

Exhibit 3

to

**Affirmation of Michael A. Rollin in Support of Order to
Show Cause Why The Court Should Not Continue The Trial
Following The September Trial Dates to Allow Discovery
Concerning Newly Disclosed Evidence**

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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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

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R. E. Bailey - Confidential

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R. E. Bailey - Confidential

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R. E. Bailey - Confidential

[Redacted text block]

25

Q. In September of 2010, what were the

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2 A. I believe Mayer Brown was retained.

3 Q. And as you sit here today, you don't
4 know if it was before June 17th, 2010 or after
5 June 17th, 2010, correct?

6 A. As I'm talking, I think it's more
7 likely after, but I really have no clear
8 recollection as to when the suits were filed.

9 Q. As a result of Ms. Patrick's letter
10 of June 2010, did the Bank of New York Mellon
11 retain Mayer Brown to represent it for exposure
12 it had in its role as a trustee in the 530
13 covered trusts?

14 MR. GONZALEZ: Dan, I'm going to
15 instruct the witness not to answer that
16 question to the extent it requires the
17 witness to, by answering, to acknowledge
18 one way or another whether the bank had a
19 belief that it had exposure in its role as
20 a trustee. I believe that calls for this
21 witness' mental impressions regarding any
22 analysis of that issue.

23 A. With that instruction, I'm not able
24 to answer the question.

25 Q. Well, you certainly had conversations

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2 with people, it may have been internally with
3 Bank of New York Mellon folks, about whether or
4 not the bank had liability for its role as a
5 trustee in the subject trusts, correct?

6 MR. GONZALEZ: Objection to form.

7 I'm going to instruct the witness not
8 to answer that question to the extent it
9 calls for attorney-client communications.

10 A. I'm not going to answer the question.

11 Q. And did any retainer agreement
12 between Bank of New York Mellon and Mayer Brown
13 articulate the scope or representation as it
14 relates to the covered trusts?

15 (Counsel confer.)

16 MR. GONZALEZ: If you recall, you can
17 answer the question.

18 A. I don't recall -- I don't recall.

19 Q. Was Bank of New York Mellon concerned
20 any time between June 17th, 2010 and June 28th,
21 2011 about its exposure for its conduct in its
22 role as a trustee in the 530 trusts?

23 MR. GONZALEZ: Objection to form.

24 Lacks foundation and is also calling on
25 this witness to testify as a corporate

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2 representative, which he was not noticed to
3 testify as.

4 And to the extent the question calls
5 for either attorney-client communications
6 or work product, I would instruct you not
7 to answer, but otherwise you can answer.

8 A. Based on that instruction, I don't
9 think I can answer the question.

10 Q. Was Mayer Brown hired to protect Bank
11 of New York Mellon from liability in the covered
12 trusts?

13 MR. GONZALEZ: Objection to form.

14 Vague and lacks foundation.

15 A. My understanding is that Mayer Brown
16 was retained generally to represent the trustee
17 in connection with the issues presented by
18 Ms. Patrick and the institutional holders.

19 Q. Including Bank of New York Mellon's
20 exposure for its role as a trustee in the
21 covered trusts?

22 MR. GONZALEZ: I'm going to object to
23 the form, to lacking foundation, to calling
24 for speculation.

25 And to the extent you can answer that

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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 4th day of February 2013.



MANOHARAN MAHADEVA
Notary Public, State of New York
No. 01M76096639
Qualified in Westchester County
Commission Expires August 11, 2015

Albany, New York.

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C E R T I F I C A T E

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

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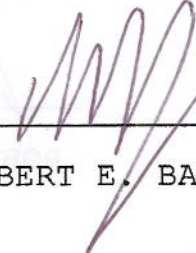
ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: MATTER OF THE APPLICATION OF BNYM

Date: DECEMBER 3, 2012

DEPONENT: ROBERT E. BAILEY - CONFIDENTIAL

Pg.	Ln.	Now Reads	Should Read	Reason
3	5	Bank	The Bank	Party name
6	5	Bans	Bank	Transcription error
30	19-20	the fact	its own	Transcription error
55	13	trustees	trustee	Transcription error
63	20	unwielding	unwieldy	Transcription error
69	18	Yeah, I don't...	I don't...	Clarify the record
85	8	of	under	Incorrect transcription
85	9-10	than it did	than did	Transcription error
108	3	BNYW8699	BNYM-CW8699	Transcription error



