

June 1, 2017

The Honorable Saliann Scarpulla  
New York State Supreme Court  
Commercial Division  
60 Centre Street  
New York, NY 10007

**Re: *In the Matter of the Application of the Bank of New York Mellon, No. 150973/2016***

Dear Justice Scarpulla:

We write on behalf of the undersigned Senior Holders in response to the improper letter filed by Tilden Park and Prosirir today (Dkt. Nos. 259-60). Their letter violates Part 39's Practices and Procedures and the Rules of the Commercial Division, and therefore should not be considered by the Court. Because the letter was improperly submitted, the undersigned will not respond to its merits unless directed by the Court.

This Part's Practices and Procedures state that "Justice Scarpulla does NOT accept any letters, documents, or papers by e-filing, mail, or facsimile unless expressly permitted by these Practice Rules, Commercial Division Rules 2 and 18, or by prior approval of the Court." The Court did not give Tilden Park and Prosirir prior approval to submit their letter.

Moreover, Rule 18 of the Commercial Division Rules provides as follows:

Rule 18. Sur-Reply and Post-Submission Papers. Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule shall not respond in kind.

Tilden Park and Prosirir's letter is an improper sur-reply addressing the merits of the Senior Holders' Motion for Leave to Reargue, which has been fully briefed (Dkt. Nos. 231-43, 250-53). It is also an improper reply to the Senior Holders' counter-proposed judgment (Dkt. Nos. 256-58) and an opposition to a hypothetical motion for stay that might be filed by the Senior Holders. It is procedurally improper on these multiple grounds.

Respectfully submitted,

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cc: All counsel of record (via NYSCEF)