IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WASHINGTON MUTUAL, INC., et al.,[1]	Case No. 08-12229 (MFW)
Debtors.	(Jointly Administered)
	Hearing Date: June 17, 2010 at 10:30 a.m. (ET)

REPLY IN SUPPORT OF MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS IN SUPPORT OF ORDER DIRECTING APPOINTMENT OF AN EXAMINER UNDER 11 U.S.C. § 1104(C)

The Official Committee of Equity Security Holders (the "Equity Committee") of Washington Mutual, Inc., by and through its undersigned counsel, submits this reply in support of its *Motion of the Official Committee of Equity Security Holders in Support of Order Directing Appointment of an Examiner Under 11 U.S.C. § 1104(c)* (the "Motion") (Docket No. 4644). In further support of the Motion, the Equity Committee respectfully represents as follows:

Introduction and Summary of Argument

1. The multiple objections lodged by various parties focus primarily on two issues, one procedural and one factual. Procedurally, the Objectors dispute this Court's authority to rule on this Motion because of the overlap with the prior Examiner motion. As discussed in more detail below, however, these arguments are easily disposed of. Even under the authority cited in the Objectors' briefs and assuming *arguendo* that this Motion completely duplicated the earlier Examiner motion, this Court may determine the merits of the Motion.

2. Factually, the Objectors argue that because the Debtors and Creditors' Committee

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

agreed after the filing of this Motion to provide some work product to the Equity Committee, the reasoning for an Examiner somehow disappears. Far from it. After the six different objections, here is what remains undisputed about the "investigation" by the Debtors and the Creditors Committee. (1) The sum total of the production from one of the Settling Parties – the FDIC – was 238 heavily-redacted pages. (2) From JPMC, the other Settling Party, the Debtors received only 14 boxes of documents, otherwise never utilized the Rule 2004 discovery that this Court authorized, and acknowledged that the limited production it did receive was inadequate. (3) The Debtors never took a single deposition in the Adversary Proceeding, the Turnover Action, or the DC Action. (4) With respect to the other investigations on which the Debtors and Creditors' Committee relied so heavily in the prior Examiner motion and which formed a basis for this Court's ruling denying the Motion, neither the Debtors nor the Creditors' Committee obtained a single document from these other investigations. Yet the Objectors still claim that these events have been "investigated to death." If so, the investigation here died in its infancy.

3. An investigation by other entities that the Debtors have not used is no investigation at all for purposes of this case. For example, since the filing of this Motion, the Equity Committee has learned that JPMC has a vast database consisting of over 1 million documents in word-searchable format that were produced to the Senate and to the Department of Justice in their investigations related to Washington Mutual. The Debtors never obtained this database. It took the Equity Committee less than a week to learn of its existence. The attached Declaration of Edgar Sargent details the discovery games that JPMC evidently was playing with respect to this database, literally playing with words to hide the existence of the database from the Debtors. *See* **Exhibit A**, Declaration of Edgar Sargent. Either the Debtors knew about the database and failed to pursue it, or more likely, their investigation failed to uncover the existence of this database.

4. Now the Settling Parties act as if there is nothing new to see here; that everything worth doing already has been done. We now know that the opposite is true – that in fact, the Debtors made hardly any attempt to obtain documents from the parties with whom they are entering a multi-billion dollar settlement agreement.

5. An investigation into the events here is not for the benefit of future historians or curious rubberneckers. Rather, it is vital in order to understand the assets of the Estate. With respect to the hard assets, the Debtors still have not produced an itemized inventory of what specifically JPMC obtained from WMB.

6. With respect to the litigation assets, the Equity Committee's review of the limited JPMC production confirms that JPMC was planning to acquire WMB through an FDIC receivership as early as July 2008 – substantially before both the WMB receivership and even the events leading to the Lehman bankruptcy in September 2008. In fact, the JPMC documents reveal that JPMC and the FDIC were working hand-in-hand well before the FDIC revealed that it would take WMB into receivership or that it would auction WMB to the highest bidder. The FDIC agreed to indemnify JPMC up to $500 million for JPMC's breach of its confidentiality agreement with WMI that was signed in March 2008. Soon after the acquisition, JPMC reported negative goodwill, virtually unheard of in an acquisition and indicating that JPMC paid well below the actual value of WMB. In January 2009, JPMC's CEO announced that the WMB acquisition would generate more than $2 billion in profit annually for the company. Indeed, in the first quarter results for 2009, JPMC announced that the acquisition of WMB's loans alone would result in a gain to income of $29.1 billion to the company. *See* **Exhibit B,** Ari Levy and Elizabeth Hester, *JPMorgan's WaMu Windfall Turns Bad Loans Into Income*, Bloomberg News, May 26, 2009.

7. Now, however, the Proposed Settlement pays off those ahead of the Equity

Committee in priority virtually in full yet leaves the equity holders with nothing. Little wonder why all parties to the Proposed Settlement hope to rush through a plan without any meaningful investigation into the actual assets of the Estate. A targeted Examiner investigation tailored to investigating the role of JPMC and the FDIC in causing the bankruptcy and to determining the assets of the estate is vital.

II. Argument

A. This Court Can Determine the Merits of this Motion

8. The Objectors here first argue that this Court is without authority to order an Examiner here. Such an argument is wrong on the law. As a preliminary matter, the Objectors try to label this Motion as a Rule 60(b) Motion. This Motion is not under Rule 60(b), however. Rather, it is a new Motion for Appointment of an Examiner under different facts. Nothing in Section 1104 of the bankruptcy code prevents parties from filing more than one request for an Examiner. This fact alone is dispositive of the issue, as this Court has full authority to rule on the Motion.

9. A court can hold that a motion is barred by *res judicata*, but that principle does not apply here. The test that the Debtors attempt to use – whether the issue is the same "cause of action" – is inapplicable on its face to a Motion that is not a cause of action at all. Rather, under *res judicata*, "'[T]he focal points of our analysis are whether the acts complained of were the same, whether the material facts alleged in each suit were the same and whether the witnesses and documentation required to prove such allegations were the same.'" *Elkadrawy v. Vanguard Group, Inc.*, 584 F.3d 169, 173 (quoting *United States v. Athlone Indus., Inc.*, 746 F.2d 977, 984 (3d Cir.1984)). Here, the scope of the materials that the Debtors had in their possession was unknown to the Equity Committee at the time of the first Examiner motion. For example, the Equity Committee did not receive the limited FDIC production in the Debtors' possession until

late May. The Debtors also maintained – and continue to maintain – that they were relying on other investigations as well. Again, it was not until after the May 5 hearing that the Debtors told the Equity Committee that it actually had no documents from these other investigations. Because the material facts here are different – namely, the actual scope of the investigation now known as of this Motion – *res judicata* does not apply.

