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BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION
U.S. SENATE COMMITTEE ON BANKING, HOUSING & URBAN AFFAIRS
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Chairman Brown and Ranking Member Toomey, thank you for the opportunity to provide this written testimony on behalf of PricewaterhouseCoopers LLP ("PwC"). I lead PwC's financial services practice. In this role, I help manage and oversee the firm's diverse services to the banking and capital markets, insurance, and asset management sectors.

While the vast majority of our consulting engagements are unrelated to government enforcement proceedings, from time to time we have served as an independent consultant in relation to regulatory safety and soundness or compliance enforcement orders involving financial institutions. The most recent examples of such work are the Independent Foreclosure Review ("IFR") engagements that the firm performed for four mortgage servicers, under the oversight and guidance of the Federal Reserve Bank (the "Fed") and the Office of the Comptroller of the Currency ("OCC"). I was one of the senior firm leaders who oversaw our IFR engagements for the past two years.

In this written testimony, I will first describe briefly the full range of services that our firm provides for financial institutions, with emphasis on the history, nature, and scope of our financial services regulatory advisory practice. Next, I will provide the Subcommittee with our perspective on the usual role of the independent consultant in matters relating to agency enforcement orders. In so doing, I will specifically address the standards of professionalism and objectivity to which PwC adheres when performing regulatory consulting engagements, including ones related to agency enforcement orders. Finally, as an example of recent

experience in this type of work, I will share some observations about our role as Independent Consultant in the IFR engagements.

## I. PwC and its Financial Services Practice

PwC is a U.S. partnership with over 37,000 dedicated employees, principals, and partners. We provide an array of professional services to public and private companies, the federal government, state and local governments, and individuals. We have built our brand through the delivery of quality services to our clients and by performing those services with integrity, objectivity, and professionalism.

We provide professional services to clients in more than 16 industry categories, including financial services. Our financial services practice provides audit and other permitted services to financial services clients, as well as a full range of expertise and services – including tax, regulatory, compliance, and risk management services – to our non-audit clients. Our clients include national, regional and local banks, mortgage servicers, asset managers, insurance companies, and private equity firms. Through the provision of diverse services to the full range of financial service entities, we have developed broad and deep experience in considering and helping our clients address regulatory and compliance matters. Our work on such matters on behalf of our audit and tax clients has contributed to – and regularly benefits from – the expertise of the financial services regulatory advisory practice.

Although regulatory advisory work to financial services clients is just a small fraction of the overall work that we do, I will discuss it further given the Subcommittee's interest in these services. For PwC, this year marks the 25th anniversary of our financial services regulatory advisory practice. The practice began just before the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the Federal Deposit Insurance Corporation

Improvement Act of 1991. Understanding these landmark laws, their implementing rules, and their impact on our clients, was important to performing our core client services. As a consequence of the deep learning we developed in the evolving financial services regulatory arena, financial institutions increasingly came to us for advice as they developed their approaches to regulatory compliance.

From our vantage point, the demand for financial services regulatory advisory services has only increased with the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). As the Subcommittee knows, Dodd-Frank made scores of important changes to banking and securities laws, including the creation of new types of regulation, new ways of regulating financial institutions, new regulatory agencies, new regulation for some firms, and new regulators for other firms. To meet our clients' needs, we have been expanding our regulatory advisory practice, tapping risk, technology and other areas within our firm, and hiring a number of experienced professionals. These individuals – and our regulatory practice as a whole – do not lobby Congress or the agencies or otherwise advocate for our clients before the agencies. Rather, we combine our regulatory expertise and experience with our accumulated market knowledge to advise clients that operate in a highly regulated industry on solutions to their complex business challenges.

Because there is a regulatory aspect to virtually every service or product financial institutions offer, regulatory considerations play a central role in our clients' strategies and business models. We consequently view our regulatory advisory practice as an important part of the full range of client services we provide. While most of our financial services advisory work involves assisting clients in their efforts to better understand and comply with emerging regulatory matters, we are occasionally engaged in connection with regulatory enforcement

proceedings to assess historical practices, advise on remediation of past regulatory infractions, or evaluate compliance with a regulatory mandate.

## II. Matters in which Financial Institutions Are Subject to Consent Orders or Decrees

### A. The Role of the Independent Consultant

In our experience, the scope and substance of an independent consultant's work depends on the agency order and on the particular circumstances of the financial institution. There is neither a one-size-fits all consent order nor a typical independent consultant role.

