EXHIBIT C

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
NO. 13-465 C
(FILED FEBRUARY 26, 2014)

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FAIRHOLME FUNDS, INC., ET AL

VS. RCFC 12(b); RCFC 12(b)(6); RCFC 56(d)

THE UNITED STATES
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PROTECTED INFORMATION ONLY TO BE DISCLOSED

IN ACCORDANCE WITH PROTECTIVE ORDER

ORAL DEPOSITION OF MS. SUSAN MCFARLAND

HOUSTON, TEXAS

JULY 15TH, 2015

10:01 A.M.

Reported By:
SAMANTHA DOWNING, CSR
JOB NO. 39652

at the risk-free rate of debt, but then they would layer on top of that some risk premium for credit risk?

MR. LAUFGRABEN: Objection; form, foundation.

A. I would say my experience not just at Fannie but over the course of career with financial services, that's a normal construct for providers of funds, to -- to come up with a price point --

Q. (BY MR. THOMPSON) Yes.

A. -- that they would be willing to provide those funds.

Q. Yeah. And I am trying to figure out how they would come up with that price point.

They would look at interest rate risk, among others things, right?

MR. LAUFGRABEN: Objection.

A. I can't sit here and tell you what each entity specifically did.

But I think if you look academically at, you know, the buildup of rates, you're looking at a risk-free rate and then building something on for risk. And then you can make your list of what risks you think you need to build into the price and how much price you think you need to build for each of those types of risks.

But, you know, on an individual entity-be-entity basis, you would have to ask them how they built their rate structure.

Q. (BY MR. THOMPSON) And that's fair enough.

I was trying to get inside Fannie's head, when they're doing projections into the future and trying to think about, "What is our funding expense going to be?"

Did you-all try to build that expense in the same way where you made an estimate of, "Here's what we think the risk-free rates will be, and here's what we think our funding sources will require as a risk of premium"?

MR. LAUFGRABEN: Object to the form of the question.

MR. BARTOLOMUCCI: Objection; form.

A. We -- there's a lot of history that exists, and so there was a lot of -- the more -- the funding markets, by the time I was there, were performing fairly effectively with one exception. When the debt ceiling debates occurred, and there were challenges with the debt ceilings, we saw some interesting things go on within the debt markets for short periods of time around those debates.

Outside of that, it -- the pricing wasn't

that crazy or volatile. In other words, you could kind of almost trendline out the correlations that existed in the recent past to continue to exist on a go-forward basis.

Q. (BY MR. THOMPSON) Now, if you're -- we're looking at the cost of funding for Fannie Mae, is one of the variables -- is it true to say that all other things being equal, if Fannie had more capital, it would pay less in funding than if it had less capital?

MR. LAUFGRABEN: Objection; calls for speculation, calls for an expert opinion.

A. Capital exists for unexpected losses. Your expected losses should be reserved for and already reflected in your financials.

If someone is building up a price point, taking a risk-free rate and then building onto something for risks, one would then assess what the capacity that the entity has to absorb those risks. Capital could be one place a company could absorb some of those risks.

So it would not -- it would make sense to me that entities would look at capital levels in consideration, as one factor in determining a company's capacity to absorb risks, and that could influence their pricing.

Q. (BY MR. THOMPSON) Okay. And in trying to

operate Fannie's financials on a sound basis, do you think it was desirable for Fannie to have capital?

MR. LAUFGRABEN: Objection; calls for speculation.

A. I believe that if you're going to operate the enterprise ongoing that it should have capacity to absorb risks, and unexpected losses and capital is the most -- would be the -- my preferred form of risk absorption. Because really, quite -- you know, to me, Fannie had two places: Either you build capital inside the enterprise, and/or you continue to rely on the U.S. Government as the full backstop for the enterprise --

Q. (BY MR. THOMPSON) Was there --

A. -- to step in.

Q. Was there any discussion about going to the private market once Fannie had returned to profitability in 2012 and raising capital there?

MR. LAUFGRABEN: Object to the form of the question.

A. There was no discussions about, you know, raising capital in the marketplace at Fannie Mae in the time that I was there, you know, like -- the theoretical potential to do that in time, yes. But there was no discussions of, "Gee. We're starting to make money.

Should we go and do a stock offering?"
No.
Q. Okay. And do you know why there weren't such discussions?
A. I think two reasons in my opinion. This is strictly my opinion.
One, it was probably premature. I think Fannie, in the -- would need to have returned to -- you know, they would have had to have more periods of profitability before the marketplace would probably have entertained -- before we could expect a stock offering to be successful.
Two, we didn't legally have the ability to do that on our own. That would have to be the Treasury, and FHFA would have had to have agreed to that.
Q. Yes.
A. And it was pretty clear to me at that point in time that that was not going to be something they would have been receptive to.
Q. Understood.
Okay. So, Ms. McFarland, I am going to be showing you some documents today, and you're free to sort of flip through them. But I will be generally directing your attention to a specific passage.

In this first one, I would like to have the court reporter mark as McFarland 1, and it has a Bates number of Treasury 0201.
(McFarland Exhibit No. 1 was marked.)
MR. LAUFGRABEN: We object to this document from December 20th, 2010. It's well before the beginning of the discovery time period set forth in the Court's order.
MR. THOMPSON: Yes. And I understand that, and I am going to be asking questions about the time period that is within the Government's understanding of the Discovery Order.
Q. (BY MR. THOMPSON) But I would -- this is, as Counsel quite rightly notes, a memo from December 20, 2010. It's from a Jeffrey Goldstein. The subject is, "Periodic Commitment Fee for GSE Preferred Stock Purchase Agreements."
Ms. McFarland, I would like to direct your attention to the second page. And under the heading, "Reasons to Set the PCF," there's a bullet point that says, "Makes clear the administration's commitment to ensure existing common equity holders will not have access to any positive earnings from the GSEs in the future."
Now, I am not asking you about

December 2010. You weren't there.
A. Correct.
Q. But when you did arrive in the middle of 2011, did you see any manifestations of the administration's commitment to ensure existing common equity holders would not have access to any positive earnings from Fannie?
MR. LAUFGRABEN: Object to the form of the question; lack of foundation.
A. The only example that I -- that comes to mind of note is the Third Amendment.
Q. (BY MR. THOMPSON) Yeah.
And what was your reaction when you learned -- you learned of a Third Amendment a couple of days beforehand; is that right?
A. Correct.
Q. All right. And what was your reaction to it?
MR. LAUFGRABEN: Objection; vague.
Q. (BY MR. THOMPSON) Did you think it was the effective nationalization of the companies?
MR. LAUFGRABEN: Objection; form.
MR. BARTOLOMUCCI: Objection; form.
A. No, I didn't view it as nationalizing. It borders on that; I can see.
But I had, shortly before that, had

a meeting with Treasury whereby we reviewed our forecasts. I had expressed a view that I believed we were now in a sustainable profitability, that we would be able to deliver sustainable profits over time. I even mentioned the possibility that it could get to a point in the not-so-distant future where the factors might exist whereby the allowance on the deferred tax asset would be released. We were not there yet, but, you know, you could see positive things occurring.
So when the amendment went into place, part of my reaction was they did that in response to my communication of our forecasts and the implication of those forecasts, that it was probably a desire not to allow capital to build up within the enterprises and not to allow the enterprises to recapitalize themselves.
Q. (BY MR. THOMPSON) And with whom at Treasury do you have this meeting?
A. So the -- which meeting?
Q. The one you just referenced where --
A. Where I had the discussion about the forecasts?
Q. Yes.
A. So it was a common practice for us to meet with Treasury on a quarterly basis to review our results from the past quarter and to update them on our forecasts;

46

you know, our updated forecast.

