

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**MIAMI DIVISION**

**CASE NO. 1:16-CV-21224-FAM**

MASTER SGT. ANTHONY R. EDWARDS,  
USAF, RETIRED; MASTER SGT.  
SALVATORE  
CAPACCIO, USAF; GATOR CAPITAL  
MANAGEMENT, LLC; PERINI CAPITAL  
LLC; ALLEN HARDEN; ED BIERYLA;  
DOREEN BIERYLA; JORGE ZAPATA;  
HIREN PATEL; LOUISE STRANG; JOHNNA  
B. WATSON; MELODY SULLIVAN; AMIT  
CHOKSI; PHIL MILLER; JAMES  
FERGUSON; GORDON INMAN; SHAUN  
INMAN; MICHAEL CARMODY; MATT  
HILL; JOSEPH WASKE; MARYAM  
MOINFAR; WAYNE OLSON; RICH  
KIVELA; CHRIS WOSSILEK; and  
MATTHEW REED,

Plaintiffs,

vs.

PRICEWATERHOUSECOOPERS, LLP,

Defendant.

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**MOTION TO STAY AND INCORPORATED MEMORANDUM OF LAW**

PricewaterhouseCoopers LLP (“PwC”) seeks to stay this action while the U.S. Judicial Panel on Multidistrict Litigation (the “JPML”) decides whether to transfer this action to the United States District Court for the District of Columbia as part of the proposed Multidistrict Litigation (“MDL”) No. 2713, *In re: Federal Housing Finance Agency, et al., Preferred Stock Purchase Agreements Third Amendment Litigation*. The stay will promote judicial economy,

prevent the unnecessary expenditure of resources by the parties, and avoid inconsistent rulings. There will be no prejudice to Plaintiffs given the early stage of the case. The JPML will likely determine whether to transfer this case shortly.

PwC's requested relief is in keeping with longstanding practice in this district and is consistent with the decisions of district courts in at least four other related cases. Accordingly, and for the reasons set forth below, PwC respectfully requests that the Court stay this action until the JPML decides whether to transfer this case.

### **BACKGROUND**

#### **A. Plaintiffs' Complaint Against PwC**

Plaintiffs are shareholders of the Federal Home Loan Mortgage Corporation ("Freddie Mac"). (Compl. (attached to PwC's Notice of Removal, D.I. 1) ¶ 11.) PwC is an accounting firm that audited the financial statements of Freddie Mac. (*Id.* ¶ 46.)

On March 9, 2016, Plaintiffs filed suit against PwC in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, Case No. 2016-005875-CA-01. Plaintiffs allege that PwC violated the Generally Accepted Auditing Standards in its audits of Freddie Mac's financial statements and aided and abetted the Federal Housing Finance Agency's ("FHFA") and the United States Department of Treasury's ("Treasury") alleged breaches of fiduciary duties. PwC removed the case to this Court on April 6, 2016. (D.I. 1, Notice of Removal.)

Freddie Mac is a government-sponsored enterprise created by federal statute. *See* 12 U.S.C. §§ 1451-1459. Freddie Mac purchases mortgages originated by private banks and bundles the mortgages into mortgage-related securities to be sold to investors in the secondary mortgage market. (Compl. ¶ 16.) In the wake of the financial crisis, Congress enacted the Housing and Economic Recovery Act ("HERA") and established FHFA to oversee Freddie Mac.

(*Id.* ¶ 20.) HERA also granted Treasury the authority to purchase securities from Freddie Mac. (*Id.*)

On September 6, 2008, FHFA placed Freddie Mac into conservatorship. (*Id.* ¶ 21.) As conservator, FHFA succeeded to all rights, titles, powers, and privileges of Freddie Mac, and of any stockholder, officer, or director of Freddie Mac. *See* 12 U.S.C. § 4617(b)(2)(A). After becoming conservator of Freddie Mac, FHFA entered into a senior preferred stock purchase agreement (the “PSPA”) with Treasury. (Compl. ¶ 22.) Plaintiffs assert that under the PSPA Freddie Mac created and issued a new class of stock to Treasury in exchange for a funding commitment from Treasury. (*Id.*) Plaintiffs allege that Freddie Mac also issued warrants to Treasury to purchase a certain amount of Freddie Mac common stock and created covenants barring Freddie Mac from changing its capital structure, paying dividends to shareholders other than Treasury, or seeking to terminate FHFA’s conservatorship without Treasury’s approval. (*Id.*)

