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May 9, 2013

**VIA E-FILED AND FACSIMILE**

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

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

Dear Justice Kapnick:

I write on behalf of the Steering Committee members to update the Court on the status of the discovery requests served by the Institutional Investors.

Notwithstanding the Court's direction in last week's conference call to the Institutional Investors to serve narrowed discovery requests, this past Monday afternoon, the Institutional Investors served *identical* requests to all objecting investors in this proceeding. The parties conferred over these *identical* requests on Tuesday morning, and Ms. Patrick sent a narrowed set of requests via email on Tuesday afternoon. While not entirely clear what is intended by the Institutional Investors, the Steering Committee believes the narrowed requests are the operative requests.

In the prior call with Your Honor, Ms. Patrick indicated that her primary concern was making sure that there were no surprises at trial – a concern shared by the Steering Committee despite suggestions to the contrary. Accordingly, through the meet and confer process, the parties were able to find common ground on certain categories of information sought by the

Institutional Investors' narrowed requests. First, the Steering Committee has no objection to providing updated holdings information. Again, despite contrary suggestions, holdings information was provided long ago to the Institutional Investors in response to the initial discovery requests served by them, and we have no objection to supplementing holdings information (which the Institutional Investors should do as well). Second, the Steering Committee agrees that any exhibits used in trial will be exchanged on a mutually agreeable date. Third, the Steering Committee agrees that any witness that will be called to testify at trial should be made available for deposition in advance of trial on mutually agreeable dates. Finally, the Steering Committee agrees that the parties should continue to confer on all pre-trial disclosure topics.

While the parties were able to resolve the primary concerns expressed by Ms. Patrick on the last call with the Court regarding the exchange of information before trial, the parties continue to debate requests for other information sought by the Institutional Investors. This information falls into four general categories:

- First, the Institutional Investors seek the deposition of a corporate representative of each Steering Committee entity regardless of whether the entity intends to present a corporate representative at trial. The particular topics that the Institutional Investors intend to explore are settlement communications regarding unrelated securities cases, and all internal analyses of the Settlement. During the meet and confer, we informed Ms. Patrick that we would let her know by noon Eastern today (Thursday) whether the Steering Committee intended to call any corporate representatives of the Steering Committee entities. The answer is no. As a result, in what little time is left before trial, there is no reason for the depositions.
- Second, the Institutional Investors seek documents regarding cost sharing or agreements by any objecting investor to pay fees and costs of any other objecting investor, or to share in any recovery.
- Third, the Institutional Investors seek any internal evaluations of the Settlement by the objecting parties.
- Fourth, the Institutional Investors seek information regarding settlement demands by any objecting party that "link the assertion or prosecution of their objection to any potential resolution of their securities claims against Bank of America."

In short, these requests seek information that in some cases is privileged and that, at any rate, is entirely irrelevant to whether the Trustee has met *its burden* of proving that it acted reasonably, satisfied its fiduciary and other duties, and that the Settlement is fair and reasonable.

The Institutional Investors are asking the Court to order this privileged and irrelevant discovery three weeks before trial, when abundant *relevant* work must be accomplished by the parties, including: (1) filing responsive briefs on May 13 to the briefs filed on May 3; (2) filing reply briefs to the response briefs on May 20; (3) completing four remaining expert witness depositions; (4) addressing the pending notice of jury demand; (5) conferring regarding witness and exhibit lists; and (6) preparing for trial. There is enough to do without adding harassing and irrelevant discovery to this list. To the extent that the Institutional Investor persist in their effort to obtain this discovery – even though their purported concern about surprise at trial has been fully resolved, respectfully, the issues should be briefed and argued, as has been the practice on the Steering Committee’s motions to compel.

We look forward to discussing these issues with the Court.

Respectfully submitted,

/s/ Derek W. Loeser

Derek W. Loeser

cc: Counsel of record (via ECF)