

February 9, 2007

BY HAND

Honorable William B. Moran  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Franklin Court Building  
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Washington, D.C. 20005

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**Re: In the Matter of Franklin D. Raines, J. Timothy Howard and Leanne G. Spencer  
Notice No. 2006-1**

Dear Judge Moran:

Enclosed for filing please find Respondents' Joint Notice Of Filing A Proposed Scheduling Order. We have included an original and two copies. Please date stamp one copy and return it with our messenger. We will provide a electronic version of this document in Word Perfect format under separate cover. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "David S. Krakoff", written over a light blue horizontal line.

David S. Krakoff

Enclosures

cc: Joseph J. Aronica, Esq.  
David A. Felt, Esq.  
Kevin M. Downey, Esq.  
Steven M. Salky, Esq.

**UNITED STATES OF AMERICA  
OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT**

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<b>In the Matter of:</b>	)	
	)	<b>Notice No. 2006-1</b>
<b>FRANKLIN D. RAINES</b>	)	
	)	<b>Judge William B. Moran</b>
<b>J. TIMOTHY HOWARD</b>	)	
	)	
<b>LEANNE G. SPENCER</b>	)	
_____	)	

**JOINT NOTICE OF FILING A PROPOSED SCHEDULING ORDER**

Pursuant to the Court’s request, Respondents Franklin D. Raines, J. Timothy Howard, and Leanne G. Spencer (“Respondents”) respectfully submit the attached proposed scheduling order. Respondents do not object at this time to OFHEO’s proposal to schedule the evidentiary hearing in this matter for March 18, 2008.<sup>1</sup>

However, Respondents do object to several of the interim dates proposed by OFHEO. In particular, with regard to document discovery, the deadlines for the parties to meet-and-confer regarding privilege logs should be in advance of the deadline for challenging privilege claims. With regard to expert reports, OFHEO should submit its expert reports first because it bears the burden of proof, with Respondents then able to submit rebuttal reports thereafter. Also, the deadlines for dispositive motions should be extended to allow the parties sufficient time to utilize the expert reports in briefing the dispositive motions. Finally, Respondents disagree with OFHEO’s proposal that the parties exchange witness lists, numbered exhibits, demonstrative

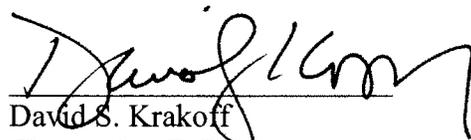
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<sup>1</sup> Respondents continue to maintain that 12 U.S.C. § 4633(a)(2) requires the evidentiary hearing to commence within 60 days of the filing of the Notice of Charges. Respondents submit this memorandum in light of this Court’s ruling rejecting that contention and directing counsel for the parties to confer in an effort to reach agreement on revisions to the schedule proposed by OFHEO on January 30, 2007. In complying with the Court’s directive, Respondents do not waive their contentions regarding 12 U.S.C. § 4633(a)(2).

exhibits and prehearing statements three months before the scheduled hearing. Accordingly, Respondents have proposed dates for these exchanges closer in time to the scheduled hearing.<sup>2</sup>

Respondent Spencer also advises this Court that her Lead Counsel, David S. Krakoff, is currently under an Order from Chief Judge Donald W. Molloy of the United States District Court for the District of Montana to keep his calendar clear for trial in a pending criminal case, *United States v. W.R. Grace, et al.*, Cr. No. 05-07-M-DWM. Mr. Krakoff is Lead Counsel for one of the defendants in that matter, which involves complicated issues involving an alleged conspiracy relating to asbestos production. The case had been scheduled for trial in September 2006, but the Government appealed certain pretrial rulings to the United States Court of Appeals for the Ninth Circuit, where briefing is now ongoing. The case is now tentatively scheduled for trial between September 2007 and February 2008, although that schedule could change depending on the progress of the appeal. Accordingly, we wish to advise the Court and the parties that it may become necessary for Spencer to seek relief regarding the date for commencement of the hearing in this matter.

Respectfully submitted,



David S. Krakoff  
Christopher F. Regan  
Adam B. Miller  
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<sup>2</sup> Counsel for Respondents have conferred with counsel for OFHEO regarding the proposed scheduling order but were not able to reach agreement.

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Kevin M. Downey  
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*Counsel for Defendant Franklin D. Raines*

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Washington, DC 20036

*Counsel for Respondent J. Timothy Howard*

Dated: February 9, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of February, 2007, I caused to be served by hand delivery a copy of the foregoing Joint Notice Of Filing A Proposed Scheduling Order upon:

Joseph J. Aronica  
DUANE MORRIS LLP  
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Adam B. Miller

UNITED STATES OF AMERICA  
OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

Notice Number 2006-1

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In The Matter Of: )  
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FRANKLIN D. RAINES )  
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J. TIMOTHY HOWARD )  
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)  
LEANNE G. SPENCER )  
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**PROPOSED SCHEDULING ORDER**

The Office of Federal Housing Enterprise Oversight (“OFHEO”) proposes the following schedule for this proceeding:

***Document Discovery***

Document production to be completed between the parties	July 16, 2007
Privilege logs on rolling basis to be completed by	July 16, 2007
Deadline for parties to meet and confer regarding privilege logs	July 23, 2007
Deadline for challenging privilege claims	July 30, 2007
Deadline for submission to the Court of 12 U.S.C § 1780.28 document subpoenas to nonparties	July 30, 2007
Deadline for motions to compel (Parties may file such motions anytime prior to that date; no document may be challenged more than 60 days after the privilege log for such document is received,	August 6, 2007

except as noted below.) The Court encourages the parties to “meet and confer” throughout the discovery process in an attempt to eliminate disputes.

Deadline for responses to motions to compel	30 days after motion
Replies to responses to motions to compel	15 days after response
Deadline for final production of de-privileged documents (De-privileged documents to be produced on a rolling basis)	October 1, 2007

### ***Experts***

OFHEO to notify Respondents of the names of its planned expert witnesses and the subject areas to be addressed by its experts’ reports	July 2, 2007
Respondents to notify OFHEO of the names of their expert witnesses and the subject areas to be addressed by their experts’ reports	July 16, 2007
OFHEO to provide names of any additional expert witnesses necessary to address any subject areas first identified by Respondents on July 16, 2007	July 30, 2007
Deadline for OFHEO to file expert reports	August 17, 2007
Deadline for Respondents to file rebuttal expert reports	September 17, 2007

### ***Dispositive Motions***

Deadline for filing of dispositive motions:	November 1, 2007
Deadline for filing oppositions to dispositive motions:	December 1, 2007
Deadline for replies in support of dispositive motions:	December 15, 2007

### ***Pretrial and Trial Schedules***

Identify and exchange list of witnesses, along with short summary of expected testimony from each witness.	February 11, 2008
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Exchange all documents to be introduced at hearing proposed exhibits shall be numbered as: OFHEO, Raines, Howard and Spencer, as appropriate. Each page is to have a bates-stamp number and be single-sided; for example, "Raines Ex. 1."	February 18, 2008
Pretrial statements filed	February 25, 2008
Representations of demonstrative exhibits exchanged	48 hours before introduction at evidentiary hearing
Evidentiary hearing	March 18, 2008

Having considered OFHEO's proposed schedule, and it appearing to the Court that it should be entered, it is this \_\_\_\_ day of \_\_\_\_\_, 2007, hereby

ORDERED that proceedings in this matter shall conform to this schedule.

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Honorable William B. Moran  
United States Administrative Law Judge