

and value of those claims, arising from circumstances leading to the closure of Washington Mutual Bank (“WMB”) by the U.S. Office of Thrift Supervision (“OTS”), the OTS’s appointment of the Federal Deposit Insurance Corporation (“FDIC”) as receiver for WMB, and the FDIC’s sale of WMB assets to JPMorgan Chase, N.A. (“JPMC”), including:

- i. WMI’s negotiations with JPMC and other potential investors or merger/acquisition partners during 2008;
- ii. Discussions between JPMC, the FDIC, the OTS, other officials at the Department of the Treasury, the SEC, and any other government agencies during 2008 concerning WMB or WMI;
- iii. Any actions by JPMC (including but not limited to direct or indirect communications to the media and securities transactions) that could have had the effect of damaging market or government agency perceptions of WMB or WMI’s financial health, capital adequacy, or liquidity;
- iv. JPMC’s communications about WMB or WMI with other actual or potential WMI investors or merger/acquisition partners or investment advisors (including Goldman Sachs) during 2008;
- v. JPMC’s decision to withdraw from discussions with WMI about a merger or acquisition;
- vi. WMB’s financial condition during 2008 and its ability to satisfy regulatory requirements regarding capital and liquidity up to the time of seizure, including how WMB’s condition compared to that of other banks that were not seized and placed into an FDIC receivership;

- vii. The causes of the “run on the bank” experienced by WMB in the two-week period preceding OTS closure, including the extent to which institutional deposits, brokered deposits, or deposits under the control of governmental or quasi-governmental agencies were withdrawn;
- viii. The extent to which JPMC obtained confidential information from WMB or WMI during 2008, how it obtained such information, and how it used such information;
- ix. The decisions of OTS and FDIC regarding the seizure of WMB and the sale of WMB assets, the bases for those decisions, the communications of OTS and FDIC with other government or private personnel about those decisions in advance of making and acting on them, and whether the FDIC’s sale of WMB’s assets satisfied its statutory obligations;
- x. Specific identification and valuation of WMB assets conveyed by the FDIC to JPMC;
- xi. The actions and communications of third-party professionals retained by WMI during 2007 and 2008 in its efforts to find additional investment capital and/or merger/acquisition partners;
- xii. The nature of the business relationships between WMI, WMB, and Goldman Sachs during 2007 and 2008, Goldman’s communications with JPMC and other potential acquirors of WMB or its assets,, and Goldman’s proprietary trading activities in the securities of WMI during 2008;
- xiii. To the extent not identified above, the allegations set forth in the complaint filed in the American National Action.

- b. Evaluate the extent to which there are potential claims and causes of action held by the Debtors' estates arising from breach of fiduciary duty or other legal duties by WMI officers, directors, and employees in their supervision or direction of WMB investment in subprime residential mortgages during 2007 and 2008, or in other actions and events that led to WMB's seizure and sale in September 2008;
- c. Evaluate the disputes at issue in the Debtors' Turnover Action against JPMC, styled Washington Mutual, Inc., et al. v. JPMorgan Chase Bank, N.A., Adversary Pro. No. 09-50934 (MFW), in this Court, including the existence and valuation of WMI tax attributes (principally its net operating losses) and the meaning and impact of that certain Tax Sharing Agreement, dated as of August 31, 1999, among WMI, WMB, and certain other direct and indirect subsidiaries of WMI and WMB, on those disputes;
- d. Evaluate the proper ownership, valuation, and asset affiliation of the trust preferred securities at issue in the JPMC Adversary Litigation against the Debtors and the FDIC, styled JP Morgan Chase Bank, N.A. v. Washington Mutual, Inc., et al., Adversary Pro. No. 09-50551 (MFW), in this Court, and evaluate the proper ownership of all other assets that are the subject of claims and counterclaims in that adversary proceeding;
- e. Investigate and identify the communications and negotiations that led to the Debtors' Proposed Global Settlement Agreement (a copy of which, in its current form, was attached to the Debtors proposed Plan of Reorganization filed in this case on March 26, 2010), and the factors that produced the settlement and the Debtors' decision to agree to and support its terms;

- f. Potential claims belonging to the Debtors for fraudulent conveyance or for the recovery of preferential transfers, including but not limited to any such claims that arise from WMI's capital contributions to WMB;
- g. To the extent not encompassed in preceding topics, investigate the subjects, and obtain information from the proposed information sources, identified in the Debtors' Motion for Rule 2004 examination filed on December 14, 2009, and evaluate the extent to which such information bears on the actual or potential claims and causes of action held by the Debtors as specified in this Order;
- h. To the extent not addressed in the preceding topics, evaluate the merit and valuation of the claims of any parties that would be released under the Debtors' Proposed Global Settlement Agreement;
- i. The identification, nature, and valuation of assets held by the Debtors post-bankruptcy, including assets that would be conveyed to JPMC and the FDIC under the proposed global settlement agreement; and
- j. Otherwise perform the duties of an examiner set forth in 11 U.S.C. § 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code.
- k. All of the duties identified in Paragraph 2 of this Order shall collectively be referred to herein as "the Investigation."