Plaintiffs allege that Treasury and FHFA subsequently amended the PSPA “so that Treasury had the right to take the entire positive net worth of Freddie Mac each quarter in perpetuity” (the “Third Amendment”). (*Id.* ¶ 31.) Plaintiffs contend that the Third Amendment—and the resulting “Net Worth Sweep,” as Plaintiffs term it—was a self-dealing transaction and in breach of the fiduciary duties that FHFA and Treasury owed to Freddie Mac and its shareholders, including Plaintiffs. (*See id.* ¶¶ 37, 40-42.) Plaintiffs allege that PwC—as Freddie Mac’s auditor—assisted the breaches and engaged in false and negligent auditing. (*See, e.g., id.* ¶ 4-7, 43-44, 47-50, 63-64, 67-68, 71, 73-74, 80, 86, 88, 90, 92.)

#### **B. Third Amendment MDL**

Shareholders of Freddie Mac and the Federal National Mortgage Association (“Fannie Mae”) have filed actions against FHFA, Treasury, Fannie Mae, Freddie Mac, PwC, and Deloitte & Touche LLP (Fannie Mae’s auditor) challenging, among other things, the Third Amendment.

On March 15, 2016, FHFA filed a motion with the JPML seeking to transfer four cases to the United States District Court for the District of Columbia for consolidated or coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407.<sup>1</sup> (*See* Ex. A, FHFA Motion for Transfer.) FHFA articulated that there are common questions of fact and law regarding FHFA's and Treasury's statutory powers under HERA and whether Freddie Mac's and Fannie Mae's shareholders have the authority under HERA to bring claims related to the Third Amendment. (*See id.* at 4-6.) Treasury filed a response in support of FHFA's motion. *See* Response of Defendants Jacob Lew and the U.S. Department of the Treasury in Support of the Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings, *In re: Federal Housing Finance Agency, et al., Preferred Stock Purchase Agreements Third Amendment Litigation*, MDL No. 2713 (J.P.M.L. Mar. 21, 2016). On March 28, 2016, FHFA filed a Notice of Related Actions with respect to two additional cases.<sup>2</sup> *See* Notice of Related Actions, *In re: Federal Housing Finance Agency, et al., Preferred Stock Purchase Agreements Third Amendment Litigation*, MDL No. 2713 (J.P.M.L. Mar. 28, 2016). On April 7, 2016, FHFA notified the JPML of this action, as well as a related action, *Edwards v. Deloitte & Touche, LLP*, 16-CV-21221-RNS, also pending in the Southern District of Florida. (*See* Ex. B, FHFA Notice of Related Actions.) The JPML will convene on May 26, 2016 and will likely decide at that hearing whether the foregoing actions should be consolidated and transferred to the United States District Court for the District of Columbia for pretrial proceedings. *See* Judicial Panel on Multidistrict

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<sup>1</sup> Those cases are: *Saxton v. FHFA*, 15-CV-0047 (N.D. Iowa, filed May 28, 2015); *Jacobs v. FHFA*, 15-CV-0708 (D. Del., filed Aug. 17, 2015); *Robinson v. FHFA*, 15-CV-0109 (E.D. Ky., filed Oct. 23, 2015); and *Roberts v. FHFA*, 16-CV-2107 (N.D. Ill., filed Feb. 10, 2016).

<sup>2</sup> Those cases are: *Pagliara v. Fed. Nat'l Mortg. Ass'n*, 16-CV-0193 (D. Del., filed Mar. 25, 2016) and *Pagliara v. Fed. Home Loan Mortg. Corp.*, 16-CV-0337 (E.D. Va., filed Mar. 25, 2016).

Litigation Hearing Information, <http://www.jpml.uscourts.gov/hearing-information> (last visited Apr. 13, 2016).

As FHFA explained in its Notice of Related Actions, this action, and the action brought by the same plaintiffs against Deloitte & Touche LLP, present common factual issues and the same threshold legal issues as the other cases that have been proposed for the MDL. (*See* Ex. B, Notice of Related Actions at 2-3.) All of the actions challenge the legality of the Third Amendment. (*See id.*; *see also* Compl. ¶ 37-43.) Furthermore, all of the cases present the same threshold question of whether the plaintiff shareholders have the ability to bring the actions, given that FHFA, as conservator, has succeeded to their rights, titles, powers, and privileges under 12 U.S.C. § 4617(b)(2)(A)(i). (*See* Ex. B, Notice of Related Actions at 2-3.)

