

May 23, 2013

The Honorable Jacob J. Lew
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Lew:

As you know the Housing and Economic Recovery Act of 2008 authorized the U.S. government to place government-sponsored enterprises (GSEs) in a conservatorship.

On September 7, 2008, the Federal Housing Finance Agency (FHFA) established a conservatorship for Fannie Mae and Freddie Mac and assumed control of these two GSEs. Common shareholders lost their voting rights, dividends on preferred and common stock were suspended, and annual shareholder meetings were canceled.

Under the conservatorship, the government has received warrants to buy up to 79.9 percent of GSE common stock for \$0.00001 per share. The non-government common stockholders are, in essence, zombie stockholders with no rights and no remedies against the GSEs or the FHFA.¹ The government, however, does not want to own even 80 percent of the stock, because the government does not want the GSEs' assets and liabilities on the government's books.

Many prudent investors, including the undersigned, purchased Fannie Mae and Freddie Mac common stock because these stocks were considered safe investments. Shareholders who might otherwise have been apprehensive about keeping their Fannie Mae and Freddie Mac stock, even as the financial crisis was mushrooming, were led to believe these two prominent GSEs were financially sound. Even the most risk-averse, prudent investor was comfortable relying on statements from knowledgeable high-ranking government officials who publically claimed Fannie Mae and Freddie Mac were rock-solid companies.

1. On July 10, 2008, OFHEO Director James B. Lockhart said:

“OFHEO has been monitoring and continues to monitor closely Fannie Mae, Freddie Mac and the mortgage and financial markets. As one would expect, we are carefully watching the Enterprises’ credit and capital positions.

As I have said before, they are adequately capitalized, holding capital well in excess of the OFHEO-directed requirement, which exceeds the statutory minimums. They have large liquidity portfolios, access to the debt market and over \$1.5 trillion in unpledged assets.”²

¹See: 12 USC § 4617 (b) (2) (K) Other provisions. (i) Shareholders and creditors of failed regulated entity. Notwithstanding any other provision of law, the appointment of the Agency as receiver for a regulated entity pursuant to paragraph (2) or (4) of subsection (a) and its succession, by operation of law, to the rights, titles, powers, and privileges described in subsection (b)(2)(A) shall terminate all rights and claims that the stockholders and creditors of the regulated entity may have against the assets or charter of the regulated entity or the Agency arising as a result of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under subsections (b)(9), (c), and (e).

² <http://www.fhfa.gov/webfiles/1503/71008Statement.pdf>.

2. On July 10, 2008 former Chair of the House Financial Services Committee Representative Barney Frank said that Fannie Mae and Freddie Mac are important financial institutions that are basically strong and are “well capitalized.”³

3. On July 13, 2008 former Senator Christopher Dodd, who chaired the Senate Banking Committee said: Fannie and Freddie were in “good shape.”

“They have more than adequate capital, in fact more than the law requires,” Dodd, a Connecticut Democrat who is chairman of the Senate Banking Committee, said on CNN’s “Late Edition” today. “They have access to capital markets. They’re in good shape. To suggest somehow they’re in major trouble is not accurate,” Dodd said.⁴

4. On July 15, 2008 Senator Dodd also said:

“In considering the state of our economy, in particularly turmoil in recent days, it is important to distinguish between fear and facts. In our markets today, far too many actions are being driven by fear and ignoring crucial facts.

One such fact is that Fannie Mae and Freddie Mac have core strengths that are helping them weather the stormy seas of today’s financial markets. They are adequately capitalized. They are able to act as the debt markets. They have solid portfolios with relatively few risky subprime mortgages. They are well-regulated and they have played a vital role in maintaining the flow of affordable mortgage credit, even during these volatile times.”⁵

5. On July 15, 2008 former Treasury Secretary Henry M. Paulson said:

“Our proposal⁶ was not prompted by any sudden deterioration in conditions at Fannie Mae or Freddie Mac. OFHEO have reaffirmed that both GSEs remain adequately capitalized.”⁷

6. On July 16, 2008 Ben S. Bernanke, the Chairman of the Federal Reserve told the House Financial Services Committee:

“Let me just say a word about GSEs, because you raised that. The GSEs are adequately capitalized. They are in no danger of failing.”⁸

Unfortunately, shareholders were adversely affected because of their reliance on misleading statements about the financial strength of the GSEs made by many high-ranking government officials prior to the imposition of the conservatorship in September of 2008.

The abuse of Fannie Mae and Freddie Mac common stockholders by the FHFA knows few bounds. On

³ US Frank: Fannie, Freddie Are “Very Important, Well Capitalized” By John Shaw, The Main Wire, July 10, 2008 Thursday 2:24 PM GM <http://www.marketnews.com>

⁴ July 13, 2008, Bloomberg – Fannie Mae, Freddie Mac Are in 'Good Shape' Dodd Says.

⁵ Senate Committee on Banking, Housing and Urban Affairs, Hearing on the Federal Reserve’s Semiannual Monetary Policy Report to Congress, July 15, 2008

⁶ Treasury Secretary Henry M. Paulson Jr. was seeking permission from Congress to temporarily increase the amount the companies could borrow from the Treasury.

