Mortgage-Association-credit-rating-276550/ratings/view-by-class
https://www.moodys.com/credit-ratings/Federal-Home-Loan-Mortgage-Corp-credit-rating-276455/ratings/view-by-class

# EXHIBIT 2

**UNITED STATES DISTRICT COURT**
**DISTRICT OF COLUMBIA**

| | |
|---|---|
| **In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations**<br><br>**THIS DOCUMENT RELATES TO:**<br>**ALL CASES** | **Misc. Action No. 13-mc-1288 (RCL)** |

# SUPPLEMENTAL EXPERT REPORT OF JOSEPH R. MASON

**February 10, 2023**

**CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER**

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## I. Introduction and Summary of Opinions

1. While Defendants' counsel suggested in trial and at closing[1] that share price fluctuations unrelated to the Net Worth Sweep ("NWS") mitigated damages later in 2012, there is no sound economic basis to support the notion that subsequent changes in the stock prices represented a "recovery" that would offset damages arising from the NWS.[2]

2. I testified at trial that the NWS caused GSE shareholders damages of $1.6 billion.[3] A stock price movement reflects the market's assessment of the value of new information (here, the NWS), so that the change in price that was caused by the new information reflects the market's best estimate of the value of that information. I testified that work performed by Defendants' expert, Dr. Attari, shows damages to GSE private shareholders of at least $1.6 billion. That $1.6 billion is the one-day decline in the market value of the GSE stocks that occurred promptly upon the announcement of the NWS, which cannot logically be attributed to anything other than the NWS.[4]

3. Only share price increases arising from changes to the NWS – rather than share price increases arising from other influences – could mitigate the harm caused by the NWS. I know of no facts or claims by Defendants or their experts that any change to the NWS from August 17, 2012 to today has occurred that has mitigated or reduced the damages the NWS caused to shareholders in this case. As a result, there has been no causal influence to date that mitigates the $1.6 billion harm. The $1.6 billion decline in share value associated with the announcement of the NWS on August 17, 2012, therefore, constitutes a reasonable and reliable measure of damages at that time, as well as today.[5]

---

1 *See* Transcript of Jury Trial ("Trial Tr.") 1524:1-17; 2688:3-8.

2 I also note that Defendants' expert, Dr. Attari, expressed no formal analysis or opinion regarding loss mitigation in this matter.

3 *See* Trial Tr. 1499:4-17.

4 *See* Trial Tr. 1539:11-14. Note that neither Defendants' expert nor I have identified any confounding information that could account for any portion of the $1.6 billion decline in value of the relevant GSE shares. Dr. Attari's presentation, however, also shows statistically significant negative excess returns on August 20, 2012, the subsequent trading day following the announcement of the NWS on Friday August 17, 2012. Dr. Attari's presentation associates this date with the NWS (*see* FHFA-DDC-0119100). If one accepts Dr. Attari's attribution of the further decline on August 20, 2012 to the NWS, damages increase beyond the $1.6 billion derived from the single-day effect on Friday, August 17, 2012 to $1.73 billion (*see* FHFA-DDC-0119085).

5 As the Court recognized prior to trial, "Dr. Mason previously opined that a measure of expectation damages based on lost share value would total approximately $1.6 billion based on a 50 to 60 percent decline in value estimated by one of defendants' experts, ***although he cautioned that that measure 'understates damages ...*** because it does not fully encompass the shares' fundamental value.'" *See Fairholme Funds, Inc. v. Federal Housing Finance Agency*, 2022 WL 11110548, at *2 (D.D.C. Oct. 19, 2022) (emphasis added).

4. The opinions explained in this supplement are provided because on cross-examination, defense counsel read a bullet point from Dr. Attari's PowerPoint presentation of his equity event study results that included the phrase "[the] [p]rice of the common stock recovered in September 2012 and that of the junior preferred stocks recovered during October 2012."[6] I was then asked by defense counsel only, "Did [defense counsel] read that correctly?"[7] I was prevented from explaining that the stock price "recovery" alluded to in the passage in no way lessened the harm the NWS caused shareholders and does not mitigate damages in this matter, as Defendants' counsel implied.[8]

5. Having reviewed portions of the trial transcript, I understand that Defendants asserted that such an explanation would "offer completely new opinions that were never disclosed" and are "completely outside the scope of [my] expert disclosures."[9] But that is not so. In my reply expert report, I opined that:

> "I understand that Dr. Attari supervised an event study whereby he evaluated the statistical significance of the equity share price declines in response to the NWS and evaluated the market value decline.[10] … [B]ased on my review of the documents produced on this topic by Defendants, adoption of Defendants' method and analysis of the decline in share price would appear to yield damages of approximately $1.6B based on the decline in the GSE share price.[11]"

6. In rendering my opinion, I had considered the entirety of Dr. Attari's analysis summarized in the presentation of his equity event study results,[12] including the statements pertaining to changes in GSE share prices (among them, the statement regarding the recovery) and the corresponding backup materials to weigh Dr. Attari's analysis in its entirety. My opinion, therefore, already included the conclusion that the so-called price "recovery" noted by Dr. Attari in no way mitigated the harm the NWS caused GSE shareholders or the damages resulting from that harm through the remainder of 2012, the period analyzed by Dr. Attari.

