

# **EXHIBIT D**

1           IN THE UNITED STATES COURT OF FEDERAL CLAIMS

2           - - - - - X

3           FAIRHOLME FUNDS, INC, et al., :

4           Plaintiffs, :

5                   v.                   : Case No. 13-465C

6           THE UNITED STATES, :

7           Defendant.                   :

8           - - - - - X

9                                   Washington, D.C.

10                                  Friday, May 15, 2015

11                   CONFIDENTIAL - PROTECTED INFORMATION TO BE

12           DISCLOSED ONLY IN ACCORDANCE WITH PROTECTIVE ORDER

13                   Videotaped Deposition of MARIO UGOLETTI, a  
14           witness herein, called for examination by counsel for  
15           Plaintiffs in the above-entitled matter, pursuant to  
16           notice, the witness being duly sworn by AMANDA  
17           BLOMSTROM, a Notary Public in and for the District of  
18           Columbia, taken at the offices of Cooper & Kirk,  
19           1523 New Hampshire Avenue NW, Washington, D.C., at  
20           9:34 a.m., Friday, May 15, 2015, and the proceedings  
21           being taken down by Stenotype by AMANDA BLOMSTROM,  
22           CRR/RMR/CLR/CSR, and transcribed under her direction.

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

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

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1 those options were. So it was not a -- there was not  
 2 a plan for them that I -- that I saw. So consistency  
 3 with a plan, no.  
 4 MR. THOMPSON: Ms. Hosford, I'm happy to  
 5 keep going, but we've kind of got into a natural  
 6 break point in my questioning. So I don't know if  
 7 you want to take lunch now or ...  
 8 MS. HOSFORD: Well, we had talked about  
 9 12:45, but if Mr. Ugoletti is fine with lunch now,  
 10 then I am fine with lunch now.  
 11 THE WITNESS: I'm a little hungry.  
 12 MR. THOMPSON: Okay. So we're off the  
 13 record.  
 14 THE VIDEOGRAPHER: We're off the record.  
 15 The time on the video is 12:30 p.m.  
 16 (Recess taken.)  
 17 THE VIDEOGRAPHER: We're back on the  
 18 record. The time on the video is 1:34 p.m.  
 19 BY MR. THOMPSON:  
 20 Q. Now, sir, welcome back.  
 21 A. Thank you.  
 22 Q. And wanted to do, to do a little bit of

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

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

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

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

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

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

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1 PIK are you talking about?  
 2 BY MR. THOMPSON:  
 3 Q. Do you want me to repeat the question?  
 4 A. Yeah, that would be good.  
 5 Q. Yeah, yeah.  
 6 Was the option of preserving the funding  
 7 commitment --  
 8 A. Yeah.  
 9 Q. -- by having the companies pay a  
 10 12 percent payment-in-kind dividend, was that  
 11 something that was discussed at FHFA, you know, in  
 12 the leadup to the Net Worth Sweep?  
 13 A. Not that I recall and for the reasons that  
 14 we talked about. I mean, one of them was the basic  
 15 10 percent versus 12 percent, that it just -- that  
 16 had been -- unless there was some economic aspect  
 17 that would make that an economic transaction, it  
 18 wasn't even part of the discussion.  
 19 So that's -- that's one that I would point  
 20 to at FHFA. So it really wasn't -- it just never was  
 21 on the table.  
 22 Q. Okay. Now, when you -- you've stated

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

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1 MS. HOSFORD: No. I instructed you not to  
 2 answer.  
 3 THE WITNESS: I've been instructed not to  
 4 answer.  
 5 BY MR. THOMPSON:  
 6 Q. Okay. But -- but just, let me -- was that  
 7 a phrase that you came up with, with -- wholly apart  
 8 from what the lawyers told you to say, was that a  
 9 phrase you came up with?  
 10 Now, if you can't answer, you can't  
 11 answer.  
 12 MS. HOSFORD: Objection; calls for  
 13 attorney-client privileged discussions.  
 14 I instruct you not to answer.  
 15 BY MR. THOMPSON:  
 16 Q. So I don't want to know anything about  
 17 what the lawyers told you, okay? But did you  
 18 independently come up with that?  
 19 MS. HOSFORD: You may answer.  
 20 THE WITNESS: I may answer?  
 21 I had another word that was similar.  
 22 BY MR. THOMPSON:

