

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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: **Chapter 11**  
: **Case No. 08-12229 (MFW)**  
: **(Jointly Administered)**  
: **Re: Docket Nos. 334, 494**  
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**ORDER APPROVING IN PART AND DENYING IN PART  
MOTIONS OF DEBTORS PURSUANT TO  
SECTIONS 105, 107, AND 363 OF THE BANKRUPTCY CODE  
FOR ORDER APPROVING PROCEDURES FOR THE SALE OF DEBTORS'  
INTERESTS IN CERTAIN INVESTMENTS FREE AND CLEAR OF LIENS,  
CLAIMS, AND ENCUMBRANCES AND WITHOUT FURTHER COURT APPROVAL**

Upon the motion, dated November 21, 2008 (the "Sales Procedures Motion"), of Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order, pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), authorizing WMI to sell its interests in certain investments free and clear of all liens, claims and encumbrances (collectively, the "Liens") without further order of the Court and establishing the Sale Procedures with respect thereto and upon consideration of the motion, dated December 23, 2008 (the "Supplemental Motion" and together with the Sales Procedures Motion, the "Motions") of the Debtors, for entry of an order, pursuant to sections 105(a), 107(b) and 363 of Bankruptcy Code and Rule 9018 of the Bankruptcy Rules, authorizing WMI to sell its interests in certain

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



Investments<sup>2</sup> free and clear of all liens, claims and encumbrances without further order of the Court and establishing modified sale procedures with respect thereto; and the Court having jurisdiction to consider the Motions and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motions and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motions having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motions, as modified herein, is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motions establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motions are granted to the extent provided in this Order; and it is further

ORDERED that, pursuant to sections 105(a), 107(b), and 363(b) of the Bankruptcy Code, WMI is authorized to sell the Investments, in accordance with the following procedures (the "Sale Procedures"):

- a. WMI shall provide notice (a "Sale Notice") via e-mail, facsimile, or overnight delivery of each proposed Investment sale (a "Proposed Sale") to (i) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Joseph J. McMahon, Jr., Esq., (ii) counsel to the Creditors' Committee, Akin Gump Strauss Hauer & Feld, LLP, One Bryant Park, New York, NY 10036, Attn: Fred S. Hodara, Esq., and David P. Simonds, Esq., (iii) counsel to the noteholders group, White and Case LLP, Wachovia Financial Center, 200 South Biscayne Blvd, Miami,

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<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motions.

Florida 33131, Attn: Thomas E. Lauria, Esq., and (iv) counsel to certain noteholders, Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, NY 10004, Attn: Brian Pfeiffer, Esq. (together, the "Notice Parties"), specifying (i) the Investment(s) to be sold, (ii) the identity of the purchaser and any relationships of the purchaser(s) with the Debtors, and (iii) the major economic terms and conditions of the Proposed Sale. Contemporaneously therewith, the Debtors shall file a Sale Notice with the Court and serve such Sale Notice on the U.S. Trustee, the Creditors' Committee, and all parties in interest entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002.

- b. In the event that the proposed purchaser of the Investments is an insider, as defined in section 101(31) of the Bankruptcy Code, the Sale Notice shall (i) identify the insider, (ii) describe the insider's relationship to the Debtors, and (iii) set forth the measures taken to ensure the fairness of the sale process and the proposed transaction.
- c. In the event a Notice Party or any other party in interest objects to the Proposed Sale (an "Objection"), such Objection must be in writing, be filed with the Court and be served on the Notice Parties and counsel to the Debtors, (i) Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, N.Y. 10153, Attn: Brian S. Rosen, Esq., and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attn: Mark D. Collins, Esq., so as to be received by all such parties within seven (7) business days of the date on which the Sale Notice is delivered to the Notice Parties and filed with the Court (the "Notice Period"). Each Objection must state with specificity the grounds for the Objection.
- d. If no timely Objection is interposed, the Debtors shall file with the Court (i) a certificate of no objection (a "CNO") and (ii) a proposed form of order approving the Proposed Sale. Upon entry of an order by the Court, the Debtors shall take such actions as are reasonable or necessary to consummate the Proposed Sale.
- e. If any material economic terms of a Proposed Sale are amended after transmittal of the Sale Notice, the Debtors shall send a revised Sale Notice to the Notice Parties describing the Proposed Sale, as amended. In addition, the Debtors shall file a revised Sale Notice with the Court and serve such revised Sale Notice on all parties in interest entitled to receive notice in these chapter 11 cases. If a revised Sale Notice is required, the Notice Period shall be extended for an additional seven (7) business days.

