

# **Exhibit 4**

**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 Assigned to Kapnick, J.  
and Servicing Agreements and  
Indenture Trustee under various  
Indentures), et al.,  
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 \*  
VOLUME I  
VIDEOTAPED DEPOSITION  
OF  
LORETTA A. LUNDBERG  
New York, New York  
Tuesday, October 2, 2012

Reported by:  
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR  
JOB NO. 53620





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L. Lundberg - Confidential

- [REDACTED]
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- [REDACTED] [REDACTED] [REDACTED]

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1 L. Lundberg - Confidential

2 Q. Counsel meaning Mayer Brown?

3 A. Yes.

4 Q. Did Mayer Brown engage in a legal  
5 investigation regarding this matter?

6 MR. INGBER: You can answer the  
7 question yes or no, or I don't know or I  
8 don't recall, but I wouldn't get into any  
9 substance, you cannot get into any  
10 substance of communications between  
11 yourself and Mayer Brown.

12 A. Yes.

13 Q. What legal investigation did Mayer  
14 Brown engage in --

15 MR. INGBER: Privileged and I'll --

16 MR. REILLY: Wait. I'm sorry.

17 Q. -- prior to the trustee determining  
18 that it would try to get court approval of the  
19 settlement?

20 MR. INGBER: Privileged and I  
21 instruct the witness not to answer the  
22 question.

23 BY MR. REILLY:

24 Q. Are you going to follow that  
25 instruction?

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2 A. Absolutely.

3 Q. Did you, meaning the trustee, obtain  
4 any other legal advice concerning the claims  
5 that could have been brought by Bank of New York  
6 Mellon other than the two experts that you  
7 mentioned and Mayer Brown?

8 MR. INGBER: Objection to form.

9 A. No.

10 Q. The trustee had been represented by  
11 Pillsbury before Mayer Brown?

12 A. Yes.

13 Q. Did you, meaning the trustee, obtain  
14 any legal investigation by Pillsbury concerning  
15 the underlying claims that could have been  
16 brought against Bank of America?

17 THE WITNESS: Falls into the...

18 MR. INGBER: Yes or no or I don't  
19 know or I don't recall.

20 A. Yeah, I really don't recall. It's so  
21 long ago.

22 Q. Paragraph J on page 5 of Exhibit 4,  
23 the trustee is asking the court to find that  
24 there were arm's length negotiations, correct?

25 MR. INGBER: Objection. The document



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2 to what we filed were also made available on a  
3 public website.

4 Q. Okay. Other than what's been made  
5 available on the public website or submitted to  
6 the court, are there other expert reports or  
7 opinions that Bank of New York Mellon relied  
8 upon in reviewing specific litigation issues?

9 MR. INGBER: Can you read that back?

10 MR. REILLY: Let me try that one  
11 again. I don't want to hear that one.

12 BY MR. REILLY:

13 Q. Other than the expert reports that  
14 were submitted to the court and that were  
15 publicly -- made publicly available, were there  
16 other specific litigation issues that were  
17 considered by other experts retained by Bank of  
18 New York Mellon?

19 A. Not that I remember.

20 Q. Was it Bank of New York Mellon's  
21 position that it would not sue Bank of America  
22 on trusts where the institutional investors did  
23 not own 25 percent of the holdings?

24 MR. INGBER: Objection to form and  
25 also objection on the privilege grounds.

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2 To the extent your answer would  
3 reveal communications with counsel, they're  
4 privileged and I instruct you not to  
5 answer.

6 A. I can't answer.

7 Q. You do know the answer to that  
8 question; is that correct?

9 A. Yes.

10 Q. Bank of New York Mellon only  
11 considered litigation regarding the breaches of  
12 representations and warranties in the PSAs,  
13 correct?

14 MR. INGBER: Objection.

15 Mischaracterizes the witness' testimony and  
16 it's -- it may be privileged and so I'll  
17 instruct the witness not to answer the  
18 question if her answer would reveal  
19 attorney-client communications and/or work  
20 product.

21 A. Can you repeat the question?

22 MR. REILLY: Can you read that back,  
23 please?

24 (Question was read back as follows:

25 "QUESTION: Bank of New York Mellon

1 L. Lundberg - Confidential

2 only considered litigation regarding the  
3 breaches of representations and warranties  
4 in the PSAs, correct?")

5 A. It's the only document that I'm aware  
6 of that we were a party to.

7 Q. And therefore the only set of rights  
8 that were viewed to be pursued, correct?

9 MR. INGBER: Objection. Same  
10 privilege objection and it calls for a  
11 legal conclusion.

12 A. I can't answer that question.

13 Q. Because you're being instructed not  
14 to and you're going to follow that instruction?

15 A. Yes.

16 Q. Paragraph L, "Pursuant to C.P.L.R.  
17 7701, the court hereby approves the actions of  
18 the trustee in entering into a Settlement  
19 Agreement in all respects."

