

# SULLIVAN & CROMWELL LLP

TELEPHONE: 1-310-712-6600  
FACSIMILE: 1-310-712-8800  
WWW.SULLCROM.COM

*1888 Century Park East  
Los Angeles, California 90067-1725*

NEW YORK • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

June 19, 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 - Filed 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 gives rise to JPMC's indemnity rights are: (1) *City of Los Angeles v. JPMorgan Chase & Co., et al.*, No. 2:14-cv-04168-ODW-RZ, filed in the U.S. District Court for the Central District of California ("*Los Angeles*"); (2) *City of Miami v. JPMorgan Chase & Co., et al.*, No. 1:14-cv-22205-UU, filed in the U.S. District Court for the Southern District of Florida ("*Miami*"); and (3) *City of Miami Gardens v. JPMorgan Chase & Co., et al.*, No. 1:14-cv-22206-CMA, filed in the U.S. District Court for the Southern District of Florida ("*Miami Gardens*"). In each of the complaints, plaintiffs in the aforementioned actions ("Plaintiffs") allege that Washington Mutual Bank and its predecessor entities violated the Federal Fair Housing Act by "engag[ing] in a continuous pattern and practice of mortgage discrimination [against minority borrowers] in" Los Angeles, Miami, and Miami Gardens, respectively, "since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis." (*Los Angeles* Compl. ¶ 3; *Miami* Compl. ¶ 5; *Miami Gardens* Compl. ¶ 5.) Although the complaints use the defined term "JPMorgan" to describe the purported perpetrator of these alleged violations, that term is defined as "the

Federal Deposit Insurance Corporation

combination of several large U.S. banking companies . . . including . . . Washington Mutual,” and the complaints allege that JPMC is liable for Federal Fair Housing Act violations arising from the “residential home loans and lending operations acquired from, and/or sold by or through, Washington Mutual Bank, Washington Mutual Bank F.A. . . . [and] Long Beach Mortgage Company.” (*Los Angeles* Compl. ¶ 2 n.1; *Miami* Compl. ¶ 2 n.1; *Miami Gardens* Compl. ¶ 2 n.1.) Moreover, as you know, prior to WMB’s closure in 2008, WMB had a major presence in Los Angeles and the Miami area, while JPMC did not. In any event, the complaints allege violations in regard to loan product types that WMB and its affiliated entities offered and JPMC did not. As such, enclosed for your convenience are copies of the complaints in these actions.

JPMC is not aware of any claims filed by Plaintiffs 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 Plaintiffs did not file claims in the FDIC receivership by the claims bar date, then any claims they 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 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 are barred, just as you have informed certain taxing authorities in recent correspondence that their claims are barred.

In the event Plaintiffs 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 Washington Mutual Bank, Washington Mutual Bank, F.A., and Long Beach Mortgage Company, 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

Federal Deposit Insurance Corporation

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.

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

cc: Stacey R. Friedman  
Lawrence N. Chanen  
Alla Lerner  
Annette C. Rizzi  
Charla Hausler  
Joanna Jagoda  
(JPMorgan Chase Bank, N.A.)  
(Via Email without enclosures)

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

Brent McIntosh  
(Sullivan & Cromwell LLP)  
(Via Email without enclosures)