### **ARGUMENT**

“It is common practice for courts to stay an action pending a transfer decision by the JPML.” *Bonenfant v. R.J. Reynolds Tobacco Co.*, 2007 WL 2409980, at \*1 (S.D. Fla. July 31, 2007) (Zloch, J.). Courts in this District recognize that awaiting the transfer decision “can increase efficiency and consistency.” *Pulley v. JPMorgan Chase Bank, N.A.*, 2012 WL 2838677, at \*1 (S.D. Fla. July 10, 2012) (Cohn, J.) (quoting Manual for Complex Litig. § 22.35 (4th ed. 2004)); *see also Republic of Venez. v. Philip Morris Cos., Inc.*, 1999 WL 33911677, at \*1 (S.D. Fla. Apr. 28, 1999) (Ungaro-Benages, J.). Indeed, as the JPML has explained, the purpose of an MDL is to “eliminate duplicative discovery, prevent inconsistent or repetitive pretrial rulings . . . and conserve the resources of the parties, their counsel and the judiciary.” *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 990 F. Supp. 834, 836 (J.P.M.L. 1998). Staying this case pending the JPML’s decision on whether to transfer this case to the United States District Court for the District of Columbia serves these purposes.

The decision to stay proceedings is part of the district court's "broad discretion over the management of pre-trial activities." *Gibbs v. U.S.*, 517 F. App'x 664, 670 (11th Cir. 2013) (quoting *Johnson v. Bd. of Regents of Univ. of Ga.*, 263 F.3d 1234, 1269 (11th Cir. 2001)). Courts consider judicial economy, reducing confusion and prejudice, and preventing possible inconsistent resolutions. *See Bondhus v. Henry Schein, Inc.*, 2015 WL 1968841, at \*4 (S.D. Fla. Apr. 30, 2015) (citing *Axa Equitable Life Ins. Co. v. Infinity Fin. Group, LLC*, 608 F. Supp. 2d 1330, 1346 (S.D. Fla. 2009)). In exercising its discretion, a court should avoid a stay where the length would be immoderate or indefinite. *Id.* All of these considerations weigh in favor of a stay in these circumstances.

Staying the case will promote efficiency and avoid duplicative litigation. As mentioned previously, all of the actions that are proposed for the MDL—including this action—present threshold jurisdictional issues. In particular, all of the plaintiffs purport to assert their rights as shareholders of Freddie Mac and Fannie Mae despite the fact that upon FHFA becoming conservator it "immediately succeed[ed] to . . . all rights, titles, powers, and privileges of [Freddie Mac], and of any stockholder, officer, or director of [Freddie Mac] with respect to [Freddie Mac] and the assets of [Freddie Mac]." *See* 12 U.S.C. § 4617(b)(2)(A). Additionally, this action and the other actions that are proposed for the MDL will involve the determination of the propriety of the Third Amendment and FHFA's and Treasury's authority and obligations under HERA. Staying this action while the JPML decides whether to transfer this case will avoid the possibility of duplicative litigation and inconsistent results that could result if this lawsuit were to proceed before the JPML decides whether to transfer this case.

Furthermore, a stay will not prejudice Plaintiffs. The JPML will meet next month and will likely discuss FHFA's motion; a decision can be expected in short order. Moreover,

Plaintiffs have not yet begun litigating the case, as it only was filed a few weeks ago and Plaintiffs have not yet served PwC with the complaint or summons.

