

## **Exhibit 3**

# MAYER • BROWN

Mayer Brown LLP  
1675 Broadway  
New York, New York 10019-5820

Main Tel +1 212 506 2500  
Main Fax +1 212 262 1910  
www.mayerbrown.com

**Matthew D. Ingber**  
Direct Tel +1 212 506 2373  
Direct Fax +1 212 849 5973  
mingber@mayerbrown.com

December 18, 2012

**VIA ELECTRONIC MAIL**

TO: STEERING COMMITTEE

Re: *In re the Application of The Bank of New York  
Mellon* (Index No. 651786-2011)

Dear Counsel:

Pursuant to Paragraph 2(c) of the protective order signed by the parties and so ordered by Justice Kapnick on June 14, 2012 (the "Protective Order"), The Bank of New York Mellon designates the following portions of the deposition of Robert Bailey as "Confidential," as it is defined in the Protective Order:

<b>December 3, 2012 Transcript Page/Line Designation</b>
13:24-77:24
78:9-129:4
129:15-152:22
154:11-168:24
169:16-182:15
183:2-256:9
256:21-269:20
270:4-280:16
281:4-283:25
284:8-303:8
303:23-327:19
328:9-335:7

December 18, 2012

Page 2

Please feel free to call or email me if you have any questions.

Very truly yours,

*Matthew Ingber (DC)*

Matthew D. Ingber

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

-----X  
In the Matter of the Application of

Index No. 651786/

THE BANK OF NEW YORK MELLON  
(As trustee under various Pooling  
and Servicing Agreements and  
Indenture Trustee under various  
Indentures), et al.,

Assigned to Kapnick, J.

Petitioners,

for an order, pursuant to C.P.L.R.  
Rule 7701, seeking judicial instructions  
and approval of a proposed settlement.

-----X

\* C O N F I D E N T I A L \*

VIDEOTAPED DEPOSITION

OF

ROBERT E. BAILEY

New York, New York

Monday, December 3, 2012

Reported by:  
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR  
JOB NO. 55069

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

December 3, 2012  
9:41 a.m.

CONFIDENTIAL videotaped deposition of  
ROBERT E. BAILEY, held at the offices of  
Quinn Emanuel, 51 Madison Avenue, New York,  
New York, pursuant to Notice, before  
Annette Arlequin, a Certified Court  
Reporter, a Registered Professional  
Reporter, a Certified Realtime Reporter, a  
Certified LiveNote Reporter, and a Notary  
Public of the State of New York.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**A P P E A R A N C E S:**

**DECHERT**  
Attorneys for Bank of New York Mellon and  
the Witness  
1095 Avenue of the Americas  
New York, New York 10036  
BY: HECTOR GONZALEZ, ESQ.

- and -

**MAYER BROWN**  
Attorneys for Bank of New York Mellon and  
the Witness  
1675 Broadway  
New York, New York 10019  
BY: MATTHEW D. INGBER, ESQ.  
CHRISTOPHER J. HOUP, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**A P P E A R A N C E S (Cont'd.)**

**REILLY POZNER**  
Attorneys for The Western and Southern  
Life Insurance Company and American  
International Group, et al.  
1900 Sixteenth Street  
Denver, Colorado 80202  
BY: DANIEL M. REILLY, ESQ.  
CLARE PENNINGTON, ESQ.  
LARRY POZNER, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**A P P E A R A N C E S (Cont'd.):**

**GIBBS & BRUNS**  
Attorneys for The Institutional Investors  
1100 Louisiana  
Houston, Texas 77002  
BY: SCOTT A. HUMPHRIES, ESQ.

**WACHTELL, LIPTON ROSEN & KATZ**  
Attorneys for Bank of America  
51 West 52nd Street  
New York, New York 10019  
BY: JONATHAN M. MOSES, ESQ.

**SCOTT & SCOTT**  
Attorneys for The Public Pension Funds  
405 Lexington Avenue  
New York, New York 10174  
BY: BETH KASWAN, ESQ.

