



May 27, 2026

Hon. Clifton Cislak
Clerk of the Court
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: *Fairholme Funds Inc. v. Federal Housing Finance Agency*, No.
25-5113 Rule 28(j) Citation of Supplemental Authority

Dear Mr. Cislak:

Yosaki Trust v. Weber, 351 A.3d 974 (Del. 2025), decided after briefing ended, confirms that Plaintiffs’ implied-covenant claim traveled with the shares and thereby gives current shareholders—Plaintiffs here—constitutional standing.

“Claims that arise from the relationship among stockholder, stock and the company inhere in the security itself,” including “a claim alleging a corporate charter violation.” *Id.* at *3. By selling their shares, the *Yosaki* plaintiffs “lost standing” to assert dilution claims because those claims inhered in the stock and thus “traveled with” the shares. *Ibid.* In contrast, “[p]ersonal claims arise when the underlying property happens to be shares, but the cause of action is not a property right carried by the shares.” *Ibid.* Personal claims include torts “for fraud in connection with the purchase or sale of shares,” and “do not travel with the sale of a security.” *Ibid.*

Here, the jury found that by giving Treasury all future profits, the Sweep breached the implied covenant inherent in the corporate charter. JA2330-31; JA2336; Br.46-47, 51. Under *Yosaki*, this claim inheres in the shares and travels with them upon sale. 351 A.3d at *3. The “injury is to the stock and not the holder” at the time of the breach, and therefore “the Buyer ... suffer[s] the injury.” *Urdan v. WR Capital Partners, LLC*, 244 A.3d 678, 677-78 (Del. 2020). Accordingly, Plaintiffs have Article III standing because they now hold “the property right” to the claim; prior shareholders “lost standing” when they sold their shares. *Yosaki*, 351 A.3d at *3. Otherwise, the doctrine that inherent claims travel with shares would be meaningless. *See* Br.46-48.

The August 2012 price decline caused by the Sweep was not the injury caused by defendants’ implied-covenant breach, but merely a basis to reasonably estimate damages (other methods were precluded). Br.14-15; JA525-26. The post-Sweep stock price “implicitly reflect[s] the value of the pending and any prospective lawsuits” asserting “property right[s] associated with the shares.” *In re Activision Blizzard*, 124 A.3d 1025,

1044 (Del. Ch. 2015). By contrast, for stock fraud—a “personal” claim under *Yosaki*—price decline is both injury and measure of damages.

Respectfully submitted,



Hamish P.M. Hume (Bar No. 449914)
Samuel C. Kaplan (Bar No. 463350)
BOIES SCHILLER FLEXNER LLP
1401 New York Ave. NW
Washington, DC 20005
Tel: (202) 237-2727
Fax: (202) 237-6131
hhume@bsfllp.com
skaplan@bsfllp.com

Lee D. Rudy (Pro Hac Vice)
Eric L. Zagar (Pro Hac Vice)
KESSLER TOPAZ
MELTZER & CHECK, LLP
280 King of Prussia Rd.
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056
ezagar@ktmc.com

Michael J. Barry (Pro Hac Vice)
GRANT & EISENHOFER, P.A.
123 Justison Street
Wilmington, DE 19801
Tel: (302) 622-7000
Fax: (302) 622-7100
mbarry@gelaw.com

Adam Wierzbowski (Pro Hac Vice)
Robert F. Kravetz (Pro Hac Vice)
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
Tel: (212) 554-1400
Fax: (212) 554-1444
adam@blbglaw.com
Co-Lead Counsel for the Class