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

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

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

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

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1 after the Net Worth Sweep, it was less likely they  
 2 were going to be rehabilitated because they weren't  
 3 going to be able to rebuild capital; isn't that  
 4 right?  
 5 A. I don't generally believe that because the  
 6 solution to this whole issue all along, in my view,  
 7 needed to be a legislative solution. So if the  
 8 Congress of the United States says, you know, this is  
 9 all that's happened, this is all the draws, this is  
 10 all the dividends, this is everything that happened,  
 11 and we think Fannie Mae and Freddie Mac should be  
 12 rehabilitated under this structure, and this is the  
 13 housing system that we want for the next 30 years,  
 14 you have a good chance to do that.  
 15 Q. Well, but, wait a minute, when you -- when  
 16 the, when the Net Worth Sweep was entered into, you  
 17 knew that because the companies were going to have  
 18 the capital taken out of them, that when Congress  
 19 eventually turned to this situation, they're going to  
 20 be looking at two companies with no capital?  
 21 MS. HOSFORD: Objection. Can you tell me  
 22 where in the Court's order this type of questioning

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1 is authorized. It seems beyond the scope of the  
 2 Court's order. I'm going to direct him not to answer  
 3 unless you can find --  
 4 MR. THOMPSON: Let me --  
 5 MS. HOSFORD: -- you can persuade me.  
 6 MR. THOMPSON: Let me try to tie this to  
 7 the Court's order.  
 8 BY MR. THOMPSON:  
 9 Q. Do you know whether Treasury wanted to  
 10 ensure that these companies did not reemerge well  
 11 capitalized in the form that they had had before  
 12 2008?  
 13 MS. HOSFORD: Objection; calls for  
 14 speculation.  
 15 THE WITNESS: Well, I'll speculate on  
 16 that. I think Treasury had been pretty clear that  
 17 they -- I mean, they were pretty clear all along from  
 18 a legislative perspective that they wanted to see a  
 19 wind-down and they wanted to see a new housing  
 20 finance structure. I think Secretary Paulson was  
 21 clear before that.  
 22 BY MR. THOMPSON:

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1 Q. And was that an objective that FHFA  
 2 shared?  
 3 A. FHFA also believed, and I think Director  
 4 DeMarco said this many times, the, the strategic  
 5 plan, the second strategic plan was the next chapter  
 6 in a story that needs an ending, right. The ending  
 7 was for Congress to pass legislation. The ending was  
 8 not for Fannie and Freddie Mac to emerge from  
 9 conservatorship.  
 10 Q. And did the Net Worth Sweep further that  
 11 goal?  
 12 MS. HOSFORD: Objection; calls for  
 13 speculation.  
 14 THE WITNESS: I'll speculate. And, and  
 15 the speculation I will give you is the answer I gave  
 16 you not that long ago which was, emerging from  
 17 conservatorship under the structure of the PSPAs is  
 18 going to be very difficult, right. And we can  
 19 recall, and we can go through that whole process  
 20 again where, if they were going to emerge from  
 21 conservatorship, they would have to go out and raise  
 22 private equity of a hundred and 87.5 billion total

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1 and whatever the two were split up, 116 and 75.  
 2 Raise private equity. Pay off the liquidation  
 3 preference. Raise enough private equity to be able  
 4 to dilute the 79,9 warrants from Treasury and raise  
 5 enough private equity to do all that and become a  
 6 well-capitalized institution under regulatory  
 7 standards that, by the way, had changed fundamentally  
 8 from when HERA was passed, because I would think in  
 9 any corner of the world, if they were going to be in  
 10 any corner of the United States, if there was going  
 11 to be companies these -- this large, they were likely  
 12 going to be systemically important financial  
 13 institutions under Dodd-Frank and they were going to  
 14 have to hold capital well in excess of anything that  
 15 HERA or at least that pre-HERA envisioned, well in  
 16 excess in anything of that. So the, the amount would  
 17 have been huge.  
 18 And the PSPAs also have a provision that,  
 19 given that, they don't go away. If you exit  
 20 conservatorship under the PSPAs as, as you were  
 21 before, the financial commitment from Treasury goes  
 22 with you. That's, that's how it works. And so there

