

**WORKING COPIES FOR JUDICIAL REVIEW**

At Commercial Division Part 39  
Supreme Court of the State of New  
York, held in and for the County of  
New York, at the Courthouse located at  
60 Centre Street, New York, New  
York, on the 14<sup>th</sup> day of January, 2013

**P R E S E N T:**

**HONORABLE BARBARA R. KAPNICK, J.S.C.**

**MOTION SEQUENCE # 033**

In the matter of the application of

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

Petitioners,

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

Index No. 651786/2011

Assigned to: Kapnick, J.  
(Part 39)

**ORDER TO SHOW  
CAUSE WHY THE  
COURT SHOULD NOT  
COMPEL EVIDENCE  
PURPORTEDLY  
PROTECTED UNDER  
THE COMMON  
INTEREST PRIVILEGE**

UPON the annexed Affirmation of Derek W. Loeser, dated January 14, 2013, with  
exhibits attached thereto, the accompanying Memorandum of Law in Support of the Order to  
Show Cause Why the Court Should Not Compel Evidence Purportedly Protected Under the  
Common Interest Privilege, dated January 14, 2013, and all pleadings and proceedings  
previously had herein,

**SUFFICIENT CAUSE THEREFOR BEING ALLEGED, IT IS HEREBY**

**ORDERED** that petitioner The Bank of New York Mellon (“BNYM”) show cause  
before this Court at Commercial Division Part 39, to be held at 60 Centre Street, New York, New  
York, on the 7th day of February, 2013 at 10:00 a.m., or as soon as counsel may be heard, why  
an order should not be entered as follows:

- 1) Pursuant to CPLR § 3124, compelling BNYM and the Inside Institutional Investors to produce documents identified in the Inside Institutional Investors' May 21, 2012 privilege log currently being withheld under the common interest exception to the attorney client privilege;
- 2) Resumption of the deposition of Jason Kravitt; and
- 3) Awarding such other and further relief as the Court may deem just and proper.

*Being alleged*  
**SUFFICIENT REASON APPEARING THEREFOR**, let service of a copy of this

Order, together with the papers upon which it was granted, upon counsel for BNYM, by electronic filing service, and a courtesy copy of the signed order by electronic mail on or before the 16th day of January, 2013, be deemed good and sufficient service. In accordance with the

briefing schedule previously ordered by this Court, any answering papers shall be filed and served upon all counsel of record on or before January 28, 2013, and reply papers shall be filed and served upon all counsel of record on or before February 1, 2013.

*with the clerk in IA part 39*

*at 4pm*  
*with the Clerk in IA Part 39*  
*at 4pm.*

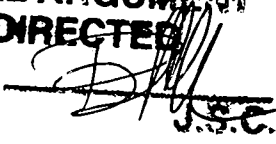
~~Oral argument is requested on this motion. Oral argument is requested on this motion.~~

Counsel submitting this Order to Show Cause has affirmed that a good faith effort has been made to resolve the issues raised in this Order to Show Cause with counsel for BNYM.

ENTER,

  
 \_\_\_\_\_  
 J.S.C.

**ORAL ARGUMENT  
 DIRECTED**

  
 \_\_\_\_\_  
 J.S.C.

**BARBARA R. KAPNICK  
 J.S.C.**

**BARBARA R. KAPNICK  
 J.S.C.**