- f. If an Objection to a Proposed Sale is properly filed and served, (i) the Objection will be deemed to be a request for a hearing on the Proposed Sale and the Objection shall be heard at the next scheduled omnibus hearing in the chapter 11 cases that is at least 10 days after service of the Objection and (ii) the Proposed Sale may not proceed absent written withdrawal of the Objection or entry of an order by the Court specifically approving the Proposed Sale.
- g. Nothing in the foregoing procedures shall prevent the Debtors, in their sole discretion, from seeking the Court's approval at any time of any Proposed Sale upon notice and a hearing.

ORDERED that the Sale Notice, in substantially the form annexed hereto as Exhibit A, is approved; and it is further

ORDERED that, except as otherwise provided below with respect to the Wavelink Stock (as hereinafter defined), pursuant to section 363(f) of the Bankruptcy Code, all sales of property pursuant to this Order shall be free and clear of all Liens, if any, with any and all such valid and perfected Liens to attach to proceeds of the sales with the same validity, priority, force, and effect such Liens had on the property immediately prior to the sale, and subject to the rights, claims, defenses, and objections, if any, of WMI and all interested parties with respect to any such asserted Liens; and it is further

ORDERED that purchasers of property sold by WMI pursuant to this Order shall be entitled to the protections afforded by section 363(m) of the Bankruptcy Code in the event of a reversal or modification on appeal of this Order; and it is further

ORDERED that the Debtors shall provide the Creditors' Committee with no less than five (5) business days' written notice via facsimile or overnight delivery of their intent to satisfy any Capital Calls or make any other capital contributions; and it is further

ORDERED that, with respect to any proposed sale of the Debtors' interests in the preferred stock issued by Wavelink Corporation ("Wavelink") and such stock, the "Wavelink

Stock”), the Debtors shall, in addition to the other notice required hereby, provide a Sale Notice of such Proposed Sale, in accordance with the Sale Procedures set forth herein, to counsel to Wavelink, Cooley Godward Kronish LLP, 101 California Street, 5th Floor, San Francisco, CA 94111, Attn: Gregg Kleiner, Esq., gkleiner@cooley.com and counsel to CapitalSource Finance LLC (“CapitalSource”), Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, PA 19103, Attn: Lauren Hofmann, Esq., lauren.hofmann@morganlewis.com; and it is further

ORDERED that any sale of the Wavelink Stock shall be subject to (i) any security interest in the Wavelink Stock that CapitalSource may hold, but only to the extent that any such security interest is valid, enforceable and not subject to avoidance; or (ii) CapitalSource’s consent, as may be required; or (iii) entry of an order of this Court authorizing such sale, upon notice and a hearing, with Wavelink and CapitalSource reserving all rights to object to any request for approval of a sale of the Wavelink Stock free and clear of any security interest that CapitalSource may hold in the Wavelink Stock; and it is further

ORDERED that any proposed sale of the Wavelink Stock shall be subject to any provisions and restrictions of that certain Fourth Amended and Restated Stockholders’ Agreement, dated August 25, 2004 and that certain Fourth Amended and Restated Registration and Investors’ Rights Agreement, dated August 25, 2004 (together, the “Stock Related Agreements”) and applicable state and federal securities laws, provided, however, that, the Debtors reserve all rights to seek an order of this Court, upon notice and a hearing, on not less than 10 days notice to Wavelink, CapitalSource, and their respective counsel, with Wavelink and CapitalSource reserving all rights to object to any motion, seeking approval of a sale of the Wavelink Stock free and clear of any restrictions on such sale imposed by the Stock Related Agreements; and it is further