While the nature of the independent consultant's role will depend on the agency order, a few general observations based on our experience may help the Subcommittee:

- Though not all agency or law enforcement orders require financial institutions to hire independent consultants in connection with required remediation, financial institutions subject to enforcement actions often hire outside consultants to assist in responding to adverse regulatory actions. In those circumstances, the outside consultant is usually hired both for its substantive expertise and experience in the area and for its objectivity.
- Independent consultants often are retained in enforcement-related matters because of their specialized expertise in areas that the financial institution is required to remediate. Those areas often include: corporate governance; credit, market, or enterprise risk management; technology; internal audit; compliance; and regulatory reporting. While financial institutions often have experienced professionals working in those areas, they may lack specialized expertise to address matters of particular complexity.
- In particularly large or difficult cases, independent consultants can be used to provide the scale of assistance and review that neither the financial institution nor the enforcement agency can dedicate to the matter.

- In some instances, the independent consultant is retained to make an independent assessment of whether an institution has done what the agency required and/or to monitor the institution's satisfactory compliance with the order's requirements.

Although the appropriate qualifications for an independent consultant vary depending on the nature of the underlying proceeding, the usual prerequisites for an independent consultant include:

(1) Significant subject matter experience and expertise;

(2) A track record of integrity, objectivity, and impartiality, such that the consultant's advice will be respected;

(3) Significant experience managing projects of the size or complexity at issue; and

(4) Sufficient dedicated personnel and resources to perform quality work promptly and in a cost-effective manner.

Of these qualifications, project management is an often overlooked but an invaluable skill, given that many independent consulting roles involve substantial matters of great complexity. While a professional services firm might be a subject-matter expert and have a sterling ethical reputation, those attributes alone may not ensure a successful project when the scope of the work requires substantial dedication of resources. For that reason, large or complex projects require a consultant that has relevant experience managing significant engagements and is able to organize a comprehensive undertaking that includes: appropriate professional training and supervision; consistent, reliable, and robust processes, procedures, and controls; and efficient and cost-effective service delivery. Moreover, the independent consultant must possess the competence and reputation for integrity necessary to have frequent, meaningful, and reliable interaction with regulators.

### B. PwC's Objectivity

Our regulatory advisory engagements generally are performed under the consulting standards promulgated by the American Institute of Certified Public Accountants ("AICPA"). Among other things, the AICPA standards require that we perform our work objectively and free of any conflicts of interest.

In an effort to maintain our objectivity and impartiality on all of our professional services engagements, PwC has implemented a system of processes and controls that governs which engagements we will pursue and accept, the scope of services that we can and will provide to a client, and any engagement-specific measures that need to be implemented. Further, we may tailor additional processes and controls to address circumstances that are particular to an engagement or set of engagements. For example, given the nature of the IFR engagements, we implemented additional procedures to identify and monitor any potential new engagements that reasonably could be viewed as implicating our ability to perform the IFR engagements with objectivity and impartiality. As a consequence of those controls, we declined to pursue several engagement opportunities.

## III. The IFR Engagements

We believe that it may be helpful to the Subcommittee to briefly discuss our experiences with the IFR engagements, in light of the general principles that we have discussed above.

### A. PwC's Retention and Approach to the IFR Engagements

As the Subcommittee knows, in April 2011, the Fed and the OCC entered into consent orders with 14 residential loan servicers that required, among other things, that those servicers retain Independent Consultants to review their foreclosure-related actions in 2009 and 2010. Four servicers retained PwC as their Independent Consultant.

Our engagements were performed in accordance with (1) the consent orders that the servicers entered into with the Fed or the OCC; and (2) the specific terms of the engagement letters with each servicer, which required regulatory review and approval before they were final. The four servicers for which PwC acted as Independent Consultant are: GMAC Mortgage ("GMAC") and SunTrust Mortgage ("SunTrust"), both of which are regulated by the Fed, and U.S. Bank National Association ("U.S. Bank") and Citibank N.A. ("Citibank"), both of which are regulated by the OCC. Three of the servicers for which PwC acted as Independent Consultant joined the January 2013 settlement. Our IFR work on the GMAC engagement continues.

While much of the recent focus has been on the goal of identifying and remedying financial harm to individuals, the Fed and the OCC directed the Independent Consultants to: first, identify servicer errors, regardless of whether they caused financial harm to borrowers; and, second, determine which servicer errors caused financial harm to the borrowers. The consent orders and regulator-approved engagement letters established the Independent Consultants' scope of work and specified many of the procedures to be followed. Moreover, the regulators guided and supervised the work as it was performed.

Despite the detail in the consent orders and in the engagement letters, the scale and complexity of the IFR engagements were unprecedented and had not been entirely anticipated before the engagements began. As the Government Accountability Office ("GAO") noted in its report last week, the IFR engagements involved applying hundreds of procedures to thousands of loan files to identify potential errors in dozens of different categories. No two borrower files were the same and often lacked relevant documentation, requiring that engagement teams identify gaps or deficiencies in documentation and request the missing material from the

servicers. Further, servicers' legal obligations varied by state, and legal advice provided to the Independent Consultants evolved, as the Independent Legal Counsel (engaged by the servicers pursuant to the orders to provide advice on the laws of the more than fifty relevant state and federal jurisdictions) took stock of the distinct and sometimes inconsistent federal and state laws. As the engagements progressed, the regulators also added to the elements of the loan file that needed to be reviewed. Indeed, aspects of the legal and regulatory guidance remained unresolved even as late as January 2013. Together, these challenges placed a particular premium on the thoroughness of reviewer training and the quality and competence of the reviewers themselves.

