

EXHIBIT E

1 IN THE UNITED STATES COURT OF FEDERAL CLAIMS
2 - - - - - X
3 FAIRHOLME FUNDS, INC., et :
4 al., :
5 Plaintiffs, : Case No. 13-465C
6 v. :
7 THE UNITED STATES, :
8 Defendant. X

9 - - - - -

10 Washington, D.C.

11 Tuesday, July 14, 2015

12 Deposition of JEFFREY ALAN FOSTER, a
13 witness herein, called for examination by counsel for
14 Defendant in the above-entitled matter, pursuant to
15 notice, the witness being duly sworn by MARY GRACE
16 CASTLEBERRY, a Notary Public in and for the District
17 of Columbia, taken at the offices of Cooper & Kirk,
18 1523 New Hampshire Avenue, N.W., Washington, D.C., at
19 8:00 a.m., Tuesday, July 14, 2015, and the
20 proceedings being taken down by Stenotype by MARY
21 GRACE CASTLEBERRY, RPR, and transcribed under her
22 direction.

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1 payment based on positive net worth."
 2 Do you see that?
 3 A. Yes.
 4 Q. How did that idea come to be part of this
 5 document?
 6 A. That related to the fact that --
 7 MR. DINTZER: And I'm going to instruct
 8 the witness that to the extent that your answer would
 9 involve any communications with members of the White
 10 House or the NEC or would involve attorney-client
 11 communications, I'll instruct the witness not to
 12 answer. Otherwise, you may answer the question.
 13 THE WITNESS: The reason why I believe
 14 this was part of the transition plan was that, as
 15 these steps were initiated, the profitability of
 16 Fannie Mae and Freddie Mac might have been impacted.
 17 BY MR. PATTERSON:
 18 Q. And had Treasury done any projections to
 19 test that concern that you just articulated?
 20 MR. DINTZER: Objection. Vague.
 21 THE WITNESS: I'm not -- can you be more
 22 specific?

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1 BY MR. PATTERSON:
 2 Q. Yes. You said that this could impact the
 3 reform -- did you say that the reform proposal here
 4 could impact Fannie and Freddie's profitability
 5 potentially?
 6 MR. DINTZER: Objection.
 7 THE WITNESS: Potentially.
 8 BY MR. PATTERSON:
 9 Q. And was that concern based on any
 10 projections that Treasury did then?
 11 MR. DINTZER: Objection. Confusing.
 12 THE WITNESS: We knew that there was a
 13 circularity in the PSPAs that would over time result
 14 in reduced funding capacity and would make it more
 15 challenging to be able to gradually wind down the
 16 GSEs.
 17 BY MR. PATTERSON:
 18 Q. And how did you know that?
 19 A. From modeling work that we had done.
 20 Q. And which modeling work was that?
 21 A. Where we forecast and using assumptions
 22 from FHFA and Grant Thornton that that earnings

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1 capacity would not be sufficient to cover expected
 2 dividend payments.
 3 Q. Now, when did Treasury come up with this
 4 idea to restructure the PSPAs to allow for variable
 5 dividend payment?
 6 MR. DINTZER: Objection. Vague.
 7 THE WITNESS: Can you be more specific?
 8 BY MR. PATTERSON:
 9 Q. When did Treasury first have the idea to
 10 restructure the PSPAs to allow for variable dividend
 11 payment based on positive net worth as stated in this
 12 document?
 13 A. I don't know when Treasury came up with
 14 that idea. I began discussing it with colleagues in
 15 2010.
 16 Q. And with whom did you discuss that?
 17 A. Counsel, Jeffrey Goldstein, Mary Miller,
 18 Tim Bowler, others within the department.
 19 Q. Do you remember specifically who else
 20 within the department?
 21 A. It went from a small group to a larger
 22 group over time. So at some point it included the

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1 broader housing finance reform team.
 2 Q. And was this your idea?
 3 MR. DINTZER: Objection. Vague and
 4 confusing.
 5 THE WITNESS: I don't know. Other people
 6 may have had this idea as well, but I had this idea.
 7 BY MR. PATTERSON:
 8 Q. And how did you come up with this idea?
 9 MR. DINTZER: Objection. Vague.
 10 Confusing.
 11 THE WITNESS: The original idea generated
 12 from a phone conversation between me and Mario
 13 Ugoletti about the challenges of the circularity of
 14 drawing to pay ourselves.
 15 BY MR. PATTERSON:
 16 Q. And when did that conversation take place?
 17 A. Sometime in 2010.
 18 Q. And did you discuss the idea of allowing
 19 for a variable dividend payment based on positive net
 20 worth with Mario Ugoletti at that point?
 21 A. Yes.
 22 Q. And what was Mr. Ugoletti's reaction to

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1 that?

2 MR. DINTZER: Objection, Counsel. I've

3 allowed a few questions, but if you could keep your

4 questions within the time frame allowed by the Court,

5 please.

6 MR. PATTERSON: So your position is that I

7 cannot ask him questions about FHFA's reaction to the

8 net worth sweep dividend if they're outside the time

9 period?

10 MR. DINTZER: My question to you is, if

11 you could identify how your previous question, the

12 one you just asked, fits into the Court's order

13 allowing for specified limited discovery.

14 MR. PATTERSON: Well, one of the key

15 topics is whether and what extent FHFA was acting as

16 the United States.

17 MR. DINTZER: Right.

18 MR. PATTERSON: And, you know, FHFA's

19 response to Treasury's proposal, I think, would fit

20 well within that.

21 MR. DINTZER: So if you want to ask about

22 that within the time frame, I have no problem with

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1 that.

2 MR. PATTERSON: So my question to you is,

3 since that conversation took place outside of the

4 time frame, is it your position that I cannot ask

5 about that conversation?

6 MR. DINTZER: That would not fit within

7 the time frame, that is correct.

8 MR. PATTERSON: So you would instruct the

9 witness not to answer my question of how Mr. Ugoletti

10 responded to that.

11 MR. DINTZER: In 2010?

12 MR. PATTERSON: Yes.

13 MR. DINTZER: Yes.

14 MR. PATTERSON: Well, we obviously reserve

15 the right to challenge that instruction.

16 BY MR. PATTERSON:

17 Q. So in addition to Mr. Ugoletti, did you

18 have discussions with anyone else outside of Treasury

19 about your idea to allow for a variable dividend

20 payment based on positive net worth?

21 MR. DINTZER: If you could put a time

22 frame on that, Counsel.

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1 MR. PATTERSON: And again, we don't agree

2 with your instruction, but for purposes of this, I

3 will put a time frame on it. Beginning on June 1st,

4 2011 through August 17th, 2012.

5 THE WITNESS: Again, I wouldn't say it was

6 my idea and no, I don't recall having conversations

7 outside the Administration.

8 BY MR. PATTERSON:

9 Q. And how about other agencies of the

10 government outside of Treasury?

11 MR. DINTZER: Objection. Vague.

12 Incomplete.

13 THE WITNESS: Can you be more specific?

14 BY MR. PATTERSON:

15 Q. Were there any agencies of the government

16 outside of Treasury that you had discussions or

17 communications with about the idea to allow for a

18 variable dividend payment based on positive net worth

19 from June 1st, 2011 through August 17th, 2012?

20 A. Yes.

21 Q. And which agencies were those?

22 A. The White House. And I don't recall if

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1 there were others.

2 Q. With whom at the White House did you have

3 discussions about that topic?

4 MR. DINTZER: Objection. Calls for

5 Presidential communication privilege. But you can

6 identify the name.

7 MR. PATTERSON: Yeah. That's all I asked.

8 MR. DINTZER: The name. That's it.

9 THE WITNESS: Jim Parrot and Brian Deese.

10 BY MR. PATTERSON:

11 Q. When was the first time after June 1st,

12 2011 that you had discussions with Jim Parrot and

13 Brian Deese about the variable dividend payment idea?

14 MR. DINTZER: And I'm going to instruct

15 you not to answer on Presidential communication

16 privilege.