And that meeting -- I don't remember every specific person in the meeting. I was there; Tim Mayopoulos, who was the CEO of Fannie Mae was there; Dave Benson I think would have been there. He -- he was the Treasurer of Fannie Mae at the time. That would have been normal for him to be in attendance. Mary Miller, the Secretary of the Treasury, was there.

Tim --

Q. Bowler?

A. Thank you.

I believe he was there. He was normally at those meetings.

I believe there was a gentleman -- and I can't remember his name -- who used to work at Fannie that was now at Treasury that was, like, a Financial Analyst. I think he was there because they knew part of the topic we wanted to talk about was these projections.

And then there were probably other members of -- excuse me -- FHFA, the U.S. Treasury, and Fannie Mae to talk about some other topics that were going to be covered in that meeting. Because normally we reviewed financials, but they were -- you know, there may be one, two, or three other topics that would be

47

discussed.

And both Fannie and Treasury would then make sure they had the -- the personnel around the table to facilitate those conversations. I don't remember in this particular meeting what those topics were and who those individuals were.

Q. Do you remember Jeff Foster being at the meeting?

A. He could have been.

MR. LAUFGRABEN: Objection.

A. He could have been. I can't confirm yes or not.

Q. (BY MR. THOMPSON) Yes.

A. It wouldn't surprise me if he was. That would have been reasonable.

Q. And Mario Ugoletti; was he at the meeting?

Do you know?

A. No, I don't remember Mario being there, you know, again, because I don't have perfect recollection of all the attendees.

If you said, "Here's this document. Mario was there," I would say, "Okay. He was there."

I don't remember him being there, but he could have been there.

Q. Okay. And so would it be fair to say that there were at least five or six Treasury officials at this meeting?

48

A. Probably, yes.

Q. Okay. And did the meeting take place at Treasury?

A. Yes, it did.

Q. And was this within less than a month before the net worth sweep?

A. I believe it was the week before.

Q. Okay.

A. It was very -- it was within the week or two. It was very close to.

Q. Would it surprise you to know that there's an e-mail from Tim Bowler where he's saying, "We need to make a renewed push on the net worth sweep"?

MR. LAUFGRABEN: Objection; form, lack of foundation.

MR. BARTOLOMUCCI: Objection.

A. I don't have knowledge of that e-mail.

Q. (BY MR. THOMPSON) Okay. And was this meeting -- I am sorry if I asked this.

Was it at Treasury?

A. Yes.

Q. And would this -- how would this have been set up?

49

A. Normally Dave Benson was our primary sort of liaison between the company and Treasury. And these meetings were generally scheduled the day -- you know, because they were -- we had the regular kind of quarterly meetings, and there might be some other meetings of; you know, specific topics that would occur in between those other meetings.

I don't know -- I can't recollect exactly, you know, whether we would initiate setting it up, or Treasury would initiate setting it up. I don't know how the logistics all worked out.

Q. And when you were making your presentation, did you have a PowerPoint that you were using?

A. A few pages, yes, from a PowerPoint.

MR. THOMPSON: Okay. I don't believe, Mr. Bartolomucci -- and I apologize if I am wrong about this, but I don't believe we have that PowerPoint presentation.

So I would ask if you would be kind enough to go back and talk to your client and see if they did produce it? And if they didn't produce it, whether they have it, because it's our view that it's highly material to these depositions?

MR. BARTOLOMUCCI: Request noted.

MR. THOMPSON: Likewise, I would make the same request to the Government, that to the extent the Government has a copy of this document, I don't believe it's been provided to us. Again, I apologize if I am wrong, but I don't have knowledge of all the pages. But it's not one that I have seen.

I would just request if you could ask your client, Treasury, whether they have the document, whether it's been produced, whether privilege has been asserted, which I can't imagine since Fannie was there.

Will you take that back to your client?

MR. LAUFGRABEN: I will take it under advisement.

MR. THOMPSON: Thank you. I appreciate that.

Q. (BY MR. THOMPSON) Okay. And did you have internal -- so you had a PowerPoint presentation you used at the meeting.

Did you have also have any internal documentation that was provided to you in preparation of the meeting?

A. Well, in the sense that I was reviewing actual results and forecasts, there's a lot of documentation that I looked at on both of those to get comfortable and ultimately sign off on the financials and sign off on the 10-Q --

Q. Yes.

A. -- as well as approve the forecast. So -- and that's just part of the standard process of preparing actuals and preparing forecasts.

Q. And sorry if I am not being clear.

But I am just asking, when you went into this quarterly meeting with Treasury, would typically someone on your staff provide you with either a briefing book or some background materials that would be more detailed than the PowerPoint you would hand out to Treasury?

A. Well, in the normal course of preparing our actual results, there's a whole process for closing the books, reviewing the results, and preparing the 10-Qs.

And so the information contained in the PowerPoint from the actual results are ultimately pulled from -- they're basically summarizations, very high-level summarizations of results that come from that standard process that exists to, you know, approve our actuals.

So it wasn't like I needed a separate briefing book for that. I already had that information available to me in the normal course of my job and responsibilities to, you know, close the books, and sign off on the results and file our Q.

The forecasts, in much the same fashion, albeit not quite as formal, we had a process. My team would meet with me to review the forecasts, they would bring information, we would discuss. I, at times, would challenge assumptions, and, you know, I could play devil's advocate.

We could look at a lot of different things. We could look at sensitivity analyses, comparisons of this forecast to prior forecasts to things like that, a variety of mechanisms for me to get comfortable that we finalized a forecast that we felt comfortable with, that it was a baseline representation of what our most current perspectives were on expectations of future performance.

So because that process already existed, I was relying on that and the knowledge that I gained through that process to inform me to have those discussions with Treasury. I don't recollect bringing -- I didn't bring, like, you know, a bunch of supporting documentation with me.

Q. Okay.

A. Okay. You know, it was the PowerPoint presentation.

You know, from time to time, I might bring a page or two of notes that -- that I wanted to

make sure either -- you know, make sure I get these points across, or here's a few, you know, additional pieces of data that they may ask about that aren't reflected on the documents, and I wanted to make sure I had the correct information on hand.

Most of those would take the form of kind of personal notes on my part.

Q. Okay. Did you take notes of this meeting?

A. No.

I don't generally take notes in those types of meetings.