7. The opinion in my Reply Report regarding the $1.6 billion in damages estimated at the announcement of the NWS applies today, as well as in 2012. The harm caused by the NWS today is likely much higher today because the GSEs were profitable over the period and value derived from that profitability accrued to the Treasury. Over the ensuing ten years after the NWS, the NWS has caused approximately $150 billion in excess value (exceeding pre-existing contractual requirements) to accrue to the Treasury, which necessarily had a negative impact on the value of the GSE shares owned by private shareholders. As noted by the Court, for instance, these additional amounts would have (at a minimum) "increase[d] the value of Plaintiffs' underlying securities either by way of reinvestment into the company or

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6 *See* FHFA-DDC-0119087.

7 *See* Trial Tr. 1524:6.

8 *See* Trial Tr. 1535:8-1537:25; Trial Tr. 2687:21-2688:12.

9 *See* Trial Tr. 1535:14-16; *see also* Trial Tr. 1536:3-4.

10 *See* FHFA-DDC-0119086; *see also*, Attari Deposition, 16:19-17:3.

11 *See* FHFA-DDC-0119091. The $1.6B excludes the decline associated with FNMA common equity.

12 *See* Trial Exhibit PX-375; FHFA-DDC-0119086.

reduction of debt."[13] The $150 billion in value that accrued to Treasury amounts to *roughly 100 times* the estimated damages of $1.6 billion.[14]

8. I have been asked by counsel to provide further information behind my opinion with regard to whether the "recovery" in GSE share prices referred to by Dr. Attari in the summary of his equity event study results at FHFA-DDC-0119087, or any other purported recovery, mitigates damages in this case. In particular, I have been asked to refine and clarify the relevant portions of my prior Expert and Reply Report opinions in response to Defendants' cross-examination and argument, and to detail my reasoning with regard to why the aforementioned stock price recovery discussed by Defendants' counsel, or any purported recovery, does not mitigate damages in this case.

9. In summary, I am of the opinion that there has not been a change in the NWS policy (by which all profits generated by the GSEs accrue to the benefit of Treasury) that would mitigate damages in this case.[15] Thus, the harm from the NWS persists to this day. Since the share price movement that Defendants characterize as a "recovery" is unrelated to any change in the NWS, Defendants' purported "recovery" in GSE share prices cannot logically reduce the $1.6 billion in damages caused by the NWS.

10. I have been asked to include the details of those opinions here for the convenience of the factfinder in this matter even though the opinions in this report were already advanced, either explicitly or implicitly, in one or both of the two prior reports that I submitted in this case. In addition, I have also been asked to calculate prejudgment interest on damages through the date of this report as well as through the expected date of trial.

## II. The Attari Report's Characterization of a "Recovery" in GSE Share Prices in this Case is Misleading

### A. Changes in GSE share prices identified as a "recovery" by Defendants are unrelated to the NWS and thus irrelevant to the harm

11. Dr. Attari's stock price analysis, as summarized in FHFA-DDC-0119086, analyzes the time period of January 1, 2012 to December 31, 2012. The NWS was enacted August 17, 2012, on which date the value of the GSEs' common and preferred stock, in the aggregate, dropped by more than half. At FHFA-DDC-0119087, Defendants' expert wrote the "[p]rice of the common stock recovered in September 2012 and that of the junior preferred stocks recovered during October 2012."[16] But there were no changes to the NWS in the six to ten weeks following its announcement, let alone any such change that could have

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13 *See Fairholme Funds, Inc. v. Federal Housing Finance Agency*, 2018 WL 4680197, at *14 (D.D.C. Sept. 28, 2018).

14 The $1.6 billion amounts to an average of approximately $1.40 per share for FNMA JPS, approximately $1.69 per share for FMCC JPS, and approximately $.07 per share for FMCC common stock.

15 *See* Mason Report dated August 27, 2021 at ¶ 27. *See also* Joint Statement of Undisputed Facts dated October 18, 2022 at ¶¶ 44-45.

16 FHFA-DDC-0119087.

resulted in any relevant *recovery from* the NWS, which, in fact, imposed harm to shareholders that persists to this day.[17] It is my opinion that the "recovery" characterized in this statement is irrelevant to damages in this case because there is no sound economic basis to support the notion that subsequent changes in the stock prices represented a recovery that would offset damages arising from the NWS.

