

February 14, 2017

VIA ELECTRONIC FILING

Mr. Mark Langer
Clerk of the Court
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *Perry Capital LLC v. Lew*, Nos. 14-5243 (L), 14-5254 (con.), 14-5263 (con)

Dear Mr. Langer:

We write pursuant to FRAP 28(j) to respond to FHFA's January 23, 2017 letter.

FHFA overstates the significance of *Edwards v. Deloitte & Touche, LLP*, No. 16-21221 (S.D. Fla. Jan. 18, 2017). *First*, that decision has no impact on Class Plaintiffs' direct claims for breach of our shareholder contracts. No such direct claims for breach of contract were addressed in *Edwards*.

Second, *Edwards* does not support the view that any of Class Plaintiffs' claims are solely derivative. The *Edwards* plaintiffs filed suit against Fannie Mae's auditor and asserted claims for negligent misrepresentation and aiding and abetting breach of fiduciary duty based on a theory of accounting malpractice. The *Edwards* plaintiffs' claims "rest[ed] entirely on economic harm to the value of their shares." Order at 10. Here, the GSEs paid Treasury more than \$120 billion in dividends over and above what Treasury was entitled to receive under the PSPAs prior to the August 17, 2012 Net Worth Sweep. Absent the Net Worth Sweep, FHFA would have been required to pay something on the order of \$20 billion in dividends to private shareholders in the Class. Accordingly, Class Plaintiffs seek a direct recovery for that breach of contract, as well as for the elimination of their voting rights and liquidation preferences. The relief sought by Class Plaintiffs flows "directly to the stockholders, not the corporation." *See* Class Plaintiffs' Final Opening Brief ("Op. Br."), at 21-23 (filed Mar. 8, 2016); Class Plaintiffs' Final Reply Brief ("Reply Br."), at 18-21 (filed Mar. 8, 2016).

Third, for the reasons already explained by Fairholme, the holding in *Edwards* that HERA requires FHFA to determine whether to sue itself and sister government agencies cannot be correct, and is contrary to the only court of appeal decisions to address such an issue. *See* Op. Br., at 23-34; Reply Br., at 3-10, 17. It would raise serious constitutional issues to hold otherwise. *See* Op. Br., at 28-29; Reply Br., at 8.

Respectfully Submitted,



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