

# 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 - 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 an additional matter 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 *JPMorgan Chase Bank, N.A. v. Zogaib et al.*, Case No. 2013-035598, filed in the Eleventh Judicial Circuit of Florida, Miami-Dade County. A defendant in this foreclosure action, [REDACTED] asserts counterclaims against JPMC for civil conspiracy, fraudulent inducement, promissory estoppel, and declaratory relief based on alleged predatory lending in connection with a mortgage loan originated by WMB on "March 5, 2005." (Answer at ¶¶ 31, 62, 82-108.) [REDACTED] alleges, *inter alia*, that "Washington Mutual Bank, [JPMC's] predecessor, served as the lender" and engaged in "abusive lending practices" that "push[ed] the Homeowner into a predatory

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loan product,” and that JPMC “has assumed all liabilities for acts and omissions committed by [WMB]” regarding the mortgage transaction. (*Id.* at ¶ 41 48, 62, 66.) Enclosed for your convenience is a copy of the answer containing [REDACTED] counterclaims.

JPMC is not aware of any claim filed by [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [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 [REDACTED] did submit a timely claim 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 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 this dispute, including the costs and expenses it incurs in defending against any action that may arise in relation to this dispute, 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 this dispute, we understand the FDIC consents to our defending, and, if we deem it to be prudent, settling any action that may arise from this dispute. 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 this dispute and instead asserts that Section 12 of the Agreement does not apply to any such liabilities,

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then the FDIC may not purport to exercise its rights to direct the defense of this action or determine whether to settle it.

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  
Lauren Freundlich  
(JPMorgan Chase Bank, N.A.)  
(Via Email without enclosure)

Richard Osterman  
David Gearin  
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(Federal Deposit Insurance Corporation)  
(Via FedEx with enclosure)

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