

# SULLIVAN & CROMWELL LLP

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September 12, 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 relates to potential noncompliance by WMB prior to receivership with federal, state, and local environmental laws and regulations at certain WMB sites. Specifically, JPMC has become aware of potential noncompliance with certain federal, state, and local environmental regulatory requirements, including reporting requirements under the federal Emergency Planning and Community Right to Know Act (“EPCRA”), waste handling requirements under the federal Resource Conservation and

Federal Deposit Insurance Corporation

Recovery Act ("RCRA"), and air permitting and other requirements under the Clean Air Act ("CAA"), occurring prior to September 25, 2008 at a number of WMB sites. These sites include the following:

- 9 Dekalb Avenue, Brooklyn, NY
- 130 Second Avenue, New York, NY
- 7255 Baymeadows Way, Jacksonville, FL
- 7301 Baymeadows Way, Jacksonville, FL
- 2210 Enterprise Drive, Florence, SC
- 3050 Highland Parkway, Downers Grove, IL
- 2500 Marsh Lane, Carrollton, TX
- 3929 W. John Carpenter Freeway, Irving, TX
- 20855 Stone Oak Parkway, San Antonio, TX
- 23861 El Toro Road, Lake Forest, CA
- 3607 Crater Lake Highway, Medford, OR

JPMC is in the process of voluntarily disclosing potential instances of noncompliance to the EPA and, in some cases, the states identified above pursuant to policies allowing for penalty mitigation for parties that voluntarily discover and report such noncompliance, as well as taking appropriate actions as necessary to bring the facilities into compliance. To the extent JPMC incurs any costs associated with the aforementioned potential noncompliance occurring at WMB sites prior to September 25, 2008, JPMC is entitled to indemnification from the FDIC under Section 12.1 of the Agreement. These indemnifiable costs include the costs of defending, responding to or otherwise mitigating any potential or alleged noncompliance, as well as costs incurred in connection with JPMC's ongoing audit program to mitigate and avoid such penalties and enforcement actions, to the extent those costs are attributable to potential noncompliance occurring at the aforementioned WMB properties prior to September 25, 2008.

It is unclear whether the [REDACTED] or any of the [REDACTED] identified above filed a claim related to the "Right to Know" notice regulations with 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 the [REDACTED] or a [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 the [REDACTED] or a state might assert against either the FDIC or JPMC.

In the event the [REDACTED] or any of these [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

Federal Deposit Insurance Corporation

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 matter, including the costs and expenses it incurs in defending against any action that may arise in relation to this matter, as well as the amount of any fine, settlement or adverse judgment, are subject to indemnification by the FDIC pursuant to Section 12.1 of the Agreement. In the event that any claim is filed, and should the FDIC fail to assume responsibility for defending or resolving such claim, we understand the FDIC consents to our defending, and, if we deem it to be prudent, settling any action that may arise from this matter. 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 matter 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 this matter 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

cc: Lawrence N. Chanen  
Joanna Jagoda  
Arthur Korzec  
(JPMorgan Chase Bank, N.A.)

Richard Osterman  
David Gearin  
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