

1 and that's a debt claim.

2 BY MR. PATTERSON:

3 Q. So those sorts of factors would not inform
4 your judgment at all as to how to value the amount of
5 Treasury's commitment?

6 A. A line of credit?

7 Q. Yes.

8 A. No. I mean, that's apples and oranges. A
9 line of credit is a senior claim or typically is a
10 senior claim. I can't recall any junior lines of
11 credit being offered by banks but tended to be a
12 senior claim on the assets of the company. So it
13 ranks at the -- you know, tends to rank at the top of
14 the capital structure where the PSPA is a line that
15 provides capital, equity capital to the two GSEs,
16 Fannie Mae and Freddie Mac, in the event that their
17 liabilities are less than -- I'm sorry, their
18 liabilities are greater than their assets. So from
19 my perspective, it's not a line of credit.

20 (Bowler Exhibit No. 2 was
21 marked for identification.)

22 BY MR. PATTERSON:

1 Q. Let me hand you another exhibit and we're
2 going to mark this as Bowler 2.

3 I would like you to look down to the
4 second email in this email chain which is from James
5 Lockhart -- or from Tony Ryan at Treasury to James
6 Lockhart, the second email, and I just specifically
7 want you to focus on the last sentence of that, which
8 says, "The one other question I would have is should
9 the preferred dividend rate be dropped to 5 percent
10 (per TARP) as Treasury will be just buying preferred
11 to pay the dividend."

12 So now was it your understanding that the
13 interest rate or the dividend rate on Treasury stock
14 was higher than that that was imposed under TARP?

15 MR. SCHWIND: Objection, calls for
16 speculation, lack of personal knowledge and
17 foundation.

18 THE WITNESS: Do you mind if I -- I'm
19 sorry, I haven't had a chance to -- do you mind if I
20 read this?

21 BY MR. PATTERSON:

22 Q. Well, I mean, I'm really just concerned

1 about that.

2 A. I've read the email. Can you ask your
3 question again?

4 Q. Well, the question is, you were aware that
5 the dividend rate, the 10 percent dividend rate was
6 higher than the rate under TARP, the 10 percent rate
7 for Fannie Mae and Freddie under the PSPAs?

8 MR. SCHWIND: Same objection.

9 THE WITNESS: Well, under TARP, the -- so
10 the dividend rate for most banks under TARP was
11 5 percent and then stepped up to 9 percent. Now,
12 some banks needed to get their capital in the form of
13 junior subordinated debt and then the rate set on
14 that was equal to 5 percent divided by I think .65,
15 and then 9 percent divided by .65. So I think that
16 meant that the step-up rate was -- I can't do the
17 math in my head but it was like 8 and change and then
18 stepping up to 13 for some banks.

19 Then there was also a couple of other
20 one-off deals that were done in some of the other
21 programs with Citigroup, Ally that had higher rates
22 than 5 percent. So under TARP, there was like a

1 myriad of different rates depending on the facts and
2 circumstances of the investment being made.

3 So how the 10 percent compared to the
4 dividend rates or the interest rates associated with
5 the TARP programs depended on what program it was and
6 the institution that was involved with it and the
7 nature of those investments.

8 BY MR. PATTERSON:

9 Q. And why was the rate for Fannie and
10 Freddie set at 10 percent?

11 A. I don't know.

12 Q. And was that ever discussed during your
13 time at Treasury, why that amount had been selected?

14 A. I can't remember.

15 Q. And did FHFA ever request, during your
16 time at Treasury, that the rate be reduced?

17 A. I can't remember ever getting that
18 request.

19 (Bowler Exhibit No. 3 was
20 marked for identification.)

21 BY MR. PATTERSON:

22 Q. Now, this is an action memorandum for

1 Secretary Geithner dated December 20th, 2010. And I
2 understand that's before you were at Treasury but I
3 wanted to ask you a question about that that relates
4 to your time at Treasury. And this deals with
5 waiving the periodic commitment fee for 2011. You
6 discussed that earlier for 2012, correct?

7 Now, if you would turn to page 2 of this
8 document, at the bottom there is a heading that says
9 reasons to set the PCF, and it says, "Makes clear the
10 Administration's commitment to ensure existing common
11 equity holders will not have access to any positive
12 earnings from the GSEs in the future."

13 Were you aware of that commitment at the
14 time you were at Treasury?

15 A. Can you be more specific?

16 Q. Yes. The commitment --

17 A. Because this is referring to, looks like a
18 document that was done in December 2010.

19 Q. Right.

20 A. And it looks like you've got
21 considerations, reasons to waive and then reasons
22 to --

1 Q. Right.

2 A. -- waive.

3 Q. I'm specifically focusing on the statement
4 that the Administration had a commitment to ensure
5 existing common equity holders will not have access
6 to any positive earnings from the GSEs in the future.
7 Do you see that statement?

8 A. Yes.

9 Q. So was that a commitment that Treasury
10 continued to hold during the time you were at
11 Treasury?

12 A. So first off, I can't comment on this
13 document because I wasn't there.

14 Q. Right. I'm not asking you about -- I'm
15 asking you about the time you were at Treasury.

16 A. Oh, so at Treasury, the operating policy
17 that we worked under in regard to Fannie Mae and
18 Freddie Mac was outlined in the Treasury white paper
19 that was released in early 2012 which was that the
20 Administration had the view that Fannie Mae and
21 Freddie Mac should be wound down.

22 Q. But did Treasury have a view that the

1 common equity holders of Fannie and Freddie will not
2 have access to any positive earnings from the GSEs in
3 the future, yes or no?