### B. The Objectivity of Our IFR Engagement Teams

From even before our formal engagement, we adopted procedures to maintain our objectivity and impartiality:

- In advance of our engagements by the servicers, we disclosed to the Fed and the OCC all recent and ongoing relationships with the servicers that were considering engaging us as Independent Consultant. We were engaged only after the Fed and the OCC considered that information and approved both our engagement by the servicer and the terms of our engagement letters;
- Our engagement letters mandated that we perform our IFR engagements with objectivity and impartiality and that we report to the regulators any attempts by a servicer to interfere with our efforts; and
- We tailored our controls to mitigate any risk that our IFR engagement teams might be subject to inappropriate information or influence.

When, in May 2012, the OCC requested that the Independent Consultants submit for regulatory approval certain types of prospective engagements, we set up an internal process to identify any potential covered engagements and agreed to seek regulator approval for certain types of prospective engagements.

### C. Our Services Were Rendered by Experienced, Talented, and Well-Trained Professionals

We staffed our IFR engagement teams with qualified PwC professionals and provided them with substantial, multi-week training. At its peak, our IFR engagements involved over 1,500 PwC professionals working at multiple locations around the country. We addressed the complex and dynamic nature of these engagements by establishing processes designed to take advantage of the scale of that effort while providing appropriate controls for our work.

Critical to large and complex engagements is having systems that provide for consistently applied standards and procedures within the engagement. For the IFR engagements, each engagement team performed three core levels of review: (1) the primary review teams examined each of the files designated for examination; (2) a secondary team of professionals reviewed that work to provide coaching and guidance to the primary reviewers; and (3) our tertiary reviewers then assessed the overall work. The tertiary reviewers were responsible for examining all of those files identified as containing potential errors and selected samples of files for review based on a variety of factors. PwC supplemented the training provided to the professionals assigned to these tasks based on the complexity of certain loan files, with particular attention to issues such as errors related to the Servicemembers Civil Relief Act.

In addition to the three-tiered review within each engagement, PwC formed a centralized Quality Assurance ("QA") team that tested the work of each IFR engagement team. The QA

team consisted of experienced file review professionals. The team's charter was to assess the quality of the engagement teams' file reviews, to provide feedback to those teams on the quality of the file reviews, to follow up on any identified issues to help train the professionals assigned to review files, and periodically to report the QA team's observations to the OCC and the Fed.

Finally, within the bound of our obligations to maintain client confidentiality, the leaders of the PwC IFR engagement teams regularly communicated with each other to share their experiences and to address common issues of process, technology, and regulator guidance. This collaboration played an important role in promoting efficient execution of our engagements.

### D. PwC Cooperated Fully and Was Transparent with the Regulators

The Fed and the OCC directed the scope and detail of the IFR process from its inception. The regulators established the initial scope of work through the April 2011 consent orders and through review of the procedures set forth in each of the engagement letters that they approved. Throughout the IFR engagements, the regulators provided additional procedures, issued new instructions, and adjusted the scope of work. These modifications came through written and informal guidance from the regulators' Examiners-in-Charge ("EICs") and through regulators' periodic discussions with the Independent Consultants, as a group and individually.

PwC worked closely with the OCC and the Fed throughout the IFR engagements. Shortly after the file review segment of the IFR engagements began in earnest, we provided the regulators with weekly written and oral status updates on our work; we met with the regulators for more extensive discussions about the IFR effort on a number of occasions; beginning in 2012, we provided cost and hours reports to the regulators; and we interacted regularly with the servicers' EICs. The regulators assessed the progress of PwC's IFR work, visited the loan

review sites, and met with our engagement teams. When necessary, PwC sought and received guidance on uncertain or unresolved issues.

Because of PwC's role as an objective and impartial Independent Consultant – and our consequent sensitivity to being perceived as an advocate for the servicers – we were careful to avoid exerting inappropriate influence over the ongoing execution of the IFR process. PwC instead followed the procedures mandated by the regulators, raised questions with the regulators when challenges arose or became apparent, and continued as efficiently and effectively as possible to satisfy the engagement letters' mandate to (1) identify servicer errors related to foreclosure proceedings in 2009 and 2010, irrespective of borrower harm, and (2) determine instances where borrowers suffered financial harm because of servicer error or misconduct.

## IV. Conclusion

On behalf of my partners and colleagues at PwC, I would like to thank the Subcommittee for the opportunity to provide this written testimony. I look forward to the opportunity to discuss these matters further and to answer your questions during the upcoming hearing.