Q. Would there have been anyone on your team who would typically take notes on those meetings?

A. No one on my team was present. In other words, nobody from the Finance Team was present at the meeting other than me.

Q. Okay.

A. I -- I don't recollect -- there wasn't -- as far as I know, there was no official note-taking.

That doesn't mean that people at the table might be taking or jotting down personal notes.

Q. Okay. And I just was -- wanted to know if you had a recollection as to whether typically one participant from Fannie would try to take notes down as to what was said.

A. Not that I was aware of, no.

Q. Okay. Was anyone from FHFA at this meeting?

A. I don't recollect. I don't remember.

Q. Okay. And you said there was an Analyst who had been at FHFA and --

A. No, had been at Fannie --

Q. Sorry.

A. -- and had gone to work for the U.S. Treasury.

Q. Mr. Goldstein?

A. Yes. Thank you.

Q. Okay.

A. Thank you. Yes.

Q. Allen Goldstein?

A. I said that if you refresh my memory on the name, I could confirm it.

Yes, it was Allen.

Q. And he was there at the meeting?

A. I believe he was at the meeting.

Q. Okay. Very good.

Did you ever have any similar type of conversation with anyone at the FHFA about the deferred tax asset prior to the Third Amendment?

A. Yes.

Q. Okay. And tell me about that meeting.

A. Well --

MR. LAUFGRABEN: Object to the form of the question; vague.

A. I don't -- so just as we -- you know, we had a formal quarterly sit-down with Treasury. We had more regular interactions with individuals at FHFA. So one either Jeff Spohn and/or Brad Martin would attend our Executive Committee meetings.

And so generally anything I was going to say at Treasury, I was already telling the Executive Committee, and Brad or Jeff would have been present at those meetings.

And as such, my reviews of actuals and forecasts and even the -- the -- the raising of the potential that that allowance might be reversed in the not-so-distant future I would have mentioned at an Executive Committee meeting, and Jeff and/or Brad would have been present to hear that.

Q. (BY MR. THOMPSON) And just to be clear on that, that would have been within a month of the Third Amendment?

A. It would have been prior to that --

Q. Yes.

A. -- because it's all part of the discussions we have through the quarter-end-close process and forecast preparation and Board prep and all that kind of stuff

that takes place in that cycle.

Q. Just so the record is clear, when you say, "prior to that," what period would that have been?

A. Well, it would have been probably -- I would suspect it was -- something that occurred in July would be my -- because of the timing.

You know, you're closing the books for the second quarter. We're prepping for the upcoming Board meetings, getting the forecasts done, letting the team know when the results are coming out for the quarter, all of those kinds of conversations that would happen internal at Fannie Mae before we would ever have that conversation with Treasury.

Q. Okay. And I am sorry I interrupted you.

You described these --

A. And then with the -- we also provide -- so we cannot file our Q unless DeMarco gave us permission to file the Q.

So drafts of our filings were also provided to FHFA first. They had the opportunity to provide feedback, and then we could incorporate that feedback and then got approval for the final filings.

We also had a press release that would go along with -- when we filed a Q, we would go out with a press release. There is where you might see a little

more color.

There would normally be a quote for the CEO like Tim and a quote from me, and we would also kind of preclear that press release with FHFA before issuing the press release.

As far as -- I believe during 2012, I began to signal -- there began to be some public communication as to our view that things were starting to look good and starting to head in a positive direction.

I would have to refresh my memory through documents as to the timing of what I said and when. But I know through the course of early 2012 and then throughout that summer, the messaging was getting a bit more and more positive that we were sending out. And certainly FHFA was aware of our communications, our external communications in that regard.

As far as the deferred tax asset, I -- I don't recollect that we had some big formal meeting to break the news to them, okay? I believe that it was just something that we talked about in the normal course of keeping them informed about kind of what we're seeing.

And also, Jeff Spohn and/or Brad Martin would attend our Board meetings, so they would also

58

hear that the same comments I was making to Treasury, I was making to the Board.

Q. Okay. In the same timetable?

A. I don't remember exactly when the Board meetings were within that window, but it would have been Board meetings shortly before that that I would have reviewed this very same information.

Q. Okay. And when you say that you would have had dialogue with people at FHFA about the deferred tax assets, with who would you have had the dialogue?

Would that have been Mario Ugoletti?

MR. LAUFGRABEN: Object to the form of the question; vagueness as to time period.

A. Yeah.

So early on, it's probably through the Chief Accountant's office of the FHFA, because it is a technical accounting matter.

Q. And do you happen to recall --

A. I can pick him out of a lineup.

Q. Okay. We'll show you some names later on.

A. I tell you, I -- ask me a number, I can probably give it to you. People's names...

It would have started there. Eventually there were conversations with Director DeMarco and key direct reports of his, but that -- the -- those -- the

59

DeMarco conversations occurred when we were actually in the serious mode of potentially -- we were looking -- we did a full analysis at the end of the second quarter; no release. We did a full analysis at the end of the third quarter; no release.

When we were doing the analysis for the fourth quarter of 2012, we started to get to a point where we were tipping towards release, and that's when I began to have conversations with more senior folks at FHFA on it. But they were already aware of the statement that I made to Treasury. I mean, in general, I put it on people's radar screens that it's something that could happen in the not-so-distant future.

I will say that I believe Mary Miller asked me in this meeting about how large would it be and did I have any idea of when.

Q. Yeah.

A. And I believe my response was around 50 billion, but that could be larger or smaller depending upon when. The further out in time it is, the smaller it probably would be. It is part of the evidence that it might be good.

So the further out in time that it would be released, the smaller the release size would be.

But I said probably in the

60

50-billion-dollar range and probably sometime mid 2013 at that time when I met with them late July, early August 2012.

But I said we had not done a real in-depth analysis, so I was just kind of giving her kind of my off-the-cuff perspective in the moment.

Q. And FHFA was on notice that you had sent this message to Treasury?

A. Yes.

MR. LAUFGRABEN: Object to the form of the question.

A. Yes.

Q. (BY MR. THOMPSON) And they were on notice of that fact before the Third Amendment; is that right?

MR. LAUFGRABEN: Same objection.

A. Yes.

Q. (BY MR. THOMPSON) Okay. Now, if we look for -- let's look at some of these Board minutes, and we've actually -- we've been going -- well, that's fine.

Does -- do you need a break, or --

A. I am fine right now.

Q. Okay.

A. I am fine right now. If I need water, then I will need a break.

Q. Okay. Very good.

61

Okay. So we're going to have the court reporter mark as McFarland 2 a document that bears the Bates number FM3153 through 3159.

(McFarland Exhibit No. 2 was marked.)

Q. (BY MR. THOMPSON) And if we look, these are minutes of the meeting of the Board of Directors from August 22, 2011. And if we look at the last sentence of the second paragraph, it indicates Jeff Spohn from the Federal Housing Finance Agency also participated.

Is this a piece of what you were saying earlier, that typically there was an FHFA member at your Board meetings?

A. Yes.

Q. Okay. And if we turn to page 4 of this document, there's a heading that says, "Bank of America Countrywide and Bank of New York Mellon Proposed Settlement."

Do you see that?

