

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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*In re* : Chapter 11  
: :  
WASHINGTON MUTUAL, INC., *et al.*, : Case No. 08-12229 (MFW)  
: :  
: Jointly Administered  
: :  
: **Objection Deadline: August 19, 2009 at 4:00 p.m. (ET)**  
\_\_\_\_\_ X **Hearing Date: August 24, 2009 at 11:30 a.m. (ET)**

**MOTION OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION TO COMPEL THE  
WASHINGTON MUTUAL, INC. NOTEHOLDERS GROUP TO COMPLY WITH FEDERAL  
RULE OF BANKRUPTCY PROCEDURE 2019**

JPMorgan Chase Bank, National Association (“JPMC”), through its undersigned counsel, submits this Motion to Compel the Washington Mutual, Inc. Noteholders Group to Comply with Federal Rule of Bankruptcy Procedure 2019 (the “Motion”). In support of the Motion, JPMC respectfully represents as follows:

**BACKGROUND**

1. On September 26, 2008 (the “Commencement Date”), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §101 *et seq.* (the “Bankruptcy Code”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On October 20, 2008, the self-styled “Washington Mutual Noteholders Group” (the “Washington Mutual Noteholders Group”) first appeared in this case as “23 entities that . . . are the beneficial owner of, or the holder or manager of, various accounts with investment authority, contractual authority or voting authority for more than \$1.1 billion in face amount of notes issued by Washington Mutual, Inc. *See* Notice of Appearance and Request for Service of Papers dated October

20, 2008 [Docket No. 101] (the “First NoA”); *see also* Verified Statement of White & Case LLP Pursuant to Bankruptcy Rule 2019 dated October 20, 2008 [Docket No. 102] (the “W&C 2019 Statement”). True and correct copies of the First NoA and the W&C 2019 Statement are attached hereto as Exhibits “A” and “B,” respectively.

3. On November 6, 2008, another law firm – Kasowitz, Benson, Torres & Friedman LLP (“KBT&F”) – filed a Notice of Appearance and Request for Service of Papers on behalf of what it defined as the “WMI Noteholders Group.” *See* Docket No. 247 (the “Second NoA”). A true and correct copy of the Second NoA is attached hereto as Exhibit “C.” In the Second NoA, KBT&F represented that a list of participants in the WMI Noteholders Group “is provided with the Verified Statement of – Kasowitz, Benson, Torres & Friedman LLP Pursuant to Fed. R. Bankr. P. 2019, filed contemporaneously herewith . . . .” Second NoA, pg. 1. No such verified statement appears on the docket of these cases and, upon information and belief, no such verified statement has been filed.

4. On June 15, 2009, the Washington Mutual Noteholders Group claimed in a pleading filed with the Court that it “collectively holds at least \$3.3 billion in face amount of outstanding debt securities issued by Debtor Washington Mutual, Inc.” and they are collectively “the principal stakeholders in these chapter 11 proceedings.” *See* Statement of Washington Mutual, Inc. Noteholder Group In Opposition To (A) The Motion of Intervenor-Defendant Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank, To Stay or Dismiss the Adversary Complaint, and (B) the Motion of Defendant JPMorgan Chase Bank, National Association for Stay of Debtors’ Adversary Proceeding [Docket No. 38] (the “Noteholders Group Statement”), p. 1.<sup>1</sup>

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<sup>1</sup> The Washington Mutual Noteholders Group has opposed various motions filed by JPMC. For example, on July 15, 2009, the Washington Mutual Noteholders Group filed the Objection to Motion of Debtors’ Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a)

5. KBT&F, which did not file a verified statement pursuant to Bankruptcy Rule 2019, appears “Of Counsel” on the Noteholders Group Statement on behalf of what is asserted to be holders of “at least \$3.3 billion in face amount” of notes issued by WMI. White & Case, which filed the 2019 Statement disclosing the names of twenty-three (23) holders of notes in the collective principal amount of more than \$1.1 billion, does not appear on the Noteholders Group Statement.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory predicate for the relief requested herein is Federal Rule of Bankruptcy Procedure 2019 (the “Bankruptcy Rules”).

#### **RELIEF REQUESTED**

8. By this Motion, JPMC respectfully requests the Court to enter an order, substantially in the form attached hereto, compelling the Washington Mutual Noteholders Group to: (i) comply with Bankruptcy Rule 2019 by requiring each member of the Washington Mutual Noteholders Group to disclose the amount of each of their claims, the date(s) such claims were acquired, the amount paid therefore and any subsequent disposition thereof; and (ii) otherwise bar their participation in these cases until its disclosure deficiencies are fully remedied.

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for Approval of Settlement with JPMorgan Chase Bank, N.A. [Docket No. 1324] (the “9019 Objection”). While the 9019 Objection was subsequently withdrawn, the Washington Mutual Noteholder Group made the same representations regarding its economic stake in these cases as was described in the Noteholders Group Statement. In this instance, White & Case is listed as counsel to the Washington Mutual Noteholders Group and KBS&T is listed as “of counsel.” Neither the Noteholders Group Statement nor the 9019 Objection contain any explanation of how the Washington Mutual Noteholders Group’s claims have swelled from \$1.1 to \$3.3 billion since October, 2008. As of the date hereof, White & Case has not filed revisions to the W&C 2019 Statement to reflect the increase in the stated amounts held by the Washington Mutual Noteholders Group.