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1 was a provision in there that even if, even if they  
 2 did all those things I talked about, and FHFA finally  
 3 put the stamp of approval on them and said, By God,  
 4 you did it, you've made the capital, you raised all  
 5 that money, and even if we had the SIFI standard, you  
 6 would meet it, and the Federal Reserve won't have to  
 7 supervise you, Treasury still has to approve them  
 8 coming out of conservatorship because it's still the  
 9 financial backing of the PSPAs goes with them.  
 10 So did the third amendment change any of  
 11 that stuff? No. Very little.  
 12 MR. THOMPSON: Now, Ugoletti 29 has a  
 13 Bates number of FHFA 103596.  
 14 (Exhibit No. 29 marked.)  
 15 MS. HOSFORD: Mr. Thompson, would it be  
 16 okay if we took a, like a three-minute break?  
 17 MR. THOMPSON: Sure.  
 18 THE VIDEOGRAPHER: This concludes Disk  
 19 No. 3 in the video deposition of Mario Ugoletti. The  
 20 time on the video is 4:44 p.m. We are off the  
 21 record.  
 22 (Recess taken.)

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1 THE VIDEOGRAPHER: This begins Disk No. 4  
 2 in the video deposition of Mario Ugoletti. The time  
 3 on the video is 4:53 p.m. We are on the record.  
 4 MS. HOSFORD: Counsel, a question: What  
 5 is this document that you've handed us?  
 6 MR. THOMPSON: Oh, yeah. So your  
 7 colleague had requested something that was verifiable  
 8 with a URL. The prior screenshot we gave you, I  
 9 believe, was from Bloomberg, and that's not --  
 10 there's no URL, you have to be a subscriber; so we  
 11 wanted to give you something that had an Internet  
 12 source for the same information. We've given you a  
 13 CNN.com, we could also give you a Google Finance if  
 14 you want.  
 15 MS. HOSFORD: But how does this document  
 16 relate to this document?  
 17 MR. THOMPSON: It's the same information.  
 18 MS. HOSFORD: How did this document get  
 19 created then? Is this a screenshot from the same  
 20 site as this?  
 21 MR. THOMPSON: It's, it's -- it's stock  
 22 price information, so you could get it from Google

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1 Finance, you could get it from CNN, you can get it  
 2 from Bloomberg. So your colleague requested a URL,  
 3 there is no URL for Bloomberg, it's a proprietary  
 4 service, so what we're instead giving you is the  
 5 information.  
 6 MS. HOSFORD: All right.  
 7 MR. THOMPSON: We're trying to be helpful.  
 8 If it's not helpful, I apologize, and you can  
 9 disregard it.  
 10 MS. HOSFORD: But I don't understand, I  
 11 mean, there's different dates, different data, how --  
 12 there seems to be no relationship between this and  
 13 this except --  
 14 MR. THOMPSON: Other than it's the same  
 15 stocks, and the one that you have in your right hand  
 16 is inclusive of all the information in your left  
 17 hand.  
 18 MS. HOSFORD: So but why did you not --  
 19 why did you not give us a URL for this one?  
 20 MR. THOMPSON: It doesn't exist.  
 21 MS. HOSFORD: Well, how --  
 22 MR. THOMPSON: It's not available on the

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1 Internet. You have to pay Bloomberg, and so I can't  
 2 give you a URL for it.  
 3 MS. HOSFORD: Oh, so you're trying to --  
 4 MR. THOMPSON: I'm trying to be helpful.  
 5 Your colleague said, We'd like something we could  
 6 verify. So I tried to give you something that was  
 7 verifiable.  
 8 MS. HOSFORD: So you're trying to give me  
 9 something that, that --  
 10 MR. THOMPSON: Verifies the information  
 11 that we provided to the witness in a way --  
 12 MS. HOSFORD: Or this has some of the same  
 13 information. It's not verifying this.  
 14 MR. THOMPSON: It has all of the same  
 15 information. And if it's not helpful, I apologize.  
 16 We weren't obligated to do this. We did it in a  
 17 spirit to try to be helpful.  
 18 Was it helpful to you, Mr. Dintzer?  
 19 MR. DINTZER: No, actually, it wasn't.  
 20 But, I mean, I -- you hand -- you handed something to  
 21 the witness, and you represent it's whatever --  
 22 actually, it doesn't even represent, you said it

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

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

14 BY MR. THOMPSON:  
15 Q. And, I'm sorry, so -- so why were they --  
16 why was there a renewed push?

17 MS. HOSFORD: Objection; asked and  
18 answered.

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

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

6 MR. THOMPSON: Okay. This next one is  
7 going to be Ugoletti 30. It has a Bates number of  
8 FHFA 102247.  
9 (Exhibit No. 30 marked.)