10. Even assuming that *res judicata* does apply and that this Motion is, as the Objectors maintain, simply a motion under Rule 60(b) to modify a judgment, this Court has the power to "determine the merits of" this Motion. As the very cases cited in Paragraph 10 of the Debtors' Response and Paragraph 14 of the Creditors' Committee's Response show, this Court can inform the appellate court that it intends to grant the Motion, at which point the appellate court will remand the case.

11. The Debtors also do not dispute that this Court has jurisdiction to actually grant the Motion as soon as the Equity Committee files a Motion dismissing the appeal. The Equity Committee will withdraw the appeal as soon as this Court indicates that it will grant this Motion.

B. The Appointment of an Examiner is Necessary and Appropriate

12. On the merits of a new Examiner here, the Objectors largely rehash the discredited argument that WMI has been "investigated to death." That statement simply cannot apply to the investigation conducted by the Debtors and Creditors' Committee here. As discussed extensively in the Introduction, at the last hearing, and in the discovery motions at issue at the last hearing, the investigation into the underlying claims against JPMC and the FDIC was minimal and perfunctory.

13. The Objectors continue to rely on the government investigations that took place into the collapse of Washington Mutual as grounds for denying an Examiner here. This argument is flawed for at least three reasons, each of which independently supports an Examiner

here. *First*, by public account, the investigations into Washington Mutual largely centered around the company's mortgage and loan practices. They did not focus on the role JPMC played in the collapse of the bank, and they only tangentially focused on the role of the FDIC. *Second*, even the limited scrutiny applied to the events central to the claims here raised more questions than answers. For example, the Senate Investigation revealed that WMB was solvent and would have passed the federally-mandated "stress test" occurring a few months later. *Third*, and most importantly, neither the Debtors nor the Creditors' Committee ever obtained access to the results of these investigations, or used these investigations to spur their own investigations, or even obtained any documents from these investigations. That these other sources of material sit untapped does not affect whether a proper investigation occurred here.

14. The Debtors' argument that these other investigations obviate the need for an Examiner stands in stark contrast to the information the Equity Committee just learned about a trove of documents that JPMC turned over to the Senate and the Department of Justice but that the Debtors never obtained or apparently even knew existed. The documents that JPMC produced in response to these other investigations are in the millions and are contained in a fully searchable database. The database includes both heritage Washington Mutual documents and documents gathered from JPMC's files. Despite the obvious relevance to the case, JPMC did not produce it to the Debtors or, apparently, even let them know that it existed.

15. Counsel for the Equity Committee discovered the existence of this database in meet and confer sessions with JPMC's attorneys. In justifying its refusal to produce documents responsive to a request for "[a]ll documents concerning any investigations by federal, state or municipal government bodies of JPMC related to its acquisition of WMB," counsel for JPMC indicated that there had been no government investigations of JPMC related to its acquisition of WMB. See Declaration of Edgar Sargent at ¶ 5. Based on this statement, counsel for the Equity

Committee represented in a brief to this Court that JPMC had indicated there had been no government investigation into its conduct regarding the WMB acquisition. Counsel for JPMC then contacted counsel for the Equity Committee to complain that this statement was inaccurate. *Id.* ¶¶ 6-8. After some initial confusion trying to understand the distinction being drawn by JPMC, the Equity Committee discovered that JPMC had been differentiating between government investigations into JPMC and government investigations into JPMC's conduct, whatever that distinction is worth. While JPMC contends that the former never occurred, it not only acknowledges the latter, but intends to rely on these investigations into JPMC's "conduct" to support its theory that it did nothing wrong. *Id.* ¶¶ 7-8. Learning this, the Equity Committee requested that JPMC produce any documents related to any investigation in which JPMC contends its conduct was an issue. At this point, counsel for JPMC disclosed the existence of the PSI investigation database. *Id.* ¶ 9. This database is a rather large "stone unturned" that the Equity Committee quite quickly uncovered and that inexplicably was not produced to the Debtors. May 5 Hearing Transcript at 98:14-17.

16. The existence of this database not only shows how JPMC appears to have hoodwinked the Debtors and why a real investigation never occurred here, it also demonstrates the massive discovery games that JPMC was playing and continues to play. JPMC's documents play a central role in determining the assets of the Estate. Yet despite this Court's Rule 2004 order giving the Debtors the right to obtain these documents and investigate the claims, JPMC produced only 14 boxes of material.

17. As the Equity Committee has now learned both through conversations with JPMC and reviewing the Debtors' correspondence, JPMC's production was culled from the email of only seventeen employees. It limited its search to this small group even though its internal documents identify over one-hundred employees involved in the due diligence of Washington

Mutual. Based on meet and confer correspondence with the Debtors, JPMC conducted no searches for documents maintained by employees in any of the following departments: accounting, corporate communications (i.e. press relations); audit (admittedly involved in due diligence); chief investment office (admittedly involved in acquisition); commercial banking (admittedly involved in due diligence); and the tax group (admittedly involved in acquisition). *See* December 18, 2009 letter from Erica Taggart to Brian Glueckstein at pages 2-4, Exhibit 1 to the Declaration of Edgar Sargent. In the departments where JPMC did conduct searches, it appears to have limited those searches to certain employees and omitted members of the departments who were more likely to have been substantively involved in the day-to-day work. *Id.*

18. In addition to limiting its search to seventeen employees, JPMC also apparently confined its search to only one type of document: email and attachments. JPMC did not produce any electronic documents other than email stored on network drives or individual's computers. It did not produce any documents that existed in paper form. It did not produce any accounting records or financial information from any accounting database it maintains, unless such data happened to be attached to an email from one of the custodians.

19. The Debtors and Creditors' Committee argue that because they now have agreed to produce work product, an Examiner is now unnecessary. This argument is wrong for two independent reasons. *First,* it ignores that the Equity Committee still is not receiving all of the work product. *Second,* the production of work product is meaningful only to the extent that they conducted an underlying investigation.