ORDERED that nothing in this Order shall be construed to prevent WMI, in its sole discretion, from seeking Court approval at any time of any proposed sale transaction, upon notice and a hearing; and it is further

ORDERED that WMI is authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order; and it is further

ORDERED that, with respect to each sale of property pursuant to this Order, the requirements of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure are waived; and it is further

ORDERED that the Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to the interpretation and enforcement of the procedures established by this Order and the transactions consummated thereunder.

Dated: Wilmington, Delaware

Jan. 5, 2008

  
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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> <sup>1</sup>	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	
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**NOTICE OF PROPOSED SALE OF DEBTORS' INTERESTS IN CERTAIN INVESTMENTS PURSUANT TO INVESTMENT SALE PROCEDURES**

PLEASE TAKE NOTICE that, pursuant to the Order Approving In Part and Denying In Part Motions of the Debtors Pursuant to Sections 105, 107 and 363 of the Bankruptcy Code For Order Approving Procedures for the Sale of Debtors' Interests in Certain Investments Free and Clear of Liens, Claims, and Encumbrances and Without Further Court Approval, for the sale of the above-captioned debtors and debtors in possession's (collectively, the "Debtors") interests in certain investments, entered by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on \_\_\_\_\_, \_\_\_\_\_ (Docket No. \_\_\_\_\_) (the "Sale Order"), the Debtors propose to sell certain assets ("Assets") to \_\_\_\_\_ (the "Purchaser") pursuant to an agreement dated \_\_\_\_\_, \_\_\_\_\_ (the "Purchase Agreement"). [A copy of the Purchase Agreement is annexed hereto as Exhibit A.] This

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Notice is being provided in accordance with and sets forth the information required under the Sale Order.

Description of the Assets. The Assets consist of \_\_\_\_\_, as more fully detailed on Exhibit A to the Purchase Agreement. Except as set forth in the Purchase Agreement, the Debtors are not aware of any appraisal or other indicia of value with respect to the Property.

Relationship of Purchaser to the Debtors. [The Purchaser's relationship with the Debtors is as follows: \_\_\_\_\_.] [The Purchaser has no relationship with the Debtors.]

Economic Terms and Conditions of the Proposed Sale. The Debtors propose to sell the Assets to Purchaser free and clear of all liens, claims, encumbrances and other interests therein, pursuant to section 363(f) of the Bankruptcy Code. The Purchaser has agreed to pay a purchase price of \$ \_\_\_\_\_ for the Assets. The other terms and conditions of the proposed sale (the "Proposed Sale") are set forth in the Purchase Agreement.

Procedures to Object to the Proposed Sale. Any objection to the Proposed Sale (an "Objection") must: (i) be in writing; (ii) state with specificity the nature of the objection; and (iii) be filed with the Bankruptcy Court and served on the parties identified on Exhibit B attached hereto (the "Notice Parties") so as to be received by 5:00 p.m. (EST) on or before \_\_\_\_\_, \_\_\_\_\_ (the "Objection Deadline"). If no Objections are filed with the Bankruptcy Court and served on the Notice Parties by the Objection Deadline in accordance with the terms of the Sale Order, the Debtors, in their sole and absolute discretion, may consummate the Proposed Sale.



If the Debtors obtain the written consent of all Notice Parties to a Proposed Sale, the Bankruptcy Court may enter an order allowing the Debtors to consummate the Proposed Sale before the Objection Deadline.

Dated: \_\_\_\_\_  
Wilmington, Delaware

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Mark D. Collins (No. 2981)  
Chun I. Jang (No. 4790)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
- and -

Marcia L. Goldstein, Esq.  
Brian S. Rosen, Esq.  
Michael F. Walsh, Esq.  
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Facsimile: (212) 310-8007

ATTORNEYS TO THE DEBTORS  
AND DEBTORS IN POSSESSION