



February 7, 2014

VIA E-MAIL
AND REGULAR MAIL

Matthew D. Ingber
Mayer Brown LLP
1675 Broadway
New York, NY 10019

Re: *In the Matter of the Application of The Bank of New York Mellon*
Index No. 651786/2011

Dear Matt:

As you know, Judge Kapnick, in her decision dated January 31, 2014 (“Op.”) rejected the entry of an order in the form of the proposed final order and judgment (the “PFOJ”) appended to the Settlement Agreement. *See Op.* at 13, n.5. Among other things, Judge Kapnick rejected the scope of the release to be provided to Bank of America and its affiliates in ¶9 of the agreement (the “Settlement Agreement is approved except to the extent that it releases the loan modification claims”) (Op. at 53).

The Severability clause of the Settlement Agreement, ¶26, which provides that portions of the Settlement Agreement survive if certain provisions of the Settlement Agreement are invalidated, does not appear to extend to the invalidation of the release. In addition, ¶2(a) of the Settlement Agreement provides that the terms of the Settlement Agreement “are subject to and conditioned upon ‘Final Court Approval’” – which is defined to require entry of an order by the Article 77 judge that materially conforms to the form of the PFOJ, unless the parties otherwise agree in writing:

(a) Requirement of Final Court Approval. Where provided for herein, the terms of this Settlement Agreement are subject to and conditioned upon “Final Court Approval.” Final Court Approval shall have occurred only after . . . (v) the Settlement Court enters in the Article 77 proceeding (including in a subsequent proceeding following an appeal and remand) the Final Order and Judgment (provided that if the Settlement Court enters an order that does not conform in all material respects to the form of order attached as Exhibit B hereto, the Parties may, by the written agreement of all Parties, deem that order to be the Final Order and Judgment...).

ATTORNEYS AT LAW

NEW YORK

SCOTT + SCOTT LLP

212 223-6444 VOICE

CONNECTICUT

THE CHRYSLER BUILDING

212 223-6334 FAX

OHIO

405 LEXINGTON AVENUE, 40TH FLOOR

SCOTTLAW@SCOTT-SCOTT.COM

CALIFORNIA

NEW YORK, NY 10174

WWW.SCOTT-SCOTT.COM



Matthew D. Ingber
February 7, 2014
Page 2

Have Bank of America and its affiliates agreed to modify the release language in ¶9 of the Settlement Agreement to exclude loan modification claims? Is there a written agreement to accept Judge Kapnick's decision and order in lieu of entry of an order in the form of the PFOJ? If so, please provide me with a copy of this written agreement by Friday, February 14, so that I can advise my clients on how to respond to AIG's proposed order to show cause.

Thank you for your cooperation.

Very truly yours,
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

A handwritten signature in black ink, appearing to read "Beth Kaswan", with a long horizontal flourish extending to the right.

Beth Kaswan

BK/as