17 MR. PATTERSON: So he can't answer when he

18 had communications with them?

19 MR. DINTZER: That's correct.

20 MR. PATTERSON: And, again, we reserve the

21 right to challenge that instruction.

22 MR. DINTZER: And if you, Counsel, can

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1 explain how that relates to the limited scopes of
2 discovery, I would appreciate it.
3 MR. PATTERSON: The whole process of how
4 the net worth sweep idea was conceived, proposed,
5 agreed to goes to the purposes and how FHFA was
6 acting at the time it entered the net worth sweep.
7 MR. DINTZER: So it's your position that
8 if somebody from the White House talked him as
9 opposed to somebody from some other agency, that that
10 affected the relationship between FHFA and Treasury?
11 MR. PATTERSON: It's our position that the
12 whole process of the consideration and adoption of
13 the net worth sweep informs the evaluation of what
14 FHFA was doing when it agreed to it and in what
15 capacity was acting.
16 MR. DINTZER: And it is your understanding
17 that the evaluation of how FHFA -- what it was doing,
18 that that was in the scope of the Court's discovery
19 order?
20 MR. PATTERSON: Within the scope of this
21 Court's discovery order is whether and to what extent
22 FHFA was acting as the United States when it entered

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1 the net worth sweep. So it's our position that the
2 process of how the net worth sweep got adopted is
3 relevant to that question.
4 And so I think I had asked when he had
5 first had communications with Mr. Parrot and Deese on
6 this issue. You had instructed not to answer and so
7 you're standing by that instruction?
8 MR. DINTZER: And I'm going to add to it
9 I'm instructing not to answer on the scope as well.
10 MR. PATTERSON: Again, we take issue with
11 that instruction.
12 BY MR. PATTERSON:
13 Q. So starting June 1st of 2011 through
14 August 17th, 2012, did you have any communications
15 with FHFA about the proposal to allow for a variable
16 dividend payment under the PSPAs?
17 A. Yes.
18 Q. And with whom did you have communications
19 on that topic at FHFA?
20 A. Mario Ugoletti and Ed DeMarco.
21 Q. And what was Mr. Ugoletti and
22 Mr. DeMarco's response to this idea starting June

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1 1st, 2011?
2 A. I don't remember when the first
3 conversation in that time period happened.
4 Q. But just in general, during that time
5 period, what was FHFA's response to the proposal to
6 change PSPAs to allow for variable dividend payment?
7 MR. DINTZER: Objection. Vague.
8 Confusing.
9 THE WITNESS: I think you would have to
10 ask FHFA.
11 BY MR. PATTERSON:
12 Q. Did FHFA express any concerns to you about
13 the proposal to allow for variable dividend payment
14 under the PSPAs?
15 A. Yes. They stated a number of concerns and
16 questions throughout the conversation and discussion.
17 Q. And what were those concerns?
18 A. Primarily related to mechanics and how
19 such a proposal would work. I don't remember the
20 specifics.
21 Q. Did FHFA ever propose any alternatives to
22 the proposal to allow variable dividend payment based

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1 on positive net worth starting June 1st, 2011?
2 A. Our original proposal was to modify the
3 PCF, which was not ultimately adopted as a variable
4 payment. And that was not the final structure of the
5 reform. And there was a back-and-forth conversation
6 between FHFA and Treasury on the appropriate way to
7 support the funding capacity and maintain the
8 financial stability of Fannie and Freddie on an
9 ongoing basis.
10 Q. And when was that proposal to modify the
11 PCF made?
12 A. I don't remember. I don't think a formal
13 proposal was made. There was a discussion that was
14 initiated.
15 Q. And earlier I think you said that the
16 reason it was not adopted had to do with discussions
17 with counsel, is that correct? That proposal to
18 change the PCF.
19 MR. DINTZER: Objection. Vague.
20 THE WITNESS: I don't know why it wasn't
21 ultimately adopted, but my advice from counsel was a
22 reason.

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1 A. I don't recall what modifications, if any,
2 we made.
3 Q. If we can turn to slide 9, the slide
4 marked number 9. This slide has the title PSPAs key
5 terms. And do you see the section of this slide
6 titled core terms?
7 A. Yes.
8 Q. There is a row for dividend rate. Do you
9 see that?
10 A. Uh-huh.
11 Q. And this row says, "Cash, 10 percent. If
12 elected to be paid in kind, pick 12 percent."
13 What does this mean when it says, "if
14 elected to be paid in kind"?
15 MR. DINTZER: Objection. Vague.
16 THE WITNESS: Can you be more specific?
17 BY MR. PATTERSON:
18 Q. This says one of the core terms of the
19 dividend rate, it says, "If elected to be paid in
20 kind, pick 12 percent:
21 What's your understanding of what that
22 means?

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1 A. I think that refers to in the event that
2 the GSEs fail to pay their cash rate, that a
3 paid-in-kind rate would then be put in place at a
4 higher rate.
5 Q. And what is a paid-in-kind rate?
6 A. Instead of paying cash, you pay in kind
7 for -- with other securities. I think that's a
8 shorthand for any construct where, in this
9 circumstance, the liquidation preference would be
10 increased by 12 percent of the amount outstanding
11 versus paid out in cash.
12 Q. And Fannie and Freddie had the option to
13 elect to pay in kind, correct?
14 MR. DINTZER: Objection. Calls for a
15 legal conclusion. Foundation.
16 THE WITNESS: I'm not a lawyer, so I don't
17 know if I can answer that.
18 BY MR. PATTERSON:
19 Q. In your nonlawyer understanding, was it
20 your understanding that Fannie and Freddie had the
21 ability to elect to pay the dividends in kind under
22 the PSPAs?

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1 A. I don't think they had the ability to
2 elect. It was if they failed to be able to pay the
3 10 percent. In that circumstance, if that failure
4 occurred, the liquidation preference would
5 automatically increase at an annual rate of 12
6 percent.
7 Q. Now, this document says, "If elected to be
8 paid in kind," correct?
9 A. That's what it says.
10 Q. So it's your position this document is
11 incorrect?
12 MR. DINTZER: Objection. Vague.
13 THE WITNESS: This document was designed
14 to be a shorthand summary, not necessarily a
15 definitive legal conclusion of the documents, the
16 legal documents themselves.
17 BY MR. PATTERSON:
18 Q. So then in your understanding, what is
19 "elected" shorthand for?
20 MR. DINTZER: Objection. Confusing.
21 THE WITNESS: I don't necessarily think it
22 was shorthand for anything. I think it may have been

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1 misstated.
2 BY MR. PATTERSON:
3 Q. And did you review this document?
4 MR. DINTZER: Objection.
5 BY MR. PATTERSON:
6 Q. Did you raise any concerns about this
7 dividend rate provision being misstated at the time
8 you reviewed it?
9 MR. DINTZER: Objection. Vague as to
10 time.
11 THE WITNESS: Again, I'm not a lawyer, so
12 I was not looking for its legal accuracy.
13 BY MR. PATTERSON:
14 Q. Now, if Fannie and Freddie paid the
15 dividends in kind, they would not have been required
16 to make a draw to pay Treasury's dividends, correct?
17 MR. DINTZER: Objection. Assumes facts.
18 Calls for a legal conclusion.
19 THE WITNESS: I don't know if that would
20 have been true or not. My understanding would be
21 that it would increase the liquidation preference and
22 further reduce the net worth outstanding.