20. With respect to the production of the work product itself, soon after the Equity Committee filed this Motion, the Debtors became substantially more forthcoming about allowing access to work product that the Equity Committee first requested on May 7. The Equity

Committee is cooperating with the Debtors to facilitate the transfer, and the parties are using the exact method suggested by the Equity Committee when it first made a request for this work product – a Rule 502(d) order that was submitted to this Court on June 15. The Equity Committee will take what it can get. To date, it cannot determine the utility of what the Debtors have because they have not yet produced anything. The Equity Committee and the Debtors are still trying to resolve some issues regarding the scope of this work product production, such as whether the Equity Committee will be able to access informal analysis contained in email or advice passed along to the Debtors via email.

21. The Creditors' Committee has been substantially less forthcoming in their work product. They have not agreed to share their work product or attorney client communications. The Creditors' Committee argues that it would be "disingenuous" for the Equity Committee to agree that the Creditors' Committee does not have to produce the material yet use the lack of production as a ground for appointing an Examiner. *See* Creditors' Committee Brief ¶ 5. To the contrary, that the Creditors' Committee still refuses to produce this material – even though it can do so lawfully – shows why an Examiner would be helpful. An Examiner would have access to the work product while the Equity Committee does not.

22. Moreover, any work product they have is limited by its nature to the investigation actually performed by the Debtors and Creditors' Committee.

23. The FDIC references the "extensive discovery available to the Equity Committee," but the FDIC concedes that this extent of this discovery does not encompass the FDIC's own documents. FDIC Brief ¶ 15. The FDIC's brief rehashes its Motion to Dismiss in the DC Action about why it believes the Estate's claims have no merit. The FDIC's arguments, however, should be irrelevant to the resolution of the Examiner Motion. *First*, this Motion is not a Motion to Dismiss the claims. The DC Court has denied without prejudice the FDIC's

arguments, and it should not be allowed to backdoor them here. *Second*, the FDIC's arguments are irrelevant to this Motion. Even assuming *arguendo* that the FDIC is entirely correct that its claims should be dismissed, the underlying facts are relevant to other claims being released in the proposed settlement.

24. Some of the Objectors use the fact that $30 million a month is accruing to the Note Holders as reason to deny an Examiner. This argument is flawed for numerous reasons, including the fact that the Debtors had nearly two years to conduct an investigation they did not do. To now use this passage of time as reason to deny the Examiner is simply trying to run out the clock.

25. Just as importantly, on page 283 of the Debtors' Fourth Amended Plan filed recently with the Court (Docket # 4691), note 4 states that interest will accrue until December 31, 2010. Thus, any delay until the end of the year apparently will cause no increase in interest payments for the Senior Subordinated Note Holders. And even assuming that the entire $30 million continues to accrue each month and that the Note Holders would not release it in any settlement, a few extra months is worth trying to determine the assets held by the Estate so that all parties who are entitled to do so can share in the Estate's proceeds. Indeed, because the Equity Committee is lowest in priority, the Equity Committee also wishes for a quick resolution here. But first there should be an investigation of the potential tens of billions of assets held by the Estate.

26. In addition to performing the investigation that has not yet occurred here, an Examiner likely will enable a quicker resolution of the case. A report provides all interested parties with a neutral analysis of the claims and may pave the way for settlement.

27. The difficulties encountered by the Equity Committee so far in trying to obtain discovery also demonstrate that an Examiner can perform the tasks here quicker and cheaper

than the discovery that needs to be conducted before plan confirmation.

28. Because this bankruptcy involves the largest bank failure in the history of the United States, it is also important to the process itself that a full accounting of the Estate occur here. The Settling Parties wish to cram everything into the plan confirmation process, which has a different standard for determining reasonableness. At a minimum, the importance of this bankruptcy is a factor this Court should weigh in determining whether an Examiner should investigate the assets of the Estate in a completely transparent manner.

29. Finally, the Equity Committee is open to working with the Court and all parties on a timeframe and scope that makes sense given the investigation here. For example, the Examiner could focus primarily on determining the hard assets of the Estate and the role of JPMC and the FDIC in the bankruptcy. The Court also could set timelines to ensure that the Examiner proceeds as expeditiously as possible.

30. Indeed, the timeline for appointing an Examiner through this Motion may well be quicker than the timeline for resolution of the direct appeal to the Third Circuit of the first Examiner motion, which in the Equity Committee's view needs to occur before any plan confirmation hearing.

WHEREFORE, the Equity Committee respectfully requests that the Court grant the relief requested by this Motion, and for such other and further relief as it deems just and proper.

Dated: June 16, 2010
Wilmington, Delaware

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EXHIBIT A

DECLARATION OF EDGAR SARGENT

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WASHINGTON MUTUAL, INC., et al.,	Case No. 08-12229 (MFW)
	Jointly Administered
Debtors	

DECLARATION OF EDGAR SARGENT IN SUPPORT OF THE REPLY IN SUPPORT OF THE MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS FOR THE APPOINTMENT OF AN EXAMINER

Edgar Sargent Esq., declares:

1. I am a partner at Susman Godfrey L.L.P. and am counsel of record for the Official Committee of Equity Security Holders ("Equity Committee") in this action. I submit this declaration in support of the *Motion of the Official Committee of Equity Security Holders For the Appointment of an Examiner.*

2. Beginning June 7, 2010, I conducted a number of "meet and confer" negotiations with counsel for JPMorgan Chase ("JPMC"). On the calls, JPMC has been represented by two attorneys from Sullivan & Cromwell, Brian Glueckstein and Stacey Friedman. With me on the calls has been my co-counsel, Greg Taylor of Ashby & Geddes.

3. The intent of these calls has been to identify documents JPMC would make available to the Equity Committee in response to our requests for production. For many of these requests, JPMC's counsel directed us to the production it made to the Debtors in response to their Rule 2004 subpoena in the summer of 2009. A copy of the documents in that production was made available to us for review.

4. In order to understand the scope of the documents in this production, I reviewed correspondence memorializing previous meet and confer sessions between counsel for JPMC and counsel for the Debtors. A copy of one of these letters, dated December 18, 2009 and from Erica Taggart to Brian Glueckstein, is attached to this Declaration as Exhibit 1. On pages 2-4 of this letter, Ms. Taggart memorializes conversations with Mr. Gluecksten regarding certain departments within JPMC and whether or not documents were produced from employees assigned to these departments.