3. The Debtors, the Debtors' affiliates and subsidiaries, and the Official Committees appointed in this bankruptcy case are directed to fully cooperate with the Examiner in conjunction with the performance of any of the Examiner's duties and the Investigation, and the Debtors and the Official Committees shall use their respective best efforts to coordinate with the Examiner to avoid unnecessary interference with, or duplication of, the Investigation.

4. The Debtors' duty to cooperate fully with the Examiner shall include promptly providing the Examiner with access to all information within the Debtors' possession, custody, or control that may be relevant to the Investigation, including information the Debtors have obtained through formal or informal means from third parties, as well as other information as identified and requested by the Examiner.

5. Within ten (10) days after the later of entry of this Order or the date on which the U.S. Trustee files a notice of the Examiner's appointment, the Examiner shall propose a work and expenses plan (the "Work and Expenses Plan"), which shall include a good faith estimate of the fees and expenses of the Examiner and the Examiner's proposed professionals for conducting the investigation. The Court may then hold a status conference to consider the Work and Expenses Plan and any responses thereto, and to order further relief as appropriate to aid the Examiner in the performance of the Examiner's duties and/or to accommodate the needs of the estate. Notwithstanding the foregoing, the Examiner is authorized to commence the Investigation immediately upon appointment.

6. The Examiner shall prepare and file a report (the "Report"), as required by 11 U.S.C. § 1106(a)(4), within 150 days of the Examiner's appointment, unless such time shall be extended by order of the Court upon application by the Examiner on notice to interested parties.

7. The Examiner may retain counsel or other professionals if the Examiner determines that such retention is necessary to discharge the Examiner's duties, which retention shall be subject to Court approval after notice under the standards equivalent to those set forth in 11 U.S.C. § 327.

8. The Examiner and any professionals retained by the Examiner pursuant to the order of this Court shall be compensated and reimbursed for their expenses pursuant to the procedures for interim compensation and reimbursement of expenses of professionals established

in these cases. Compensation and reimbursement of the Examiner shall be determined pursuant to 11 U.S.C. § 330, and compensation of the Examiner's professionals shall be determined pursuant to standards equivalent to those set forth in 11 U.S.C. § 330.

9. The Examiner shall cooperate fully with any governmental bodies or agencies (such cooperation shall not be deemed a public disclosure) including, but not limited to, any federal, state or local government agency that may be investigating the Debtors, their management or the pre-bankruptcy financial condition and performance of WMB, and the United States Congress or any committee or subcommittee thereof, and the Examiner shall use best efforts to coordinate with such agencies and bodies in order to avoid unnecessary interference with, or duplication of, any investigations conducted by such bodies or agencies, and to make use of information relevant to the Investigation that they may have developed and obtained through their own efforts.

10. The Examiner shall have the standing of a party in interest in this bankruptcy case with respect to matters within the scope of the Investigation, and shall be entitled to appear and be heard at any and all hearings in this case.

11. The Examiner shall have full access to the non-privileged documents of all parties and to all materials the Debtors have received in response to discovery authorized by this Court or otherwise. If the Examiner seeks the disclosure of documents or information as to which the Debtors assert a claim of privilege or have objected and the Examiner and Debtors are unable to reach a resolution on whether or on what terms such documents or information should be disclosed to the Examiner, the matter may be brought before the Court for resolution. The Debtors' attorney-client and work-product privileges remain and are not deemed waived or in any way impaired by this Order.

12. Nothing in this Order shall impede the rights of the U.S. Trustee, any of the Official Committees, the Examiner, or any other parties in interest to request any other lawful relief, including but not limited to a request to further expand the scope of the Investigation, if during such Investigation other relevant matters are revealed which the Examiner or other party believes should be brought to the attention of the Court.

DATED: _____

BY THE COURT:

Mary F. Walrath
United States Bankruptcy Judge