

# SULLIVAN & CROMWELL LLP

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June 24, 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.

Although you have previously been apprised of this litigation, JPMC hereby provides formal notice of the following matters that give rise to JPMC's indemnity rights, which relate to litigation commenced by [REDACTED] and [REDACTED] ("Plaintiffs") concerning alleged wrongdoing in a foreclosure action, including but not limited to: (1) *Eskanos v. Washington Mutual Bank, F.A.*, No. 12-22689-CA-02, filed in the Circuit Court of the 11th Judicial Circuit of Florida, Miami-Dade County

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("Eskanos I"); and (2) *Eskanos v. JPMorgan Chase Bank, N.A. sbm Washington Mutual Bank, F.A.*, No. 13 JG 55982/13 EX 372, filed in the Court of Common Pleas, Franklin County, Ohio ("Eskanos II"). As you are aware from previous correspondence and your involvement in some of the proceedings, Plaintiffs have commenced a number of actions against Washington Mutual Bank, F.A. asserting claims for recovery. Plaintiffs commenced the *Eskanos I* action for fraudulent transfer, alleging that Washington Mutual Bank, F.A. had transferred assets to avoid a prior bankruptcy judgment in Plaintiffs' favor, which resulted in a default judgment. In the *Eskanos II* action, Plaintiffs sought to execute this default judgment against Washington Mutual Bank, F.A. and JPMC as its alleged "successor by merger" ("sbm"). Enclosed for your convenience is a copy of the complaint in the *Eskanos I* action and the notice of writ of execution of judgment against JPMC, as "successor by merger" of Washington Mutual Bank, F.A., in the *Eskanos II* action.

[REDACTED]  
[REDACTED] and the subsequent *vacatur* of the default judgment, Plaintiffs may continue to litigate this or other actions against JPMC as "successor by merger" to WMB or Washington Mutual Bank, F.A. JPMC requests that the FDIC promptly inform Plaintiffs that [REDACTED] was not a claim assumed by JPMC and take responsibility for defending or resolving this dispute with Plaintiffs.

JPMC is advising you that the liability it has incurred in connection with these claims, including the costs and expenses it incurred in defending against the claims, are subject to indemnification by the FDIC pursuant to Section 12.1 of the Agreement. Although we understand Plaintiffs' claims have been resolved, should JPMC incur any additional costs in defending against Plaintiffs' claims or should Plaintiffs pursue related claims against JPMC, those additional costs and expenses would also be subject to indemnification. In addition, should JPMC decide to settle any related claims that Plaintiffs may subsequently pursue, the costs and expenses incurred by any such settlement would also be subject to indemnification. We understand the FDIC Receiver consents to our defending and, if we deem it to be prudent, settling such claims. 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 action 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 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

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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  
Jeremy Mack  
Joanna Jagoda  
(JPMorgan Chase Bank, N.A.)  
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