A. Yes.

Q. And do you recall that Fannie Mae had initiated a series of litigations against major financial institutions?

A. Yes.

MR. LAUFGRABEN: Object to the form of the question.

What does this have to do with the Discovery Order?

MR. THOMPSON: Profitability. They made tens of billions of dollars off of this.

MR. LAUFGRABEN: A couple of questions.

Q. (BY MR. THOMPSON) So at -- and do you recall what the gist of the lawsuit was?

Was it that you had bought product and covenants were false?

MR. LAUFGRABEN: Object to the form of the question.

A. Yes. Well, that we had bought product that had not complied with the requirements.

The general model that existed in originations at the time was to detect and correct after the fact, versus inspect and reject prior to taking it on. So it was determined that a significant percent of the -- the loans that we received that had been originated through some of these -- now, there were different lawsuits. So there's investment securities, and there is loan guarantee activity.

So the lawsuits and the loan guarantees was premised basically on the fact that we had found a significant defects in a significant number of loans. And that per the requirements, they were to make us

whole on that. That was sort of the operating model. And that were large sums of money owed to us to resolve all those loans in accordance with the Loan Origination Agreements that existed. So that's on the loan origination side.

There were also lawsuits that existed related to the investment securities and whether or not the institutions involved had fully and appropriately disclosed information about securities to the buyers of those securities as required, and that the lawsuits contend that they had not. And as a result, they owed damages to the buyers and owners of those securities, Fannie Mae being one of those.

Q. (BY MR. THOMPSON) Did your team, when it was building projections of future profitability, include a line item for expected values of settlements that might or verdicts that might be realized?

A. Not as a general practice.

We would only build those in if in the event it was all but certain and agreed to. Otherwise, we -- there -- now, I want to pause here, because there's two ways one can address some of these issues.

So on the investment securities side, we didn't build anything in for being -- you know, getting some kind of a settlement. On the loan origination

side, while we didn't build in settlement projections as settlement projections, we did have assumptions about how much we should expect to receive.

It's not -- in the normal course, a loan would go bad. We would assess the defects. If we thought we had a valid claim against the institution that originated the loan, we could build some assumption in for recovery from that institution for those defects. So in our normal projection of net loan losses, we would include some amount of recovery from various institutions for them curing the defects.

When we got into significant contention -- let's use the Bank of America Countrywide as an example -- we tried to be very conservative. Not that we didn't think we had a legitimate claim to a lot larger number, but we knew that Bank of America was heavily disputing our requests and how much we had been asking for them to make us good, you know, to cure the defects. So we tried to be very, very conservative as to how much we thought we would actually collect from Bank of America.

And so then as the actual agreements were reached, it was a matter of comparing that which we had already incorporated into our assumption set versus how much we actually got from them.

Q. Okay. Very helpful. Thank you.

A. Okay.

Q. And we can put this document to the side.

A. Okay.

Q. Now, the periodic commitment fee.

Do you recall there being any discussion while you were at Fannie Mae about the amount of the periodic commitment fee?

MR. LAUFGRABEN: Objection as to time period.

Q. (BY MR. THOMPSON) As I said, at the beginning -- the assumption is -- that I am asking about --

A. The main discussions were the -- that they were continuing to waive our need to pay the commitment fee.

Q. Okay. Was the commitment fee regarded by yourself as akin -- not the commitment fee, but the commitment itself as akin to a line of credit?

MR. LAUFGRABEN: Objection; vague.

A. Yeah.

I mean, obviously the Preferred Stock Purchase Agreement provides for funding -- access to funding if in the event certain conditions exist. One could say that's not dissimilar to some forms -- you can call it a line of credit, or

you can call it an LC, a letter of credit, because it's a little bit more you draw if in the event certain conditions exist, whereas a line of credit is open-ended as to where one can draw and pay down and whatnot on it.
So you -- yeah. The commitment fee would probably be very similar to fees that you would see structured into those types of instruments.
Q. And are those types of fees generally calculated as a percentage of the outstanding commitment?
MR. LAUFGRABEN: Objection; lack of foundation, calls for speculation, calls for expert testimony.
A. I would say it -- for letters of credit and lines of credit in the normal ordinary course of banks' dealings with customers, since I have a lot of banking experience, that would be a customary structure --
Q. (BY MR. THOMPSON) Okay.
A. -- Yes.
Q. All right. Did anyone at FHFA or Treasury tell you that the periodic commitment fee would be incalculably large if they didn't waive it?
A. No.
MR. LAUFGRABEN: Objection.
Q. (BY MR. THOMPSON) Okay. I am going to have --

our next one will be McFarland 3. It has a Bates number of FM3070 through 3074.
(McFarland Exhibit No. 3 was marked.)
Q. (BY MR. THOMPSON) So these are minutes of the meeting of the Board of Directors of Fannie dated October 20, 2011. If you look at the third full paragraph on the first page, we can see you're present, as well as Jeff Spohn of the FHFA.
A. Uh-huh.
Q. And if we turn to the second page, the first full paragraph, the first sentence reads, quote, "The Board discussed the utility of obtaining on an ongoing basis a good bank/bad bank financial presentation, and CFO McFarland indicated that she would include this information in the November Board reporting package."
What is being referred to there as the good bank/bad bank?
A. At that time, Fannie Mae's results were commingled. The results associated with the book that had been originated prior to the -- I use the word, "meltdown" -- the financials crisis, the 2007, 2008 period, whatever you want to call it, and obviously there were fairly significant losses coming forward from that book of business. All the while, over the last most-recent period, new loans had been originated, put

on the books.
And when you had this combined result, it made it at times difficult to ensure that you were -- we were getting the desired results from the new book of business. So could we kind of separate the results into two pieces, that of the bad back book, which is the bad bank, and that of the new book, that being the good bank, in such a way that it -- it would better enable us to understand the unique results of each of the -- each part of the portfolio.
Q. And have you heard of the term, "vintages"?
A. Yes.
Q. And is this a metaphor similar to wine, that the originations and investments made in a particular year could be good or bad?
A. Yes.
Q. Okay. And were the vintages of 2009 and '10 and '11 and '12 good vintages for Fannie Mae?
A. Yes. They were certainly much better vintages than the vintages of 2002, '3, '4, '5, '6, '7.
Q. Yes.
And as time went on, the good vintages became a bigger part of Fannie's future, and the bad vintages became diminished; is that right?
MR. LAUFGRABEN: Objection to the form of

the question.
A. Yes.
So two things began to happen: The percentage of the overall book, you know, the -- the older vintages, comprised less of the total portfolio vis-à-vis the new vintages, and the performances of the new vintages improved.
The, for instance, the 2011 vintage had better performance than 2009 vintage.
Q. (BY MR. THOMPSON) Okay.
A. So you had both of those positives occurring over time.
Q. Okay. And I would like to ask the court reporter to mark this next exhibit as McFarland 4. It has a Bates number of FHFA72466 through 72484.
(McFarland Exhibit No. 4 was marked.)
Q. (BY MR. THOMPSON) This document says, "Senior Preferred Stock Purchase Agreement: Treasury Draw Projections, October 24, 2011, Financial Planning & Analysis."
Who was in charge of the financial planning and analysis of Fannie at this time?
A. I believe it was Anne Gehring reporting to me.
Q. Okay. And then if we turn to page -- I am going to refer to these Bates numbers -- these are the

little numbers in the bottom right-hand corner -- 72478. It's the 13th --

A. 78?

Q. Yes, 78.

A. Okay.

Q. And it shows projections of total net income. And if we look at 2020 out through 2026, it -- in this document, Fannie's projecting profits of about 10 billion a year; is that right?