5. One of the document requests we made of JPMC was for "[a]ll documents concerning any investigations by federal, state, or municipal government bodies of JPMC related to its acquisition of WMB." When we discussed this request in a meet and confer session on June 7th, Mr. Glueckstein told me that JPMC would not produce documents in response to this request because there had been no government investigations into JPMC related to its acquisition of WMB.

6. When I attempted to memorialize this representation in an email to Mr. Glueckstein, I wrote: "you indicated that as far as you and your client are aware, no government body has opened any investigation into JPMC's conduct related to its acquisition of Washington Mutual assets."

7. Mr. Glueckstein then responded and corrected this statement saying that, instead, "we confirmed that we are aware of no government investigation of JPMC related to its acquisition of the assets of WMB."

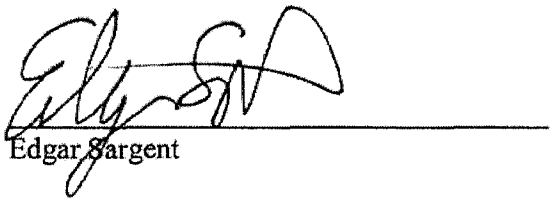
8. I responded to this correction by telling Mr. Glueckstein I did not understand the difference between my statement and his. After an exchange of several more emails on the subject and an additional phone call addressing it, I learned that JPMC was distinguishing between investigations "into JPMC" and investigations "into JPMC's conduct." Mr. Glueckstein now acknowledged to me that JPMC did believe that there had been investigations into JPMC's conduct with regard to the Washington Mutual acquisition, including by the United States Senate Permanent Subcommittee on Investigations. A copy of the email exchange between myself and Mr. Glueckstein in which this issue was discussed is attached as Exhibit 2.

9. Once JPMC's position on investigations had been clarified, I told Mr. Glueckstein that we would insist that his client produce any documents related to any investigation into JPMC's conduct, including the Senate PSI investigation. Mr. Glueckstein then explained to me that JPMC had a database of over one million documents which had been provided to the Senate PSI for use in its investigation of Washington Mutual. The database is searchable and contains both heritage Washington Mutual documents and JPMC documents. Mr. Glueckstein admitted to me that this database had not been produced or made available to the Debtors.

10. The foregoing is based on my personal knowledge and is true and correct to the best of my knowledge, information, and belief.

Dated: Seattle, Washington

June 15, 2010



Edgar Sargent

Sargent Declaration

Exhibit 1

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DECEMBER 18, 2009

VIA EMAIL AND U.S. MAIL

Brian Glueckstein, Esq.
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Dear Brian:

I write regarding our recent correspondence regarding JPMC's 2004 production. In particular, this letter confirms and responds to our conversations at 12 pm PST / 3PM EST and 2pm PST / 5pm EST Friday, December 11, 2009 during which we discussed various issues related to JPMorgan Chase Bank, N.A.'s ("JPMC") production pursuant to the Court's June 24, 2009 order granting a rule 2004 examination of JPMC, including (1) production of documents in native versus TIFF format, (2) information regarding custodians searched by JPMC, (3) search terms used in JPMC's 2004 production, and (4) documents withheld by JPMC on the basis of alleged third party confidentiality.

JPMC's 2004 PRODUCTION

Format for Production of Documents

WMI asked JPMC to reconsider its position that documents be produced in TIFF format rather than native format. WMI suggested that a native production presented certain advantages over TIFF format, including consistency with other productions in this case, lower cost, ability to better handle embedded documents, and greater information for certain formats such as Excel spreadsheets. Further, JPMC has not objected to producing materials in native format in other situations, including the USAO investigation and pursuant to the scheduling stipulation. You agreed to address the issue with your client, but said that you currently did not wish to produce in native format.

Information Regarding Custodians

The parties discussed various issues regarding the custodians searched in JPMC's 2004 production. We asked for any information JPMC was willing to disclose about its method for selecting and excluding certain custodians, especially regarding the custodians on the Project West list and the shorter list of custodians we provided in previous correspondence. JPMC maintained that no custodians were "excluded," but rather that it selected the most reasonable custodians from whom it produced documents after speaking with the most senior decision-makers on the deal. JPMC further stated that it would not agree at this time to search for additional documents responsive to WMI's 2004 requests from any of the custodians identified on either the list of relevant custodians WMI submitted in its November 25, 2009 meet and confer letter,[1] or identified on the Project West team list. However, JPMC said that it may be willing to do so in the future if WMI provided a narrower list of relatively few additional custodians, and if WMI committed not to seek documents from additional custodians in the future.

JPMC also reviewed each department with potentially relevant information and provided the following information:

- Accounting: JPMC stated that these are internal JPMC people and internal corporate accounting people. JPMC stated that individuals in this department merely provided support on the deal and had no substantive involvement.

- Corporate Communications: JPMC stated that these individuals were only involved at the time of the closing of the acquisition of WMB, had the limited role of fielding press releases, and were unlikely to have responsive documents. Thus, JPMC did not produce from them.

- Audit: JPMC stated that these individuals engaged only in due diligence issues and had nothing to do with the transactions or bids at the heart of the acquisition of WMB's assets.

- Branch banking (part of retail financial services group): JPMC identified these as individuals brought in to consult on various aspects of WaMu's branch banking business. JPMC identified two senior people and suggested they would be open to considering searches of them: Tom Cartwright and Scott Powell. However, JPMC maintained that

[1] WMI notes that our earlier list of Project West Team Leaders, attached to the November 25, 2009 letter, inadvertently left off a few individuals identified by the JPMC internal email we cited: JPM_EX00016647-48. Please note that we have also added Tom Kelly to our list based on our understanding that he had potentially relevant communications with Washington Mutual's PR team at around the time of the seizure. A revised list, including all the names on JPMC's list of team leaders, is attached hereto as Attachment A.

these individuals were not involved in core issues of the WMB asset acquisition, and would not agree to produce documents from their files without additional concessions from WMI, such as an agreement not to seek production from additional custodians or an agreement to a limited number of additional custodians to be searched.

- Chief Investment Office: JPMC acknowledged that we identified A. Duersten as a likely relevant custodian. JPMC stated that Ms. Duersten would have had the most involvement from this department, but that this department did not have meaningful involvement with the WMB transaction aside from some due diligence. However, JPMC would not agree to produce documents from their files without additional concessions from WMI, such as an agreement not to seek production from additional custodians or an agreement to a limited number of additional custodians to be searched.