Finally, district courts in four cases considering this very issue—*i.e.*, whether to stay a case brought by stockholders of Freddie Mac or Fannie Mae relating to the Third Amendment—already have stayed actions pending the JPML’s decision. *See* Minute Entry, *Roberts v. FHFA*, 16-CV-2107 (N.D. Ill. Apr. 8, 2016); Order, *Saxton v. FHFA*, 15-CV-0047 (N.D. Iowa Apr. 4, 2016); Order, *Pagliara v. Federal Nat’l Mortg. Ass’n*, 16-CV-0193 (D. Del. Apr. 4, 2016); Order, *Jacobs v. Federal Housing Fin. Agency*, 15-CV-0708 (D. Del. Mar. 29, 2016). As Judge Chang stated last week in deciding to stay *Roberts*, “[t]he MDL Panel is the right forum to consider the Plaintiffs’ arguments, and there is no harm to the Plaintiffs (at least, no harm that the MDL Panel itself will not be considering) in staying this case until [the Panel decides the transfer motion].” Minute Entry, *Roberts v. FHFA*, 16-CV-2107 (N.D. Ill. Apr. 8, 2016). For all of the reasons explained above, this Court should do the same.

### **CONCLUSION**

For the foregoing reasons, PwC respectfully requests that the Court stay this action pending the JPML’s decision on whether to transfer the case to the United States District Court for the District of Columbia for consolidation with MDL No. 2713, *In re: Federal Housing Finance Agency, et al., Preferred Stock Purchase Agreements Third Amendment Litigation*.

**LOCAL RULE 7.1 CERTIFICATION**

PwC's counsel met and conferred with counsel for Plaintiffs in a good faith effort to resolve the issues raised in this motion and were unable to do so. Plaintiffs advised PwC that they intend to move to remand the action to the state court. Plaintiffs have indicated that they oppose a stay with respect to their anticipated motion to remand, but do not oppose a stay with respect to other aspects of this action. PwC's position is that the Court should stay all proceedings until the JPML rules on FHFA's pending Motion for Transfer and Notice of Related Actions. FHFA does not oppose PwC's request for a stay.



Dated: April 13, 2016

Respectfully submitted,

*/s/ Ramon A. Abadin* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 13, 2016, a true and correct copy of the foregoing was filed electronically with the Clerk of the Court, by using the CM/ECF system, causing a true and correct copy to be served on all counsel of record. I also served the following counsel of record via e-mail.

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/s/Ramon A. Abadin  
 Ramon A. Abadin

# **EXHIBIT A**

**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

	)	
In Re:	)	
	)	MDL No. _____
Third Amendment Litigation	)	
	)	

**FEDERAL HOUSING FINANCE AGENCY’S MOTION FOR TRANSFER OF  
ACTIONS TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

The Federal Housing Finance Agency (“FHFA” or the “Conservator”) respectfully moves the Judicial Panel on Multidistrict Litigation (the “Panel”) for an order, pursuant to 28 U.S.C. § 1407, transferring four pending actions concerning the Conservator’s and the U.S. Department of the Treasury’s (“Treasury”) entry into the Third Amendment to the Senior Preferred Stock Agreements, as well as any subsequent actions, to the U.S. District Court for the District of Columbia for coordinated or consolidated pretrial proceedings. The Schedule of Actions filed herewith identifies the currently pending actions subject to FHFA’s motion.

In support of its motion, FHFA states:

1. FHFA was created by the Housing Economic Recovery Act of 2008 (“HERA”) as an independent federal agency with supervisory and regulatory authority over the Federal Home Loan Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac,” and, together with Fannie Mae, the “Enterprises”). 12 U.S.C. § 4511 *et seq.* The Enterprises are congressionally chartered with the mission of providing liquidity and stability to the Nation’s secondary residential mortgage market and expanding access to mortgage credit throughout the Nation. *See id.* § 1716 (Fannie Mae); *id.* § 1451 note (Freddie Mac).

2. In September 2008, the FHFA Director, acting pursuant to his powers under HERA, placed the Enterprises in conservatorships and appointed FHFA as Conservator. *Id.* § 4617(a)(2). The Conservator “immediately succeed[ed] to . . . all rights, titles, powers, and privileges of the [Enterprises], and of any stockholder, officer, or director of [the Enterprises].” *Id.* § 4617(b)(2)(A). HERA consolidates control of the Enterprises with the Conservator, *see id.* § 4617(b)(2), and it reinforces and facilitates the Conservator’s plenary operational authority by shielding the Conservator’s actions from judicial review. *Id.* § 4617(f) (“[N]o court may take any action to restrain or affect the exercise of powers or functions of the Agency as conservator.”).