A. Yes --

MR. LAUFGRABEN: Objection.

A. -- this document says that.

Q. (BY MR. THOMPSON) Okay. And do you believe as of October 2011 that that was a reasonable long-term projection of profitability for Fannie?

A. Yes.

I do, though, appreciate, having been in this business for a long time, that the further out in time you go, the more those projections are subject to a lot of factors that have yet to occur that would not have been, you know, explicitly incorporated into those projections.

So they are reasonable placeholders based on trending out what you know today or could reasonably expect based on what you know today. But as you get

further out in time, a lot of stuff can happen; with that as a caveat.

Q. Okay. Now, did anyone at FHFA -- well, first of all, would FHFA have been aware of these projections?

MR. LAUFGRABEN: Object to the form of the question; calls for speculation.

A. I need to refresh my memory as to where this document was -- it's -- this looks like a document that would have been covered in the Executive Committee and/or the Board, but I can't -- you know, I need -- I don't know if that was the case or not, because there's no nomenclature on this document to indicate one way or the other.

If it had been, then clearly members of FHFA would have been present in those meetings.

Q. (BY MR. THOMPSON) And if we look at this, is it fair to say that you at this time, October 2011, really thought that 2013 and then maybe going into 2014 was going to be a turning point for Fannie's profitability?

A. The projections that existed at that time based on this document show that profitability starts to show up in 2013. I mean, that's what this particular forecast indicated.

Q. Yes.

Do you recall anyone at FHFA ever criticizing any of the projections of future profitability that Fannie was making in 2011 and 2012 up through the time of the net worth sweep?

MR. LAUFGRABEN: Object to the form of the question.

A. I -- my recollection is there wasn't criticism.

There were questions. There were cautions. In other words, you know, let's not forget that, you know, this -- that a lot of bad things have happened, right?

And, you know, with some history in mind, when the declines were occurring, the degradations were occurring, the company was having a hard time keeping up with the face of the degradations. As a result, the forecasts that the company had been producing prior to my arrival -- and I am basing this on what I have been told, so I don't know if it's relevant here or not -- that the actual outcomes tended to be a little bit worse than what the company had been projecting.

But when I got there, we focused very heavily on trying to continue to improve the quality of the forecasts. And I think if you look at the actual results vis-a-vis a lot of the forecasts we were

producing, you would see the results and forecasts being more in alignment. In fact, it improved over time.

Having had experience at other companies, that's not unusual that it's hard to catch up with trends, whether that's negative trends or positive trends.

So if some things are going bad, sometimes it's hard to catch up to how bad. And, you know -- but on the flip side, when things start to turn good, sometimes it's hard to catch up with how fast and the magnitude of the tailwinds and how much things are going to improve and how fast. So that's not a unique thing to Fannie Mae.

I just remember there being some general discussions about, you know, are we -- you know, let's not forget that there have been times in the past where the forecasts didn't reflect all the badness that ultimately happened, right?

Q. (BY MR. THOMPSON) Uh-huh.

A. And it was more in that general conversation, but not a -- what I would call an outright criticism of, "You're wrong. That can't be right."

There wasn't any of that kind of --

Q. Okay. And were you aware that Grant Thornton was doing its own projections of the future

of foundation. This is also beyond the scope of the Discovery Order.

A. I mean, you know, I don't remember exactly, you know, did somebody say this or that or whatever. I don't remember the specific comments, but I remember the general gist of conversation was in that kind of vein.

Q. (BY MR. THOMPSON) And was there a sense of this is a problem if we can't generate capital and retain capital?

MR. LAUFGRABEN: Object to the form of the question.

How is this related to any of the topics in the Discovery Order?

MR. THOMPSON: Well, it relates to the profitability, was it a problem in the term of probability.

MR. LAUFGRABEN: We will instruct the witness not to answer this.

MR. THOMPSON: She is not your witness.

MR. BARTOLOMUCCI: Do you know what the question on the table is?

A. So why we've had a little bit of back and forth here.

Q. (BY MR. THOMPSON) So was there a sense that this was going to be a problem for Fannie going forward

that it was not able to retain capital?

MR. LAUFGRABEN: Same objection.

We're instructing the witness not to answer, this is so far beyond the scope of the discovery order.

A. There were discussions about the pros and cons. In other words, what about it is good for Fannie, what about it may not be so good for Fannie, okay?

Q. Okay.

A. Sos, you know, one of the things, you know, that is to the good is it did resolve this iterative borrow-to-pay-the-dividend issue that we've talked about previously.

You know, in my mind, the lack of capital accumulation meant that we had no -- we were building no financial wherewithal to take on unexpected events and losses, that we would be highly dependent on the Government -- even more-so dependent on the Government if an event, things like that happened in the future.

I didn't take in my own mind whether this was a temporary -- you know, that we've got this -- you know, look, they put a second amendment in, they put a third amendment in, could there be a fourth amendment.

So things could change in the future, so I didn't take it as a forever and ever amen necessarily.

It could be, but it didn't necessarily need to be. So I wasn't, you know, kind of trying to draw any conclusion.

It seemed odd to me that if what they wanted to do was wipe out the shareholders, why they didn't do that in inception of the conservatorship in the first place, because they left market speculation to occur in the marketplace.

So -- but time passes. Different people and minds may think differently over time. So, you know, I wasn't assuming one way or the other that they were trying to wipe out the shareholders.

Q. Well, you said earlier that, well, you know, there was surprise and not surprise.

Was the not surprise because there was a sneaking suspicion that the Government wasn't going to let anyone else participate in the profits?

MR. LAUFGRABEN: Same objection as we specified before.

We would instruct the witness not to answer this question. It's far beyond the scope of the Discovery Order, and Counsel has not tied it to any topics in the Discovery Order.

MR. BARTOLOMUCCI: Do you want to restate the question?

MR. THOMPSON: Sure.

Q. (BY MR. THOMPSON) So was there a -- did you have the sense that the Government simply was not going to allow the private shareholders to participate in future profits when you were at Fannie?

Do you think that was one of the possibilities that might ultimately come out?

MR. LAUFGRABEN: Renew our objections and our instruction to the witness not to answer.

Counsel still has not tied this to the Discovery Order.

MR. BARTOLOMUCCI: David, do you really want her to answer what was her sense of what the Government thought was possible?

MR. THOMPSON: Yeah.

I mean, it goes to the reasonable investment -- yeah.

Q. (BY MR. THOMPSON) I mean, from your perspective, you were dealing with the Government, and you said you weren't surprised totally by the net worth sweep.

I just really want you to explain why.

