

# SULLIVAN & CROMWELL LLP

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September 2, 2014

Via Federal Express

Federal Deposit Insurance Corporation,  
Receiver of Washington Mutual Bank, Henderson, Nevada,  
1601 Bryan St., Suite 1701,  
Dallas, Texas 75201.

Attention: Regional Counsel (Litigation Branch) &  
Deputy Director (DRR - Field Operations Branch)

Re: Indemnification Obligations

Dear Sirs:


We refer to the Purchase and Assumption Agreement Whole Bank, dated as of September 25, 2008 (the "Agreement") by and among the Federal Deposit Insurance Corporation in its corporate capacity ("FDIC Corporate") and as receiver ("FDIC Receiver" and, together with FDIC Corporate, "FDIC") and JPMorgan Chase Bank, N.A. (together with its subsidiaries and affiliates, "JPMC") relating to the resolution of Washington Mutual Bank, Henderson, Nevada ("WMB"). This letter supplements our prior indemnification notices and provides you with written notice of additional matters for which JPMC is entitled to indemnification under Section 12.1 of the Agreement.

The additional matter that gives rise to JPMC's indemnity rights is *Smith v. Wilson & Assoc., et al.*, No. 10CV-12-137 ("*Smith*"), a putative class action based on alleged realty transfer tax violations, originally filed in the Circuit Court of Clark County, Arkansas. The action was removed to the United States District Court for the Western District of Arkansas under docket number 6:12-cv-06124-SOH and was subsequently remanded to the Circuit Court of Clark County. Enclosed for your convenience is a copy of the complaint in this action. In *Smith*, plaintiffs and putative class members ("Plaintiffs") name as defendants, *inter alia*, "Washington Mutual," which "may be affiliated with Washington Mutual, Inc." (Compl. ¶ 10.) Plaintiffs' claims arise from the alleged failure of the defendants, including Washington Mutual, "to pay Arkansas transfer taxes and failure to affix proper documentary stamps or symbols to instruments, which affect the transfer of title or ownership interests, which have been filed of record with County Recorders." (*Id.* ¶ 13.) It is unclear from the complaint whether Plaintiffs are referring to the conduct of WMB or to some other "Washington Mutual" entity. All of the conduct at issue in the complaint and alleged against

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“Washington Mutual,” however, occurred prior to WMB’s receivership. Thus, to the extent Plaintiffs claims for liability relate to pre-receivership action or inaction by WMB, any such claims (a) are barred by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1821(d)(3) (13) (“FIRREA”); and (b) in any event were not assumed by JPMC under the Agreement.

JPMC is not aware of any claim filed by Plaintiffs in the FDIC receivership by the December 30, 2008 claims bar date, as required by FIRREA. As you know, if Plaintiffs did not file a claim in the FDIC receivership by the claims bar date, then any claim they may seek to assert against either the FDIC or JPMC based on conduct by WMB or its subsidiaries prior to the receivership is statutorily barred for failure to exhaust the administrative claims process mandated by FIRREA. FIRREA’s statutory bar would apply equally to any unexhausted claims that Plaintiffs might assert against either the FDIC or JPMC. If your records show that Plaintiffs did not file timely proofs of claims, we request that you immediately inform them that any claims against either the FDIC or JPMC based on the conduct of WMB are barred.



In the event Plaintiffs did submit a timely claim in the WMB receivership for any claims relating to pre-receivership conduct of WMB (we would appreciate receiving copies if any were filed), we note that at the time of WMB’s closure, its books and records showed no such liabilities. (If you disagree, please identify where on WMB’s books and records such liabilities were reflected.) As you know, the liabilities assumed by JPMC were limited to those on WMB’s “Books and Records,” with a “Book Value,” when WMB was closed. JPMC did not assume any WMB liabilities that did not have a book value on WMB’s books and records at the time WMB was placed into receivership, nor did it assume, for those liabilities on WMB’s books and records, liability for any amounts in excess of such book value. Thus, any liability for conduct that precedes WMB’s closure remains with the FDIC.

JPMC is advising you that the liabilities it incurs in connection with these claims to the extent that such liabilities derive from the actions of WMB, including the costs and expenses incurred in defending against the claims to this extent, are subject to indemnification by the FDIC pursuant to Section 12.1 of the Agreement. We understand the FDIC Receiver consents to our defending and, if we deem it to be prudent, settling such claims to this extent. As you know, and as the FDIC has acknowledged in court, if the FDIC disclaims responsibility for any liabilities that may arise in connection with these actions and instead asserts that Section 12 of the Agreement does not apply to any such liabilities, then the FDIC may not purport to exercise its rights to direct the defense of these actions or determine whether to settle them.

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As you are aware from previous correspondence notifying you of the FDIC's indemnification obligations in other matters, the matters identified in this letter are not intended to be exhaustive or to constitute a statement that no other facts have or may come to our attention that could result in claims for which indemnification is provided, and we reserve the right to supplement this notice as additional facts or circumstances may arise.

Sincerely,

  
Robert A. Sacks

Enclosure

cc: Lawrence N. Chanen  
Joanna Jagoda  
Einat Philip  
(JPMorgan Chase Bank, N.A.)  
(Via Email without enclosures)

Richard Osterman  
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