10 BY MR. THOMPSON:  
11 Q. So the top email is from Ms. Tagoe to you  
12 and to others, August 9th, 2012. And at the bottom  
13 is an email from a reporter with the American Banker.  
14 And this reporter, Mr. Horwitz, says in the second  
15 sentence of his email "It looks like the GSEs are  
16 vastly outperforming even the most optimistic outcome  
17 listed."  
18 Was that true; were they "vastly  
19 outperforming even the most optimistic outcome  
20 listed"?  
21 A. I'm not going to parse adjectives here in  
22 terms of "vastly," or whatever, but they were. I

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

7 Q. Okay.  
8 A. So, I mean, that's ...  
9 Q. Now, Treasury had experience with  
10 writing --  
11 A. Are you done with this?  
12 Q. Yes, sir.  
13 -- had experience with writing up deferred  
14 tax assets insofar as earlier in 2012, were you aware  
15 that Treasury had written back up AIG's deferred tax  
16 assets?

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

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

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1 MS. HOSFORD: Objection; speculative, and  
2 it has nothing to do with this case.  
3 You may answer.  
4 THE WITNESS: No.  
5 BY MR. THOMPSON:  
6 Q. Okay. FHFA reviewed Fannie and Freddie's  
7 10-Ks and 10-Qs; is that right?  
8 A. That is correct.  
9 Q. Okay.  
10 This next one is going to be Ugoletti 31.  
11 It has a Bates number of FHFA 3584 through 3738.  
12 (Exhibit No. 31 marked.)

13 BY MR. THOMPSON:  
14 Q. We have -- this is the 10-Q -- we have  
15 produced select pages. If you or DOJ wants the full  
16 400 pages, we can print it out.  
17 MS. HOSFORD: I'm just going to object  
18 that this is not going to represent the full  
19 document; and to the extent that Mr. Ugoletti  
20 attempts to interpret any information in this  
21 document, it will not be reliable.  
22 BY MR. THOMPSON:

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1 Q. Now, sir, if we look at this document and  
2 you turn to page -- it's hard to read, but --  
3 A. That's why I have my glasses.  
4 Q. -- 3737, "Deferred Taxes Asset, Net," it  
5 says "Our valuation allowance decreased by  
6 \$989 million to \$34.7 billion during the six months  
7 ended June 30, 2012 primarily due to a decrease in  
8 deferred tax assets. After consideration of the"  
9 value "allowance, we had a net deferred tax asset of  
10 \$3.1 billion, primarily representing the tax effect  
11 of unrealized losses on our available-for-sale  
12 securities. We continue to be in a tax loss  
13 carryforward position."  
14 This reflects the fact that the companies  
15 were, in fact, decreasing their valuation allowance  
16 right on the eve of the Net Worth Sweep; isn't that  
17 right?  
18 MS. HOSFORD: Objection; lack of  
19 foundation, assumes facts not in evidence.  
20 THE WITNESS: I'm not the accounting  
21 expert here on -- on how -- how the deferred tax  
22 asset is -- how the valuation allowance is

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1 constructed, but there may be, in my recollection,  
2 that there are some portions of it that have  
3 different rules than other portions of it, but my  
4 under- -- my recollection was that when you make a  
5 determination, it is closer to an all-or-nothing  
6 determination for certain portions of it, for the  
7 large portion of it. But that's -- I'm not an  
8 accounting expert.  
9 BY MR. THOMPSON:  
10 Q. But FHFA would have been aware that the  
11 valuation allowance was, in fact, being reduced by  
12 989 million?  
13 A. Yeah, but --  
14 MS. HOSFORD: Objection; lack of  
15 foundation, calls for speculation.  
16 THE WITNESS: Right, and it doesn't say  
17 why it was being reduced there. I -- I don't know  
18 what portion of the rules in the deferred tax asset  
19 world that portion of the valuation allowance was  
20 being decreased by.  
21 I don't know, maybe some of them expired,  
22 couldn't use them anymore. I -- I don't know. I