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1 BY MR. PATTERSON:
 2 Q. How would it further reduce the net worth
 3 outstanding?
 4 A. Because it would increase the liquidation
 5 preference to offset the loss on the balance sheet.
 6 Q. And how would increasing the liquidation
 7 preference reduce the net worth outstanding?
 8 A. Actually, I'm sorry. That's not right.
 9 It would not impact the net worth, but it would
 10 increase the liquidation preference for the preferred
 11 stock.
 12 Q. We're going to come back to this exhibit,
 13 but in the meantime, I'll mark another exhibit.
 14 (Foster Exhibit No. 23 was
 15 marked for identification.)
 16 BY MR. PATTERSON:
 17 Q. You've been handed an exhibit marked
 18 Foster 23. This is an email from 2008 marked FHFA
 19 00083259. Do you see that?
 20 A. Yep.
 21 Q. And on the first page -- or actually,
 22 let's turn to the second page of this email. And

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1 there is questions for both GSEs. Do you see that?
 2 A. Okay.
 3 Q. And number 4 says, "Did the GSEs intend to
 4 pay cash at 10 percent or accrue at 12 percent as a
 5 matter of policy?" Do you see that?
 6 A. I do.
 7 Q. Now, during the time you were at Treasury,
 8 FHFA always paid the dividends in cash; is that
 9 correct? Or Fannie and Freddie always paid the
 10 dividends in cash; is that correct?
 11 A. During my --
 12 Q. During your tenure at Treasury.
 13 A. During my tenure, yes.
 14 Q. Did you have any discussions during your
 15 tenure at Treasury about the option of accruing
 16 dividends at 12 percent versus paying dividends in
 17 cash?
 18 MR. DINTZER: Objection. That's a really
 19 broad question, Counsel. Objection to the extent it
 20 calls for conversations with counsel and instruct you
 21 not to answer; objection to the extent that it calls
 22 for conversations with anybody at the White House,

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1 then I instruct you not to answer; to the extent that
 2 it calls for conversation outside of that, to the
 3 extent that it's beyond the time period specified, we
 4 have a scope problem. So I just ask counsel if you
 5 could make it a more narrow question.
 6 BY MR. PATTERSON:
 7 Q. And again, we don't agree with the scope
 8 objection or necessarily the other objections, but
 9 for the purposes of moving along today, we'll say
 10 from June 1st, 2011 through adoption of the net worth
 11 sweep on August 17th, 2012, did you have any
 12 discussions outside of discussions with counsel or
 13 the White House about the option that Fannie and
 14 Freddie had of accruing dividends at a 12 percent
 15 rate?
 16 MR. DINTZER: Is this a question about the
 17 document itself or just in general?
 18 MR. PATTERSON: In general.
 19 MR. DINTZER: You can set aside the
 20 document. And I'm going to object to vague.
 21 THE WITNESS: I don't recall having
 22 discussions about having the GSEs accrue at a 12

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1 percent rate.
 2 BY MR. PATTERSON:
 3 Q. Do you recall having any discussions that
 4 related in any way to the option to have the
 5 dividends be paid in kind that we've discussed, with
 6 all the time period and other caveats that I listed
 7 in my prior question?
 8 MR. DINTZER: Objection. Vague.
 9 THE WITNESS: I recall having a
 10 conversation around the implications of if the GSEs
 11 paid 10 percent, but it was never considered as an
 12 option that we would support or want to pursue.
 13 BY MR. PATTERSON:
 14 Q. And when did you have that conversation?
 15 A. Had that conversation with Tim Bowler.
 16 Q. And when did you have that conversation
 17 with him?
 18 A. I don't recall.
 19 Q. And what was discussed at that
 20 conversation in connection with --
 21 A. The negative implications and signaling
 22 that would come from Fannie or Freddie failing to pay

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1 10 percent and moving to -- and accruing and paying a
 2 higher interest rate through a kind of -- create a
 3 liquidation preference or paid in kind and the
 4 negative implications that that would signal to the
 5 market.
 6 Q. And what would those negative implications
 7 be?
 8 MR. DINTZER: Objection. Vague.
 9 THE WITNESS: That the government support
 10 for Fannie and Freddie was more limited and that an
 11 ever-increasing liquidation preference would be
 12 confusing to explain.
 13 BY MR. PATTERSON:
 14 Q. And how would that have the implication of
 15 Treasury's support being more limited?
 16 MR. DINTZER: Objection. Confusing.
 17 THE WITNESS: Because if effectively we
 18 were saying -- because the way that I recall the
 19 PSPAs were constructed were that the 12 percent only
 20 took into account if the GSEs failed to pay the 10
 21 percent cash and there was concern that simply
 22 dealing a PIK or instructing the GSEs or having FHFA

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1 instruct the GSEs to accrue it or PIK at 12 percent
 2 would be perceived as bad by the markets.
 3 BY MR. PATTERSON:
 4 Q. What was your basis for thinking that
 5 would be perceived as bad by the markets?
 6 A. That it would be confusing and that
 7 effectively, it would be a failure to pay the
 8 specified dividend that was outlined in the original
 9 document.
 10 Q. And you used PIK as a shorthand for the
 11 payment-in-kind option. Is it okay if I use that
 12 terminology as well?
 13 A. I'm okay with that.
 14 Q. So are PIK provisions unusual provisions
 15 in equity securities?
 16 MR. DINTZER: Objection. Beyond the scope
 17 of the Court's identified discovery topics. And lack
 18 of foundation.
 19 THE WITNESS: PIK instruments are
 20 associated with a variety of different securities.
 21 The senior preferred stock, while structured as
 22 preferred stock, had more -- had features and

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1 mechanics that were more similar to a debt security
 2 than to an equity.
 3 BY MR. PATTERSON:
 4 Q. And what were those features?
 5 A. Fixed interest rate, senior position and
 6 in many ways more structured like a bond.
 7 Q. And what was your basis for thinking
 8 moving to a PIK would be confusing?
 9 A. One, the liquidation preference would
 10 continue to accrete; two, you would be switching from
 11 the normal rate to effectively something that could
 12 be perceived as a penalty rate.
 13 Q. And what about that is confusing?
 14 A. So if you have an increasing liquidation
 15 preference, it would have required additional and
 16 more complicated messaging to the market.
 17 Q. Why would it have been -- you've explained
 18 it here to me in a pretty straightforward way. Why
 19 would it have been confusing to the market?
 20 MR. DINTZER: Objection. Argumentative.
 21 THE WITNESS: I think that was my judgment
 22 based off of my experience.

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1 BY MR. PATTERSON:
 2 Q. Now, you said you were concerned about the
 3 circular dividend issue; is that correct?
 4 A. Yes.
 5 Q. The PIK option would have solved that
 6 issue, right?
 7 MR. DINTZER: Objection. Calls for a
 8 legal conclusion. Lack of foundation.
 9 THE WITNESS: I never explored this option
 10 in the full kind of -- in the full extent as to
 11 whether it would have fully solved that problem or
 12 not. It still had the -- it still continued to
 13 accrete at a higher rate, but I don't know if it
 14 would have fully solved the problems of the
 15 circularity.
 16 BY MR. PATTERSON:
 17 Q. What problems of the circularity would
 18 have remained had the PIK option been adopted?
 19 MR. DINTZER: Objection. Calls for
 20 speculation.
 21 THE WITNESS: I'm not sure.
 22 BY MR. PATTERSON:

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1 Q. Are you aware of any other company that
2 has drawn on a line of credit to pay dividends?
3 MR. DINTZER: Objection. Vague.
4 THE WITNESS: Not that I can think of.
5 BY MR. PATTERSON:
6 Q. Can you think of any preferred stock
7 instruments that have a dividend rate based on the
8 net worth of a company other than Fannie and
9 Freddie's preferred stock that Treasury owns after
10 the net worth sweep?
11 MR. DINTZER: And I'm going to instruct
12 the witness not to answer as beyond the scope.
13 MR. PATTERSON: And why is that beyond the
14 scope?
15 MR. DINTZER: Actually, if you can go
16 ahead and explain to me how it's in the scope, that'd
17 be great.
18 MR. PATTERSON: This is all in the line of
19 considerations that were made in connection with
20 adopting the net worth sweep.
21 MR. DINTZER: I didn't hear about -- I'm
22 sorry, I didn't mean to interrupt you, Counsel.