MR. LAUFGRABEN: Same objections, and same instructions.

A. I will tell you -- yeah. This is from my vantage point. I am not presuming what the Government was thinking or wanted. I am not trying to represent anything from them. I may represent my perspective on what they may have been thinking.

I just sat down with them -- to the Treasury and said, "We think we're sustaining profitable."

The numbers were decent-sized. I also put on the radar that there was a possibility of a deferred tax allowance release that could be sitting in the not-so-distant future.

So the fact that this happened shortly thereafter -- so the time -- the time connection there was part of why -- that was part of why I wasn't surprised. Okay. I just told them that.

So then the question is why would they be concerned of us making money and creating capital inside the enterprise. I think in my own opinion, a lot of -- a lot of people got wiped out, and the Government had to step in on a lot of fronts during the financial crisis. I think politically it seemed a little -- it would seem to me that there would be individuals bothered that some individuals might profit from the Government's support of the enterprises, okay?

So, you know, it wouldn't -- would it be -- how would it play out if somebody made big bucks

because -- off the backs of the taxpayers? I am kind of -- how some people could connect dots that the Government stepped in, put a bunch of money into the GSEs using taxpayers' funds, and now Daddy Big Bucks over here is making a big profit off of Fannie Mae stock.

You could see how positioned that way, how that would be pretty politically unpalatable. I could see why there could be a concern that anybody plays things out that way. So, thus, why -- I wasn't trying to presume that they completely wanted to wipe out the shareholders, but I certainly would appreciate why there would be sensitivity of things playing out in a way that somebody would glob on to that story line.

Does that make sense?

Q. (BY MR. THOMPSON) Yes. Thank you. And let's go on.

MR. LAUFGRABEN: Is this a good time to take a five-minute break?

MR. THOMPSON: Sure.

THE REPORTER: Okay. It's 2:58.

(Recess from 2:58 p.m. to 3:05 p.m.)

THE REPORTER: It's 3:05.

Q. (BY MR. THOMPSON) Okay. We're on to McFarland 20, and it has a Bates number of Fannie Mae

2523 through 2525.

(McFarland Exhibit No. 20 was marked.)

Q. (BY MR. THOMPSON) Now, this is a letter from you to Ed DeMarco dated August 6th, 2012; is that right?

A. Yes.

Q. And you're reporting that there's a surplus amount, thus there's no need for a draw; is that right?

A. Yes.

MR. LAUFGRABEN: Object to the form of the question.

Q. (BY MR. THOMPSON) If we look at the last page of the document, there's a lists of assets and liabilities. I just want to make sure I understand.

The Government's commitment was not listed as an asset on the Balance Sheet of the company; is that correct?

A. Yes.

Q. Okay. So this next one is going to be McFarland 21. It has a Bates number of Fannie Mae 2482.

(McFarland Exhibit No. 21 was marked.)

Q. (BY MR. THOMPSON) So this is an e-mail from Nicola Fraser dated August 7th, 2012 to you and Mr. Benson and Mr. Mayopoulos and others. The subject is, "Draft Treasury Meeting Discussion Materials, Treasury Slides 8, 9, 12 Version 9."

Does this relate to the meeting that you described earlier that took place at Treasury on the eve of the net worth sweep where you spoke to Ms. Miller about deferred tax assets and other things?

MR. LAUFGRABEN: Object to the form of the question; mischaracterizes previous testimony.

A. This relates to the presentation that was being prepared for my use in the meeting with Treasury on the 9th with Mary Miller and others at Treasury to update them on our financial results forecast. And while the meeting materials didn't express in writing the deferred tax allowance issue, I in that meeting articulated that orally to Treasury.

Q. (BY MR. THOMPSON) Okay. And you can put that to the side. Let's look at McFarland 22, which has Bates numbers 2526 through 2535.

(McFarland Exhibit No. 22 was marked.)

Q. (BY MR. THOMPSON) So take a moment, Ms. McFarland, to look through this, and my question is whether this is the PowerPoint presentation that was provided to Treasury at that meeting?

A. Yes, although -- so you asked earlier -- I think you didn't think you had the presentation.

Q. Exactly.

A. This is it, although this is the update.

So from time to time, presentations, whether that's -- you know, Treasury or Board or whatever, it looks like this has some updates. Normally those updates are minor corrections. Maybe it's spellings or -- you know, I can't tell you what got changed, but clearly we met with them on August 9th.

So the version I would have used would have been the version that existed on August 9th, not the updated version as of August 15th. I am not aware of substantive changes made the document. In all material respects, probably the information here is the same material that I reviewed with Treasury.

Q. Okay.

MR. THOMPSON: And I guess, Chris, if you-all could look and see if you have the August 9th version, that would be great, you know? We would certainly appreciate it.

MR. BARTOLOMUCCI: Got it.

Q. (BY MR. THOMPSON) Okay. So -- and you walked them through each of these slides --

MR. LAUFGRABEN: Object to the form of the question.

Q. (BY MR. THOMPSON) -- the Treasury officials who were present?

A. I walked Treasury through the financial slides.

Q. The financial slides, okay.

A. Correct.

Q. Including the projections of future profitability?

A. Yes.

MR. LAUFGRABEN: Objection.

Q. (BY MR. THOMPSON) Okay. And what was their reaction to the projections of future profitability?

MR. LAUFGRABEN: Object to the form of the question. It's vague.

A. I remember there being a few questions asked that I would put more in the category of seek to understand.

Q. (BY MR. THOMPSON) Okay.

A. And I do think there was a, you know -- a little bit of question around, well, you know, what could cause the outcomes to be, you know, different than this. And I believe I gave them a brief update of some sensitivity analyses that we do, which we kind of do on a recurring basis.

But there wasn't any expression of -- I want to be careful here.

Generally in our meetings with Treasury, they wanted to hear a lot more from us than they were giving.

Q. Yes. I understand.

A. They kept things fairly close to the vest, if you will.

Q. Yes.

A. So this was not untypical of that.

But they asked a few questions. Sometimes from the questions they ask, you can kind of get a sense of what's on their mind.

That is where, you know, Mary did ask me -- when I brought up the deferred tax asset allowance valuation, you know, she asked me that question as an example. But --

Q. Okay. That's helpful.

Let me ask you a question: Does it follow from the fact that -- well, strike that.

Am I right in thinking that Fannie Mae did reserve some of its loan loss provisions?

MR. LAUFGRABEN: Object to the form of the question.

A. Fannie Mae's loan loss reserve declined --

Q. (BY MR. THOMPSON) Okay.

A. -- over time.

Q. Okay.

A. And so in -- you know, so if you think of that as a loan loss reserve reversal, then yes.

Q. Okay. And does it mean that, with the benefit of hindsight, Fannie was over-reserved at one point?

MR. LAUFGRABEN: Object to the form of the question; calls for speculation.

Just please put a time frame on it.

A. Let me answer this in the theoretical construct, and then we can apply it to Fannie specifically.

Q. (BY MR. THOMPSON) Okay.

A. When a company changes its allowance one way or the other, it can be for a variety of reasons. One, it can be because they didn't get it right before, and they had to correct it, which I think is a little bit of the question you're asking.

