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## Communication To Members Of Class 19

To the Members of Class 19:

We write today in our capacity as counsel to a consortium of investors (the "TPS Consortium") proposed to be treated under Class 19 of the chapter 11 plan (the "Plan") of Washington Mutual, Inc. (together with affiliates, the "Debtors"), a copy of which Plan is enclosed in the materials you have received with this letter. In connection with your receipt of the Plan and accompanying materials, the Debtors are seeking your approval of the Plan and then intend to seek to have the Plan confirmed and made binding on you by the United States Bankruptcy Court for the District of Delaware (the "Court").

**AS DISCUSSED BELOW, THE TPS CONSORTIUM BELIEVES THE PLAN: (A) DEPRIVES MEMBERS OF CLASS 19 OF SIGNIFICANT VALUE TO WHICH THEY MAY OTHERWISE BE ENTITLED; AND (B) RELEASES INAPPROPRIATELY VALUABLE CLAIMS AND CAUSES OF ACTION AGAINST NUMEROUS THIRD PARTIES.**

**THE TPS CONSORTIUM BELIEVES MEMBERS OF CLASS 19 SHOULD VOTE AGAINST THE PLAN AND DECLINE TO GRANT THE PROPOSED RELEASES (AS DISCUSSED BELOW).**

The TPS Consortium and its professionals have carefully reviewed the Plan, including the proposed "global settlement" in connection with which the Debtors seek authority to deliver significant additional value (in the form of assets and/or valuable releases of claims) to: (a) JPMorgan Chase, N.A. ("JPMC"); (b) other parties involved in the seizure and sale of Washington Mutual Bank to JPMC in September 2008; and (c) third parties involved in creation, issuance and sale of the Trust Preferred Securities associated with your Class 19 interest. Before casting your vote on the Plan, you should carefully review the accompanying disclosure statement and the contents of this letter, and consult with your own legal and/or financial advisors.

In particular, the TPS Consortium believes you should be aware of the following critical issues before casting your ballot on the Plan and/or electing whether to grant the requested releases of claims against third parties:

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### **Pending Litigation Concerning Ownership Of The Trust Preferred Securities**

On July 6, 2010, members of the TPS Consortium commenced litigation against Washington Mutual, Inc. (“WMI”), JPMC and certain other parties involved in the structuring and sale of the Trust Preferred Securities. In that litigation, the TPS Consortium challenged the Debtors’ assertions as to the purported occurrence of a “conditional exchange” of your Trust Preferred Securities into preferred stock of WMI immediately prior to the filing of the Debtors’ Chapter 11 cases. More specifically, the TPS Consortium believes important conditions to the consummation of that exchange transaction were not, and cannot now be, fulfilled. Moreover, the TPS Consortium believes the pre-bankruptcy fraud and other misconduct of WMI and other parties in connection with the Trust Preferred Securities provide ample equitable grounds to block any transfer of the Trust Preferred Securities to JPMC, as is contemplated under the Plan.

**It is the TPS Consortium’s position that holders of Trust Preferred Securities are entitled to retain their interests in those securities; rather than being forced to accept the approximate one penny on the dollar contemplated under the Plan (a result you would be accepting by voting in favor of the plan and granting the requested releases).**

The trial on the TPS Consortium’s litigation currently is scheduled to commence on December 1, 2010. While the Complaint filed by the TPS Consortium is of public record with the Court, upon request, counsel to the TPS Consortium will provide to you a copy of the Complaint initiating this litigation.

### **The Plan Contemplates Unlawful And Inappropriate Releases Of Claims**

The Plan contemplates releases of potentially valuable claims against JPMC, the Debtors’ officers and directors, parties involved in the structuring and sale of the Trust Preferred Securities, and numerous other parties who may have significant liability in connection with the Debtors’ collapse and bankruptcy filing. Through the Plan, the Debtors’ seek authority to release not only their claims against such parties, but the Debtors also are seeking a forced release of claims you may hold in your individual capacity against certain of these parties.

The TPS Consortium believes the proposed release of the Debtors’ claims would be inappropriate under the circumstances. More importantly, the TPS Consortium believes the Debtors’ attempt to force you to release claims you may have against third parties would be unlawful and violative of settled law, including decisions rendered by the Bankruptcy Judge overseeing the Debtors’ Chapter 11 cases in In re Coram Healthcare Corp., 315 B.R. 321, 335-36 (Bankr. D. Del. 2004) and In re Zenith Elecs. Corp., 241 B.R. 92, 111 (Bankr. D. Del. 1999).

The Plan purports to allow you to “opt out” of the proposed release of your claims. But, the Debtors have indicated their intent to ask the Court to invalidate your exercise of such “opt out”



rights, and still force you to release your claims. Further, the Debtors have indicated their intent to “deem” you to have granted such releases and to have forfeited your rights to the Trust Preferred Securities if Class 19 votes to accept the Plan. **As such, the TPS Consortium believes you should: (a) “opt out” of the proposed releases by checking the appropriate box on the enclosed ballot; and (b) vote against the Plan on the enclosed ballot.**

### **The Settlement Contemplated By The Plan Is Inappropriate**

Prior to entering into the “global settlement,” the Debtors were party to other significant litigation against, among others, JPMC and the FDIC (the agency responsible for seizing and selling Washington Mutual Bank). In such other litigation, the Debtors made numerous claims regarding value purportedly owned by, or owed to, the Debtors, which claims, if successful, could have resulted in significant distributions to stakeholders in these cases, including members of Class 19. But, prior to entering into the “global settlement” to compromise substantially all of those claims (including claims as to the ownership of the Trust Preferred Securities), the Debtors had conducted, in the view of the TPS Consortium, minimal (and in some cases, perhaps, no) discovery or analysis of such claims. Moreover, it appears the Debtors’ attorneys responsible for negotiating the “global settlement” were operating under potentially disabling conflicts of interest with certain parties who, under the settlement, would receive significant additional benefits, including, without limitation, JPMC.

### **Conclusion**

In sum, the TPS Consortium believes the Plan and “global settlement” fail to provide members of Class 19 with an appropriate recovery on account of their interests. In that regard, the TPS Consortium believes members of Class 19 should vote against the Plan and elect to “opt out” of the releases proposed to be granted to JPMC, the FDIC and others.

We would welcome the opportunity to speak with you or your counsel to further explain our views prior to the casting of your ballot. In that regard, please feel free to contact me (617-856-8595) or my partners, Robert Stark (212-209-4862) or Sigmund Wissner-Gross (212-209-4930), if you would like to discuss the TPS Consortium’s concerns regarding the Plan.

Very truly yours,

Jeremy B. Coffey