12. From an economic standpoint, for any "recovery" to be considered to have offset or mitigated damages in this matter, that "recovery" must have been caused by a reversal or material change to the NWS, which (as Defendants' expert's event study shows) caused the loss of value of $1.6 billion for the relevant GSE shares on the day it was announced. But Defendants' expert's analysis does *not* attempt to show, nor even suggest, that any or all of the purported "recovery" was caused in any way by a subsequent change to the NWS. Neither the FHFA nor the U.S. Treasury announced a change to their intention and policy that the benefits of GSE performance should accrue to Treasury, rather than shareholders.[18] Defendants' expert's presentation includes a table of news events related to positive price movements of the GSE shares from August 2012 through October 2012; yet Defendants' expert does not even attempt to link any of these events to changes in the NWS. I reviewed the news releases cited by Defendants' expert during the period following the NWS and see no reference to changes to the NWS between August 17, 2012 and the end of October 2012 (the purported recovery period). It must, therefore, be that the changes to the stock price during the purported "recovery" period are unrelated to any new developments about the NWS that would offset or mitigate damages in this case. The statement in Dr. Attari's presentation discussing price "recoveries" in September 2012 and October 2012 is, therefore, inapt and had no impact on my opinion regarding "damages of approximately $1.6B" arising from the NWS. There also has been no change to the NWS from December 31, 2012 through the date of this report that has remedied or mitigated the harm caused to shareholders by the NWS.[19]

### B. The NWS Altered the Value Path of GSE Shares

13. Since no change was made to the NWS in the timeframe analyzed by Defendants, it is reasonable to believe that had the NWS *not* been enacted, the value path of Fannie Mae and Freddie Mac

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17 Note that share prices had also not, in fact, "recovered" to pre-NWS levels as of the dates mentioned in FHFA-DDC-0119087. I note that at the end of September 2012, the common stock of FMCC reached a per-share value of $0.26 compared to a value of $0.30 on August 16, 2012, immediately prior to the NWS. Similarly, the common stock of FNMA reached a per-share value of $0.28 at the end of September 2012 compared to a value of $0.30 on August 16, 2012, immediately prior to the NWS. The market values of the FMCC and FNMA preferred stocks reached a value of $849 million and $1.11 billion, respectively, at the end of October 2012, compared to a value of $1.26 billion and $1.46 billion, respectively, on August 16, 2012 (*see* FHFA-DDC-0119085). In fact, during the remainder of 2012, prices never exceeded those on the day prior to the NWS (FHFA-DDC-0119086-101). None of those share price movements, however, could be associated with any change to the NWS because there was no change to the NWS.

18 The NWS "ma[de] sure that every dollar of earnings that Fannie Mae and Freddie Mac generate will be used to benefit taxpayers for their investment in those firms." U.S. Department of Treasury. *See* "Treasury Department Announces Further Steps to Expedite Wind Down of Fannie Mae and Freddie Mac," August 17, 2012.

19 As noted in the Mason Report, "under the terms of the Fourth Amendment all increases in net worth accrue to Treasury in the form of an increase to the liquidation preference" such that all benefits of GSE earnings continue to accrue to Treasury through today just as they did under the Third Amendment. *See* Mason Report dated August 27, 2021 at ¶ 27. *See also* Joint Statement of Undisputed Facts dated October 18, 2022 at ¶¶ 44-45.

shares at FHFA-DDC-0119088-89 would have proceeded *without* the drop caused by the NWS announcement on August 17, 2012. Said differently, without the NWS, the stock prices would have fluctuated on subsequent news after August 17, 2012 – beginning at their levels from August 16, 2012 (before the NWS) and *not* from the suppressed levels from after the NWS.[20] Since the stock price increases after August 17, 2012 have nothing to do with the NWS, they cannot in any way mitigate or offset damages in this matter. In addition, those stock price increases likely would have been larger had the NWS not attenuated the link (in particular the upside link) between the GSEs' cash flows and investor returns.

### C. The GSEs' Performance Since 2012 Makes the $1.6 Billion Measure of Damages Conservative

14. At the time of the NWS, the economic recovery was well underway. By almost any measure, the housing market, the financial services industry, and the economy at-large had already recovered significantly from the height of the crisis, aided by an immediate infusion of roughly $5 trillion in assistance from the U.S. Government and the Federal Reserve System.[21] By August 2012, the internal conditions at the GSEs were ripe for strong future performance and growth.[22] From the date of the NWS through Q2 2022, the GSEs earned over $330 billion in comprehensive income.[23]