4 A. Treasury had the view, when I worked --
5 Treasury had the view that the common shareholders of
6 Fannie Mae and Freddie Mac would not receive payments
7 from those two enterprises in the future based upon
8 the disclosure of both enterprises that it was highly
9 unlikely that they were going to be able to make the
10 dividend payments on a go-forward basis to the
11 Treasury Department of the United States of America.
12 And, therefore, since the preferred stock purchase
13 agreement and liquidation preference was senior to
14 the claims of the common shareholders, and you had
15 both enterprises saying that it was unlikely for them
16 to be able to meet the full 10 percent dividend
17 payment that was owed to Treasury, we had no
18 expectation that common shareholders would receive
19 dividends from Fannie Mae or Freddie Mac.

20 Q. And this statement says that the
21 administrative made a commitment to ensure that
22 common equity holders will not have access to any

1 positive earnings. So that's my question. Did
2 Treasury have that commitment? Not did it understand
3 that they would not, but did it have a commitment to
4 ensure that they would not receive any positive --
5 have any access to positive earnings?

6 A. So I can't --

7 Q. Again, while you were there. I'm not
8 talking about this document. I'm saying while you
9 were there, was that a policy at Treasury?

10 A. The only policy -- the only core policy in
11 regard to the two enterprises at Treasury and their
12 structure during the time period that we're
13 discussing, which is I guess when I first arrived at
14 Treasury in August 1, 2011 and then through I guess
15 August 17, 2012, was to wind down the GSEs over time.
16 That was the policy.

17 Q. So are you saying Treasury did not have a
18 policy during that time to ensure that existing
19 common equity holders would not have access to any
20 positive earnings from GSEs in the future?

21 A. I don't remember a specific policy or a
22 definitive policy that Treasury had in regard to the

1 common shareholders of Fannie Mae or Freddie Mac.
2 The only policy that I operated under that I remember
3 was laid out in the white paper because that was the
4 Administration's policy on housing finance reform.
5 That was the umbrella policy which we operated under.

6 (Bowler Exhibit No. 4 was
7 marked for identification.)

8 BY MR. PATTERSON:

9 Q. What I've handed you is another memorandum
10 for Secretary Geithner. This is dated January 4th,
11 2011. And again, I know this is before you were
12 there but I'm going to use some comments in this to
13 ask you about your understanding during the time when
14 you were at Treasury.

15 So if you could turn to page 3, there is a
16 heading number 4 that says, "Affirm our current
17 obligations," and the first bullet point under that
18 says "ensure \$275 billion of funding capacity
19 available after 2012 is not used to pay dividends.
20 This may require converting preferred stock into
21 common or cutting or deferring payment of the
22 dividend."

1 Now, while you were at Treasury, did
2 Treasury consider converting Treasury's preferred
3 stock in Fannie and Freddie into common?

4 A. Do you mind if I read this real quick and
5 then --

6 MR. SCHWIND: And while he's reading that,
7 can I just ask counsel what discovery topic counsel
8 believes this is relevant to?

9 MR. PATTERSON: This is relevant to, you
10 know, both the expectations of future profitability,
11 if they had common stock, they would have access to
12 Fannie's and Freddie's profits that presumably they
13 would not have as preferred stock, and also just the
14 process of what was determined and how it was
15 determined that they would select the net worth sweep
16 is related to the reasons why the net worth sweep
17 component of the third amendment was adopted and
18 whether Treasury and FHFA working with Treasury were
19 acting as the United States.

20 MR. SCHWIND: Counsel is going to somehow
21 link this to a question about Treasury's expectations
22 for future profitability and Treasury's basis to

1 enter into the third amendment, is that right?

2 MR. PATTERSON: Yes.

3 MR. SCHWIND: You're representing you're
4 going to make that link?

5 MR. PATTERSON: I'm saying there is that
6 link. And depending on how he answers, I mean, I may
7 or may not make the link explicitly but I'm saying
8 that what Treasury considered and if it considered
9 these topics is related to those topics.

10 MR. SCHWIND: We'll see -- I'll allow it
11 but there is no link in this document to Treasury's
12 expectations as far as future profitability and
13 definitely no link in this document to the third
14 amendment but, again, I'll allow several questions.

15 THE WITNESS: Do you mind reading the
16 question again?

17 THE REPORTER: "Question: While you were
18 at Treasury, did Treasury consider converting
19 Treasury's preferred stock in Fannie and Freddie into
20 common?"

21 THE WITNESS: I don't remember that
22 conversation ever coming up with me.

1 BY MR. PATTERSON:

2 Q. Well, did Treasury consider options for
3 changing the dividend other than the net worth sweep?

4 A. Yes. There was conversations around what
5 might be an appropriate dividend structure post-2012.

6 Q. And what were the different options that
7 Treasury considered?

8 A. Well, I think "considered" is too strong
9 of a word. People that -- individuals on the capital
10 markets team that I ran presented ideas around how
11 one might modify the dividend in order to preserve
12 capacity but they quickly were discarded because they
13 would ultimately result in a compromise of claim on
14 behalf of the taxpayer, meaning that the U.S.
15 taxpayer would be walking away from economic value as
16 a result of those ideas, such as, you know, lower
17 the -- just lower the dividend from 10 percent to
18 something lower. I think somebody on the team
19 brought that up when we discussed this and we quickly
20 realized that that wouldn't work because that would
21 result in a compromise of claim that the taxpayer is
22 unilaterally walking away from a 10 percent dividend

1 going to continue to instruct the witness not to
2 answer.

3 BY MR. PATTERSON:

4 Q. Did Treasury expect that without changing
5 the dividend structure, that Fannie and Freddie's
6 safety and soundness would be threatened?

7 A. Did Treasury -- I don't know how to -- can
8 you be more specific? I'm struggling with -- like,
9 the safety and soundness is a high-level and broad
10 concept, so can you be like more specific, like what
11 do you mean by their safety and soundness, like more
12 tangible style questions that I can react to?

13 Q. Was one of the things Treasury was
14 concerned about that the cost of debt for Freddie and
15 Fannie would increase without changing the dividend
16 structure?

17 A. Yes. To be clear on that, we were very
18 concerned that the cost of debt for Fannie and
19 Freddie would go up if we did not address this issue
20 and the yields at which Fannie Mae's and Freddie
21 Mac's mortgage-backed securities traded in the global
22 capital markets would rise.