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1 MR. PATTERSON: As I explained earlier,
2 our position is that issues related to the
3 consideration and adoption of the net worth sweep are
4 relevant to the topic of whether FHFA was acting as
5 the United States.
6 MR. DINTZER: Right. And the question
7 was, "Can you think of any preferred stock
8 instruments" -- now, that would presumably be ever in
9 the history of man -- "that have a dividend rate
10 based on the net worth of a company?" So you're
11 asking about everything ever.
12 MR. PATTERSON: Yes.
13 MR. DINTZER: And you think that that's
14 within the scope of the Court's order?
15 MR. PATTERSON: I'm just trying to probe
16 into the understanding of how this net worth sweep
17 idea was proposed, what was thought about it.
18 MR. DINTZER: I completely understand.
19 I'm just asking you, is your question, the breadth of
20 your question, are there any preferred stock ever
21 issued that he's ever heard of, that that's within
22 the Court's order?

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1 MR. PATTERSON: That is my position. Let
2 me ask it another way and see if you'll allow him to
3 answer.
4 BY MR. PATTERSON:
5 Q. During the time that the net worth sweep
6 proposal was under consideration, were you aware of
7 other preferred stock instruments that had a net
8 worth dividend component based on a company's net
9 worth?
10 MR. DINTZER: Objection. Vague.
11 Confusing.
12 THE WITNESS: There are no other companies
13 that were in conservatorship or that the federal
14 government invested in that I knew of that had
15 preferred stock variable payments.
16 BY MR. PATTERSON:
17 Q. How about other private companies outside
18 of conservatorship or that Treasury had invested in?
19 MR. DINTZER: Objection. Vague.
20 Confusing.
21 THE WITNESS: Not that I know of, but none
22 that were comparable to the investment that Treasury

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1 made in Fannie and Freddie.
2 BY MR. PATTERSON:
3 Q. Now, if you go back to this SEC
4 presentation that we were looking at before, I would
5 like you to turn to slide 17.
6 MR. DINTZER: Which exhibit number are we
7 looking at,
8 MR. PATTERSON: This is 22.
9 BY MR. PATTERSON:
10 Q. Now, this slide is titled Freddie Mac base
11 case PSPA forecast. Do you see that?
12 A. Yes.
13 Q. And there is a row in here for remaining
14 PSPA funding capacity, which is above the last gray
15 box there on the page. Do you see that?
16 A. Yes.
17 Q. Now, in fiscal year 2023, this shows
18 Freddie Mac having \$137.1 billion in remaining
19 funding capacity; is that correct?
20 A. That's what it says, yes.
21 Q. If we turn to the next slide, which is the
22 Freddie back downside PSPA's forecast, it projects in

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1 fiscal year 2023 a remaining PSPA funding capacity of
 2 102.6 billion, correct?
 3 A. That's what it says, yes.
 4 Q. So in light of these projections, was
 5 there any risk of Freddie Mac exhausting Treasury's
 6 funding commitment at least in the near term?
 7 MR. DINTZER: Objection. Calls for an
 8 expert analysis and vague. You can answer. And
 9 calls for speculation.
 10 THE WITNESS: Can you ask the question
 11 again?
 12 BY MR. PATTERSON:
 13 Q. Given these projections --
 14 MR. PATTERSON: Well, actually, read back
 15 the question, please.
 16 THE REPORTER: "Question: So in light of
 17 these projections, was there any risk of Freddie Mac
 18 exhausting Treasury's funding commitment at least in
 19 the near term?"
 20 MR. DINTZER: Same objection.
 21 THE WITNESS: The concern -- so in the
 22 outward projection year, the circularity of the

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1 dividend continued to remain and the funding capacity
 2 continued to go down over time.
 3 BY MR. PATTERSON:
 4 Q. Do you remember what my question was?
 5 A. Yes.
 6 Q. Okay. I don't think that answered the
 7 question, so I --
 8 MR. DINTZER: Objection. Argumentative.
 9 MR. PATTERSON: If you could read back the
 10 question.
 11 THE REPORTER: "Question: So in light of
 12 these projections, was there any risk of Freddie Mac
 13 exhausting Treasury's funding commitment at least in
 14 the near term?"
 15 THE WITNESS: Again, the funding
 16 capacity -- so there was a risk that the market would
 17 perceive that, under this scenario, that eventually
 18 the funding capacity would be exhausted as draws and
 19 dividends exceeded net income, which could have
 20 resulted in an increase in debt funding costs, which
 21 would have further reduced net income, so it could
 22 have actually had a more detrimental impact if the

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1 market would have believed that the funding capacity
 2 would eventually be exhausted, which could have
 3 accelerated the problem sooner. So there was a risk
 4 in the near term.
 5 BY MR. PATTERSON:
 6 Q. That the funding capacity would be
 7 exhausted?
 8 A. That the funding capacity could be at
 9 risk.
 10 Q. How about whether the funding capacity
 11 could be exhausted?
 12 MR. DINTZER: Objection. Vague.
 13 Confusing.
 14 THE WITNESS: Again, I don't want to
 15 speculate as to what the risks were as to whether it
 16 could be exhausted or not, but there was a risk from
 17 this outcome, this forecast.
 18 BY MR. PATTERSON:
 19 Q. And please turn to slide 20, which is
 20 labeled -- strike that. I'll just keep going here.
 21 So you said the goal was to --
 22 MR. DINTZER: I'm sorry, just what page

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1 are you on?
 2 MR. PATTERSON: Stay on this page, 18.
 3 That's fine. We don't need to move to 20.
 4 BY MR. PATTERSON:
 5 Q. So you were saying that the risks still
 6 existed that the funding capacity could be exhausted
 7 in light of these projections; is that correct?
 8 MR. DINTZER: Objection. Vague.
 9 Confusing.
 10 THE WITNESS: I think I answered the
 11 question earlier.
 12 BY MR. PATTERSON:
 13 Q. Okay. Now, could the circularity issue
 14 have been addressed by having the net worth sweep
 15 dividend structure come into place if Treasury's
 16 commitment about got below \$100 billion, but not
 17 before that time?
 18 A. Can you repeat the question?
 19 Q. Yes. Could the concern about the circular
 20 dividend payments putting Treasury's funding
 21 commitment at risk been addressed by having a net
 22 worth sweep dividend kick in only when Treasury's

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1 MR. DINTZER: Objection.
 2 Mischaracterizes. You're saying other than the
 3 conversations that were had either with counsel or
 4 that contained advice provided by counsel? Is that
 5 what you're asking?
 6 MR. PATTERSON: Yes. I'm asking about
 7 policy discussions, which I'm assuming would be
 8 separate from discussions of the legal ramifications.
 9 MR. DINTZER: I just want to make sure I
 10 understand the context.
 11 MR. PATTERSON: Yes.
 12 THE WITNESS: It's hard for me to separate
 13 what was supported by counsel or what was directly
 14 related to counsel.
 15 MR. DINTZER: Do you want to talk?
 16 Anything that counsel told you that you consulted
 17 with counsel on, anything that conveys what counsel
 18 told you.
 19 THE WITNESS: Can I just take two seconds?
 20 MR. PATTERSON: Sure.
 21 (Discussion off the record.)
 22 THE WITNESS: I also just want to clarify

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1 the question in terms of my answer around if I ever
 2 had conversations with anyone at Fannie Mae or
 3 Freddie Mac. Employees from Fannie Mae and Freddie
 4 Mac regularly asked Treasury if we were ever going to
 5 do X, Y or Z related to the dividend or make any
 6 changes and those were typically -- or those were
 7 almost always one-way conversations.
 8 BY MR. PATTERSON:
 9 Q. And what do you mean by "one-way
 10 conversations"?
 11 A. Meaning that they would ask, what are you
 12 guys -- are you guys thinking about this, or are you
 13 doing something about this, or are you going to
 14 consider this? And the answer was effectively, we
 15 know this is something -- this is something we're
 16 looking at.
 17 Q. Okay.
 18 A. But it was not a conversation or
 19 discussion around what we might do or what we might
 20 not do.
 21 Q. And were there specific alternatives with
 22 respect to the dividend structure that Fannie and