15. At trial, I testified about how the NWS had an ongoing impact on the GSEs and shareholders, including how it swept "every dollar of profit the GSEs earned going forward," "prevented the companies from building capital," and "insured that shareholders would receive little to no benefit from any future positive financial performance by the GSEs."[24] The NWS thus prevented shareholders from sharing in the benefit of this performance in any way.[25] Instead, the benefits of the performance have accrued solely to Treasury as senior preferred shareholder with approximately $330 billion of value accruing to Treasury from 2013 through Q2 2022.[26] This amounts to an excess of approximately $150 billion in value when compared

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20 I note that Dr. Attari visually positioned the date indicator for the NWS at the end of the day August 17, 2012 in his charts within FHFA-DDC-0119088-89, rather than at the beginning of that day, creating the illusion that the large drop occurred before the Net Worth Sweep. Tables elsewhere in FHFA-DDC-0119086-101 show that the stock price fell from the previous high on the day of the NWS. Prices never exceed those on the day prior to the Net Worth Sweep at any time analyzed by Defendants in FHFA-DDC-0119086-101.

21 *See* Expert Report of Dr. Bala Dharan ("Dharan Report") dated August 12, 2021 at ¶ 132. *See also*, United States Government Accountability Office, "Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act," Report No. GAO-13-180, January 2013, at 29-31. Note further, the GAO states, "academic studies … have found that costs associated with rescuing financial institutions are generally small relative to overall crisis costs. *See, e.g.*, Reinhart and Rogoff (2009)" (at page 29, footnote 49).

22 *See* Dharan Report at ¶¶ 43, 143-176.

23 Plaintiffs' Trial Exhibit 5-O, Comprehensive Income of Fannie Mae and Freddie Mac.

24 Trial Tr. 1538:15-1539:10.

25 As I noted in the Mason Report dated August 27, 2021 at ¶49, "[i]ndeed, had the GSEs been permitted to retain earnings and deploy them elsewhere, but-for performance may logically have been stronger than actual performance. Additionally, all influences by GSE management and the FHFA were, instead, dedicated to shrinking the enterprises and, as such, hampering growth."

26 *See* Plaintiffs' Exhibit 5-H and Joint Statement of Undisputed Facts dated October 18, 2022 at ¶47. I include increases in the liquidation preference of $84.3 billion that have occurred in lieu of dividends from Q3 2019 through Q2 2022 in this figure.

to 10% dividend payments but for the NWS.[27] Said differently, the NWS has caused approximately $150 billion in excess value to go to one shareholder, Treasury, which necessarily harms the other, private shareholders.[28]

16. But for the NWS, this value would have contributed to an increase in the value of privately held GSE shares. As the Court held in its September 28, 2018 order denying Defendants' motion to dismiss the implied covenant claim, an investor would expect additional available cash on hand "to increase the value of Plaintiffs' underlying securities either by way of reinvestment into the company or reduction of debt. The Net Worth Sweep does exactly the opposite. It decreases the value of all securities other than the PSPAs by eliminating the possibility of profits accruing in any way to their benefit."[29]

17. Numerous financial ratios for the GSEs would have also been improved but for the NWS, implying greater value prospects for the GSEs to shareholders.[30] Such ratios are informative in this case, because "practitioners routinely use ratios to derive and communicate the value of companies and securities."[31] In addition, "extensive academic research has examined the importance of ratios in predicting stock returns."[32]

18. As a result, it is reasonable to believe that the $150 billion in excess value that accrued to Treasury under the NWS would have translated into at least $1.6 billion in increased share value – the latter being only about 1% of the former. It is my opinion, therefore, that the $1.6 billion in damages measured at the announcement of the NWS is reasonable, and conservative, in this matter.

## III. Prejudgment Interest

19. I have also been asked to compute prejudgment interest through the date of this report and through the expected date of trial. Total prejudgment interest for Fannie Mae Junior Preferred Shares is approximately $646 million through today and estimated as $684 million through trial.[33] Total prejudgment interest for Freddie Mac Junior Preferred Shares is approximately $494 million through today and estimated as $516 million through trial, while prejudgment interest on Freddie Mac common stock is approximately $29 million through today and estimated as $30 million through trial.[34] I will update all figures as of the date

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27 The GSEs would have owed approximately $180 billion in dividends over the period of 2013 through Q2 2022 but-for the NWS. *See* Dharan Initial Report ¶ 121, fn 155, and Table 1, extending computation through Q2 2022.

28 The $150 billion consists of approximately $65.8 billion of excess dividends and $84.3 billion of increase in liquidation preference.

29 *Fairholme Funds, Inc. v. Federal Housing Finance Agency*, 2018 WL 4680197, at *14.

30 For instance, solvency ratios such as debt to capital would have indicated lower financial risk but for the NWS, while improved liquidity ratios would have communicated to investors a stronger "capacity to take on debt." The GSEs' capital ratios would have also been improved, providing a stronger overall financial position for investors. *See* CFA Institute Refresher Readings, "Financial Analysis Techniques," at pp. 32, 37.

