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March 14, 2013

Via E-filing and Facsimile

The Honorable Barbara R. Kapnick
Supreme Court of the State of New York
60 Centre Street
New York, New York 10007

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

Dear Justice Kapnick:

I write in response to the letter submitted Monday by BNYM and the Inside Institutional Investors (collectively, "settlement proponents"). The settlement proponents appear to be withdrawing the commitment they made to Intervenor and to this Court during the March 7 conference call to produce the communications that have been withheld based on a claimed common interest privilege (motion sequence 33). BNYM is apparently concerned that producing the communications without a Court order compelling production would open BNYM to arguments that it waived its attorney-client privilege over *other* (unspecified) communications.

Of course, the communications the Steering Committee seeks through motion sequence 33 are not privileged, for the reasons we have argued at length in our briefs and in oral argument. The settlement proponents no longer seriously argue that the communications are privileged, but are rather withholding production because of the perceived need for a Court order granting the motion. In order to address BNYM's concern and also to facilitate expeditious resolution of motion sequence 33, the Steering Committee respectfully submits the enclosed proposed Order for the Court's consideration.

Respectfully submitted,



Daniel M. Reilly

Enclosure

cc: Counsel of record (via ECF)

1335400

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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.

Motion Seq. 33

[PROPOSED] ORDER

The Steering Committee of Intervenor-Respondents and Objectors moved under CPLR § 3124 for an order compelling production of all communications between Petitioner the Bank of New York Mellon and Intervenor-Petitioners the Institutional Investors (collectively, “Petitioners”) between November 18, 2010 and June 29, 2011 (Motion Sequence 33). The Institutional Investors have produced a privilege log indicating that there are 548 such communications and that they have been withheld based on the common interest exception to the waiver of the attorney-client privilege (“common interest privilege”). The Steering Committee disputes that the common interest privilege applies to the withheld communications. In motion sequence 33, the Steering Committee requests that this Court order the Petitioners to produce all of the communications being withheld under the claim of a common interest privilege and that the deposition of Mr. Jason Kravitt be re-opened.

Upon reviewing the papers filed by the parties in support of and in opposition to motion sequence 33, and upon hearing oral argument during the February 7, 2013 hearing, the Court determines that no common interest privilege applies to the communications between BNYM and the Institutional Investors between November 18, 2010 and June 29, 2011. The Court

further holds that the requested discovery is relevant and discoverable under governing New York law.

It is therefore ORDERED that BNYM and the Institutional Investors produce all communications previously withheld on the claim of a common interest privilege no later than five (5) business days from the date of this Order.

It is FURTHER ORDERED that BNYM shall make Jason Kravitt available for five (5) additional hours of on-the-record deposition testimony to answer questions about the previously withheld communications and the topics about which he was instructed not to answer based on a claim of common interest privilege, including topics reasonably following from his answers.

ENTER

Dated: _____, 2013

J.S.C.