There are two other general reasons: One, for instance, if I reserved in period A for loans I expected to go bad in the future, and I am now in the future, those loans have gone bad, I have worked through them, and I charged them off, I no longer need to carry the reserve on them anymore. So the reserves will going away.

Now, I may put up new reserves for new loans that I think will go bad or loans that didn't look as bad in period A but now look not so hot in the next period.

So reversing reserves may just be the fact that you've worked through the problems, and you no longer need to carry the reserve because you actually realize the charge-off.

The third bucket can be because assumptions have changed, that you have seen -- you assumed a certain home price, so your severity was going to be a certain level. Now home prices are improving, so what you're likely to get -- it could be the other way. Let's say it was improving.

Then you would say, "Okay. I expect to get more for the collateral than I previously expected."

That's not a correction of an error. That's not meaning I was over-reserved in the prior period.

The reserves were based on what home prices were in the prior period. Now that I see that home prices are going to be better, I am updating the reserves to reflect those updated assumptions.

Q. Okay. Do you recall for Fannie whether all three of those factors were in place, or just some of them --

MR. LAUFGRABEN: Object to the form of the question.

Q. (BY MR. THOMPSON) -- in the reduction of the

loan loss provisions?

MR. LAUFGRABEN: Same objection with respect to the time period.

A. For the time period -- I believe we started reducing reserves sometime in 2012, so let's -- I will answer it in the context of declines in allowance during 2012 from, say, where it ended in 2011. So let me just box it in.

There was nothing that caused those declines that we deemed to be a correction of an error, because, quite frankly, if it was a correction of an error, and it was material, we would need to restate our prior financials. We have that responsibility from an accounting perspective to do so.

All of the materials chance in the allowance were driven by the burnoff of the bad stuff and improving assumptions and applying those improving assumptions to what we thought we now needed to have in the reserves.

Q. (BY MR. THOMPSON) Is there some judgment that you as CFO and your team had to exercise as you were trying to set the right level of loan loss provisions?

MR. LAUFGRABEN: Objection; form of the of the question.

A. Yes.

Judgment is required in setting allowance loan loss.

Q. (BY MR. THOMPSON) Okay. Where are the areas where judgment needs to be brought into bear?

Future home prices is one, right?

MR. LAUFGRABEN: Objection; vague, calls for speculation.

A. As we discussed previously, there were a number of different home-price projections out there.

Q. (BY MR. THOMPSON) Yeah.

A. So you use judgment as to which home price projections you're going to use as your base-case calculation.

You can see periods of time -- so when you look back at your history, you can try to extrapolate off the historical performance what you might expect in the future for loans in the same stage of delinquency. So you could say that historically loans that are 90 days delinquent, X percent of them don't pay.

However, what you would probably see, if you looked back over history, what that percentage looked like 12 months ago might look different than 6 months ago which may look different than 3 months ago. There's judgment involved in how you should consume

historical information into your assumptions set and calculations of where you think you need to set your reserves today.

We talked earlier about the fact that we had made requests of a myriad of financial institutions to make good on their warrant obligations for defects in loans that they presented to us, and we had to make assumptions to the collectability of those demands and requests on other financial institutions.

So those are just examples of things that are included in the loan loss reserve calculations that requires some degree of management judgment.

Q. Okay. Do you also have to make some management judgment about future macroeconomic conditions like the employment rate and that sort of thing?

MR. LAUFGRABEN: Objection; vague.

A. You can make assumptions around unemployment and its effect on expected performance. And, you know, you need to have an analytical basis for how you're consuming those assumptions.

But that can be a factor that can be used and considered in setting your allowances.

Q. (BY MR. THOMPSON) Okay. This one is going to be McFarland 23. It has a Bates number of Fannie Mae 3595 through 3602.

MR. LAUFGRABEN: Object to the form of the question.
Within what time period?
MR. THOMPSON: The same time period we've been talking about.
A. 2008?
Q. (BY MR. THOMPSON) And 2011, '12.
A. I am not aware of swapping of loans that occurred at my time at Fannie.
Q. Okay.
A. Okay.
MR. THOMPSON: Well, we are ending -- getting very close to the end of my questions.
And so what I would request is maybe we could take a short break, and I can confer with my colleagues. We may have some questions of their own, but there's light at the end of the tunnel. Let's take a five-minute break.
THE REPORTER: It's 3:48.
(Recess from 3:48 p.m. to 4:18 p.m.)
THE REPORTER: It's 4:18.
MR. THOMPSON: So the Fairholme plaintiffs do not have any more questions at this time, but thank you very much. We appreciate you taking the time today and we owe you a check and we will get that

to your counsel next week for -- you know, it's a witness fee. I think it's $120, so don't spend it all in one place.
THE WITNESS: I can retire now.
MR. THOMPSON: Thank you very much.
EXAMINATION
BY MR. ZAGAR:
Q. Good afternoon, Ms. McFarland. My name is Eric Zagar. I represent the class action plaintiffs, and I have a few questions.
All of my questions will pertain to the time period from when you started at Fannie Mae in 2011 until the Third Amendment in August of 2012.
A. Okay.
Q. We talked a lot today about projections that Fannie Mae would be profitable and able to accumulate capital.
My question is, did you give any thought to how Fannie Mae could use that capital that it was projected to accumulate?
MR. LAUFGRABEN: Objection; form.
A. Not -- we didn't have conversations about, oh, if we had this much capital, then we could go out and expand our business in this way or, you know, any of those types of things.

It was merely that the -- the profits, under the structure prior to the Third Amendment, would create some capital accumulation, and that capital accumulation could, you know, be there for providing the starting of capital available for whatever the resolution of housing finance might be.
It could be there to help take future negative events; you know, those kinds of things, but not -- there was no specific conversations about deploying capital in various ways, no.
Q. I think that answers my question, but I will ask it again.
Was there any discussion that you were aware of, of deploying that capital to try to pay back the Government for the money that it had borrowed?
MR. LAUFGRABEN: Objection; calls for a legal conclusion.
A. In the context that there would be capital available that at some point the existing construct, the Preferred Stock Purchase Agreement and the conservatorship, there's a hope and maybe an optimistic belief that that couldn't continue in perpetuity. And so all of the claims of the Government against Fannie needed to be resolved, and that to the extent that Fannie was profitable and that might create capacity

from which to, you know, make available for whatever those resolutions might be.
But there wasn't any specific conversation on specific structures from which to try to make that happen in the near term.
Q. (BY MR. ZAGAR) Was there any discussion that you were aware of of just getting the excess capital to Treasury voluntarily?
MR. LAUFGRABEN: Object to the form of the question.
A. I think it's important to bear in mind that the profitable was recent, so the actual, you know, profitable quarters started in early 2012; that the improvement in our forecasts, you know, all kind of came about, you know, in that positive way in the last, say, six-month period. And so we were consuming a lot of new-and-improved information, and then the Third Amendment went in place.
So really, in some ways, I would contend there really wasn't sufficient enough time for us to really sort of contemplate. If the Third Amendment had not been put in place, it's theoretical we might we have begun to explore a myriad of options possibly.
But the way that the timing of everything played out, the Third Amendment was put in place, you

know, so quickly, if you will, after the news started to turn good, we never delved in in a deep way into some of those options and alternatives.