3. The Conservator—acting on behalf of the Enterprises—and Treasury entered into two preferred stock purchase agreements (“PSPAs”) wherein Treasury agreed to commit billions of U.S. taxpayer dollars to ensure that the Enterprises did not enter mandatory receivership. *See* 12 U.S.C. § 4617(a)(4). Under the PSPAs, an Enterprise must draw funds from Treasury if its net worth is negative—defined as liabilities exceeding assets in accordance with U.S. Generally Accepted Accounting Principles—in any calendar quarter. Combined, the Enterprises have made 24 draws totaling approximately \$187 billion on the Treasury commitment.

4. Under the PSPAs, the Enterprises were obligated to pay Treasury a fixed quarterly dividend and a periodic commitment fee (“PCF”), intended to compensate U.S. taxpayers fully for the commitment.

5. FHFA and Treasury amended the PSPAs to, among other things, increase Treasury’s commitment of funds. In the most recent of these amendments, executed on

August 17, 2012 (the “Third Amendment”), FHFA and Treasury replaced the fixed quarterly dividend with a variable dividend equal to the Enterprises’ quarterly earnings, if any. The Third Amendment also suspended the PCF for so long as the variable dividend is in place.

6. Enterprise shareholders have filed 15 complaints challenging the Third Amendment in six different U.S. district courts.<sup>1</sup> Those actions bring materially identical claims against FHFA and Treasury seeking materially identical relief. They allege that FHFA and Treasury acted outside their statutory powers in violation of the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.*, and/or assert Delaware and Virginia state law claims for breach of contract, breach of the implied duty of good faith and fair dealing, and breach of fiduciary duty. Plaintiffs ask the courts to declare that the Third Amendment violates HERA, to vacate the Third Amendment, and to enjoin FHFA and Treasury officials from taking any actions pursuant to the Third Amendment. Plaintiffs also ask the courts to rescind the Third Amendment and to return to the Enterprises all monies paid to Treasury under the Third Amendment.

7. HERA, however, bars shareholders from second-guessing the Conservator’s operational decisions, expressly foreclosing judicial review that would restrain or affect the Conservator’s exercise of its statutory powers, *see* 12 U.S.C. § 4617(f), and transferring to the Conservator the very “rights, titles, powers, and privileges” upon which shareholders rely in the various actions, *see id.* § 4617(b)(2)(A)(i).

8. Bringing all of these cases, which raise common questions of fact, before a single tribunal for pretrial proceedings will serve the convenience of the parties and witnesses as well

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<sup>1</sup> Enterprise shareholders have also filed two actions against the Enterprises’ auditors in Florida state court. *Master Sgt. Edwards v. Deloitte & Touche, LLP*, No. 2016-004986-CA-01 (Fla. Cir. Ct. Feb. 29, 2016); *Master Sgt. Edwards v. PricewaterhouseCoopers, LLP*, No. 2016-005875-CA-01 (Fla. Cir. Ct. Mar. 9, 2016). Though it is not a party to either action, the Conservator is monitoring those cases, which raise many of the same questions of fact and law as the 15 actions filed in U.S. district courts.

as promote the just and efficient conduct of the actions. The need to avoid inconsistent pre-trial rulings, to foreclose the possibility of duplicative discovery, and to conserve the efforts and resources of the parties and the judiciary all weigh heavily in favor of transferring these cases to a single court for coordinated or consolidated pretrial proceedings.

9. Existence of Multiple Litigation As detailed in the accompanying memorandum in support of this Motion and the Schedule of Actions, shareholders have filed at least 15 complaints challenging the Third Amendment in six U.S. district courts.

a. Courts have granted the motions to dismiss filed by FHFA and Treasury with respect to eleven of the complaints. *See Perry Capital LLC v. Lew*, 70 F. Supp. 3d 208 (D.D.C. 2014); *Cont'l W. Ins. Co. v. FHFA*, 83 F. Supp. 3d 828 (S.D. Iowa 2015). Plaintiffs have appealed the decision of the District Court for the District of Columbia. Briefing on the appeal is completed and argument is scheduled for April 15, 2016 in the U.S. Court of Appeals for the D.C. Circuit. Plaintiff in *Continental Western Insurance Co.* did not appeal the district court's decision to the U.S. Court of Appeals for the Eighth Circuit.

b. Four cases (the "Related Cases") are currently pending in the U.S. district courts for the districts of Delaware, Eastern Kentucky, Northern Iowa, and Northern Illinois.

c. Based on demand letters received by the Enterprises' boards of directors, FHFA anticipates the filing of additional shareholder actions challenging the Third Amendment.