1 Q. And that was because the size of -- you
2 anticipated the size of Treasury's commitment would
3 become finite and then perhaps start shrinking after
4 2012, is that correct?

5 A. Yes.

6 Q. Now, if you hold all else equal, if Fannie
7 and Freddie had a higher amount of retained earnings
8 versus a lower amount of retained earnings, would
9 that reduce their cost of capital?

10 MR. SCHWIND: Objection, vague, ambiguous,
11 calls for speculation.

12 THE WITNESS: I don't know.

13 BY MR. PATTERSON:

14 Q. Or a higher amount of capital? Let's put
15 it that way.

16 MR. SCHWIND: Same objections.

17 THE WITNESS: I don't know. And the
18 reason why I'm saying I don't know is that the PSPAs
19 was the support mechanism to back those two companies
20 and that's what investors were primarily looking at.

21 BY MR. PATTERSON:

22 Q. So investors would be indifferent to what

1 Fannie and Freddie's capital levels were?

2 A. I didn't say that. I said the PSPAs were
3 the mechanism that gave investors confidence in
4 buying the securities of Fannie Mae and Freddie Mac.

5 Q. And what investors did you communicate
6 with to come to that understanding?

7 A. What investors did I communicate with to
8 come to that opinion? I had a meeting with -- I
9 recall meeting with Angela Gordon, who is a large
10 investor, at which this topic was brought up. I
11 recall the staff that worked for me telling me that
12 the investors that they spoke with and the
13 broker-dealers that traded the securities of Fannie
14 Mae and Freddie Mac referenced this. Those are like
15 the specific memories that I have.

16 Q. And did you do any study in 2012 before
17 the third amendment of whether Fannie and Freddie's
18 debt costs were in fact rising?

19 A. Their debt costs?

20 Q. Their cost of capital was in fact rising?

21 A. In 2012, one of the things that we noticed
22 was the fact that the yield differential between the

1 mortgage-backed securities of Fannie Mae and Freddie
2 Mac relative to Ginnie Mae was starting to widen, and
3 that was concerning.

4 Q. And when did you notice this?

5 A. Beginning -- I don't know the exact date
6 but I know that by the, you know, the second quarter,
7 that was something I was watching closely. And by
8 looking -- just looking at my Bloomberg screens and
9 looking at the dollar prices of Fannie's and
10 Freddie's securities relative to the dollar prices of
11 securities that were guaranteed by Ginnie Mae.

12 Q. If we look back at this document that we
13 were looking at before, we looked at number 1.

14 A. Is that the Citigroup document?

15 Q. Yes, that's the Citigroup document.
16 Number 3 says, "FHFA preserves and conserves assets
17 and property of the enterprises, ensures focus on
18 their housing mission, and facilitates stability and
19 emergence from conservatorship."

20 Now, I'm not asking about how FHFA runs
21 things. I'm asking you, in your view, did the third
22 amendment facilitate Fannie and Freddie's emergence

1 from conservatorship?

2 MR. SCHWIND: Objection, vague and
3 ambiguous.

4 THE WITNESS: Can you be more specific
5 with what you mean by that?

6 BY MR. PATTERSON:

7 Q. Was the third amendment consistent with
8 the goal of facilitating Fannie's and Freddie's
9 emergence from conservatorship?

10 MR. SCHWIND: Same objection.

11 THE WITNESS: So the goal -- do you mean
12 Treasury's goal? Whose goal? I'm sorry, I don't
13 understand what you're saying.

14 BY MR. PATTERSON:

15 Q. Okay. It's not asking anything
16 subjective. Just as an objective matter, was it
17 consistent with facilitating Fannie and Freddie
18 emerging from conservatorship to resume private
19 operations outside of the government's control?

20 MR. SCHWIND: The same objections.

21 THE WITNESS: I'm sorry, can you ask like
22 a specific -- I just want to make certain I get your

1 specific question.

2 MR. PATTERSON: Can you read back the
3 question?

4 THE REPORTER: "Question: Just as an
5 objective matter, was it consistent with facilitating
6 Fannie and Freddie emerging from conservatorship to
7 resume private operations outside of the government's
8 control?"

9 THE WITNESS: What do you mean by
10 objective matter? Like was one -- you're trying to
11 say is one of the goals of the third amendment to
12 facilitate the exit of Fannie Mae and Freddie Mac
13 from conservatorship?

14 BY MR. PATTERSON:

15 Q. I'm just asking was the third amendment
16 consistent with that goal. I'm not asking if anyone
17 had that goal. I'm just saying was the third
18 amendment consistent with that goal?

19 A. I don't know that -- I can only speak from
20 Treasury's perspective and the team -- I'm sorry, I
21 can only speak for the team at Treasury's perspective
22 on what we were trying to accomplish within the

1 context of modifying the dividend structure and then
2 incorporating changes to the covenants associated
3 with the PSPAs in 2012 which was preserving the
4 solvency to the greatest extent possible, helping
5 preserve the solvency of the GSEs on a going-forward
6 basis, you know, protecting them, making certain
7 their housing finance markets functioned
8 appropriately and, thirdly, protecting the taxpayer's
9 interests in the nearly \$200 billion investment that
10 had been made in the GSEs, and then protecting the
11 taxpayers from risk in regards to the GSEs in the
12 future because the remaining nearly quarter of a
13 trillion dollars of backstop that was left
14 outstanding. I guess that was -- when we negotiated
15 the PSPA changes with FHFA, those were the goals.
16 It's protect solvency, protect system, protect
17 taxpayer.

18 Q. So was the issue of whether or not the
19 third amendment would affect Fannie and Freddie's
20 ability to emerge from conservatorship something that
21 was considered by Treasury?