Q. (BY MR. ZAGAR) The net worth sweep giving all the profits to Treasury, that was not your idea, correct?

A. It was not my idea.

MR. LAUFGRABEN: Object to the form of the question.

Q. (BY MR. ZAGAR) Do you think it is likely that you would have come up with that idea on your own?

MR. LAUFGRABEN: Objection; form, calls for speculation. It's outside the scope.

A. No, I don't believe that I would have proposed something quite like that.

MR. ZAGAR: That's all I have. Thank you.

EXAMINATION

BY MR. LAUFGRABEN:

Q. Good afternoon, Ms. McFarland. As I mentioned earlier, my name is Eric Laufgraben, and I represent the United States in this action.

I think you testified earlier that one source of recapitalization would be retained earnings.

In your view, what amount of capital, if

any, would Fannie Mae need to be deemed adequately capitalized?

A. You know, we did do some what I call back-of-the-envelope work on that, and, you know, I -- I would have to -- I don't remember the exact numbers.

I think you would probably be looking at something in the high single-digit percent of assets, you know? You know, something in the 7-to-8-percent-of-asset range, and I could work the math backwards and come up with a -- what that means in dollars.

It would certainly be at a level higher than what Fannie would require to have in capital pre-conservatorship.

Q. Do you know how much that would be based on the level of assets held in 2012?

A. On-Balance-Sheet assets -- of course, we haven't done any kind of risk because it's a little more complex than that simple math.

I think the on-Balance-Sheet assets of Fannie on a GAAP basis were a little over 3 trillion, if I remember correctly. What would that be, 24 -- is that 24 billion? Do I have the zeros right?

But -- well, but you would do it on -- really have to look at -- okay. Let me -- that's why I

said I would love to be able to use a little pen and paper to calculate that.

But, you know, I kind of come from a traditional bank environment. So when I assess and look at the activities, you know, I thought of it in the context of what -- how would you evaluate the capital requirements if you -- you constructed it more similar to how capital requirements are set for banks.

Having said that, some of the back of the envelope we were doing wasn't based on the Balance Sheet that existed in 2012, because the presumption is that certain things would change over time. So the held portfolio, which I think was a little under a billion dollars, then -- I can't remember the exact number -- would diminish over time, the guaranteed assets that were consolidated onto the Balance Sheet.

So I can't remember how we kind of worked through all of those different numbers. That's why I am hesitant to just throw, you know, an off-the-cuff enumeration of it.

Q. Now, were any of the forecasts that you presented to -- to Treasury prior to the execution of the Third Amendment -- now, it's true that none of them took into account the potential for a payment of periodic committee fees; is that correct?

A. That's correct.

Q. Okay. And the Treasury commitment, did that serve as a means to absorb losses like capital?

A. It could be used -- if I remember, it was structured I think in a way that that could be used in addition to or instead of up to the amount that was available.

Q. And I will come back to it, but with respect to the -- I think it's the August 9th, 2012 meeting that you attended with Treasury, I think you mentioned that you advised Mary Miller of the possibility and the Treasury team of the possibility of releasing the DTA valuation allowance.

Is that correct?

A. Correct.

Q. Okay. Now -- and I think you -- you said that you had some belief that there was some sort of -- that Treasury was influenced by that -- by that disclosure that you said that you made during that meeting when it decided to execute the Third Amendment.

A. The timing of the Third Amendment was coincidental. It was closely -- followed closely after those conversations.

Q. Okay.

A. And so it was possible that the information we provided in that meeting may have had some influence on the going forward with the Third Amendment when it happened.

Q. But to be clear, no one from -- you don't know either way; is that correct?

A. That's correct.

Q. And no one from Treasury ever indicated that as much to you?

A. They never mentioned the Third Amendment until they told us they were doing it.

Q. Right.

And no one from Treasury ever indicated that the Third Amendment was somehow connected in any way to your disclosure to Mary Miller or to Treasury during the August 9th meeting?

A. Yeah; no one at Treasury ever said that.

Q. And no one from FHFA ever said that, either, did they?

A. No.

Q. And turning back to that meeting, we saw what was previously marked as McFarland Exhibit No. 24. This is an e-mail from David Benson to Tim Bowler dated August 11th, 2012.

A. Okay. I remember the document. I can pull it out from this stack here.

Okay. Got it.

Q. Okay. Now, this is now, I guess, 2 days after you met with Treasury on August 9th?

A. Based on the date of the e-mail, yes.

Q. Now, none of -- the models that are reflected in the attachments here, none of those models incorporate the release of the valuation allowance, do they?

A. No, but they incorporate the utilization of the deferred tax asset over time.

It got back -- that conversation on the assumption from a tax perspective, but, no, not a -- you know, a release in a near future period, no.

Q. Okay. And what was previously marked for identification as McFarland 22 -- this is the one that says on the cover, "Fannie Mae Update Treasury Meeting August 9th, 2012" -- it says it's updated on August 15th, 2012.

A. Correct.

Q. Now, is it also correct for the models in these attachments that none of those models, you know, reflect a -- you know, any sort of, you know, definitive release of a valuation allowance at any particular point in time; is that correct?

A. That's correct.

As I stated earlier, I did not include any of that in the numbers or in writing, but I did articulate that potential to the members that were present there from Treasury.

Q. Okay.

A. And Mary asked me some follow-up questions about that.

Q. Now, I guess the day before the Treasury meeting was, you know, I guess, August 8th, 2012.

Do you recall being interviewed by media outlets following Fannie Mae's release of the 10-Q for the second quarter of 2012 on or around August 8th, 2012?

A. If August 8th was the date we released the 10-Q, then I would have done media interviews on August 8th. That would have been normal.

I don't recollect the date we filed the Q.

MR. LAUFGRABEN: May I have this marked for identification?

(McFarland Exhibit No. 28 was marked.)

MR. BARTOLOMUCCI: Do you have any other copies?

MR. LAUFGRABEN: No.

MR. BARTOLOMUCCI: Don't worry about it.

Q. (BY MR. LAUFGRABEN) Do you recognize what's --

THE REPORTER: 28.

Q. (BY MR. LAUFGRABEN) What's been handed to you is what's been marked for identification as McFarland 28. It's a filing for Fannie Mae, the Form 10-Q.

And do you recognize this document?

A. Yes.

Q. Okay. And is this the -- is this the 10-Q for Fannie Mae for the second quarter of 2012?

A. Yes.

Q. Okay. And was this released on or around August 7th, 2012?

A. I would have to look here. I should be able to.

It's dated August 8th, 2012.

Q. Thank you for clarifying.

Is this the 10-Q that was released on or around August 8th, 2012?

A. Yes.

Q. Okay. And just for the record, on the page that's marked for identification as Treasury 4079 at the very end --

A. 4079; let me get to that.

Okay. Yes, my certification.