

SULLIVAN & CROMWELL LLP

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

RECEIVED  
9/4/14

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

September 3, 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 matters that give rise to JPMC's indemnity rights are notices from state agencies and other claimants of unclaimed property that WMB or affiliates failed to report and/or remit in accordance with applicable law including the demand for such unclaimed property together with applicable penalties. Enclosed for your convenience are copies of two such notices: (1) a notice from the [REDACTED] State Controller to Washington Mutual, Inc., dated May 6, 2011, seeking \$21,856,347.32 in outstanding cash property and interest; and (2) a notice from the [REDACTED] State Controller to Washington Mutual, Inc., dated March 10, 2014, seeking \$1,978.24 in interest. Also enclosed is a copy of correspondence between counsel for JPMC and the State of [REDACTED] Unclaimed Property Division ("UPD") regarding a notice from the UPD to WMB of \$318,380.14 in interest assessed on funds that WMB remitted to the State in November 2006. JPMC advised the UPD, and the UPD agreed, that JPMC had no obligation for the interest assessed, because "the FDIC, as the receiver of Washington Mutual, would have inherited any obligation for the

Federal Deposit Insurance Corporation

Assessment, if one existed.” (Letter from [REDACTED] to [REDACTED], dated June 16, 2009, at 3.)

With respect to the two claims identified above, JPMC is not aware of any claim of outstanding cash property and interest on unclaimed property filed by the [REDACTED] State Controller 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 that [REDACTED] State Controller 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 a state agency 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 the [REDACTED] State Controller 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 the [REDACTED] State Controller 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. Additionally, though JPMC is not aware at this time of any additional claims by state agencies for outstanding property and interest or other penalties relating to unclaimed property associated with WMB, to the extent such claims exist, this same analysis (*i.e.*, the need for that agency to have filed a claim prior to the claims bar date) would apply equally to those state agencies.

Notices of noncompliance with unclaimed property laws, such as property that was not reported or reported late by WMB, should be the FDIC Receiver’s responsibility in the first instance. However, these notices were sent to JPMC. JPMC is therefore advising you that the imposition of any liabilities on JPMC would be subject to indemnification by the FDIC pursuant to Section 12.1 of the Agreement. We are also advising you that JPMC may incur costs and expenses in connection with defending the assessment of these liabilities against JPMC, all of which would be subject to indemnification under 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.

Federal Deposit Insurance Corporation

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.

  
A. Sacks

Enclosures

cc: Lawrence N. Chanen  
Joanna Jagoda  
Rachel Ahn  
Miguel Matos  
(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)