22 A. Treasury's perspective on the future of

1 Fannie Mae and Freddie Mac was driven by our policy
2 regarding winding them down and having the
3 enterprises be wound down. We didn't articulate a
4 specific view as to how they should be wound down,
5 but we wanted them to be wound down. That was the
6 policy as outlined by Treasury in the white paper
7 that was published in 2011.

8 Q. And before we turn from the Citi document,
9 I want to ask about did you ever meet with BlackRock
10 or communicate with BlackRock about the PSPAs?

11 A. I can't remember. I don't know.

12 Just to make sure I got the question, did
13 I ever meet with BlackRock regarding the PSPAs.

14 Q. Or to communicate.

15 A. Or do I ever communicate with BlackRock
16 regarding the PSPAs? I can't remember.

17 MR. PATTERSON: Well, it's 11:35. We
18 could go for another 20 minutes and have lunch.

19 MR. SCHWIND: Let's take a five-minute
20 break, coffee break for everybody.

21 MR. PATTERSON: That's fine.

22 (Recess.)

1 BY MR. PATTERSON:

2 Q. You can put aside the Citi presentation.
3 We're finished with that one. And I'm going to hand
4 you a new exhibit and this will be Bowler 6.

5 (Bowler Exhibit No. 6 was
6 marked for identification.)

7 BY MR. PATTERSON:

8 Q. Now, this is -- at the top, it's an email,
9 September 29th, 2011 from Jeff Foster to various
10 individuals including you. And this email is dealing
11 with the decision to waive the PCF in the fourth
12 quarter of 2011, periodic commitment fee.

13 Now, if you look at the very bottom of the
14 first page of this email, the last word on that page
15 is note and this is an email from Jeff Foster.
16 Turning to the next page, it says, "We made a policy
17 decision in July not to make changes to the PCF for
18 this quarter, as it would take at least a month to do
19 the work necessary with FHFA and the Fed to set the
20 fee, which requires their approval/input as well."

21 Do you see where it says that?

22 A. Yes.

1 Q. What changes did Treasury decide not to
2 make with respect to the PCF in July?

3 A. Do you mind if I just read the email so
4 I'm familiar with the email?

5 MR. SCHWIND: Again, Counsel, I'm going to
6 ask, what does setting the PCF in 2011 have to do
7 with any of the discovery topics in this case?

8 MR. PATTERSON: As an initial matter, the
9 amount of the PCF has to do with Fannie and Freddie's
10 profitability.

11 MR. SCHWIND: Right. It was waived. So
12 again, what does that have to do with any --

13 MR. PATTERSON: Well, if they had decided
14 to change it, that could have changed, so I'm trying
15 to see what changes they considered making and what
16 factors they considered in that.

17 MR. SCHWIND: Again, we all know that the
18 PCF was waived, and so if you want to talk about the
19 effect of that waiver on their profit, that's fine,
20 but I'm going to instruct the witness not to answer
21 as far as why Treasury made the decision to waive
22 because that's not relevant to the profitability of

1 the GSEs.

2 MR. PATTERSON: Well, we don't know that
3 until we know the reasons why they decided.

4 MR. SCHWIND: No, we know the PCF was
5 waived. So why Treasury waived has nothing to do
6 with the profitability of the GSEs. The fact that
7 they did waive might. But again, on the topic of why
8 Treasury elected to waive the PCF, I'm going to
9 instruct the witness not to answer.

10 BY MR. PATTERSON:

11 Q. Now, if Treasury had made changes to the
12 PCF, that potentially would have affected Fannie and
13 Freddie's profitability, is that correct?

14 A. Do you want me to answer that question or
15 read the document first?

16 Q. Okay.

17 A. Okay.

18 Q. Well, actually, let's not worry about the
19 document. I'm just going to ask you that question.

20 If Treasury made the decision to change
21 the PCF, that potentially could affect Fannie's and
22 Freddie's profitability, is that correct?

1 MR. SCHWIND: Objection, vague, calls for
2 speculation.

3 THE WITNESS: So change the PCF. There
4 was no PCF in place when I worked at Treasury so I'm
5 not sure there was anything to change.

6 BY MR. PATTERSON:

7 Q. Okay. I'm just saying --

8 A. What do you mean by your question? There
9 was nothing there to change. There was nothing in
10 place to change.

11 Q. Well, there was policy in place not to
12 impose it and that policy could be changed?

13 A. Yes, that's correct.

14 Q. And that could potentially affect Fannie's
15 and Freddie's profitability, is that correct?

16 A. Yes.

17 Q. And did Treasury consider changing that
18 policy in July of 2011?

19 A. In July of 2011?

20 MR. SCHWIND: Objection, calls for
21 speculation, lack of personal knowledge.

22 BY MR. PATTERSON:

1 A. Because it says shall be reset every five
2 years hereafter and shall be determined with
3 reference to the market value of the commitment as
4 then in effect. So just because it says market value
5 here, you want to look at market conditions.

6 Q. And what would you look at in the market?

7 MR. SCHWIND: Again, it's vague, calls for
8 speculation, calls for a legal conclusion.

9 THE WITNESS: Just what's going on with
10 the enterprises, what's going on with financial
11 markets, you know, where are equity prices, what are
12 equity prices at that point in time or preferred
13 stock prices at that point in time. All those would
14 factor into an assessment, I'm assuming, because of
15 the phrase market value.

16 BY MR. PATTERSON:

17 Q. And how would what is going on with equity
18 prices and things such as that impact how you would
19 set the commitment?

20 A. Oh, because since the PSPA is a commitment
21 to provide equity to Fannie Mae or Freddie Mac if
22 they need equity, you would want to know how people

1 are valuing preferred stock and common stock at that
2 point in time in the market because that's what's --
3 I mean, essentially -- important really preferred
4 stock too. You would want to know how that's being
5 valued in the market at that point in time because
6 that's what you might have to put into the company.
7 Do investors want preferred stock or do they not want
8 preferred stock at that time as expressed by the
9 dollar prices on preferred stock and their implied
10 yields.