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1 Freddie employees raised in those communications?
 2 A. Not that I specifically recall.
 3 Q. Generally, do you recall?
 4 A. Inferences to cutting the dividend or
 5 changing the dividend structure, but we never would
 6 engage in those conversations.
 7 Q. And were the things that Fannie and
 8 Freddie suggested considered by Treasury as it was
 9 considering altering the dividend structure?
 10 MR. DINTZER: Objection. Vague. Calls
 11 for speculation.
 12 THE WITNESS: I did not -- that wasn't --
 13 those conversations did not contribute to my thinking
 14 other than to provide another data point of market
 15 concern about the unsustainability of the dividend
 16 structure.
 17 BY MR. PATTERSON:
 18 Q. And do you know if they contributed to
 19 anyone else's thinking?
 20 A. You'd have to ask someone else.
 21 Q. And now to get back to the --
 22 A. Sorry.

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1 Q. No, that's fine. So there was a question
 2 pending. I don't know if you want to read it back.
 3 MR. DINTZER: Could you?
 4 THE REPORTER: "Question: So you didn't
 5 have any policy discussions about situations in which
 6 Treasury could envision Fannie and Freddie exiting
 7 conservatorship?"
 8 THE WITNESS: Yes, we did.
 9 BY MR. PATTERSON:
 10 Q. And what was the content of those
 11 discussions?
 12 A. We considered what circumstances Fannie or
 13 Freddie could exit conservatorship and what the
 14 mechanics of -- what the implications of that may or
 15 may not be.
 16 Q. And did Treasury come to a conclusion
 17 about whether and in what circumstances it would
 18 permit Fannie and Freddie to exit conservatorship
 19 into private control under its existing charters?
 20 Under their existing charters?
 21 MR. DINTZER: Objection. Confusing.
 22 Calls for speculation.

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1 THE WITNESS: My perspective was that
 2 consistent with the Administration policy to wind
 3 down Fannie Mae and Freddie Mac gradually over time
 4 and not allow them to continue to operate under the
 5 form of their existing charters, that exiting
 6 conservatorship as private companies would not be
 7 appropriate.
 8 BY MR. PATTERSON:
 9 Q. And that was a view shared in Treasury
 10 generally in light of that policy that you've just
 11 mentioned; is that correct?
 12 MR. DINTZER: Objection. Calls for
 13 speculation.
 14 THE WITNESS: I wouldn't want to speculate
 15 what others at Treasury felt or believed about that
 16 policy. I can only speak to how I interpreted and
 17 what I believed.
 18 BY MR. PATTERSON:
 19 Q. Did anyone at Treasury that you know of
 20 disagree with you on this issue?
 21 MR. DINTZER: Same objection.
 22 THE WITNESS: You would have to ask

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1 someone else at Treasury.
 2 BY MR. PATTERSON:
 3 Q. Do you know whether anyone else at
 4 Treasury disagreed with you?
 5 MR. DINTZER: Disagreed.
 6 MR. PATTERSON: Disagreed.
 7 MR. DINTZER: Same objection.
 8 THE WITNESS: In what time period?
 9 BY MR. PATTERSON:
 10 Q. While the net worth sweep was under
 11 consideration.
 12 MR. DINTZER: Objection. Vague.
 13 THE WITNESS: I'm not really sure how to
 14 define the time period the net worth sweep was under
 15 consideration.
 16 BY MR. PATTERSON:
 17 Q. Let's say June 1st, 2011 to August 17th,
 18 2011. Or 2012, I'm sorry.
 19 A. Not that I can recall.
 20 Q. Do you recall someone disagreeing with you
 21 on that outside of that time period?
 22 MR. DINTZER: Objection. Vague.

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1 Confusing.
 2 THE WITNESS: Yes.
 3 BY MR. PATTERSON:
 4 Q. And who was that?
 5 A. Jim Millstein.
 6 Q. And what was his view?
 7 A. That --
 8 MR. DINTZER: Objection. Counsel, if you
 9 can just identify what period of time you're asking
 10 about.
 11 BY MR. PATTERSON:
 12 Q. Well, when did Jim Millstein communicate
 13 this disagreement to you? Or when did you become
 14 aware of this disagreement from Jim Millstein?
 15 A. Prior to June 1st, 2011.
 16 Q. Do you remember when any more precisely
 17 than that?
 18 A. Sometime in Q1, Q2.
 19 Q. What was your understanding of
 20 Mr. Millstein's disagreement with you?
 21 MR. DINTZER: Objection. Vague and
 22 confusing.

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1 THE WITNESS: I wouldn't say it was a
 2 disagreement with me per se. Jim had a more positive
 3 view towards bringing the GSEs out of
 4 conservatorship.
 5 BY MR. PATTERSON:
 6 Q. And other than Jim, did anyone else that
 7 you recall have that more positive view about
 8 bringing Fannie and Freddie out of conservatorship?
 9 A. Not that I can recall.
 10 (Foster Exhibit No. 32 was
 11 marked for identification.)
 12 BY MR. PATTERSON:
 13 Q. We're on Foster 32. And this is an email
 14 from Ankur Datta to you and some others at Treasury,
 15 August 16th, 2012, UST 00505921 on the bottom of the
 16 first page.
 17 And the top email here says, "Attached is
 18 the latest draft of the tick-tock, incorporating
 19 edits from Beth, Megan and Tim." And if we turn to
 20 the attachment, it says, "PSPA amendment announcement
 21 tick-tock - August 16th to 17th."
 22 So what was this document?

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1 A. This was a rundown of the folks or the
2 people that Treasury would reach out to to provide
3 context for or an in-color explanation around the
4 PSPA announcement.
5 Q. So then you see on Friday, August 17th at
6 8:00 a.m., it says, "Press release goes live." So
7 entries before that time would be things that would
8 be done before the third amendment was announced
9 publicly; is that correct?
10 A. I presume so.
11 Q. And under Thursday, the last entry is
12 "Outreach to Hill staff, Representatives Frank and
13 Johnson." Do you know if before this time there had
14 been any communications from Treasury to Congress
15 about switching to a variable dividend under the
16 PSPAs?
17 A. Not to my knowledge. I don't know.
18 Q. And do you know why it was the staff or
19 Representatives Frank and Johnson that were being
20 informed?
21 MR. DINTZER: Objection. Calls for
22 speculation.

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1 THE WITNESS: I can only speculate.
2 BY MR. PATTERSON:
3 Q. If you had to, what would you say?
4 MR. DINTZER: Same objection.
5 THE WITNESS: If I had to speculate, those
6 were ranking Democrats on the Hill. But I don't know
7 if this was exhaustive either. So I don't know who
8 all Megan Moore contacted.
9 BY MR. PATTERSON:
10 Q. So there may have been other Hill staff
11 that she contacted; is that what you're --
12 A. You would have to ask Megan Moore.
13 Q. And then an entry above that is "Nick
14 Timiraos from The Wall Street Journal."
15 Do you know why Treasury was contacting
16 him before the public announcement of the net worth
17 sweep?
18 A. You would have to ask Matt Anderson.
19 Q. So you weren't involved in that decision
20 at all?
21 A. I was not involved in that decision.
22 Q. Did Treasury communicate with any other