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

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

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

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

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

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1 thinking is on it.  
 2 BY MR. THOMPSON:  
 3 Q. And what was the --  
 4 A. My -- my --  
 5 Q. What was the thinking of Fannie Mae on --  
 6 MS. HOSFORD: Objection.  
 7 BY MR. THOMPSON:  
 8 Q. -- July 26, 2012?  
 9 MS. HOSFORD: Lack of foundation, calls  
 10 for speculation.  
 11 THE WITNESS: I do not know what Fannie  
 12 Mae's thinking was on July 26th. I was not part of  
 13 this meeting. I did not really hear much about this  
 14 issue until January or early February of the next  
 15 year when the first quarter results were about to  
 16 come out.  
 17 BY MR. THOMPSON:  
 18 Q. And they wanted to reverse the valuation  
 19 allowance?  
 20 A. That's right.  
 21 Q. You have said that the conservator did not  
 22 envision that the deferred tax assets were going to

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

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1 Q. To you?  
 2 A. To me.  
 3 Q. Okay. But I'm asking: Do you have an  
 4 opinion on whether FHFA, as conservator, knew that  
 5 the deferred tax assets might be written back up in  
 6 2013?  
 7 MS. HOSFORD: Object -- objection; vague  
 8 as to time period.  
 9 BY MR. THOMPSON:  
 10 Q. On the eve of the Net Worth Sweep.  
 11 MS. HOSFORD: Lack of foundation.  
 12 THE WITNESS: I, I don't know who else in  
 13 FHFA or what they knew about the potential for that,  
 14 but, as we've gone through here, there were -- our  
 15 accountants were monitoring this situation, they were  
 16 monitoring how they were doing about doing their  
 17 potential, whether to revalue, they had to do it all  
 18 the time, revalue or not revalue, and I do not recall  
 19 knowing about that this was going to be an issue  
 20 until really '13 when it became imminent that, oh,  
 21 this has to happen now, and I don't know what anybody  
 22 else thought about it.

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

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1 September 2011 projections, you recall that, for  
 2 Freddie?  
 3 A. Yeah.  
 4 Q. I know it was a long time ago. Yeah.  
 5 A. Yeah.  
 6 Q. And it showed projections of roughly  
 7 5 1/2 billion out over the next 10 years; you  
 8 remember that?  
 9 MS. HOSFORD: Objection; lack of  
 10 foundation.  
 11 THE WITNESS: I would have to go back if  
 12 you want the actual numbers, but, I mean, it showed,  
 13 it showed net income being positive, I mean.  
 14 BY MR. THOMPSON:  
 15 Q. Yeah, and if, and if that condition  
 16 persisted for some period of time, then -- and, and  
 17 Freddie, for example, was making \$5 billion a year,  
 18 year after year, then the deferred tax asset would be  
 19 written back up; is that right?  
 20 A. That's an accounting determination that  
 21 the companies have to make.  
 22 Q. Yes.

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

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

15 A. It's not --

16 MS. HOSFORD: Objection; asked and  
17 answered.

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

19 BY MR. THOMPSON:

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

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

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

5 Q. Yeah, and I don't mean to be difficult, I  
6 don't mean to be difficult, but I want to make sure  
7 the record's complete. Even if you didn't have a  
8 precise understanding of every little test to know  
9 exactly what quarter it would be written up, did you  
10 have a rough sense as to, you know, if they make  
11 5 billion a year, year after year, that yeah, at some  
12 point in the next two, three years they're going to  
13 write it back up?

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

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

19 BY MR. THOMPSON:

20 Q. Yeah.

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

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

2 MS. HOSFORD: Objection; asked and  
3 answered.

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

10 BY MR. THOMPSON:

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

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

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

22 MS. HOSFORD: Within the next two or three

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1 days after what?

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

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

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

8 MS. HOSFORD: Of August?

9 MR. THOMPSON: Yes.

10 MS. HOSFORD: Thank you.

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

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

22 THE WITNESS: 33.