⁷ Testimony of Honorable Henry M. Paulson Secretary of the Treasury, Hearing: Recent Developments in U.S. Financial Markets and Regulatory Responses to Them. US Senate Committee on Banking, Housing and Urban Affairs, Tuesday, July 15, 2008.

⁸ House Committee on Financial Services Hearing on Monetary Policy and the State of the U.S. Economy July 16, 2008.

June 16, 2010, the FHFA directed Fannie Mae and Freddie Mac to delist their common and preferred stock from the NYSE. The Exchange did not demand this move. Fannie Mae's stock price had dropped slightly below the \$1 per share threshold stipulated by NYSE rules, but the Big Board is quite flexible with time either to get back over \$1 or to allow companies to offer a reverse stock split. Freddie was over the \$1 level. The delisting took the shares down to the range of 30 cents, wiped out billions of dollars in shareholder value, and chased away many institutional holders.

FHFA Acting Director Edward J. DeMarco said: "A voluntary delisting at this time simply makes sense and fits with the goal of a conservatorship to preserve and conserve assets."⁹

On September 15, 2010, Acting Director DeMarco said:

"The statutory purpose of conservatorship is to preserve and conserve each company's assets and put them in a sound and solvent condition. The goals of conservatorship are to help restore confidence in the companies, enhance their capacity to fulfill their mission, and mitigate the systemic risk that contributed directly to instability in financial markets."¹⁰

Acting Director DeMarco's action in delisting Fannie Mae and Freddie Mac do not seem to comport with his understanding of the statutory purpose of the conservatorship.

Regulators should adhere to the stated purpose of the conservatorship. Fannie and Freddie have the potential to become solvent. A May 9, 2013 news release from Fannie Mae states:

"Based on net worth of \$62.4 billion at March 31, 2013, the company's dividend obligation to Treasury will be \$59.4 billion by June 30, 2013. After the June payment, we will have paid an aggregate of \$95.0 billion in cash dividends to Treasury since conservatorship began."

Similarly a May 8, 2012 news release from Freddie Mac states:

"Based on our Net Worth Amount at March 31, 2013, our dividend obligation to Treasury in June 2013 will be \$7.0 billion. We paid dividends of \$5.8 billion in cash on the senior preferred stock during the three months ended March 31, 2013, based on our Net Worth Amount at December 31, 2012. Through March 31, 2013, we have paid aggregate cash dividends to Treasury of \$29.6 billion, an amount equal to 41% of our aggregate draws received under the Purchase Agreement."

In sum, Fannie and Freddie received a total of approximately \$188 billion from the U.S. Government, and will have paid the government about \$132 billion in dividends by next month. Moreover, it is fair to assume that Fannie and Freddie will be able to fully repay the U.S. Government.

A variety of proposals have been advanced regarding the structure of Fannie and Freddie. It is time for Congress, the Treasury Department and the FHFA to seriously embrace a structure that will protect the already financially injured common shareholders. Options put forth by former Treasury Secretary Paulson and the GAO are rarely mentioned by Treasury officials or members of Congress. A September 9, 2009 Congressional Research Service Report suggested that Congress may consider the following options:

⁹ FHFA News Release http://www.fhfa.gov/webfiles/15854/Delisting_6_16_10.pdf

¹⁰Statement of Edward J. DeMarco, Acting Director, Federal Housing Finance Agency, Before the U.S. House of Representatives Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises, September 15, 2010.

- Return Fannie Mae and Freddie Mac to their stockholders with little or no change to their congressional charters;
- Eliminate their GSE status and convert Fannie Mae and Freddie Mac into private corporations;
- Eliminate their GSE status and convert Fannie Mae and Freddie Mac into a government agency; or
- Make supplementary changes to support the secondary mortgage market such as providing government reinsurance of MBS or encouraging the use of covered bonds.

Regardless of the final outcome of the deliberations on the structure of these GSEs, Fannie and Freddie common shareholders deserve a chance to recover some of the value of their stock. As you know, the Federal government provided funds to help stabilize AIG (\$69 billion) and Citigroup (\$45 billion). Other funds and guarantees were also made available to these companies. AIG and Citigroup shareholders benefited from the recovery of these companies. Similarly, Fannie Mae and Freddie Mac common stockholders should be allowed to participate in the recovery of the value of their stock just as was the case with AIG and Citigroup investors.

The common shareholders have been in a financial limbo far too long. It is unfair to punish the common shareholders who have held their Fannie and Freddie stock, in the hopes of recouping some of their losses. Fannie Mae and Freddie Mac should be relisted on the NYSE and their conservatorships should, over time, be terminated.

What steps do you intend to take as Secretary of the Treasury to ensure that the legitimate concerns of Fannie Mae and Freddie Mac common stockholders are addressed?

I look forward to your response.

Sincerely,



Mr. Ralph Nader

cc: Mr. Edward DeMarco, Acting Director Federal Housing Finance Agency (FHFA)
Mr. Donald H. Layton, CEO, Freddie Mac
Mr. Timothy J. Mayopoulos, CEO Fannie Mae