

December 13, 2001

The Honorable Armando Falcon
Director
Office of Federal Housing Enterprise Oversight
1700 G Street, NW, 4th Floor
Washington, DC 20552

Re: *Proposed Corporate Governance Regulations, RIN 2550-AA20*

Dear Director Falcon:

We write as President Bush's appointees to the Fannie Mae Board of Directors. We come from various regions of the country and diverse backgrounds, but share a deep commitment to ensuring that the U.S. housing finance system remains safe and sound, accessible to all Americans and the envy of the world. We are writing to express our serious concerns regarding OFHEO's proposed corporate governance regulations. We have been briefed by counsel and corporate governance experts on the proposed new regulations. We are concerned that the proposal will subject those of us serving on Fannie Mae's board to a regime that is significantly different from and much more punitive and restrictive than the corporate governance rules in place at virtually all comparable financial institutions and large corporations generally. If the proposed regulations are adopted, board members appointed by President Bush will have more potential personal liability and less financial protection than the directors appointed to Fannie Mae's board by any previous president.

It is a great honor to be appointed by the President to serve on the board of a company with such an important housing mission, but in light of the proposed regulation on corporate governance, we now have serious concerns about serving on Fannie Mae's board. Indeed, had we known about the proposed regulations at the time President Bush offered us the opportunity to serve on Fannie Mae's board, some of us would have had serious reservations about such service.

We were surprised to learn that OFHEO's proposed regulations will impose standards of conduct and responsibilities on Fannie Mae directors that are a significant departure from those imposed on directors of other large financial institutions and other publicly-held corporations. Even more disturbing is OFHEO's proposal to remove a significant part of the indemnification protection currently provided to officers and directors of Fannie Mae, protections that are permitted by statute and consistent with those provided under Delaware corporate law, the most widely used body of corporate law in America.

In place of corporate governance standards familiar to those of us with experience serving on other corporate boards, OFHEO proposes a broad list of obligations that directors will owe to OFHEO, but does not state the standards that will be employed in interpreting whether those

obligations have been met. A violation of any obligation subjects a director to the enforcement authority and civil money penalties that OFHEO can impose. This is both unprecedented and unnecessary.

Like almost all large corporations, Fannie Mae currently provides indemnification for its officers and directors. This provides us with reasonable assurance of protection against costly litigation. Years ago, Fannie Mae's stockholders approved indemnification provisions that incorporate the standards permitted under the Delaware General Corporation Law. The Delaware statute is a widely followed, modern formulation of corporate indemnity powers. Under the Delaware standard, Fannie Mae's indemnification does not provide coverage where a director is found to have (i) breached the duty of loyalty, (ii) not acted in good faith or in a manner involving intentional misconduct, (iii) had reasonable cause to believe the conduct was unlawful, or (iv) derived an improper personal benefit from the conduct. In place of such widely accepted restrictions on indemnification, OFHEO's proposal would restrict indemnification in virtually all instances involving a claimed breach of OFHEO's rigid checklist of standards.


OFHEO's indemnification proposal is not only unreasonable, we have been advised by highly regarded counsel that it is also contrary to law. The 1992 legislation governing OFHEO's supervisory responsibilities allows Fannie Mae to indemnify directors with respect to OFHEO administrative proceedings against a director for all but the most serious violations. The proposed regulation would prohibit virtually all indemnification.

We understand that OFHEO has modeled its indemnification provisions on provisions in the Federal Deposit Insurance Act (FDI Act). The FDI Act provisions, however, grew out of Congress' concerns that the Boards of foundering thrifts, who often had direct approval authority over the transactions that spurred the thrift crisis, were acting in their own personal interest rather than the best interests of the companies. Moreover, indemnification of thrift directors utilized federally insured funds. There is no comparable situation here. The role of Fannie Mae directors is closer to that of directors of non-bank companies; there are no federally insured funds involved; and most importantly, OFHEO itself after extensive review has concluded that Fannie Mae is fiscally sound. It is not surprising, then, that Congress chose a very different indemnification scheme in Fannie Mae's governing legislation than it did in the banking context.

Fannie Mae already has strong corporate governance provisions in place, which have been reviewed positively by OFHEO's examiners. Fannie Mae's Board is continually subject to rigorous examination. We urge you to consider the consequences of OFHEO's proposed regulations on the ability of Fannie Mae to attract and retain directors. We strongly suggest that OFHEO withdraw its proposed regulation on corporate governance.

We appreciate your consideration of our views and we are available to discuss them with you.

Sincerely yours,



Honorable Victor Ashe

Molly H. Bordonaro

William R. Harvey

Manuel Justiz

Taylor C. Segue, III

Honorable Victor Ashe

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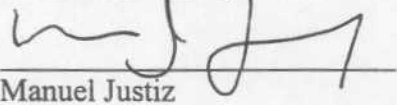
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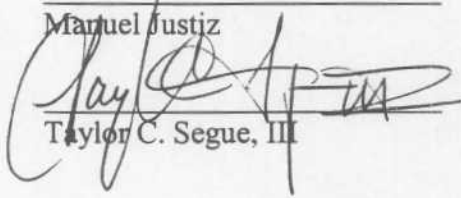
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