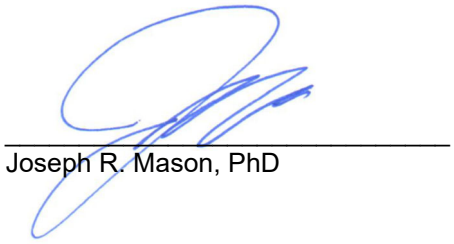
31 CFA Institute Refresher Readings, "Financial Analysis Techniques," p. 9.

32 CFA Institute Refresher Readings, "Financial Analysis Techniques," p. 9.

33 For Fannie Mae, prejudgment interest is calculated using quarterly compound interest at 5.0 percent plus the time-weighted average federal funds rate. I understand the details on prejudgment interest for Fannie Mae are specified in Delaware Code Title VI § 2301 and have been provided direction from counsel on application of these details.

34 For Freddie Mac, prejudgment interest is calculated using annual simple interest at the Virginia prejudgment interest rate of 6.0 percent.

of trial. With prejudgment interest applied, total damages amount to approximately $2.8 billion. I present the details of these results in full in Exhibit 1.



Joseph R. Mason, PhD

# In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations
## Exhibit 1.A
## Prejudgment Interest through Expected Date of Trial ($ millions)

| | Damages | PJI | Damages including PJI |
|---|---|---|---|
| **Fannie Mae Common** | N/A | N/A | N/A |
| **Fannie Mae Junior Preferred** | $ 779.00 | $ 684.46 | $ 1,463.46 |
| **Fannie Mae Total** | **$ 779.00** | **$ 684.46** | **$ 1,463.46** |
| **Freddie Mac Common** | $ 46.00 | $ 30.23 | $ 76.23 |
| **Freddie Mac Junior Preferred** | $ 786.00 | $ 516.47 | $ 1,302.47 |
| **Freddie Mac Total** | **$ 832.00** | **$ 546.69** | **$ 1,378.69** |
| **Total Damages** | **$ 1,611.00** | **$ 1,231.15** | **$ 2,842.15** |

**Notes**

(1) Prejudgement interest for Fannie Mae is calculated as quarterly compounded interest, using 5.0 percent plus the time-weighted average federal funds rate.

(2) Prejudgement interest for Freddie Mac is calculated as annual simple interest using the Virginia prejudgement interest rate of 6.0 percent.

(3) Expected date of trial applied as July 31, 2023. I will update this calculation using prevailing federal funds rate data at the time of trial.

# In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations
## Exhibit 1.B
## Prejudgment Interest through February 10, 2023 ($ millions)

| | Damages | PJI | Damages including PJI |
|---|---|---|---|
| **Fannie Mae Common** | N/A | N/A | N/A |
| **Fannie Mae Junior Preferred** | $ 779.00 | $ 645.54 | $ 1,424.54 |
| **Fannie Mae Total** | **$ 779.00** | **$ 645.54** | **$ 1,424.54** |
| **Freddie Mac Common** | $ 46.00 | $ 28.93 | $ 74.93 |
| **Freddie Mac Junior Preferred** | $ 786.00 | $ 494.39 | $ 1,280.39 |
| **Freddie Mac Total** | **$ 832.00** | **$ 523.32** | **$ 1,355.32** |
| **Total Damages** | **$ 1,611.00** | **$ 1,168.86** | **$ 2,779.86** |

**Notes**

(1) Prejudgement interest for Fannie Mae is calculated as quarterly compounded interest, using 5.0 percent plus the time-weighted average federal funds rate.

(2) Prejudgement interest for Freddie Mac is calculated as annual simple interest using the Virginia prejudgement interest rate of 6.0 percent.

**JOSEPH R. MASON** PhD

*Senior Advisor*

Dr. Joseph Mason is a Professor at Louisiana State University and Fellow at the University of Pennsylvania's Wharton School of Business.

He has more than 25 years of experience advising corporations, government agencies, and research institutions on financial risk management issues, reviewing corporate risk management systems and internal models and working on contemporary finance and valuation issues.

Dr. Mason is frequently retained as an expert in disputes and investigations involving financial markets, valuation, and macroeconomic dynamics, particularly with respect to securities analysis involving equities, debt instruments, derivative instruments (including options, futures, swaps, and associated underlying price dynamics), and a variety of structured financial products. Dr. Mason has been deposed more than fifty times and has testified at trials and hearings in the United States District Court in the Southern District of New York, the District of Connecticut, and others.