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1 equity shareholders in Fannie and Freddie in
2 connection with the PSPA amendment announcement?
3 MR. DINTZER: Objection. Vague.
4 Foundation.
5 THE WITNESS: When?
6 BY MR. PATTERSON:
7 Q. Either in the time leading up to the net
8 worth sweep or shortly thereafter.
9 A. We were contacted by some stakeholders the
10 day of.
11 Q. And who were those stakeholders?
12 A. A number of different market participants
13 reached out to folks at Treasury.
14 Q. Do you remember who any of those market
15 participants were?
16 A. I remember speaking to a few different
17 market participants that called me that day.
18 Q. Who were they?
19 A. Richard Perry at Perry Capital. I think I
20 spoke to someone from Deutsche Bank and from Goldman
21 Sachs. I don't remember who else I spoke to.
22 Q. And what was the reaction of those market

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1 participants to the net worth sweep announcement?
2 MR. DINTZER: Objection. Foundation.
3 THE WITNESS: As I recall, they were
4 simply trying to ask questions to understand what the
5 change had done.
6 BY MR. PATTERSON:
7 Q. So what sorts of questions were those?
8 A. I don't recall the specifics. It was my
9 last day at Treasury.
10 Q. Is there a reason why that was your last
11 day at Treasury, or was that just a coincidence?
12 A. More or less coincidental. It was
13 coincidental.
14 Q. Anything about it that was not
15 coincidental?
16 A. No.
17 Q. Had any market participants been informed
18 of the net worth sweep prior to its public
19 announcement?
20 MR. DINTZER: Objection. Foundation.
21 THE WITNESS: Not to my knowledge.
22 (Foster Exhibit No. 33 was

<p>Page 238</p> <p>1 marked for identification.) 2 BY MR. PATTERSON: 3 Q. I apologize in advance. This is very 4 small, but you've been handed an exhibit marked 5 Foster 33 and this is a Treasury press release from 6 August 17th, 2012. "Treasury Department announces 7 further steps to expedite wind-down of Fannie Mae and 8 Freddie Mac." And if you look toward the bottom of 9 this, there are some bullets at the very bottom. 10 Above that it says, "This will achieve several 11 important objectives including --" 12 MR. DINTZER: And it says, "This will 13 help." 14 BY MR. PATTERSON: 15 Q. Oh, "This will help achieve," thank you, 16 "several important objectives, including," and then 17 the third bullet says, "Acting upon the commitment 18 made in the Administration's 2011 white paper that 19 the GSEs will be wound down and will not be allowed 20 to retain profits, rebuild capital, and return to the 21 market in the prior form." 22 How did the net worth sweep help achieve</p>	<p>Page 240</p> <p>1 Treasury on its preferred stock investments in Fannie 2 Mae and Freddie Mac with a quarterly sweep of every 3 dollar of profit that each firm earns going forward." 4 Do you see that? 5 A. I do. 6 Q. And then it says that feature of the third 7 amendment, I'm assuming says this will help achieve 8 several important objectives, including the objective 9 that we've discussed. 10 So I guess my question is, how would 11 moving to the net worth sweep dividend advance the 12 commitment that the GSEs would be wound down and not 13 be allowed to return to the market in their prior 14 form? 15 A. So in order to be able to wind down the 16 GSEs in a safe and responsible manner, we needed to 17 be able to reduce -- well, Congress or FHFA would 18 have needed to reduce the size and the footprint of 19 the GSEs or Fannie Mae and Freddie Mac's retained 20 portfolio and guarantee books. That reduction in 21 footprint would reduce their ability to generate net 22 income. Reduce net income generation capacity would</p>
<p>Page 239</p> <p>1 the objective of ensuring that the GSEs would be 2 wound down and would not be allowed to return to the 3 market in their prior form? 4 MR. DINTZER: Objection. Foundation. 5 THE WITNESS: The net worth sweep and the 6 third -- the third amendment supported the wind-down 7 of Fannie Mae and Freddie Mac to allow the size and 8 the scope of the portfolios and guarantee book to be 9 shrunk gradually over time, which would lower/reduce 10 their ability to generate net income, which would 11 reduce their ability to cover fixed income dividend 12 payments and, therefore, the net worth sweep would 13 have supported the execution of that wind-down 14 policy. 15 BY MR. PATTERSON: 16 Q. Just so I can make sure I'm clear on this, 17 under this heading "Full income sweep of all future 18 Fannie Mae and Freddie Mac earnings to benefit 19 taxpayers for their investment," do you see that? 20 A. I do. 21 Q. And under that it says, "The agreements 22 will replace the 10 percent dividend payments made to</p>	<p>Page 241</p> <p>1 reduce its ability to meet any fixed income dividend 2 payments under a variety of -- almost under any 3 scenario and, as a result, to be able to support the 4 wind-down, a more flexible dividend structure 5 supported that. 6 (Foster Exhibit No. 34 was 7 marked for identification.) 8 BY MR. PATTERSON: 9 Q. You've been handed Foster 34. This is a 10 document produced to us by Fannie. It's marked 11 FM_Fairholme_CFC-00003013 on the first page. And 12 from the context of this document, it's apparent that 13 it's discussing the net worth sweep. 14 And under Roman numeral (ii)3.B, it says, 15 "Friday Treasury press release emphasized wind down 16 but changes are positive." And then B says, "Pay 17 back money faster." 18 Did Treasury anticipate, at the time of 19 the net worth sweep, that it would result in Fannie 20 and Freddie paying them back faster for the amount 21 that Treasury had invested in those companies? 22 MR. DINTZER: Objection. No foundation.</p>

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1 Confusing.
 2 THE WITNESS: I have no idea what this
 3 document is or what this means. So I don't know
 4 if -- I don't know what that means.
 5 BY MR. PATTERSON:
 6 Q. Apart from this document, did you --
 7 MR. DINTZER: So are you done with the
 8 document?
 9 MR. PATTERSON: I may return to it, but
 10 this question is apart from the document.
 11 BY MR. PATTERSON:
 12 Q. Apart from the document, at the time of
 13 the net worth sweep, did you anticipate that the
 14 sweep would result in Fannie and Freddie increasing
 15 the amount they would pay in dividends to Treasury?
 16 MR. DINTZER: Objection. Vague.
 17 THE WITNESS: Did I anticipate that?
 18 BY MR. PATTERSON:
 19 Q. Yes.
 20 A. No.
 21 Q. Do you know whether anyone else at
 22 Treasury anticipated that?

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1 A. Not to my knowledge.
 2 Q. Did you consider whether or not that would
 3 be a result of the net worth sweep?
 4 MR. DINTZER: Objection. Confusing.
 5 THE WITNESS: I considered it.
 6 BY MR. PATTERSON:
 7 Q. And how was that considered?
 8 MR. DINTZER: Objection. Vague and
 9 confusing.
 10 THE WITNESS: Just through the general
 11 analysis as to whether or not this change would
 12 result in more profitability, more proceeds over
 13 time, and the conclusion was that it would not as we
 14 wound down. And so no, the conclusion -- my
 15 conclusion was that it would not.
 16 BY MR. PATTERSON:
 17 Q. And what was the basis for that
 18 conclusion?
 19 A. Based off of forecasts and analysis that
 20 was done prior to the third amendment.
 21 Q. And that conclusion is --
 22 A. Based on the information we had available.

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1 Q. And that conclusion is proven incorrect at
 2 least as of today, wouldn't you agree?
 3 MR. DINTZER: Objection. Mischaracterizes
 4 and calls for speculation. And also, if you could
 5 explain how this is within the scope, asking how what
 6 happened today is relevant.
 7 MR. PATTERSON: I'm just trying to get a
 8 better understanding of the sources of his
 9 understanding at the time and then depending on his
 10 answer, I may ask some follow-up questions about if
 11 he anticipated those possibilities at the time, what
 12 could contribute to that different result, things of
 13 that nature.
 14 MR. DINTZER: So your question is, "And
 15 your conclusion is proven incorrect at least as of
 16 today?"
 17 MR. PATTERSON: Yes.
 18 MR. DINTZER: So your understanding of the
 19 scope of the Court's order is that information about
 20 what actually happened in 2014-2015 is within the
 21 scope of the Court's discovery order; is that
 22 correct?