11 (Bowler Exhibit No. 15 was
12 marked for identification.)

13 BY MR. PATTERSON:

14 Q. And this is an exhibit, in the lower
15 right-hand corner, UST00522259. It's a briefing
16 memorandum for Secretary Geithner for a meeting with
17 Edward DeMarco dated May 31st, 2012.

18 A. Yes.

19 Q. And first, it's from Michael Stegman.
20 What was Michael's role?

21 A. He was counsel to the Secretary for
22 housing finance matters.

1 Q. What role did he play in adoption of the
2 third amendment?

3 A. Mike provided input into the third
4 amendment process with a particular focus on
5 modifications to the covenants in the preferred stock
6 purchase agreements.

7 Q. What sort of input did he provide?

8 A. He provided thoughts on how the covenant
9 package could be improved to protect the taxpayer and
10 to release the risk to the taxpayer to future draws
11 by the GSEs as a result of improving those covenant
12 packages.

13 Q. Did he provide any input on the variable
14 dividend concept?

15 A. I remember him saying he was okay with it.

16 Q. But beyond that, that's all you remember?

17 A. That's all I remember. I remember saying
18 okay, being comfortable.

19 Q. If you turn to page 2 of this, do you see
20 the last bold sentence on the page says, "Timing of
21 the potential modification of the preferred stock
22 purchase agreements with the GSEs"? And then

1 underneath that, a little bit down, there is a
2 bullet, a clear bullet that says, "FHFA has agreed to
3 the net worth sweep dividend proposal, replacing the
4 current 10 percent dividend."

5 Now, this document is from May 31st, 2012.
6 When did FHFA agree to the net worth sweep dividend
7 proposal?

8 A. I don't know when FHFA agreed to modify
9 the fixed dividend to the variable dividend. I don't
10 know the exact days. And I don't know -- I'm not
11 sure when Ed DeMarco agreed with that. I don't know
12 the exact date.

13 Q. But by this time, it had done that
14 according to this memo, right?

15 MR. SCHWIND: Objection, vague and calls
16 for speculation.

17 THE WITNESS: I don't know.

18 BY MR. PATTERSON:

19 Q. So then FHFA agreed, all that needed to be
20 worked out was the timing of the proposal, is that
21 correct? The timing of the adoption of the
22 agreement?

1 A. No. I mean, this document is from May.
2 There was a lot of work that had to be done as to how
3 the dividend was going to be calculated and then what
4 the update to the covenant package of the PSPAs
5 should be.

6 Q. But the basic net worth sweep concept had
7 been agreed to?

8 A. I don't know. I do not know. That's a
9 question that's more appropriate for the former
10 acting director DeMarco.

11 (Bowler Exhibit No. 16 was
12 marked for identification.)

13 BY MR. PATTERSON:

14 Q. You've been handed an exhibit, UST00536564
15 in the bottom right-hand corner. This is an email
16 from Sam Valverde to ExecSecProcessUnit and
17 ExecSecStaff. What do those mean, do you know?

18 A. What --

19 Q. Who is this email being sent to?

20 A. From Sam Valverde to -- you know, I really
21 don't -- I never knew what the ExecSecProcessUnit
22 was. It was something that like when you had

1 documents that were going to be shown to the
2 Secretary, it went to this thing called ExecSec
3 processing unit but I really don't know what that is.

4 Q. So the purpose of it was to eventually get
5 this to the Secretary?

6 A. I believe that to be the case. I believe
7 that to be the case. Because it went to this
8 processing unit and then the ExecSecStaff, who
9 managed -- the executive secretary staff is what
10 managed documents on behalf of the Secretary of the
11 Treasury of the United States of America.

12 Q. And at the bottom of this, it says, "Sir,"
13 and the last paragraph of the email says, "On
14 Thursday you requested an update on the path forward
15 on PSPA covenants. The attached draft working
16 document is responsive to that request. Mary Miller,
17 Michael Stegman and Tim Bowler have been using this
18 document with Brian Deese and Jim Parrott to frame
19 their discussions on the substance, timing, and
20 process for amending the PSPA covenants."

21 Now, I guess as an initial matter, does
22 this have to do with the net worth sweep or is the

1 PSPA covenant something different?

2 A. I guess I would want to see the underlying
3 document so I can't respond to that. But in general,
4 covenants were section 5.

5 Q. And who were Brian Deese and Jim Parrott?

6 A. Who were they?

7 Q. Yes.

8 A. I mean, they still are alive.

9 Q. Who are they?

10 A. Sorry.

11 Q. At this time, what was their role?

12 A. Brian Deese worked at the National
13 Economic Council and Jim Parrott worked at the
14 National Economic Council, and both of them were
15 involved in housing policy for the Administration.

16 Q. And to what extent were they involved in
17 the process of amending the PSPAs?

18 A. As Treasury staff negotiated with FHFA
19 staff, the Treasury staff, we, broadly working on
20 this, would propose the National Economic Council as
21 to developments and the two people that we proposed
22 would be Brian Deese and Jim Parrott.

1 Q. And was the net worth sweep proposal shown
2 to Brian Deese and Jim Parrott?

3 A. I don't know.

4 Q. Do you know whether they had any input
5 into the net worth sweep proposal?

6 A. Into the switching --

7 Q. Into the switching from a fixed dividend
8 to a variable dividend?

9 A. I don't remember having a specific
10 conversation with Brian Deese about that. I remember
11 Jim Parrott saying that he was comfortable with
12 moving to a variable dividend relative to the fixed
13 10 percent dividend.

14 Q. And was --

15 MR. SCHWIND: May I have one minute here?

16 MR. PATTERSON: Yes.

17 (Witness confers with counsel.)

