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May 29, 2026

VIA CM/ECF

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

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

Dear Mr. Cislak:

Plaintiffs' submission citing *Yosaki Trust v. Weber*, 351 A.3d 974 (Del. 2025)—an unpublished order issued four months before this Court heard oral argument—retreads arguments Plaintiffs made in their briefs.

Yosaki is “based on” the framework set out in *Urdan v. WR Capital Partners, LLC*, 244 A.3d 668 (Del. 2020), discussed extensively in the briefing. *See* Pls.Resp.Br.46-49, 52; Defs.Reply 27-28. As *Yosaki* and *Urdan* explained, rights that “inhere in the security” travel with the share; “personal rights ... do not.” 351 A.3d at *3. Both cases involved share dilution claims. Such claims inhere in the security because they impair relative ownership and voting power on a continuing basis that cannot be divorced from ownership of the share itself. *Urdan*, 244 A.3d at 677.

In contrast, the post-Net Worth Sweep purchasers' claims here are “personal” because the alleged breach purportedly reduced the value of their property at a particular point in time, property that simply “happen[ed] to be shares.” *Id.* But the Sweep's effect immediately was priced into the shares so later buyers suffered no ongoing injury. Although Plaintiffs say their claims are “inherent in the corporate charter,” they seek not to enforce the charter (which does not address dividends) but an award of money damages for value lost from past events.

The treatment of dividend claims confirms the point. The “right to receive payment of a lawfully declared dividend is a separate property right,” not “a right in the security,”

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and does not travel with the share. *Sabby Volatility Warrant Master Fund Ltd. v. Jupiter Wellness, Inc.*, 2025 WL 1363171, at *2 (2d Cir. May 12, 2025) (cleaned up). Plaintiffs have identified no reason a claim seeking payment of dividends and a claim seeking to recover share value based on alleged forgone dividends would be treated differently, nor why post-Sweep purchasers should be entitled to windfall profits for events priced into the shares.

If anything, *Yosaki* undermines Plaintiffs' argument because it confirms, contrary to Plaintiffs' view (Resp.Br.53-54), that the travel-with-the-shares question is one of "standing." 351 A.3d at *3 ("The Trusts lost standing after ... selling the PubCo shares.").

Respectfully submitted,

By: /s/ John P. Elwood

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