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1 MR. PATTERSON: Yes, at least to the
 2 extent that it informs the decision made at that
 3 time, at the time of the net worth sweep.
 4 MR. DINTZER: So what happened in 2014 and
 5 2015, how it informed decisions made in 2012.
 6 MR. PATTERSON: There could be potential
 7 follow-up from what has happened since then that
 8 could get back to what was considered at that time.
 9 MR. DINTZER: Go ahead and ask your
 10 question again, please.
 11 THE REPORTER: "Question: And that
 12 conclusion is proven incorrect at least as of today,
 13 wouldn't you agree?"
 14 MR. DINTZER: I'm going to object. Beyond
 15 the scope. Instruct not to answer.
 16 MR. PATTERSON: And the reason for your
 17 objection?
 18 MR. DINTZER: Because you're asking about
 19 2015.
 20 MR. PATTERSON: Well, of course we reserve
 21 the right to challenge that objection.
 22 BY MR. PATTERSON:

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1 marked for identification.)
 2 BY MR. PATTERSON:
 3 Q. You've been handed an exhibit marked
 4 Foster 36. This is an information memorandum for
 5 Secretary Geithner dated January 4th, 2011, a memo
 6 from Jeffrey A. Goldstein, and the subject is housing
 7 finance reform plan. Is this something that you've
 8 seen before?
 9 A. Yes.
 10 Q. If you turn to page 3, heading number 4
 11 says, "Affirm our current obligations." Do you see
 12 that?
 13 A. Yes.
 14 Q. And there is a bullet point that says,
 15 "Ensure \$275 billion of funding capacity available
 16 after 2012 is not used to pay dividends. This may
 17 require converting preferred stock into common or
 18 cutting or deferring payment of the dividend under
 19 legal review."
 20 Now, was the option of converting
 21 preferred stock into common stock an alternative that
 22 you considered as a way to modify the dividend

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1 obligation?
 2 MR. DINTZER: Objection. Vague.
 3 THE WITNESS: Yes.
 4 BY MR. PATTERSON:
 5 Q. And how did you consider that possibility?
 6 A. We explored that option. But quickly
 7 dismissed that as a viable option under advice of
 8 counsel and other factors.
 9 Q. What were the factors other than the
 10 advice of counsel?
 11 A. That it would have required going
 12 through -- that the logistical requirements as posed
 13 by counsel would not have been acceptable.
 14 Q. And why would they not have been
 15 acceptable?
 16 MR. DINTZER: Hang on just because I'm
 17 hearing -- I instruct the witness to the extent that
 18 your answer requires divulging anything that you said
 19 to counsel or counsel said to you, I'm going to
 20 instruct you not to answer. If there are things
 21 beyond that, you can answer.
 22 THE WITNESS: I don't recall the specifics

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1 of the mechanics or the difficulties with executing
 2 such a position, but my understanding is that it
 3 would have required the GSEs to go through -- either
 4 exit conservatorship or go through receivership and
 5 also would have compromised -- could have constituted
 6 as a compromise of claim.
 7 BY MR. PATTERSON:
 8 Q. And how would converting the preferred
 9 into common have addressed the circular dividend
 10 issue that you were concerned about?
 11 A. Again, this was not an option that we
 12 seriously considered or that we spent -- it's not an
 13 option that we spent significant time considering.
 14 But my understanding is that if we would have
 15 converted the preferred stock into common, that would
 16 have eliminated or could have eliminated, depending
 17 on the ultimate structure, the need for fixed
 18 dividend payments.
 19 Q. And why would that have been?
 20 MR. DINTZER: And again, I'm going to
 21 instruct you not to answer to the extent that it
 22 involves conversations with counsel.

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1 THE WITNESS: My understanding was
 2 informed via conversations with counsel.
 3 BY MR. PATTERSON:
 4 Q. So your understanding of how converting
 5 the preferred into the common would have addressed
 6 the circular dividend issue is informed by
 7 conversations with counsel?
 8 A. Again, we did not spend significant time
 9 looking at -- I don't remember all the analysis or
 10 work we did around this option and to the work -- to
 11 the extent that we did work, it was done in
 12 consultation and conversation with counsel as to how
 13 this option would mechanically work.
 14 Q. So just so the record is clear, in your
 15 understanding -- if you don't know, you can say you
 16 don't know -- how would have converting the preferred
 17 into common have addressed the circular dividend
 18 issue?
 19 MR. DINTZER: Since he's indicated that
 20 that at a minimum touches on or encompasses his
 21 conversations with counsel, what I would suggest is
 22 why don't we take our break now and I'll get a chance

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1 to talk with the witness and make sure I understand
 2 the scope of what you're asking and then we'll come
 3 back.
 4 MR. PATTERSON: Okay. I think that should
 5 be fine.
 6 (Recess.)
 7 THE REPORTER: "Question: In your
 8 understanding, how would have converting the
 9 preferred into common have addressed the circular
 10 dividend issue?"
 11 THE WITNESS: Converting a portion of the
 12 preferred stock into common would have -- might have
 13 eliminated the 10 percent dividend requirement on the
 14 portion that had been converted.
 15 BY MR. PATTERSON:
 16 Q. And how would that address the circular
 17 dividend issue?
 18 A. If such action would have been taken,
 19 which we did not pursue, reducing the fixed dividend
 20 requirement would have -- might have made the total
 21 amount necessary to be paid to Fannie and Freddie or
 22 paid to the Treasury on an annual basis lower, and

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1 even a reduced and lowered normalized net income for
 2 Fannie and Freddie as they were wound down might have
 3 been sufficient to cover those fixed payments and
 4 fixed obligations.
 5 Q. So what portion of the preferred stock did
 6 Treasury consider converting into common?
 7 MR. DINTZER: Objection.
 8 Mischaracterizes.
 9 THE WITNESS: I don't recall if we -- to
 10 what degree and what portion, if at all, we
 11 considered it.
 12 (Foster Exhibit No. 37 was
 13 marked for identification.)
 14 BY MR. PATTERSON:
 15 Q. You've been handed an exhibit marked
 16 Foster 37. And this is minutes of the audit
 17 committee of the board of directors of Fannie Mae
 18 from September 13th of 2012. I know this date is
 19 after August 17th, 2012, but I'm going to ask
 20 questions that relate to the time period up to and
 21 including August 17th.
 22 Now, if you turn to the second page of

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1 this document, it's entitled Chief Financial Officer
 2 Report. It says, "In response to questions regarding
 3 the deferred tax asset considerations presented in
 4 advance materials, CFO McFarland explained that
 5 timing will impact the estimates regarding the amount
 6 of the deferred tax asset valuation allowance, and
 7 the related accounting for it."
 8 So my question is, during the time, you
 9 know, starting June 1st, 2011, leading up to August
 10 17th, 2012, did you consider the possibility that
 11 Fannie or Freddie would at some point release their
 12 deferred tax assets valuation allowance?
 13 MR. DINTZER: Objection. Foundation.
 14 Confusing.
 15 THE WITNESS: Can you repeat the question?
 16 THE REPORTER: "Question: During the time
 17 starting June 1st, 2011, leading up to August 17th,
 18 2012, did you consider the possibility that Fannie or
 19 Freddie would at some point release their deferred
 20 tax assets valuation allowance?"
 21 MR. DINTZER: Objection. Vague.
 22 THE WITNESS: I was aware that that was a

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1 possibility at some point in time.
 2 BY MR. PATTERSON:
 3 Q. And what was the basis of your awareness
 4 of that being a possibility at some point in time?
 5 A. That had been flagged for me by -- I'm
 6 trying to remember what the basis for that was. I
 7 don't recall what the basis for that was. I knew
 8 that the DTAs had been written down because the
 9 expectation of income generation didn't exist and
 10 from an accounting perspective, they had not been
 11 written up or released.
 12 Q. Did you have any sense of the timing of
 13 when the deferred tax asset valuation allowances
 14 potentially could be released at the time of the net
 15 worth sweep?
 16 MR. DINTZER: Objection. Vague.
 17 THE WITNESS: I'm not an auditor and
 18 that's really more of a question for an auditor.
 19 BY MR. PATTERSON:
 20 Q. Did you have any understanding of that,
 21 though?
 22 A. No.