18 THE WITNESS: Sorry.

19 BY MR. PATTERSON:

20 Q. Was Gene Sperling at all involved in the
21 process of amending the dividend structure of the
22 PSPAs?

1 MR. SCHWIND: I just object, vague.

2 THE WITNESS: What do you mean by
3 involved?

4 BY MR. PATTERSON:

5 Q. Was he consulted at all on the proposed
6 change to the PSPAs?

7 MR. SCHWIND: Again, objection, vague,
8 ambiguous.

9 THE WITNESS: Consulted? Gene was posted
10 on the process that was underway.

11 BY MR. PATTERSON:

12 Q. And who is Gene?

13 A. Who is Gene Spurling?

14 Q. Yes.

15 A. He was the former director of the National
16 Economic Council.

17 Q. And did the National Economic Council
18 approve the net worth sweep?

19 MR. SCHWIND: I just need a minute with
20 the witness.

21 (Witness confers with counsel.)

22 MR. PATTERSON: Could I object? It

1 appears that counsel is discussing this question with
2 the witness.

3 MR. SCHWIND: We're talking about the
4 application of potential privilege.

5 MR. PATTERSON: Okay.

6 MR. SCHWIND: I'm going to advise the
7 witness not to answer the question based on the
8 Presidential communications privilege.

9 MR. PATTERSON: And we obviously reserve
10 the right to challenge that application of the
11 privilege.

12 And will you instruct the witness not to
13 answer any questions related to National Economic
14 Council and PSPAs?

15 MR. SCHWIND: No, that's not what I'm
16 saying. I directed the witness not to answer that
17 particular question.

18 BY MR. PATTERSON:

19 Q. And was the National Economic Council's
20 approval required before the net worth sweep could be
21 adopted?

22 A. The --

1 MR. SCHWIND: Listen to what he asked.

2 THE WITNESS: Can you ask your question
3 again?

4 BY MR. PATTERSON:

5 Q. Was the National Economic Council's
6 approval required before the net worth sweep could be
7 adopted?

8 A. So the agreement -- the preferred stock
9 purchase agreements are agreements between the
10 Treasury Department of the United States and the two
11 enterprises, and then so the ultimate responsibility
12 for any modifications rests within those agreements
13 with the Secretary, whoever she or he is.

14 Q. So does that --

15 A. I mean, that is the discretion -- you
16 know, any amendments to the preferred stock purchase
17 agreements, as per my understanding and reading of
18 the contracts, are between the secretary of the
19 Treasury, whoever he or she is, and the two
20 enterprises and whoever has authority over those two
21 enterprises.

22 Q. And so my question is was the National

1 Economic Council's approval required for the
2 amendment to be adopted? And just so the record is
3 clear, it's a yes or no in answer to that question.

4 A. So my reading -- so this is -- I'm not a
5 lawyer and my responsibilities here were pretty much
6 policy and process. But my reading of the document,
7 this is an agreement between the Treasury Department
8 of the United States of America and the two
9 enterprises, Fannie Mae and Freddie Mac respectively
10 as per the purchase agreements, and those are the two
11 parties that are negotiating, that are responsible
12 for these two documents.

13 But obviously within the context of the
14 conservatorship, the FHFA director taking active
15 conservatorship powers is responsible for the
16 authorities and management of the board of
17 shareholders of the companies. So that's my reading
18 of the contract.

19 Q. And my question is not necessarily as a
20 purely legal matter but just as a practical matter,
21 was the National Economic Council's approval required
22 before the net worth sweep could be adopted?

1 misstates the terms of the third amendment. I'm
2 sorry, misstates the terms of the PSPAs.

3 THE WITNESS: So are you saying that --
4 you're talking about like if the GSEs failed to pay
5 their dividend, that the dividend would accrue at
6 12 percent?

7 BY MR. PATTERSON:

8 Q. Yes.

9 A. And so that's what you're talking about?

10 Q. Yes.

11 A. What's your question now?

12 Q. My question is was Secretary Geithner
13 aware of that feature of the PSPAs?

14 A. I don't know the answer to that question.

15 Q. Do you know if he considered that when
16 deciding whether or not to adopt the third amendment?

17 A. I don't know the answer to that question.

18 Q. If you turn to the next page, the first
19 sentence reads, "Under Treasury's projections (and
20 the projections of certain third-party experts), the
21 GSEs will not generate enough income to meet their
22 dividend requirements in the long term."

1 Which Treasury projections is this
2 referring to, do you know?

3 A. I believe it's the -- I don't know which
4 specific set of projections but I believe it's the
5 work that we had completed the summer. And I would
6 have to go through and look at the models again and
7 then the process that was put in place to say which
8 was the latest of -- last set of projections that
9 were sent to Secretary Geithner.

10 Q. But it would be -- the latest set of
11 projections would be the ones that would be the most
12 relevant to that, correct?

13 A. The latest ones and the ones we shared
14 with Secretary Geithner when we were going through
15 the process.

16 Q. And so these projections were sent to
17 Secretary Geithner, so he had seen the projections?

18 A. I don't know if he saw them or not. I
19 know he was sent material with projections.

20 Q. And which third-party expert projections
21 are being referred to?

22 A. I don't know specifically what Counselor

1 Stegman was referring to there. I can only -- I
2 don't know specifically who they were. My guess is
3 that it was probably referring to what was in the
4 Moody's analysis that we had seen.

5 Q. And before you had mentioned that you were
6 concerned about that Moody's analysis coming out. Do
7 you know if it had been released by this point?

8 A. I can't remember.

9 Q. Now, if you go down to the third paragraph
10 which includes a numbered list 1, 2 and 3, "In
11 summary the modification has the following benefits
12 for the government." Number 2 says, "It captures all
13 future net income and asset appreciation at the GSEs
14 for reimbursement to taxpayers."

15 Now, did the existing PSPAs do that before
16 the third amendment?

17 A. That was our expectation that they would.

18 Q. And why is that?

19 A. Because the GSEs said that they didn't
20 expect to generate enough income to pay the
21 10 percent dividend on a go-forward basis.

22 Q. But if they unexpectedly did generate more

1 income, that would not necessarily all be captured by
2 taxpayers, is that correct?

