

# SULLIVAN & CROMWELL LLP

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September 23, 2014

Via FedEx

Federal Deposit Insurance Corporation,  
Receiver of Washington Mutual Bank, Henderson, Nevada,  
1601 Bryan Street, 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 matters that give rise to JPMC's indemnity rights are two actions commenced *in pro per* in the Superior Court of California for the County of Los Angeles, Central District by the Administrator for the [REDACTED] ("Plaintiff"): (1) *Evans v. JPMorgan Chase, NA. et al.*, Case No. BC553898 ("Evans F"), and (2) *Evans v. JPMorgan Chase, NA., et al.*, Case No. BC55399 ("Evans IF"). Enclosed for your convenience are copies of both complaints, each of which includes allegations against JPMC as the alleged "Acquirer of Assets and Liabilities" of WMB or as WMB's alleged "alter ego." (See *Evans I* Compl. ~ 7-8; *Evans II* Compl. ~ 4-5.) *Evans I* is a wrongful death and survival action alleging that defendants (through actions alleged in *Evans II*) caused "frustration, threats, conflicts, prolonged and intense stress, anxiety, trauma, fear, anger,

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constant and continuous harassment" leading to decedent's "untimely loss of life." (*Evans I* Compl. ~25; 30-31.) In *Evans II*, Plaintiff alleges, *inter alia*, that defendants and their alleged "alter egos" conspired to engage in fraudulent and "predatory lending practices" between 2001 and 2006-*i.e.*, prior to WMB's receivership--when they made residential mortgage loans to decedent which were later included in a pool of loans securitized into a trust in 2006 "without Decedent's knowledge." (*Evans II* Compl. ~49; 106.) Plaintiff further alleges that decedent's signatures on deeds of trust and other instruments were forged (*see, e.g.*, *id.* ~65, 80, 83-84, 95-96) and a 2005 loan application was "fabricated" using "personal information that had been wrongfully obtained from an unknown source." (*Id.* ~68.)

JPMC is not aware of any claims filed by Plaintiff in the FDIC receivership by the December 30, 2008 claims bar date, as required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1821(d)(3) (13) ("FIRREA"). As you know, if Plaintiff did not file [REDACTED] claims in the FDIC receivership by the claims bar date, then any claims [REDACTED] may seek to assert against either the FDIC or JPMC based on conduct by WMB or its subsidiaries prior to the receivership are 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 Plaintiff might assert against either the FDIC or JPMC. If your records show that Plaintiff did not file timely proofs of claims, we request that you immediately inform [REDACTED] that any claims against either the FDIC or JPMC are barred, just as you have informed certain taxing authorities in recent correspondence that their claims are barred.

In the event Plaintiff did submit timely claims in the WMB receivership (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

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FDIC may not purport to exercise its rights to direct the defense of these actions or determine whether to settle them.

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,

A large rectangular area of the page is completely blacked out, indicating a redacted signature.

(Enclosures)

cc: Lawrence N. Chanen  
Annette C. Rizzi  
Joanna Jagoda  
Lauren C. Freundlich  
(JPMorgan Chase Bank, N.A.)  
(Via Email without enclosures)

Richard Osterman  
David Gearin  
Kathryn Norcross  
(Federal Deposit Insurance Corporation)  
(Via Fedenil Express with enclosures)

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