<p style="text-align: right;">Page 258</p> <p>1 Q. And did you discuss with anyone else at 2 Treasury from June 1st, 2011 through August 17th, 3 2012 the possibility that Fannie and Freddie could at 4 some point release their deferred tax assets 5 valuation allowance? 6 A. That was discussed with -- I discussed 7 that between myself and Tim Bowler, and I think that 8 was raised in consideration with Mario Ugoletti at 9 one point, but I don't remember when. 10 Q. And what impact would the release of the 11 valuation allowance have on Fannie and Freddie's net 12 worth did you anticipate at that time? 13 A. I didn't anticipate that they would be 14 released or that there would be an impact. 15 Q. But in the event they were, did you have a 16 sense for how large the valuation allowances were? 17 MR. DINTZER: Objection. Vague. 18 Hypothetical. 19 THE WITNESS: I was not aware -- I wasn't 20 an accountant, so I wouldn't -- I didn't have an 21 informed view on what the size would be if they were 22 released.</p>	<p style="text-align: right;">Page 260</p> <p>1 Government assumed control in 2008 of Fannie Mae and 2 Freddie Mac, two federally chartered institutions 3 that provide credit guarantees for almost half of the 4 outstanding residential mortgages in the 5 United States, the Congressional Budget Office (CBO) 6 concluded that the institutions had effectively 7 become government entities whose operations should be 8 included in the federal budget." 9 Now, starting on June 1st, 2011 through 10 the net worth sweep on August 17th, 2012, were you 11 aware that the CBO had concluded that Fannie and 12 Freddie should be included in the federal budget? 13 MR. DINTZER: Objection. Vague. 14 Confusing. 15 THE WITNESS: Had I concluded that? 16 BY MR. PATTERSON: 17 Q. Were you aware that CBO had concluded 18 that? 19 A. Yes. 20 Q. And Treasury made a different 21 determination, correct? 22 MR. DINTZER: Objection. Vague.</p>
<p style="text-align: right;">Page 259</p> <p>1 (Foster Exhibit No. 38 was 2 marked for identification.) 3 BY MR. PATTERSON: 4 Q. You've been handed an exhibit marked 5 Foster 38. And this is an email from Adam Chepenik 6 to individuals including you on April 13th, 2012. 7 It's marked UST 00437857. 8 And it says, "Attached please find the 9 final GSE cost memorandum and attachments for 10 Secretary Geithner." 11 If you turn to the attachment, this is 12 entitled CEO's budgetary treatment of Fannie Mae and 13 Freddie Mac. Do you see that? 14 A. Uh-huh. 15 Q. Now, please turn to the preface which is 16 the first page containing text in this report. 17 A. Preface? 18 Q. Yes. 19 A. Okay. 20 Q. Are you there? 21 A. Yes. 22 Q. Okay. So now it reads, "After the U.S.</p>	<p style="text-align: right;">Page 261</p> <p>1 THE WITNESS: I think the distinction that 2 Treasury had made was consistent with its accounting 3 principles. CBO accounting and OMB accounting are 4 different from my understanding. 5 BY MR. PATTERSON: 6 Q. And I guess my question was a simpler one 7 than that. Did Treasury agree with CBO that Fannie 8 and Freddie should be included in the federal budget? 9 A. I think the treatment that Treasury had 10 for its investments in our -- I believe Treasury's 11 investments and commitments to Fannie Mae and Freddie 12 Mac were included in the budget. 13 Q. Treasury's investments were included in 14 the budget; is that what you said? 15 A. Yes. 16 Q. Were Fannie and Freddie's assets and 17 liabilities included in Treasury's budget? 18 MR. DINTZER: Objection. Calls for 19 speculation. Foundation. 20 THE WITNESS: I'm not a budget expert, so 21 I wouldn't want to opine on what was in or what was 22 not in the official federal budget.</p>

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1 BY MR. PATTERSON:
 2 Q. So you don't know whether Fannie and
 3 Freddie's assets and liabilities were included in the
 4 federal budget?
 5 A. I don't believe so.
 6 Q. You don't believe they were or you don't
 7 believe that you know? I'm sorry, I just want to
 8 make the record clear.
 9 MR. DINTZER: Objection. Foundation.
 10 THE WITNESS: Again, I'm not a government
 11 accounting expert, but my understanding was that the
 12 assets and liabilities were not included on the
 13 balance sheet, but all of the costs and inflows and
 14 outflows of capital were included.
 15 BY MR. PATTERSON:
 16 Q. Now, in connection with considering the
 17 net worth sweep, did Treasury consider whether
 18 adoption of the sweep would require the assets and
 19 liabilities of Fannie and Freddie to be included in
 20 the federal budget?
 21 MR. DINTZER: Objection. Calls for
 22 speculation. And Counsel, if you could explain how

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1 that question fits within the scope.
 2 MR. PATTERSON: Well, whether Fannie and
 3 Freddie are part of the government of the
 4 United States, to the extent that they're included in
 5 the budget of the United States, would affect the
 6 capacity in which FHFA and Treasury were acting at
 7 the time they entered the third amendment.
 8 MR. DINTZER: How?
 9 MR. PATTERSON: Well, if the action had
 10 the result of Fannie and Freddie being included in
 11 the budget of the United States to the same extent as
 12 agencies of the federal government, that would
 13 indicate that they were acting on behalf of the
 14 United States.
 15 MR. DINTZER: So what's your question?
 16 BY MR. PATTERSON:
 17 Q. The question is, in connection with the
 18 net worth sweep, did Treasury consider whether
 19 entering the net worth sweep would require the assets
 20 and liabilities of Fannie and Freddie to be included
 21 in the federal budget?
 22 MR. DINTZER: Objection. Calls for

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1 speculation.
 2 THE WITNESS: I don't recall.
 3 BY MR. PATTERSON:
 4 Q. Did you have any discussions on that issue
 5 with anyone in connection with considering the net
 6 worth sweep?
 7 A. I don't recall this being a specific issue
 8 that came up as part of the third amendment. There
 9 were questions that were asked generally that I
 10 recall related to the budgetary treatment of Fannie
 11 and Freddie, but I don't recall being mentioned in
 12 connection specifically with the third amendment.
 13 Q. Were those discussions related in any way
 14 to the variable dividend that was being considered?
 15 A. Not that I recall.
 16 Q. You can put aside that exhibit. While you
 17 were at Treasury, did you have access to the Treasury
 18 secure data network?
 19 A. No.
 20 MR. PATTERSON: Would it be okay if we
 21 take a break?
 22 MR. DINTZER: Sure.

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1 (Recess.)
 2 BY MR. PATTERSON:
 3 Q. I just had a few things I wanted to wrap
 4 up on. First, from June 1st through August 17th,
 5 2012, who at Treasury other than yourself was working
 6 on issues relating to the PSPAs?
 7 MR. DINTZER: Objection. Calls for
 8 speculation.
 9 THE WITNESS: There were a number of
 10 people that were working on the PSPAs.
 11 BY MR. PATTERSON:
 12 Q. And who were they?
 13 A. To my knowledge, myself, counsel, Tim
 14 Bowler, Michael Stegman, Mary Miller and Adam
 15 Chepenik, Beth Mlynarczyk. There were many people
 16 working on it.
 17 Q. And do you know if any of these
 18 individuals, did they use email accounts other than
 19 their Treasury accounts when working on official
 20 Treasury matters?
 21 A. I don't know.
 22 Q. And did you have discussions with anyone