10. Existence of Common Questions of Fact The Related Cases all involve common questions of fact and law, common pretrial procedural issues, and common parties:

a. Each of the Related Cases names FHFA and Treasury as defendants and challenges the Third Amendment, raising substantially similar factual allegations regarding FHFA's and Treasury's execution of and performance under the Third Amendment.

b. Three of the four Related Cases assert claims under the APA, alleging that FHFA and Treasury acted beyond their statutory powers and that Treasury's conduct was arbitrary and capricious.

c. The disposition of all pending claims on the merits would require the examination and consideration of Treasury's administrative record.

d. The Conservator maintains that it was under no obligation to maintain or file an administrative record. FHFA anticipates litigating whether it was required to maintain an administrative record, as well as the adequacy of any record it should be ordered to file.

e. Two of the four Related Cases assert substantially similar claims under Delaware and Virginia state law, alleging breach of contract and breach of the implied duty of good faith and fair dealing.

f. HERA limits the jurisdiction of federal district courts and forecloses judicial review where the relief sought would "restrain or affect" the Conservator's exercise of its statutory powers. 12 U.S.C. § 4617(f). The relief sought in the Related Cases would vacate the Third Amendment and enjoin FHFA and Treasury officials from taking any action pursuant to the Third Amendment. Such relief would restrain or affect the exercise of the Conservator's powers, unwinding the financing agreement that ensures the Enterprises do not enter mandatory receivership. Thus, the Related Cases present common threshold legal issues regarding the courts' jurisdiction.



g. Resolving those dispositive issues based on FHFA's and Treasury's motions to dismiss will require the courts to examine HERA and the Enterprises' federal statutory charters to determine whether the Conservator and Treasury acted within their statutory powers when entering into the Third Amendment.

h. All of the plaintiffs in the Related Cases are Enterprise shareholders, and the Related Cases present the same threshold legal issue of whether the shareholders may maintain those actions in light of the Conservator's succession to "all rights, titles, powers, and privileges" of Enterprise shareholders. 12 U.S.C. § 4617(b)(2)(A)(i).

11. Benefits of Consolidation Consolidation of these actions for pretrial proceedings will serve the convenience of the parties and promote the just and efficient conduct of the actions for at least the following reasons:

a. The claims, issues, and questions of fact and law regarding entry into the Third Amendment and the district courts' jurisdiction are substantially identical in each of the actions.

b. Pretrial motions will be dispositive in all of these actions; it is unlikely that trials will occur.

c. Common issues concerning the Conservator's obligation to maintain and file an administrative record, the completeness of the administrative record, and the supplementation of the administrative record may arise in each of the currently pending actions. Transfer will ensure consistent rulings on the Conservator's need to maintain and file an administrative record. Transfer will also ensure consistent rulings regarding challenges to and/or supplementation of Treasury's and FHFA's record (should FHFA be ordered to file one).

12. Choice of Forum and Judge The U.S. District Court for the District of Columbia is the appropriate forum for all of the Related Cases. It was the venue for ten complaints concerning the validity of the Third Amendment. *See Perry Capital*, 70 F. Supp. 3d. at 246. Additionally, the U.S. District Court for the District of Columbia is the most appropriate transferee court because FHFA, Treasury, and Fannie Mae are located in Washington, D.C. Freddie Mac is headquartered in the Washington, D.C. metropolitan area. Thus, the relevant documents, decision-makers, and administrative record are all located in and around Washington, D.C. Moreover, counsel for FHFA and Treasury are in Washington, D.C., and transfer would eliminate the need for travel to Pikeville, Kentucky, Cedar Rapids, Iowa, and/or any other locale where shareholders may file copycat complaints.

Pursuant to the accompanying Certificate of Service, a copy of this Motion and the attached Schedule of Actions, and the accompanying brief in support of this Motion have been filed with the clerk of each district court identified in the Schedule of Actions and served on counsel for all parties listed in the Schedule of Actions.