1  
2 A P P E A R A N C E S (Cont'd.)  
3  
4 KELLER ROHRBACK  
5 Attorneys for Federal Home Loan Bans of  
6 Boston, Chicago, and Indianapolis  
7 1201 Avenue of the Americas  
8 Seattle, Washington 98101  
9 BY: DAVID KO, ESQ.  
10  
11  
12 STATE OF DELAWARE  
13 OFFICE OF THE ATTORNEY GENERAL  
14 Attorneys for State of Delaware  
15 120 Broadway  
16 New York, New York 10271  
17 BY: NICK HIRST, Assistant Attorney General  
18  
19  
20  
21  
22  
23  
24  
25

1 R. E. Bailey - Confidential  
2 THE VIDEOGRAPHER: This begins tape  
3 labeled No. 1 of the videotaped deposition  
4 of Robert E. Bailey in the matter of the  
5 Application of the Bank of New York Mellon  
6 et al for the Supreme Court of the State of  
7 New York, County of New York, Index No.  
8 651786/2011.  
9 This deposition is being held at 51  
10 Madison Avenue, New York, New York on  
11 December 3rd, 2012 at approximately 9:41  
12 a.m.  
13 My name is Matthew Smith from TSG  
14 Reporting Incorporated. I'm the legal  
15 video specialist.  
16 The court reporter is Annette  
17 Arlequin in association with TSG Reporting.  
18 All appearances have been noted for  
19 the record. Will the court reporter please  
20 swear in the witness.  
21 \* \* \*  
22 R O B E R T E. B A I L E Y, called as a  
23 witness, having been duly sworn by a  
24 Notary Public, was examined and testified  
25 as follows:

1  
2 A P P E A R A N C E S (Cont'd.)  
3  
4 TALCOTT FRANKLIN  
5 Attorneys for Knights of Columbus, American Equity  
6 Investment Life Insurance Company, et al., Blue  
7 Mountain Credit Alternatives Master Fund, LP and Stone  
8 Creek LLC  
9 208 North Market Street  
10 Dallas, Texas 75202  
11 BY: DEBORA PRICE, ESQ.  
12 (Telephonically)  
13  
14  
15  
16 ALSO PRESENT:  
17  
18 NANDINI MANI, BNY Mellon, Managing Counsel  
19 MATTHEW SMITH, Legal Video Specialist  
20  
21  
22  
23  
24  
25

1 R. E. Bailey - Confidential  
2 MR. GONZALEZ: Dan, thank you.  
3 Before you begin questions, I just want to  
4 be clear. As you know, Mr. Bailey was the  
5 in-house lawyer at Bank of New York who  
6 worked on this matter. We'll take  
7 privilege objections as necessary when they  
8 come, but I just want to be clear that the  
9 fact of us not challenging his testifying  
10 in this case is by no means intended as a  
11 waiver of any relative privilege.  
12 MR. REILLY: Okay. I understand.  
13 And in the past we've agreed that one  
14 objection by the, for today, Bank of New  
15 York Mellon counsel, will be supportive of  
16 objections by Bank of America and the  
17 institutional investors.  
18 Do you guys still want to do that  
19 today?  
20 MR. HUMPHRIES: No problem.  
21 MR. REILLY: Jonathan, is that all  
22 right?  
23 MR. MOSES: Am I a party?  
24 MR. REILLY: Well, there's been  
25 objections from your seat so...

R. E. Bailey - Confidential

1

[Redacted text block]

R. E. Bailey - Confidential

1

[Redacted text block]

R. E. Bailey - Confidential

1

[Redacted text block]

R. E. Bailey - Confidential

1

[Redacted text block]

R. E. Bailey - Confidential

1

[REDACTED]

R. E. Bailey - Confidential

1

[REDACTED]

MR. REILLY: Okay. I'm going to turn

R. E. Bailey - Confidential

1

[REDACTED]

R. E. Bailey - Confidential

1

2 it over to Ms. Pennington for a while while  
3 I do a brief court hearing and you want to  
4 change seats?

5 MS. PENNINGTON: Can we just go off  
6 the record for a minute?

7 MR. REILLY: Yes.

8 THE VIDEOGRAPHER: The time is 1:55  
9 p.m. We're off the record.

10 (Recess taken.)

11 THE VIDEOGRAPHER: The time is 1:56  
12 p.m. We're on the record.

13 EXAMINATION BY

14 MS. PENNINGTON:

15 Q. Good afternoon.

[REDACTED]



R. E. Bailey - Confidential

1

[Redacted text block]

R. E. Bailey - Confidential

1

[Redacted text block]

R. E. Bailey - Confidential

1

[Redacted text block]

R. E. Bailey - Confidential

1

[Redacted text block]

R. E. Bailey - Confidential

R. E. Bailey - Confidential

THE VIDEOGRAPHER: This concludes today's deposition. The time is 6:12 p.m. We're off the record.

(Time noted: 6:12 p.m.)

ROBERT E. BAILEY

Subscribed and sworn to before me this day of 201\_\_.

R. E. Bailey - Confidential

CERTIFICATE

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK)

I, ANNETTE ARLEQUIN, a Notary Public within and for the State of New York, do hereby certify:

That ROBERT E. BAILEY, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of December, 2012.

ANNETTE ARLEQUIN, CSR, RPR, CRR, CLR