Dr. Mason has testified on economic causation, valuation, market efficiency, and damages in the areas of antitrust, PSLRA and Rule 10(b)-5, Section 11, class action, and breach of contract (*i.e.*, suitability, standard of care, financial guarantees and representations and warranties). He has testified in several high-profile federal court cases, such as Assured Guaranty v. Flagstar Bank, In re Blue Cross Blue Shield Antitrust Litigation, and Law Debenture Trust Company v. WMC Mortgage.

In regulatory matters, Dr. Mason has been engaged by both the SEC and respondents in a variety of SEC investigations and lawsuits, including those relating to marking to market, algorithmic trading, and insider trading. Dr. Mason has opined in connection with banks' risk management systems, their use and classification of structured finance arrangements, and economic capital assessments. He has also been engaged as a principal in a variety of risk management and modeling reviews by institutions such as Fannie Mae, Credit Agricole CIB/Calyon, and ExxonMobil, among other firms.

With regard to public policy, Dr. Mason has testified on financial risk management and financial markets before numerous House and Senate Committees (approximately twenty times), the European Parliament, and the Federal Reserve Board. He has also advised Congress' Joint Economic Committee, the Government Accountability Office, the Congressional Research Service, the Federal Reserve Bank of Richmond, the Public Company Accounting Oversight Board, and the Financial Crisis Inquiry Commission. At the request of the European Parliament Committee on Economic and Monetary Affairs, he co-authored the study, "Financial Supervision and Regulation in the US: Dodd-Frank Reform" (December 2018). Prior to that study, Dr. Mason authored the "Overview and Structure of Financial Supervision and Regulation in the U.S." (September 2015) for that same committee.

Dr. Mason applies formal economic reasoning to issues involving litigation, risk management, and restructuring. His formal economic training and experience is reflected in published academic articles and in his consultations on issues such as the economic dynamics of liquidations and recoveries, the economics of loss causation, and in valuation and risk management in the presence of imperfect information. Not only is Dr. Mason an expert in finance, but also in regard to financial crises and the macroeconomic dynamics of losses and recoveries.

Dr. Mason was previously a Senior Financial Economist at the Office of the Comptroller of the Currency, where, among other things, he analyzed bank risks to support examination assignments and regulatory policy. He has performed similar work for the Federal Reserve Bank of Philadelphia, the Federal Deposit Insurance Corporation, and the World Bank.

Dr. Mason holds a Doctor of Philosophy in financial economics and monetary theory, as well as Master of Science in economics from the University of Illinois at Urbana-Champaign and a Bachelor of Science in economics from Arizona State University.

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## TESTIMONY AND PUBLICATIONS

### DEPOSITION TESTIMONY:

*Deutsche Bank National Trust Company, solely In its capacity as Trustee for the Morgan Stanley ABS Capital I Inc. Trust, Series 2007-NC1 v. Morgan Stanley ABS Capital I Inc.*
No. 650291/2013
Supreme Court of the State of New York, County of New York

*Deutsche Bank National Trust Company, solely In its capacity as Trustee for the Morgan Stanley ABS Capital I Inc. Trust, Series 2007-NC3 v. Morgan Stanley ABS Capital I Inc.*
No. 651959/2013
Supreme Court of the State of New York, County of New York

*Sjunde AP-Fonden, individually and on Behalf of All Others Similarly Situated v. The Goldman Sachs Group, Inc., et al.*
No. 1:18-cv-12084-VSB
United States District Court, Southern District of New York

*Commerzbank AG v. U.S. Bank National Association*
No. 16-cv-04569-DLC-SDA
United States District Court, Southern District of New York

*In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations*
No. 13-mc-1288-RCL
United States District Court, District of Columbia

*Phoenix Light SF Limited, et al. v. HSBC Bank USA, National Association*
No. 14-cv-10101-LGS-SN
United States District Court, Southern District of New York

*In re Acuity Brands, Inc. Securities Litigation*
No. 18-cv-02140-MHC
United States District Court, Northern District of Georgia, Atlanta Division

*SEB Investment Management AB, Individually and on Behalf of All Others Similarly Situated v. ENDO International PLC, et al.*
No. 17-cv-03711-TJS
United States District Court, Eastern District of Pennsylvania

*Atlantica Holdings, Inc., et al. v. BTA Bank JSC*
No. 13-cv-05790-JMF
United States District Court, Southern District of New York

*Atlantica Holdings, Inc., et al. v. Sovereign Wealth Fund "Samruk- Kazyna," JSC*
No. 12-cv-08852-JMF
United States District Court, Southern District of New York

*Homeward Residential, Inc., solely in its capacity as Master Servicer for the Option One Mortgage Loan Trust 2006-2, for the benefit of the Trustee and the holders of Option One Mortgage Loan Trust 2006-2 Certificates v. Sand Canyon Corporation, f/k/a Option One Mortgage Corporation*
No. 12-cv-05067-JFK-JLC
United States District Court, Southern District of New York