DATED: March 15, 2016

Respectfully submitted,

/S/ Howard N. Cayne

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# **EXHIBIT B**

**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

IN RE: FEDERAL HOUSING FINANCE  
AGENCY, *ET AL.*, PREFERRED STOCK  
PURCHASE AGREEMENTS THIRD  
AMENDMENT LITIGATION

MDL Docket No. 2713

**NOTICE OF RELATED ACTIONS**

In accordance with Rule 7.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, the Federal Housing Finance Agency (“FHFA”), as Conservator for the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”), respectfully notifies the Panel of the following related actions in federal district courts.

**Related Actions**

*Edwards v. Deloitte & Touche, LLP*  
No. 1:16-cv-21221  
Southern District of Florida  
Honorable Robert N. Scola, Jr.

*Edwards v. PricewaterhouseCoopers, LLP*  
No. 1:16-cv-21224  
Southern District of Florida  
Honorable Federico A. Moreno

A Schedule of Actions is filed with this notice.

In *Edwards v. Deloitte & Touche, LLP* (the “Fannie Mae Case”), the plaintiffs are shareholders of Fannie Mae. The defendant is a certified public accounting firm that audited financial statements of Fannie Mae during conservatorship. The notice removing this case to

federal court is attached as Exhibit 1 (without the exhibits thereto). The docket sheet and Complaint are filed with this notice. In *Edwards v. PricewaterhouseCoopers, LLP* (the “Freddie Mac Case”), the plaintiffs are shareholders of Freddie Mac. The defendant is a certified public accounting firm that audited financial statements of Freddie Mac during conservatorship. The notice removing this case to federal court is attached as Exhibit 2 (without the exhibits thereto). The docket sheet and Complaint are filed with this notice.

In these actions, the plaintiffs allege negligent misrepresentation and aiding and abetting breach of fiduciary duty to plaintiffs. Specifically, plaintiffs allege that the accounting firms “violated auditing and accounting standards and aided and abetted Freddie Mac’s [and Fannie Mae’s] directors and officers, FHFA and Treasury in violating their fiduciary duties.” Freddie Mac Case Compl. ¶¶ 7, 43; Fannie Mae Case Compl. ¶¶ 9, 43. FHFA previously alerted the Panel to these cases in its original motion to transfer. *See* Memorandum of Law in Support of Federal Housing Finance Agency’s Motion to Transfer for Consolidated or Coordinated Pretrial Proceedings Under 28 U.S.C. § 1407, at 3 n.1 (filed Mar. 15, 2016), ECF No. 1-1.

These actions present common facts and the same threshold legal issue as do the four related cases that formed the basis for FHFA’s original motion to transfer. All of the complaints arise out of and relate to facts that ultimately constitute a shareholder attack on the Third Amendment. Freddie Mac Case Compl. ¶ 37 (“The [Third Amendment] offered no benefits whatsoever to Freddie Mac or Plaintiffs. Rather, it was an egregiously unfair, self-dealing transaction, the benefits of which flowed entirely to Treasury . . . and indirectly to FHFA . . . .”); Fannie Mae Case Compl. ¶ 37 (same). In addition, in all of these cases, the court must resolve a threshold legal question of whether shareholders of Freddie Mac and Fannie Mae have standing to bring these actions in light of HERA’s statutory mandate that the Conservator has succeeded

to “all rights, titles, powers, and privileges” of Fannie Mae’s and Freddie Mac’s shareholders.  
12 U. S.C. § 4617(b)(2)(A)(i).

Although these actions are against the auditors of Freddie Mac and Fannie Mae, they focus on the same events and the same actors as the related cases—the Third Amendment, FHFA, Treasury, Fannie Mae, and Freddie Mac. *See In re Enron Corp. Sec., Derivative & “ERISA” Litig.*, 227 F. Supp. 2d 1389, 1392 (J.P.M.L. 2002) (transferring shareholder claims against a corporation with shareholder claims against the accounting firm). To the extent these cases present unique factual issues, “[t]he transferee judge, of course, has the authority to group the pretrial proceedings on different discovery tracks according to the common factual issues or according to each defendant if necessary [such that] no party need participate in pretrial proceedings unrelated to that party's interests.” *In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979). As such, these cases present common factual and legal issues that warrant transfer.

Accordingly, FHFA respectfully requests that the Panel coordinate or consolidate these cases with MDL No. 2713 and transfer the cases to the U.S. District Court for the District of Columbia.

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Respectfully submitted,

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