3 A. If the GSEs generated more income than the
4 10 percent that was due, the 10 percent dividend --
5 they would not have -- there would have been net
6 worth or their assets would have exceeded their
7 liabilities at that point in time. That's
8 mathematically how that would have worked.

9 Q. So then that would not have all gone to
10 reimbursement to the taxpayers?

11 MR. SCHWIND: Objection, calls for
12 speculation.

13 THE WITNESS: I mean, under that dividend
14 structure, but I'm not sure what other policies would
15 have evolved over time. And that I can't -- I have
16 no idea.

17 BY MR. PATTERSON:

18 Q. And then the paragraph under that one
19 we've just been looking at, the second sentence says,
20 "As a result of the change, the GSEs will be more
21 financially sound which should lower their funding
22 costs and improve future profitability."

1 Do you agree with that?

2 A. Yes.

3 Q. And why is that?

4 A. Well, because if you eliminated the
5 uncertainty of a diminution of the Treasury's
6 backstop, one would assume that their costs of debt
7 would go down, their cost of borrowing would go down.
8 And if the cost of borrowing goes down relative to
9 the fixed returns on numerous assets that they were
10 funding on their balance sheet, their profitability
11 should improve.

12 Q. And as of today, as a result of net worth
13 sweep, Fannie and Freddie have paid Treasury
14 approximately \$128 billion more dividends than they
15 would have paid under the prior dividend structure.

16 A. Are you saying that as a matter of fact?

17 Q. Yes. I'm representing that and if it
18 turns out to be wrong, then it's wrong but I'm just
19 representing that fact.

20 If you had known that at the time of the
21 net worth sweep, would you still think that the net
22 worth sweep would have made the GSEs more financially

1 sound? I should say at the time that the third
2 amendment was adopted.

3 MR. SCHWIND: Object, it's vague, calls
4 for speculation and it's ambiguous.

5 THE WITNESS: And I don't understand the
6 question. Would you try that again?

7 BY MR. PATTERSON:

8 Q. The question is if you had known at the
9 time of the net worth sweep that it would result in
10 Fannie and Freddie paying \$128 billion more in
11 dividends to the federal government than they would
12 have paid with the 10 percent dividend structure
13 through the first quarter of 2015, would you still
14 have agreed that it made the GSEs more financially
15 sound?

16 MR. SCHWIND: Again, objection, calls for
17 speculation and it's vague. You can answer if you
18 can.

19 THE WITNESS: Yes.

20 BY MR. PATTERSON:

21 Q. And why is that?

22 A. Oh, because we, over time, it was the

1 Administration's policy to wind down the GSEs and the
2 GSEs therefore were going to shrink in their ability
3 to generate enough comprehensive income to pay the
4 10 percent dividend on the senior liquidation
5 preference that was put in place. The hedge would
6 have been called into question over time. So it's
7 still -- the merits of -- the core tenets and core
8 merits of the third amendment still exist.

9 Q. So you're saying that if you knew that if
10 the GSEs had \$128 billion more of net worth and the
11 same amount of Treasury funding commitment remaining,
12 that they would still be more financially sound as a
13 result of the third amendment?

14 MR. SCHWIND: Objection. It's vague.
15 It's ambiguous, calls for speculation.

16 THE WITNESS: This is a hypothetical
17 question, but ultimately what the third amendment did
18 is it ensured that any draws on the PSPAs would be
19 purely related to funding that was meant to protect
20 their solvency, and I think that's something that
21 would improve investor confidence.

22 I hate to ask but do you mind if I take a

1 break?

2 MR. PATTERSON: This is a good time to
3 take a break.

4 (Recess.)

5 BY MR. PATTERSON:

6 Q. You were talking about Fannie's and
7 Freddie's projections and would you agree, with the
8 benefit of hindsight, that Fannie and Freddie's 2012
9 projections before the third amendment proved to be
10 more accurate than Treasury's projections?

11 A. I'm sorry, when you say -- what
12 projections are you specifically referring to, the
13 projections that you showed me from the materials for
14 the board of directors for Fannie Mae?

15 Q. Yes.

16 A. Because I didn't think we saw any
17 projections from Freddie Mac.

18 Q. Okay, yes, those ones from Fannie.

19 A. I don't know. I would have to actually
20 like go and compare the deviation from results. I
21 mean, the projections that Fannie had were more
22 favorable than the projections that were used at that

1 time, but they were just projections.

2 Q. You've never gone back to look and see
3 whose are more accurate though?

4 A. No.

5 Q. Do you know if anyone at Treasury's done
6 that?

7 A. Not to my knowledge.

8 (Bowler Exhibit No. 33 was
9 marked for identification.)

10 BY MR. PATTERSON:

11 Q. I'm handing you an exhibit marked
12 Bowler 33 and this is Bates stamped UST00393810,
13 briefing memorandum for Secretary Geithner. The
14 event is meeting with CEOs of Fannie Mae and Freddie
15 Mac and FHFA acting director Ed DeMarco regarding
16 PSPA changes to be held on August 15th, 2012.

17 Now, was this meeting the first time that
18 Fannie and Freddie were informed of the third
19 amendment?

20 A. To the best of my knowledge, yes.

21 Q. And did you participate in this meeting?

22 A. I did.

1 Q. It says the primary objective is, "To meet
2 with the CEOs of Fannie Mae and Freddie Mac, as well
3 as FHFA Acting Director Ed DeMarco, to introduce and
4 review the changes to the senior preferred stock
5 purchase agreements (PSPAs) that Treasury and FHFA
6 intend to execute on Friday."

7 Who from the government spoke at this
8 meeting?

9 A. Secretary Geithner very briefly and then I
10 walked through the term sheet and Mary Miller made
11 some comments.

12 Q. And did anyone from FHFA address Fannie
13 and Freddie in this meeting?

14 A. I don't remember if Acting Director
15 DeMarco addressed Fannie or Freddie. He was in the
16 meeting.

17 Q. And how did Fannie and Freddie respond to
18 being told about the third amendment?

19 A. I remember two things clearly. One, Don
20 Layton saying I'm going to walk through the
21 adjustment from the fixed dividend to the variable
22 dividend. He said that solved the dividend issue.