- Commercial Banking: JPMC stated that individuals from this department were only involved in due diligence. JPMC stated that they would have addressed particular components of the transaction but would not have been involved in major aspects of the acquisition. JPMC identified two people they would be open to considering as additional custodians: Tom Parkhill and Todd Maclin. However, JPMC would not agree to produce documents from their files without additional concessions from WMI.

- Investment Banking Group: JPMC identified these as the individuals most involved in the transaction and stated that it had already produced from the most senior members of this department. As for additional individuals identified by WMI as potential custodians, JPMC explained that John Chrin, Thomas Novack, and Scott Albinson did not have substantive involvement in the acquisition. JPMC also addressed two other potential custodians identified by WMI: Genevieve Hovde and Sean Carmody. JPMC stated that these individuals were not decision-makers but stated that it is open to considering searches of these individuals. However, JPMC would not agree to produce documents from their files without additional concessions from WMI.

- Legal Compliance: JPMC stated that it produced from individuals in this department to the extent that the documents were not privileged. JPMC noted that WMI had identified Neila Radin as a potential custodian. JPMC stated that Ms. Radin and Dan Cooney, already searched, had a lot of overlap on the project, but that Cooney was the lead on Project West.

- Retail Banking Administration Group: JPMC stated that Sally Durdan heads the group and was searched. JPMC stated that Corinne Burger was next in charge after Ms. Durdan and JPMC would consider searching Ms. Burger. However, JPMC would not agree to produce documents from their files without additional concessions from WMI.

- Tax: JPMC stated that although the tax group was consulted, its involvement was minor. WMI identified Ben Lopata as a potential custodian. JPMC stated that they might consider searching him. However, JPMC would not agree to produce documents from their files without additional concessions from WMI.

- Credit card/card services division: JPMC identified this department as the portion of JPMC that would have done some due diligence. JPMC stated that this department was not relevant, but if WMI wanted names of individuals involved, they would consider producing docs from some senior person in the division who may have been consulted. However, JPMC would not agree to produce documents from their files without additional concessions from WMI.

- Other corporate officers: We identified Frank Bisignano as a potential custodian. JPMC stated that as is a very senior individual, he would have been consulted but that he was not involved in the day to day of Project West.

JPMC reiterated its position that it is WMI's responsibility to return to JPMC with reasons why additional custodians would be relevant to a 2004 examination. Although JPMC indicated it might be willing to search some of these additional custodians, it would not agree to do so at this time. Moreover, JPMC did not attempt to contact each of the individuals identified on either WMI's list of relevant custodians or on the Project West list to personally determine whether such individuals were in possession of responsive documents.

WMI again indicated that it would bring a motion to compel JPMC to produce additional information regarding custodians, including production from the 33 custodians identified by WMI in its November 25, 2009 letter to JPMC. JPMC requested that WMI provide yet another list of custodians, which it said it would be willing to discuss without committing to any production. However, WMI still believes that the list it previously sent to S&C, included as an attachment to this letter again, is a reasonable list of those people WMI can identify as having relevant documents.

Search Terms

WMI asked if JPMC would disclose the search terms it used in its production to date. JPMC stated that it did not believe it was legally required to disclose search terms used to date, but that it would consider WMI's request for such search terms if WMI agreed to additional concessions such as agreeing to a discrete list of additional custodians for supplemental production. Nevertheless, JPMC reiterated that it would not disclose its search terms at this time.

CONFIDENTIALITY STIPULATION

WMI asked if JPMC would be disclosing documents withheld on the basis of third party confidentiality now that the confidentiality agreement was being executed and especially given the FDIC and the OTS's agreement to the confidentiality stipulation in the adversary proceeding. JPMC stated that it planned to produce a privilege log detailing documents withheld on December 22, 2009. Notwithstanding the confidentiality agreement, JPMC would not commit to a production of documents withheld on the basis of confidentiality of third parties.

Very truly yours,

Erica Taggart

Erica Taggart

Attachment A

PROJECT WEST TEAM LEADERS		
	Name	**Title**
1	Althea L Duersten	Managing Director – Chief Investment Office
2	Barry L Zubrow	Chief Risk Officer – Credit Dept
3	Benjamin Lopata	Managing director – Tax Dept
4	Brian A Bessey	Corp -M&A Dept
5	Charlie Scharf	EVP/CEO - CEO Chase Retail Financial Services
6	David B Lowman	CEO – Home Lending Dept
7	Douglas Braunstein	Head of Americas IBC and M&A
8	Fernando Rivas	Managing Director IB-FIG
9	Frank J Bisignano	Chief Administrative Officer
10	Gordon Smith	CEO- Card Service Dept
11	Gregg B Gunselman	Executive Director – IB-FIG
12	Jay Mandelbaum	EVP/ Strategy & Development Exec – Admin Dept
13	John F Bradley	HR Director
14	John R Chrin	Managing Director (IB-FIG)
15	Kevin Watters	SVP/Business Banking Executive
16	Louis Rauchenberger	MD & Corporate Controller – Accounting Dept
17	Martha Gallo	General Auditor– Accounting Dept
18	Mike Cavanagh	EVP/CFO
19	Neila Radin	Legal Compliance
20	Raymond Fischer	CFO – LOB
21	Sally E Durdan	EVP/Corporate Finance Executive – Retail Admin Dept
22	Scott E Powell	Branch Banking
23	Stephen M Cutler	General Counsel
24	Thomas D. Novack	Managing Director IB-FIG
25	Tim Main	Head of NA FIG
26	Tod Gordon	Managing Director, Treasury
27	Todd Maclin	Head, Commercial Banking (Real Estate)
28	William King	Former IB Executive
ADDITIONAL RELEVANT PEOPLE		
25	Adam Gilbert	Managing Director
26	Brian Keegan	Managing Director - CSAS
27	Dan Cooney	SVP / General Counsel
28	Genevieve E Hovde	Analyst IB-FIG
29	Jamie Dimon	JPMC CEO
30	Joseph Evangelisti	Corporate Communications and Media Relations
31	Scott Albinson	JPMC banker
32	Sean Carmody	Associate IB-FIG
33	Tim Main	Head of NA FIG
34	Tom Kelly	Corporate Communications and Media Relations

Sargent Declaration

Exhibit 2

Edgar G. Sargent

From: Edgar G. Sargent
Sent: Wednesday, June 09, 2010 12:40 PM
To: 'Glueckstein, Brian D.'; Friedman, Stacey
Cc: Gregory Taylor (Ashby & Geddes)
Subject: RE: JPMC Requests

I still don't get it, but I guess we can discuss on the call. My apologies if we made an incorrect representation to the Court and if it seems material, we will correct it. Is the distinction between an investigation into JPMC (didn't happen) and an investigation into JPMC's conduct (may have happened)?