ROBERT E. BAILEY

SUBSCRIBED AND SWORN BEFORE ME

THIS 8th DAY OF February 2012. 2013



(Notary Public)

MANOHARAN MAHADEVA
 Notary Public, State of New York
 No. 01M/0080853
 Qualified in Westchester County
 Commission Expires August 11, 2015

MY COMMISSION EXPIRES: _____

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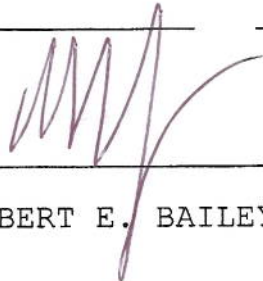
ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: MATTER OF THE APPLICATION OF BNYM

Date: DECEMBER 3, 2012

DEPONENT: ROBERT E. BAILEY - CONFIDENTIAL

Pg.	Ln.	Now Reads	Should Read	Reason
19	9	were	with	Transcription error
54	10	lends	loans	Transcription error
55	17	craft	tracked	Transcription error
178	5	related	relayed	Transcription error
206	10-11	if it was looked at or not	if we looked at it or not yet	Clarify the record
253	9	him	her	Clarify the record
281	22	a	I	Transcription error
286	13	prospective	respective	Transcription error



ROBERT E. BAILEY

SUBSCRIBED AND SWORN BEFORE ME

THIS 8th DAY OF February 2012.2013.



(Notary Public)

MANOHARAN MAHADEVA
Notary Public, State of New York
No. 01MA6098839
Qualified in Westchester County
Commission Expires August 11, 2013

MY COMMISSION EXPIRES: _____

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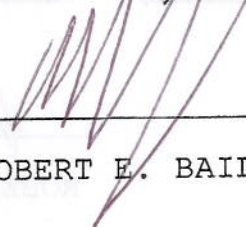
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DEPONENT: ROBERT E. BAILEY - CONFIDENTIAL


Pg.	Ln.	Now Reads	Should Read	Reason
123	17	<u>told</u>	<u>talled</u>	Transcription error
123	18	<u>that the</u>	<u>the</u>	Transcription error
177	7	<u>Deborah</u>	<u>Debra</u>	Misspelling
177	7	<u>Fidali</u>	<u>Fudali</u>	Misspelling
177	16	<u>Fidali</u>	<u>Fudali</u>	Misspelling
179	10	<u>Fidali</u>	<u>Fudali</u>	Misspelling
224	14	<u>Kenny</u>	<u>"K"</u>	Transcription error
253:16 and throughout		<u>Emphysis</u>	<u>Empha Sys</u>	Misspelling
307	23	<u>indemnify</u>	<u>indemnity</u>	Transcription error



 ROBERT E. BAILEY

SUBSCRIBED AND SWORN BEFORE ME

THIS 8th DAY OF February 2012. 2013



(Notary Public)

MANOHARAN MAHADEVA
 Notary Public, State of New York
 No. 01MA6096359
 Qualified in Westchester County
 Commission Expires August 11, 2013

MY COMMISSION EXPIRES: _____

MAYER • BROWN

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Main Fax +1 212 262 1910
www.mayerbrown.com

Matthew D. Ingber
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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:

December 3, 2012 Transcript Page/Line Designation
13:24-77:24
78:9-129:4
129:15-152:22
154:11-168:24
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328:9-335:7

December 18, 2012

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

Very truly yours,

Matthew Ingber (DC)

Matthew D. Ingber

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Matthew D. Ingber
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Direct Fax +1 212 849 5973
mingber@mayerbrown.com

April 26, 2013

VIA ELECTRONIC MAIL

Michael A. Rollin
Reilly Pozner LLP
1900 Sixteenth Street
Suite 1700
Denver, CO 80202

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

Dear Mike:

I am writing in response to your March 11, 2013 and April 17, 2013 letters regarding confidentiality designations of discovery materials. In addition to the materials we agreed to de-designate per our April 3, 2013 and April 22, 2013 letters, we will also remove confidentiality designations from the deposition transcript excerpts listed in Exhibit A (attached). The remaining excerpts should retain their "confidential" designations in accordance with section 1(d) of the Protective Order.

Please call my colleague, Chris Houpt, or me if you have any questions.

Very truly yours,


Matthew D. Ingber

cc: All counsel

Michael A. Rollin
April 26, 2013
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<u>Bailey</u>
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Michael A. Rollin
April 26, 2013
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