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May 9, 2013

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

Re: Application of Bank of New York Mellon; Index No. 651786/11
Status Report Teleconference today

Dear Justice Kapnick:

As directed by the Court, on May 6 the Institutional Investors re-served their document requests and deposition notices (*nunc pro tunc* to March 11, the date of original service) on the parties that had filed objections to the settlement. We then promptly initiated a meet and confer aimed at reaching agreement on narrowed requests and depositions and on various trial and pre-trial scheduling issues.

On May 7, we held a lengthy meet and confer with counsel for all objectors except Triaxx, during which we agreed to narrow and limit our discovery to only the items listed on the attached Exhibit A, which we respectfully supply to the Court to facilitate today's status teleconference. Our narrowing was substantial, as the Court recommended – from 18 broad categories to five narrow ones.

We asked the Objectors – for clarity and for the convenience of the Court – to send us their responses by noon today by interlineating our requests, so we could supply that combined document to the Court. Instead the Steering Committee indulged in gamesmanship – by declining to interlineate anything *and not even responding to us.* Rather they wrote to the Court today announcing their responses buried in advocacy, in a manner that – separated from the demands – made it difficult to see that they were, with very few exceptions, *refusing to produce anything.* Indeed, several objectors (including Cranberry Park and the Policemen's Fund) have declined even to produce documents sufficient to prove they were holders of the securities as of the date of their objection, a threshold requirement necessary to demonstrate their standing to object.

In its letter the Steering Committee also makes the false statement that we were supposed to serve narrowed discovery responses, when in fact Your Honor's ruling at the April court conference was that we re-serve our original demands *nunc pro tunc*, and during the last conference you urged all parties to then meet and confer in an effort to agree on responses to a narrower set of demands.

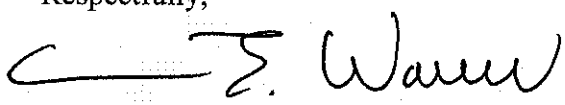
We did our part in greatly narrowing the demands to a bare minimum needed for trial. The Objectors, however, essentially stood firm on their refusal to produce anything but holdings information (and some, as noted, not even that).

Moreover, the Objectors have even refused to confirm that they will serve formal responses to our narrowed requests by May 10, the date specifically set by Your Honor for that purpose. They have also refused to acknowledge that the Court has set aside 10 trial days for the hearing, and are refusing to discuss the allocation of trial time, ostensibly on that basis – even though the Court has made that scheduling clear to all counsel.

Finally, we note that the Steering Committee continues its refrain about the "pressure" of a May 30 hearing, but their words are hollow – they found the time to prepare a frivolous Jury Demand and accompanying memo of law, so they undoubtedly have time to spare. We have submitted today, by order to show cause, a motion to vacate that meritless filing.

We look forward to speaking with Your Honor during the status teleconference this afternoon. The call-in number, which we have circulated to counsel, is the same as last time: 1-866-228-9900; Passcode: 763234.

Respectfully,



Kenneth E. Warner

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Enc.
cc: All counsel of record (e-filing)

NARROWED DISCOVERY REQUESTS AND PRE-TRIAL AND TRIAL PROPOSALS OF INSTITUTIONAL INVESTORS – TO FACILITATE CONFERENCE CALL WITH COURT ON MAY 9, 2013 AT 4:30 p.m.

1. **Request 18** – We requested holdings from all Objectors as of two dates: June 27, 2011 and May 3, 2013. As discussed, this information is relevant to whether the Objectors have standing or whether there are Trusts as to which there is no objection.

2. **Request 6** – This request for communications among any intervenors concerning the Article 77 Proceeding has been limited to the following categories:

    a. Communications by any Objector with any other intervenor offering to pay costs or attorneys' fees for another intervenor in connection with the filing or pursuit of any Objection.

    b. Any agreements of any kind, whether oral or written, reflecting cost-sharing arrangements or agreements by one or more Objectors to pay attorneys' fees or expenses for other Objectors. This includes both any joint agreement to share costs as well as any agreement by any individual objector (or group of objectors) to pay expenses, costs or attorneys' fees on behalf of other objectors.

    c. Any agreements to share in the benefits or recoveries to be obtained from any Objection.

    d. The recent settlement agreement between AIG and Triaxx.

If there are *any* agreements among any Objectors that pertain *in any way* to the payment of fees or costs for the filing or prosecution of other parties' objections to the settlement, or agreements that pertain to the filing of any objection by an Objector, those documents should be produced.

3. **Request 1, 6 and 7** – We requested the Objectors produce any documents or data that have not previously been produced in discovery in this case for the following categories:

    a. All documents or data that are cited in any Objector's filed objections; and,

    b. All documents the objectors intend to offer in evidence at trial.

EXHIBIT A

4. **Requests 8-13** – Any internal analyst reports or committee deliberations—not prepared at the direction of counsel and not prepared in anticipation of litigation—that express any view concerning the fairness and reasonableness of the settlement.[1]

5. **Request 14** – We have narrowed this request to the following categories:

    a. Any settlement demands by any Objector that link the assertion or prosecution of their objection to any potential resolution of their securities claims against Bank of America.

    b. The October 9, 2011 letter from Thomas Russo of AIG to Thomas Baxter of the Federal Reserve Bank of New York that has *not* been produced in this matter.

Deposition Notices

a. The Objectors have agreed we will be permitted to depose any Corporate Representative they designate as a trial witness and any other witness they place on their trial witness list who has not previously been deposed.

    i. We have requested that Corporate Representative witnesses be identified by May 13;
    ii. We request that any other witnesses be identified by May 14.

b. *Independent* of trial witnesses, we have narrowed our request for corporate representative depositions to:

    i. The following entities: AIG, Triaxx, and the Federal Home Loan Banks of Boston, Chicago and Indianapolis; and,

    ii. The following two topics:
        1. The allegations made in these parties' filed objections

        2. Any settlement demands that link potential or actual settlement objections to resolution of securities or other litigation claims filed by these parties against Bank of America.

Pretrial Deadlines

The Institutional Investors and BNYMellon propose the following pre-trial deadlines:

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[1] The Objectors have now asserted the Court must apply a "substantive fairness" standard in evaluating the settlement. Although we do not agree this is the appropriate standard of review, given the Objectors' assertion of this standard we have narrowed these six requests to the single category of documents set forth.

May 13 – All parties designate trial witnesses and produce any documents they intend to use at trial that have not previously been produced in discovery in this case.

May 17 – All parties exchange exhibit lists and exhibits

May 20 – All parties provide proposed deposition cuts for unavailable witnesses who have previously been deposed (we believe Robert Bostrom is the only such witness)

May 22 – Responsive cuts for unavailable witnesses exchanged by all parties.

Trial Matters

Trial Time: The court has allotted 10 days for trial. We propose that this time be split equally between the sides, with each side receiving 50% of the allotted trial hours available. Time spent on cross-examination shall be counted against the allotment for the side that is cross-examining. Each side shall designate a time-keeper, the reporter shall prepare the transcript with appropriate time stamps, and each side shall reconcile the use of time at the end of each trial day.

Opening Statement: 2 hours per side, charged against the 50% per side time allotment

Closing Argument: 2 hours per side, charged against the 50% per side time allotment

Scope of the Direct Limitation: This limitation will not apply on cross-examination, so long as the witness being examined is also on the examining party's witness list.