From: Glueckstein, Brian D. [mailto:gluecksb@sullcrom.com]
Sent: Wednesday, June 09, 2010 12:37 PM
To: Edgar G. Sargent; Friedman, Stacey
Cc: Gregory Taylor (Ashby & Geddes)
Subject: RE: JPMC Requests

Thanks, Edgar. We look forward to hopefully wrapping this up today as well.

Let's discuss #7 on our call.

As for #6, I do think there are important differences between what we represented and your language. We explained the difference during our meet and confer on Monday, and immediately corrected your email Monday night – well before the Equity Committee used your language in representations to the Court. But to be clear, here is our position set forth in writing. The failure of WaMu has been investigated. For example, it is public record that in October 2008 the U.S. Attorney's office set up a task force to look into the bank's failure. It is public record that this task force included investigators from the FBI, Federal Deposit Insurance Corporation Office of Inspector General, Securities and Exchange Commission and the IRS. The PSI hearings and other investigations are also public record. The point here is simple. After every rock has be turned over, no one except for some plaintiffs from Galveston, Texas (whose complaint has been dismissed, with prejudice) has pursued JPMC. There is no government investigation of JPMC related to its acquisition of the assets of WMB because after almost 21 months of multitudes of government and congressional investigations into the causes of WMB's failure, it is clear that JPMC was not a cause of the bank's failure and JPMC did nothing wrong.

I look forward to speaking with you shortly.

Thanks,
Brian

From: Edgar G. Sargent [mailto:esargent@SusmanGodfrey.com]
Sent: Wednesday, June 09, 2010 2:04 PM
To: Glueckstein, Brian D.; Friedman, Stacey
Cc: Gregory Taylor (Ashby & Geddes)
Subject: RE: JPMC Requests

Look forward to getting this wrapped up today, or at least crystallizing our areas of disagreement.

I don't understand how the second sentence of your email is different from my #6.

On #7, I've limited it to upset persons who included relevant allegations in pleadings. Are there really a significant number of foreclosure actions that meet that definition? I'm stymied about how to narrow this any further and still get what we are looking for. Do you have any suggestions that would eliminate the things you are worried about? This seems like a silly one to take to the Court, but as a general matter I think it makes a lot of sense for us to take advantage of any discovery that's been done in any other cases, so I really would like to keep something like this in the requests.

Okay on the rest of your email.

Talk to you in a couple of hours.

Edgar

From: Glueckstein, Brian D. [mailto:gluecksb@sullcrom.com]
Sent: Monday, June 07, 2010 7:25 PM
To: Edgar G. Sargent; Friedman, Stacey
Cc: Gregory Taylor (Ashby & Geddes)
Subject: RE: JPMC Requests

Edgar,

Thanks for your email. We generally agree with your summary of today's discussion but please note the following: in your point # 6, we confirmed that we are aware of no government investigation of JPMC related to its acquisition of the assets of WMB. In #7, your redraft appears to suffer from the same problem as the original draft in that it could be interpreted so broadly as to include any person upset about their WaMu mortgage. That

request needs to be more narrowly tailored. In #10, as discussed, there are no non-privileged drafts of the e-discovery protocol other than any contained in the correspondence between counsel for Debtors and counsel for JPMC, which you have (or is available from Debtors). Finally, as I wrote in my earlier email, we view the following requests as being previously covered by Debtors' Rule 2004 requests, to which JPMC searched for and produced responsive documents: 6, 10, 14, 15, 18, 24, 25, 26, 27, 29, 36, 37, 39, 54, and 64.

We will speak to our client on the other issues as discussed, and will get back to you promptly.

Thanks,
Brian

From: Edgar G. Sargent [mailto:esargent@SusmanGodfrey.com]
Sent: Monday, June 07, 2010 9:19 PM
To: Edgar G. Sargent; Friedman, Stacey
Cc: Gregory Taylor (Ashby & Geddes); Glueckstein, Brian D.
Subject: RE: JPMS Requests

Brian and Stacey,
Here's my understanding of where we are after today's call.

1. At your suggestion, we narrowed the document request in our recent Rule 2004 motion by selecting a number of individual requests to discuss as an initial matter. The list of those requests is in the initial email in this string, below. We made it clear that we are not waiving our right to seek documents called for by the remaining requests at a later time. You are reserving JPMC's right to object to any follow up request for any reason, including that we should not be permitted to keep coming back to JPMC for additional documents.

2. For Request No. 2, you indicated that the only documents JPMC has produced in the Texas litigation, either of the adversary proceedings, or the DC litigation are the approximately 40,000 pages provided to the Debtors in response to their Rule 2004 requests.

3. For Requests No. 3 and 4, you will take one more look at the language in these requests, but believe you are

producing all non-privileged documents called for by these requests. In particular, you will be producing all correspondence with third-parties related to the settlement or negotiations leading to the settlement. We asked for a privilege log of the items being withheld. You indicated that JPMC would not agree to log internal correspondence. This category includes any email on which the to/from/cc/bcc names are all attorneys at Sullivan and Cromwell or another firm representing JPMC and I said we agree such docs need not be logged. You will provide me with a more specific description of any other categories of internal privileged material. I indicated that we would likely object to a refusal to log settlement related documents on which the to and from names are all JPMC employees (i.e. no outside counsel on the 'to' or 'from' lines.)

3. For the following requests, you indicated that you believe the Rule 2004 production JPMC made to the Debtors provides a complete or near-complete response: 6, 10, 14, 15, 18, 24-27, 29, 36, 37, 54. I said that I would review the meet and confer correspondence between your firm and Debtors' counsel to learn more about how documents for this production were located. After I've done that, I will come back to you with any follow up requests or requests for additional clarification about the scope of the search.

4. We agreed to interpret Request 29 as calling for all valuations of WaMu assets generated up to the moment of closing on September 25, 2008. With that understanding, you indicated that JPMC's Rule 2004 production to the Debtors contains JPMC's response to this request.