## BASIS FOR RELIEF

9. Bankruptcy Rule 2019(a) requires that every entity or committee representing more than one creditor shall file a verified statement setting forth: (1) the name and address of the creditor; (2) the nature and amount of the claim and the time it was acquired (unless alleged to have been acquired more than one year prior to the bankruptcy filing); (3) a recital of the pertinent facts and circumstances in connection with the employment of the entity and, in the case of a committee, the name or names of the entity or entities at whose instance, directly or indirectly, the employment was arranged or the committee was organized and agreed to act; and (4) the amounts of claims owned by the entity, the members of the committee, the times when acquired, the amounts paid therefore, and any sales or dispositions thereof. *See* Fed. R. Bankr. P. 2019(a); *see also In re Northwest Airlines, Inc.* 363 B.R. 701,702 (Bankr. S.D.N.Y. 2007) (“[b]y its plain terms, the Rule requires disclosure of the amounts of claims or interests owned by the members of the committee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof.”) (internal quotations omitted). Bankruptcy Rule 2019(a) also requires the prompt filing of supplemental statements, “setting forth any material changes in the facts contained in the statement filed . . . .” *See* Fed. R. Bankr. P. 2019(a).

10. Based on papers filed of record by or on behalf of the Washington Mutual Noteholders Group, including the First NoA, the Second NoA, the W&C 2019 Statement, the Noteholders Group Statement, and the 9019 Objection (and lack of a KBT&F Rule 2019(a) statement and revised W&C 2019 Statement), it is not possible to determine the present composition and holdings of the Washington Mutual Noteholders Group. Based on its participation in these cases, the Washington Mutual Noteholders Group has undertaken a coordinated effort to speak with one voice on issues relevant to their respective financial interests. As the Court in *Wilson v. Valley Electric*

*Membership Corp.*, 141 B.R., 309, 314 (E.D.La. 1992) noted, “[r]ule 2019 more appropriately seems to apply to the formal organization of a group of creditors holding similar claims, who have elected to consolidate their collection efforts.”

11. Although captioned and drafted as a statement of the law firm that at one time represented (and may still represent) the Washington Mutual Noteholders Group, the W&C 2019 Statement does not comply with the requirements of Bankruptcy Rule 2019. Aside from listing of the names and addresses of the members of the group as of October 20, 2008, the W&C 2019 Statement contains little, if any, of the information required by Rule 2019.

12. In addition, despite its representation in the Second NoA, KBT&F has not filed a verified statement pursuant to Bankruptcy Rule 2019. Moreover, although the First NoA and the Second NoA represent that the Washington Mutual Noteholders Group holds more than \$1.1 billion principal amount of notes, the Noteholders Group Statement and 9019 Objection assert that the amount is more than \$3.3 billion. Tellingly, the Washington Mutual Noteholders Group has provided no explanation of how its holdings increased threefold over the period of eight months.

13. It is not the law firms purporting to represent the Washington Mutual Noteholders Group that must comply with Bankruptcy Rule 2019 -- it is the Washington Mutual Noteholders Group itself that must satisfy the disclosure obligations under Bankruptcy Rule 2019. The Washington Mutual Noteholders Group has taken an active role in these cases and, by its own assertions, expects to be the primary recipient of any distributions from the Debtors' estates. Yet, the identity and composition of the Washington Mutual Noteholders Group remains unknown to the Court, Debtors, JPMC and the balance of the Debtors' creditor constituencies. Without disclosures required by Bankruptcy Rule 2019, the Court should refuse to allow the Washington Mutual Noteholders Group to participate in these cases.

14. Counsel to JPMC has advised counsel to the Washington Mutual Noteholders Group of its belief that the Washington Mutual Noteholders Group has not complied with Bankruptcy Rule 2019(a). Because the Washington Mutual Noteholders Group has made no remedial or supplemental filings pursuant to Bankruptcy Rule 2019(a), JPMC respectfully requests that the Court compel the Washington Mutual Noteholders Group to comply with Bankruptcy Rule 2019(a) and for additional relief as contemplated by Bankruptcy Rule 2019(b). Until it satisfies its disclosure obligations under Bankruptcy Rule 2019, the Washington Mutual Noteholders Group should be barred from further participating in these proceedings.

**NOTICE AND NO PRIOR REQUEST**

15. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Washington Mutual Noteholders Group; (iii) the Debtors; (iv) counsel to the Debtors; (v) special conflicts counsel to the Debtors; (vi) counsel to the Committee; (vii) and all parties having requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, JPMC submits no other or further notice is necessary.

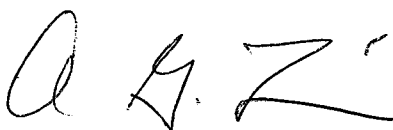
16. No previous application for the relief sought herein has been made to this Court or any other court.

**CONCLUSION**

WHEREFORE, JPMC respectfully requests that the Court enter an order, substantially in the form attached hereto, compelling the Washington Mutual Noteholders Group to (i) comply with Bankruptcy Rule 2019 and otherwise bar its participation in these cases until its disclosure deficiencies are fully remedied; and (ii) grant such other and further relief as is just and proper.

Dated: August 6, 2009  
Wilmington, Delaware

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