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February 4, 2014

Hon. Saliann Scarpulla
Supreme Court, New York County
60 Centre Street, IAS Part 39
New York, NY 10007

Re: In re the Application of The Bank of New York Mellon et al., Index No. 651786/11

Dear Justice Scarpulla:

We are local counsel of record for co-petitioners in the above matter, the Institutional Investors.¹ Lead counsel on behalf of the Institutional Investors is the Texas law firm of Gibbs & Bruns (by Kathy Patrick, Esq. and Robert Madden, Esq.). We are writing jointly on behalf of our clients and on behalf of Mayer Brown LLP (by Matthew Ingber, Esq.), attorneys for petitioner The Bank of New York Mellon, with respect to an Order to Show Cause and supporting papers e-filed slightly more than one hour ago by a group of Objectors to an \$8.5 billion settlement that was the subject of a nine-week Article 77 hearing before Justice Kapnick, which was decided in a 55-page Decision and Order last Friday. That Order, which overwhelming approved the Settlement, contained a stay of entry that continues until this coming Friday, February 7, 2014.

The Order to Show Cause just filed by the Objectors seeks to extend the stay of entry for an indefinite period, and it also contains a stay of entry pending the "hearing and determination" of Objectors' motion. This motion and both stay requests have no merit and will be greatly prejudicial to the thousands of certificateholders who are waiting for the settlement proceeds to be distributed. That cannot happen until the appeal process is complete, and of course that process cannot begin until the Decision and Order have been entered.

¹ The "Institutional Investors" are BlackRock Financial Management Inc., Kore Advisors, L.P., Maiden Lane, LLC, Maiden Lane II, LLC, Maiden Lane III, LLC, Metropolitan Life Insurance Company, Trust Company of the West and affiliated companies controlled by The TCW Group, Inc., Neuberger Berman Europe Limited, PIMCO Investment Management Company LLC, Goldman Sachs Asset Management, L.P., as adviser to its funds and accounts, Teachers Insurance and Annuity Association of America, Invesco Advisers, Inc., Thrivent Financial for Lutherans, Landesbank Baden-Wuerttemberg, LBBW Asset Management (Ireland) plc, Dublin, ING Bank fsb, ING Capital LLC, ING Investment Management LLC, New York Life Investment Management LLC, as investment manager, Nationwide Mutual Insurance Company and its affiliated companies, AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc.; Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio, Federal Home Loan Bank of Atlanta, Bayerische Landesbank, Prudential Investment Management, Inc., and Western Asset Management Company.

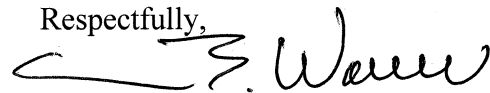
The purpose of this letter, however, is not to argue the merits of Objectors' motion. It is to ask Your Honor, if you are going to consider signing the Order to Show Cause with the stay included, to schedule oral argument on the Order to Show Cause for Thursday morning (February 6) or, if that is not possible, for Thursday afternoon or Wednesday afternoon (February 5).

The Uniform Rules, Section 202.7(f), require adequate advance notice on any request for temporary injunctive relief, as is contained in the Order to Show Cause here, and we have had virtually no notice.² I was called by phone only a couple of hours ago and Mr. Ingber could not be called at all because he was in the middle of participating in an ABA Panel on Securities Litigation. Moreover, the papers are defective in this respect, because they do not contain the representation required by Section 202.7(f) regarding notice, nor do they contain any indication of prejudice requiring that Objectors' proposed temporary injunction be heard and signed today by Your Honor. In fact, there is no prejudice to Objectors by having this Order to Show Cause heard on Thursday (or Wednesday afternoon) because, as noted, the stay of entry put into Justice Kapnick's order does not expire until Thursday at midnight. Moreover, as we will show, Objectors have no likelihood of success on this motion, since they are asking Your Honor to second guess Justice Kapnick and usurp the role of the Appellate Division, by making it impossible for the appellate process to begin.

Finally, I note that the Order to Show Cause is also defective because it is noticed only to petitioner The Bank of New York Mellon, and does not include my clients at all, although – as co-petitioners -- they are necessary parties to this motion.

Thank you for your attention to this matter.

Respectfully,



Kenneth E. Warner

KEW:ak
cc: All counsel (e-filing)

² See *Karen E. v. Yoram E.*, 39 Misc. 3d 1235(A), 972 N.Y.S.2d 144 (N.Y. Sup. Ct. 2013) (“The Court finds that, under the facts and circumstances here, the husband's counsel did not provide sufficient 22 NYCRR 202.7 notice to the wife's counsel by e-mailing her at 1:40 p.m. of his intent to file an *ex parte* application that very afternoon.”)