5. We agreed to at least tentatively treat Requests 30 and

31 as seeking documents sufficient to show the basis for the value of assets acquired from Washington Mutual as they were first booked by JPMC and also sufficient to show the basis for any allocation of the purchase price that was performed by JPMC's accounting department. You will investigate the possibility of obtaining such documents from your client. I will confirm that my client and other attorneys on my team have no concerns about this limitation on the scope of these requests.

6. With regard to Request 39, you indicated that as far as you and your client are aware, no government body has opened any investigation into JPMC's conduct related to its acquisition of Washington Mutual assets.

7. I agreed to formulate a more specific statement of the type of lawsuit about which we are seeking information in Request 40. Let me know if this works: "All documents concerning any lawsuit or other legal action in which any of the pleadings contain allegations that JPMC breached any contract or committed any tortious or otherwise legally redressable act in conjunction with its acquisition of the assets of WMB."

8. With regard to No. 53, you indicated that there was never a draft or final schedule of assets prepared in conjunction with JPMC's acquisition of assets of WMB. You objected to the request as written ("identify in detail all assets") as either being too vague or too burdensome, given the size of this acquisition. I suggested that, at least as an initial compromise, we would be willing to agree to see a list of assets at the level of detail in which they are maintained in JPMC's internal accounting systems. You agreed to investigate this possibility and get back to me.

9. For requests Number 57 (discovery requests in litigation) and 58 (meet and confer correspondence and agreements) you expressed a very strong preference that we seek this material from the Debtors rather than JPMC. I agreed that we would do so with respect to No. 57. I said I was concerned that the Debtors' production to us of meet and confer material might not be complete and you indicated that you would consider reviewing a list of the documents we obtained from the Debtors and searching for any additional material you may have. You agreed to provide us with a copy of the initial pleading in the Texas action which contained some discovery requests (and I now see an email from you attaching that document, thanks.)

10. The e-discovery protocol (No. 60) should be contained in the meet and confer correspondence produced to us by the Debtors. We ask that you search for any drafts not contained in the correspondence we have and you indicated that you would consider this request.

11. You have now provided us with a copy of the Information Access Agreement (No. 61.)

12. You object to No. 64 as being inflammatory and vague (?). Your client's position is that no documents responsive to this request exist. To the degree that the request seeks communications between JPMC and third parties concerning Washington Mutual in the six month period before acquisition, JPMC's Rule 2004 production contains your client's response.

Let me know if I missed anything or got anything wrong.

Thanks for the cooperative approach to this process.

Edgar

From: Edgar G. Sargent
Sent: Monday, June 07, 2010 12:08 PM
To: Friedman, Stacey
Cc: Gregory Taylor (Ashby & Geddes); Glueckstein, Brian D.
Subject: Re: JPMS Requests

Cool. I assume that means he's got the authority to make decisions for JPMC so we can make some real progress. If not, please let me know.

Edgar Sargent
Susman Godfrey
206-516-3895
206-769-9039 (c)

On Jun 7, 2010, at 12:00 PM, "Friedman, Stacey" <FriedmanS@sullcrom.com> wrote:

> I'm copying Brian who is taking the lead on this. Thanks.
>
> **From:** Edgar G. Sargent [mailto:esargent@SusmanGodfrey.com]
> **Sent:** Monday, June 07, 2010 2:58 PM
> **To:** Friedman, Stacey; Gregory Taylor (Ashby & Geddes)
> **Subject:** JPMS Requests
>
> **Stacey,**
> **Here are the numbers of the requests that we'd like to address on the call:**
> **2-4, 6, 10, 14, 15, 18, 24-27, 29-31, 36, 37, 39, 40, 53, 54, 57-61, 64.**
> **Talk to you in a few hours,**
> **Edgar**
>
>

EXHIBIT B

Bloomberg.com

JPMorgan's WaMu Windfall Turns Bad Loans Into Income (Update2)

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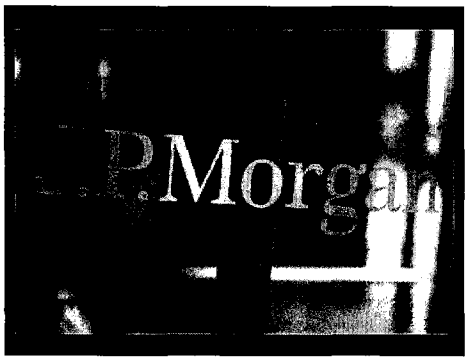
By Ari Levy and Elizabeth Hester



May 26 (Bloomberg) -- **JPMorgan Chase & Co.** stands to reap a $29 billion windfall thanks to an accounting rule that lets the second-biggest U.S. bank transform bad loans it purchased from Washington Mutual Inc. into income.

Wells Fargo & Co., **Bank of America Corp.** and **PNC Financial Services Group Inc.** are also poised to benefit from taking over home lenders Wachovia Corp., Countrywide Financial Corp. and National City Corp., regulatory filings show. The deals provide a combined $56 billion in so-called accretable yield, the difference between the value of the loans on the banks' balance sheets and the cash flow they're expected to produce.

Faced with the highest **U.S. unemployment** in 25 years and a surging **foreclosure rate**, the lenders are seizing on a four- year-old rule aimed at standardizing how they book acquired loans that have deteriorated in credit quality. By applying the measure to mortgages and commercial loans that lost value during the worst financial crisis since the Great Depression, the banks will wring revenue from the wreckage, said **Robert Willens**, a former Lehman Brothers Holdings Inc. executive who runs a tax and accounting consulting firm in New York.

"It will benefit these guys dramatically," Willens said. "There's a great chance they'll be able to record very substantial gains going forward."

JPMorgan rose $2.13, or 6.2 percent, to $36.54 at 4 p.m. in New York Stock Exchange composite trading. Wells Fargo gained 1.3 percent to $25.65 and PNC Financial climbed 5 percent to $43.25. Bank of America fell 9 cents to $10.98.

Purchase Accounting

When **JPMorgan** bought WaMu out of receivership last September for $1.9 billion, the New York-based bank used purchase accounting, which allows it to record impaired loans at fair value, marking down $118.2 billion of assets by 25 percent. Now, as borrowers pay their debts, the bank says it may gain $29.1 billion over the life of the loans in income before taxes and expenses.

