

# SULLIVAN & CROMWELL LLP

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September 10, 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 - 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 give rise to JPMC's indemnity rights are:

- (a) *Francis v. JP Morgan Chase NA, et al.*, No. CU13-080180 ("Francis"), filed in California Superior Court, County of Nevada;
- (b) *Daniels v. J.P Morgan Chase Bank, NA, et al.*, No. 13-1-10925-52, filed in Georgia's Cobb County Superior Court ("Daniels"); and

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(c) *Wells Fargo Bank, et. al. v. Morgan, et al.*, No. 89C01-0810-MF-138, filed in Indiana's Wayne County Circuit Court ("Morgan").

Each of these matters relates to claims based on alleged action or inaction by WMB occurring prior to September 25, 2008, which ultimately led to the foreclosure of certain real property. In *Francis*, plaintiff [REDACTED] asserts, *inter alia*, that WMB engaged in "deceitful lending practices" at the origination of [REDACTED] loan from WMB in 2004, and that [REDACTED] suffered financial losses in connection with a WMB investment fund as a result of WMB's misrepresentations and omissions occurring prior to September 25, 2008. (*Francis* Complaint at 2-3, 5-8, 10.) In *Daniels*, plaintiff [REDACTED] asserts claims against JPMC for wrongful foreclosure, negligence, fraud, and unfair and deceptive business practices in connection with "a revolving home equity line of credit agreement" with WMB, executed on "November 17, 2004." (*Daniels* Complaint at 1, ¶2.) In *Morgan*, JPMC as plaintiff initiated a foreclosure action in connection with a mortgage loan made by WMB in March of 2004. (*Morgan* Complaint at ¶1.) Wells Fargo Bank was later substituted as plaintiff. Defendant [REDACTED] filed a motion for relief from the foreclosure judgment, in which [REDACTED] asserts, *inter alia*, that [REDACTED] "mortgaged [REDACTED] home with Washington Mutual" and that [REDACTED] has good and meritorious defenses to this foreclosure action which were not previously presented to the Court due to Owner's belie[f], foster[ed] by the actions of WaMu in modifying [REDACTED] mortgage and accepting [REDACTED] initial modified payment on the modified agreement before Chase entered the picture." (Motion at ¶¶ 2, 16.) Enclosed for your convenience are copies of the *Francis* Complaint, the *Daniels* Complaint, the *Morgan* Complaint, and [REDACTED] Motion for Relief.

JPMC is not aware of any claim filed by these individuals 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 a claim was not filed in the FDIC receivership by the claims bar date, then any claims these individuals 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 these individuals might assert against either the FDIC or JPMC. If your records show that a timely proof of claim was not filed, we request that you immediately inform these individuals 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 these individuals did submit a timely claim in the WMB receivership (we would appreciate receiving copies if any were filed), we note that at

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the time of WMB's closure, its books and records showed no such liability. (If you disagree, please identify where on WMB's books and records such a liability was 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 liability it may incur in connection with these matters, including the costs and expenses it incurs in defending against any action that may arise in relation to these matters, as well as the amount of any settlement or adverse judgment, are subject to indemnification by the FDIC pursuant to Section 12.1 of the Agreement. Should the FDIC fail to assume responsibility for defending or resolving these matters, we understand the FDIC consents to our defending, and, if we deem it to be prudent, settling any action that may arise from these matters. 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 matters 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 matters 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

Enclosures

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

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