*Homeward Residential, Inc., solely in its capacity as Servicer for the Option One Mortgage Loan Trust 2006-3, for the benefit of the Trustee and the holders of Option One Mortgage Loan Trust 2006-3 Certificates v. Sand Canyon Corporation, f/k/a Option One Mortgage Corporation*
No. 12-cv-07319-JFK-JLC
United States District Court, Southern District of New York

*Phoenix Light SF Limited, et al. v. The Bank of New York Mellon*
No. 14-cv-10104-VEC
United States District Court, Southern District of New York

*Securities and Exchange Commission v. Amir Waldman*
No. 17-cv-02088-RMB
United States District Court, Southern District of New York

*Securities and Exchange Commission v. Lawrence F. Cluff, Jr. and Roger E. Shaoul*
No. 17-cv-02460-RMB
United States District Court, Southern District of New York

*Nora Fernandez, et al. v. UBS Financial Services of Puerto Rico, et al.*
No. 15-cv-02859-SHS
United States District Court, Southern District of New York

*Vesta Halay Johnston and Lake Charles Rubber and Gasket Co. L.L.C. v. Susan Halay Vincent, Martin Bryan Vincent, Moby Goodwin, and Gulf Coast Rubber & Gasket, L.L.C*
No. 2015-4153-G
14th Judicial District Court, Calcasieu Parish, Louisiana

*Trust Instruction Proceeding regarding Deutsche Bank National Trust Co., solely as Trustee of Securitized Asset Backed Receivables LLC Trust 2007- BR2 (SABR 2007-BR2) and Securitized Asset Backed Receivables LLC Trust 2007-BR3 (SABR 2007- BR3 v. WMC Mortgage, LLC)*
No. 651789/2013
Supreme Court of the State of New York, County of New York

*Deutsche Bank National Trust Co., solely in its capacity as Trustee for the Morgan Stanley Structured Trust I 2007-1 v. Morgan Stanley Mortgage Capital Holdings LLC, as Successor-by-Merger to Morgan Stanley Mortgage Capital Inc.*
No. 14-cv-03020-LTS
United States District Court, Southern District of New York

*The Bank of New York Mellon solely as Securities Administrator for the J.P. Morgan Mortgage Acquisition Trust, Series 2006-WMC4 v. WMC Mortgage. LLC, et al.*
No. 654464/2012
Supreme Court of the State of New York, County of New York

*TMI Trust Company of New York, solely in its capacity as Separate Trustee of the Securitized Asset Backed Receivables LLC Trust 2006-WM2 v. WMC Mortgage LLC, f/k/a WMC Mortgage Corp.*
No. 12-cv-01538-CSH
United States District Court, District of Connecticut

**TRIAL AND HEARING TESTIMONY:**

*In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations*
No. 13-mc-1288-RCL
United States District Court, District of Columbia

*In re Blue Cross Blue Shield Antitrust Litigation (MDL No. 2406)*
No. 13-cv-20000-RDP
United States District Court, Northern District of Alabama, Southern Division

*Vesta Halay Johnston and Lake Charles Rubber and Gasket Co. L.L.C. v. Susan Halay Vincent, Martin Bryan Vincent, Moby Goodwin, and Gulf Coast Rubber & Gasket, L.L.C*
No. 2015-4153-G
14th Judicial District Court, Calcasieu Parish, Louisiana

*United States of America v. Tinghui Xie, also known as Kelly Xie, also known as Kelly Liu, et al.*
No. 17-92-JWD-EWD
United States District Court, Middle District of Louisiana

*Securities and Exchange Commission v. Amir Waldman*
No. 17-cv-02088-RMB
United States District Court, Southern District of New York

*Securities and Exchange Commission v. Lawrence F. Cluff, Jr. and Roger E. Shaoul*
No. 17-cv-02460-RMB
United States District Court, Southern District of New York

*TMI Trust Company of New York, solely in its capacity as Separate Trustee of the Securitized Asset Backed Receivables LLC Trust 2006-WM2 v. WMC Mortgage LLC, f/k/a WMC Mortgage Corp.*
No. 12-cv-01538-CSH
United States District Court, District of Connecticut

**LEGISLATIVE AND REGULATORY TESTIMONY, BRIEFS, AND PRESENTATIONS:**

*Presentation to U.S. Securities & Exchange Commission Staff*
Confidential matter relating to whether and how a global asset management company applied algorithmic trading tools, models, and methods to emerging market debt portfolio management.
Washington, D.C.

Brief of Dr. Joseph R. Mason, et al., as Amici Curiae Financial Economists in support of Respondents, on *Writ of Certiorari to the United States Court of Appeals for the Second Circuit, in the Supreme Court of the United States*, Goldman Sachs Group, Inc., et al., Petitioners, v. Arkansas Teacher Retirement System, et al., Respondents, March 3, 2021.