The purchase-accounting rule, known as Statement of Position 03-3, provides banks with an incentive to mark down loans they acquire as aggressively as possible, said **Gerard Cassidy**, an analyst at RBC Capital Markets in Portland, Maine.

"One of the beauties of purchase accounting is after you mark down your assets, you accrete them back in," Cassidy said. "Those transactions should be favorable over the long run."

JPMorgan bought WaMu's deposits and loans after regulators seized the Seattle-based thrift in the biggest bank failure in U.S. history. JPMorgan took a $29.4 billion writedown on WaMu's holdings,

mostly for option adjustable-rate mortgages and home- equity loans.

'Price Judgment'

"We marked the portfolio based on a number of factors, including housing-price judgment at the time," said JPMorgan spokesman **Thomas Kelly**. "The accretion is driven by prevailing interest rates."

JPMorgan said first-quarter gains from the WaMu loans resulted in $1.26 billion in interest income and left the bank with an accretable-yield balance that could result in additional income of $29.1 billion.

The difference in accretable yield from bank to bank is due to the amount of impaired loans, the credit quality of the acquired assets and the state of the economy when the deals were completed. Rising and falling interest rates also affect accretable yield for portfolios with adjustable-rate loans.

It's difficult to gauge how much the yield will add to total revenue because banks don't disclose the expenses that chisel away at the figure. The income is also booked over the life of the loans, rather than in a lump sum, and banks don't spell out how long that is, Willens said.

Wachovia ARMs

Wells Fargo arranged the $12.7 billion purchase of Wachovia in October, as the Charlotte, North Carolina-based bank was sinking from $122 billion in option ARMs. As of March 31, San Francisco-based Wells Fargo had marked down $93 billion of impaired Wachovia loans by 37 percent. The expected cash flow was $70.3 billion.

The Wachovia loans added $561 million to the bank's **first- quarter interest income**, leaving Wells Fargo with a remaining accretable yield of almost $10 billion.

Government efforts to reduce **mortgage rates** and stabilize the **housing market** may make it easier for borrowers to repay loans and for banks to realize the accretable yield on their books. With mortgage rates below 5 percent, originations surged 71 percent in the first quarter from the fourth, a pace that may accelerate during 2009, said **Guy Cecala**, publisher of Inside Mortgage Finance in Bethesda, Maryland.

Recapturing Writedowns

Wells Fargo, the biggest U.S. mortgage originator, doubled home loans in the first quarter from the previous three months, in part through refinancing Wachovia loans.

"To the extent that the customers' experience is better or we can modify the loans, and the loans become more current, that could help recapture some of the writedown," Wells Fargo Chief Financial Officer **Howard Atkins** said in an April 22 interview.

Banks still face the risk that defaults may exceed expectations and lead to further writedowns on their purchased loans. **Foreclosure filings** in the U.S. rose to a record for the second straight month in April, climbing 32 percent from a year earlier to more than 342,000, data compiled by Irvine, California-based RealtyTrac Inc. show.

The companies bought by Wells Fargo, JPMorgan, **PNC** and **Bank of America** were among the biggest lenders in states with the highest foreclosure rates, including California, Florida and Ohio. Housing prices tumbled the most on record in the first quarter, leaving an increasing number of borrowers owing more in mortgage payments than their homes are worth, according to Zillow.com, an online property data company.

Accretable Yield

"We've still got a lot of downside to work through this year and probably through at least part of next," said **William Schwartz**, a credit analyst at DBRS Inc. in New York. "If I were them, I wouldn't be claiming any victory yet."

PNC closed its $3.9 billion acquisition of National City on Dec. 31, after the Cleveland-based bank racked up more than $4 billion in losses tied to subprime loans. **PNC**, based in Pittsburgh, marked down $19.3 billion of impaired loans by 38 percent, or $7.4 billion, and said it expected to recoup half of the

writedown. After gaining $213 million in interest income in the first quarter and making some adjustments, the company has an accretable-yield balance of $2.9 billion.

"We're just being prudent," PNC Chief Financial Officer **Richard Johnson** said in a May 19 interview.

'Huge Cushion'

Johnson said he expects the entire accretable yield to result in earnings. The company has taken into "consideration everything that can go wrong with the economy," he said.

Bank of America, the biggest U.S. bank by assets, has potential purchase-accounting income of $14.1 billion, including $627 million of gains from Merrill Lynch & Co. and the rest from Countrywide. Bank of America bought subprime lender Countrywide in July, two months before the financial crisis forced Lehman Brothers into bankruptcy and WaMu into receivership.

As market losses deepened, Bank of America had to reduce the returns it expected the impaired loans to produce from an original estimate of $19.6 billion.

"The Countrywide marks in hindsight weren't nearly as aggressive," said **Jason Goldberg**, an analyst at Barclays Capital in New York, who has "equal weight" investment ratings on Bank of America and PNC and "overweight" recommendations for Wells Fargo and JPMorgan.

Bank of America spokesman **Jerry Dubrowski** declined to comment.

The discounted assets purchased by **JPMorgan** and **Wells Fargo** make the stocks more attractive because they will spur an acceleration in profit growth, said **Chris Armbruster**, an analyst at Al Frank Asset Management Inc. in Laguna Beach, California.

"There's definitely going to be some marks that were taken that were too extreme," said Armbruster, whose firm oversees about $375 million. "It gives them a huge cushion or buffer to smooth out earnings."

To contact the reporters on this story: **Ari Levy** in San Francisco at **alevy5@bloomberg.net**; **Elizabeth Hester** in New York at **ehester@bloomberg.net**.

Last Updated: May 26, 2009 16:21 EDT

Related Videos

● **Watch**

Nomura's Peace on Banks
May 26 (Bloomberg) -- Jon Peace, an analyst at Nomura Holdings Inc., talks with Bloomberg's Mark Barton about his preference for investing in wholesale banks over commercial banks. Peace, speaking in London, also discusses the outlook for Deutsche Bank AG.

● **Watch**

Wells Fargo's Atkins Interview on April 22
April 22 (Bloomberg) -- Howard Atkins, chief financial officer at Wells Fargo & Co., talks with Bloomberg's Margaret Popper about the bank's first-quarter profit. The second-biggest U.S. lender by market value said profit rose 53 percent as borrowers rushed to refinance mortgages and the lender put aside enough money to cover at least a year of loan losses.