1 And I remember Tim Mayopoulos expressing
2 concern that the increased speed at which -- that the
3 retained investment portfolios were to be required to
4 be reduced from 10 percent to 15 percent might
5 require them to sell less liquid assets.

6 Q. Do you recall any other reactions from
7 Fannie and Freddie?

8 A. They were glad that they were brought in.
9 I remember telling them that we would be working with
10 their lawyers to review the documents, to solicit
11 feedback from them on the documents. And I remember
12 interacting with -- I remember Mary saying to Don
13 Layton that, you know, we would be happy to
14 communicate with her employees if they had any
15 questions post the third amendment, and talk to the
16 employees of Freddie Mac.

17 Q. And did the employees have any concerns
18 about the third amendment?

19 A. The employees in that room?

20 Q. Or the employees at Freddie Mac that you
21 said you spoke to.

22 A. Oh, no, after the -- Mary said she would

1 be happy to talk to the employees at Freddie Mac
2 after the execution of the agreement if it was
3 executed. Just remember it's important to note at
4 that time, the documents hadn't been executed. We
5 had agreed to a framework but we certainly want --
6 FHFA and Treasury certainly wanted to get feedback
7 from the GSEs before actually formalizing the
8 agreement.

9 Q. And were the GSEs given the opportunity to
10 approve or disapprove the third amendment?

11 A. What do you mean by that? Did we say, are
12 you guys okay with this?

13 Q. Yes.

14 A. I don't recall anybody saying that, asking
15 the companies are you okay with this. I said, here's
16 what we're doing, we would like your feedback, here's
17 the agreement that we've reached with FHFA as
18 conservator, we would like your feedback on this, we
19 think it solves the dividend issue which both
20 enterprises have raised as a core concern.

21 Q. And when had the enterprises raised the
22 dividend issue?

WITNESS ERRATA SHEET

Notice Date: July 6, 2015

Deposition Date: July 1, 2015

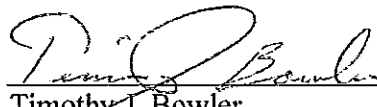
Deponent: Timothy J. Bowler

Case Name: Fairholme Funds, Inc., et al., v. United States, case no. 13-465C (C.F.C.)

Page:Line	Now Reads	Should Read
16: 11	"interest rates currency risks"	"interest rates and currency risks"
18: 10	"May of 1995"	"October of 1995"
19: 6	"Feds"	"Fitch"
20: 15	"these bonds will be here."	"these bonds should be here."
24: 6	"The same solid work"	"The same style of work"
27: 12	"The work was going to involve just"	"The work was going to involve"
34: 1	"then the management teams above"	"then the management teams at"
34: 18	"We did it I think on Don Layton"	"We did it I think with Don Layton"
40: 6	"nearly \$200 million"	"nearly \$200 billion"
51: 19	"early 2012"	"early 2011"
60: 1	"backstop that remain."	"backstop that remained."
61: 13	"\$200 million investment"	"\$200 billion investment"
71: 11	"It was not considered part of that"	"It was not considered as part of that"
74: 16	"and then communicated with us"	"and they communicated with us"
88: 11	"in regards to the GSEs"	"in regard to the GSEs"
98: 7	"address the market competence"	"address the market confidence"
102: 22	"I guess \$13.09 million."	"I guess \$13.09 billion."
123: 7	"to put more taxpayer back"	"to put more taxpayer backed"
123: 16	"there is negative consequences?"	"there is a negative consequence?"
123: 22	"there is larger losses"	"there are larger losses"
131: 5	"post the release third Q"	"post the release of the Q"
132: 17	"we believe"	"we believed"
133: 1	"net positive for their bond prices and more"	"net positive for their bond prices and"
135: 1	"Freddie Mac securities going up"	"Freddie Mac securities prices going down"
140: 11	"And then third, what are our market"	"And then third, what are market"
141: 18	"one that provided"	"one that provides"
148: 10	"to release the risk"	"to reduce the risk"
148: 17	"I remember saying"	"I remember him saying"
152: 20	"would propose the National"	"would post the National"

152: 21	"and the two people that we proposed"	"and the two people that we posted"
154: 13	"Gene Spurling"	"Gene Sperling"
157: 14	"the FHFA director taking active"	"the FHFA director taking on"
171: 19	"billing and financial model"	"budget and financial model"
175: 5	"Or that's where"	"That's where"
189: 14-15	"when half of the mortgage is paid off."	"when half of the mortgages are paid off."
195: 10	"\$150 million"	"\$150 billion"
204: 17	"their preferred"	"their deferred"
209: 2	"per annum in the average life"	"per annum and the average life"
210: 6	"28 million"	"28 billion"
222: 12	"secretary was after an extended"	"secretary was out for an extended"
226: 7	"Did I have any view in foreign"	"Did I have any view on foreign"
241: 11	"United States Government"	"United States"
256: 5	"The hedge would"	"The backstop would"
260: 14	"her employees"	"his employees"
261: 5	"but we certainly want"	"but we certainly wanted"
281: 13	"where they had questions"	"what questions they had"
288: 8	"that is publish"	"that is published"
291: 4	"It's more important to call"	"It's more accurate to call"
293: 7	"protect the mortgage finances"	"protect the mortgage finance system"
293: 8	"Near term, in two quarters"	"Near term, two quarters"
299: 1	"both Fannie Mae"	"both Fannie Mae and Freddie Mac"

I hereby certify that I have read and examined the deposition transcript, and the same is a true and accurate record of the testimony given by me. Any additions or corrections that I feel are necessary are listed above. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of August, 2015.


Timothy J. Bowler