Brief of Dr. Joseph R. Mason, et al., as Amici Curiae Economics and Finance Professors, in support of *Defendants' Opposition to Plaintiffs' Motion for Summary Judgment and Defendant's Cross Motion-Motion for Summary Judgment*, People of the State of California, et al., Plaintiffs, v. The Office of the Comptroller of the Currency, et al., Defendants, United States District Court, Northern District of California (Oakland), January 21, 2021.

*Testimony before the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, "*Climate Change: Preparing for the Energy Transition," February 12, 2019.

Co-Author (with Jeffrey D. Balcombe and W. Scott Dalrymple), *"*Financial Supervision and Regulation in the US: Dodd-Frank Reform," *European Parliament*, December 2018.

*Testimony before the U.S. Senate Committee on Energy and Natural Resources, "*Hearing on the Bureau of Ocean Energy Management's 2017-2022 OCS Oil and Gas Leasing Program," May 19, 2016.

*Testimony before the U.S. House of Representatives Committee on Natural Resources, "*The Impacts of Federal Policies on Energy Production and Economic Growth in the Gulf," September 15, 2015.

"Overview and Structure of Financial Supervision and Regulation in the U.S.," Prepared for the European Parliament's Committee on Economic and Monetary Affairs, Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy, IP/A/ECON/2012-16, PE 492.470, September 2015.

*Testimony before the U.S. Senate Committee on Environment and Public Works, Clean Air and Nuclear Safety Subcommittee, Minority Field Hearing, "*The EPA's Threat to Louisiana's Ozone Attainment," August 5, 2014.

*Testimony before the U.S. Senate Committee on Environment and Public Works, Clean Air and Nuclear Safety Subcommittee, "*Climate Change: The Need to Act Now," June 18, 2014.

*Testimony before the U.S. House of Representatives Committee on Natural Resources*, "One Year after President Obama's Gulf of Mexico 6-Month Moratorium Officially Lifted: Examining the Lingering Impacts on Jobs, Energy Production and Local Economies," October 12, 2011.

**ACADEMIC PUBLICATIONS:**

"ETF ownership and firm-specific information in corporate bond returns," (with Meredith E. Rhodes), *Journal of Financial Markets*, forthcoming.

"Asset Sales, Recourse, and Investor Reactions to Initial Securitizations: Evidence Why Off-Balance Sheet Accounting Treatment Does Not Remove On-Balance Sheet Financial Risk," (with Eric J. Higgins and Adi Mordel), *Journal of Risk Finance*, Vol. 20, Issue 3, August 12, 2019.

"Self-reporting under SEC Reg AB and transparency in securitization: evidence from loan-level disclosure of risk factors in RMBS deals," (with Michael Imerman and Hong Lee), *Journal of Risk Finance*, Vol. 15, Issue 4, August 18, 2014.

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## In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations
## Appendix B Supplemental Information Considered

**Case Documents**

(1) Transcript of Jury Trial, *Fairholme Funds, Inc. v. Federal Housing Finance Agency*, 2022

(2) Joint Statement of ndisputed Facts, *Fairholme Funds, Inc. v. Federal Housing Finance Agency*, Octo er 18, 2022

(3) Plaintiff s Trial Exhi it 5, *Fairholme Funds, Inc. v. Federal Housing Finance Agency*, 2022

**Court Cases**

(1) *Fairholme Funds, Inc. v. Federal Housing Finance Agency*, 2018 WL 4680197

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(1) "Treasury Department Announces Further Steps to Expedite Wind Down of Fannie Mae and Freddie Mac," *U.S. Department of Treasury*, August 17, 2012, https //home.treasury.gov/news/press-releases/tg1684

(2) "Financial Regulatory Reform Financial Crisis Losses and Potential Impacts of the Dodd-Fran Act," *U.S. Government Accountability Office*, January 16, 2013, https //www.gao.gov/products/gao-13-180

(3) "Housing and Mortgage Mar ets in 2012," *Federal Housing Finance Agency*, Decem er 2013, https //www.fhfa.gov/PolicyProgramsResearch/Research/PaperDocuments/20131213 RP HousingMortgageMar ets 2012 508.pdf

(4) "Financial Statement Analysis - Financial Analysis Techniques," *CFA Institute Refresher Reading*, 2023

**Other**

(1) ac up Materials to FHFA-DDC-0119086-101

(2) GSE stoc price data for the three classes at issue, August 2012 to present (updated loom erg LP data)

***All information and materials previously considered in Corrected Mason Report dated August 27,2021 and Mason Reply Report dated March 1, 2022 incorporated by reference.***