20 Do you see that? It's on page 5 of  
21 Exhibit 4?

22 A. Hold on.

23 Q. Right in the middle of the page there  
24 (indicating).

25 (Document review.)

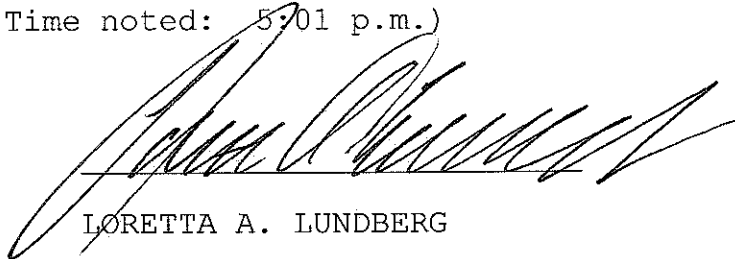
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THE VIDEOGRAPHER: The time is 5:01.

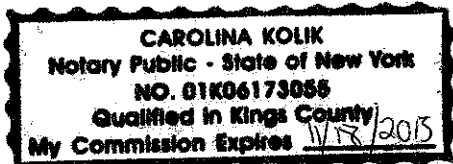
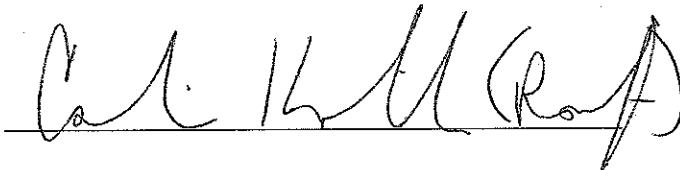
This is the end of the deposition,  
October 2nd, 2012.

(Time noted: 5:01 p.m.)



LORETTA A. LUNDBERG

Subscribed and sworn to before me  
this 3<sup>rd</sup> day of December 2012.



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C E R T I F I C A T E

STATE OF NEW YORK            )  
                                  ) ss.:  
COUNTY OF WESTCHESTER    )

I, ANNETTE ARLEQUIN, a Notary Public  
within and for the State of New York, do  
hereby certify:

That LORETTA A. LUNDBERG, 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 2nd day of October, 2012.

\_\_\_\_\_  
ANNETTE ARLEQUIN, CSR, RPR, CRR, CLR

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ERRATA SHEET FOR THE TRANSCRIPT OF:

3

CASE NAME: IN THE MATTER OF THE APPLICATION OF BNYM

4

DATE: OCTOBER 2, 2012

5

DEPONENT: LORETTA A. LUNDBERG - CONFIDENTIAL

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Pg.	Ln.	Now Reads	Should Read	Reason	
7	3	5	for Bank	for The Bank	party name
8	3	13	for Bank	for The Bank	party name
9	26	21	Yes.	correct	Clarifying a response.
10	43	18	you had	you read	incorrect transcription
11	60	19	was a link to	was only to	incorrect transcription
12	160	9	abd	and	misspelling
13	216	22-23	in and the	in the	incorrect transcription
14	225	21	couns el	counsel	typo
15	242	18	Gaines	Daines	incorrect transcription

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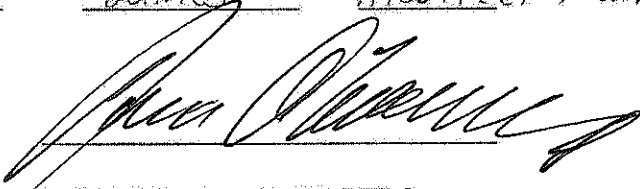
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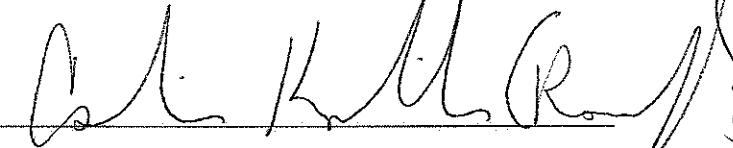
Pg.	Ln.	Now Reads	Should Read	Reason	
7	3	5	for Bank	for The Bank	party name
8	3	13	for Bank	for The Bank	party name
9	26	21	Yes.	correct	Clarifying a response.
10	43	18	you had	you read	incorrect transcription
11	60	19	was a link to	was only to	incorrect transcription
12	160	9	abd	and	misspelling
13	216	22-23	in and the	in the	incorrect transcription
14	225	21	couns el	counsel	typo
15	242	18	Gaines	Daines	incorrect transcription



LORETTA A. LUNDBERG

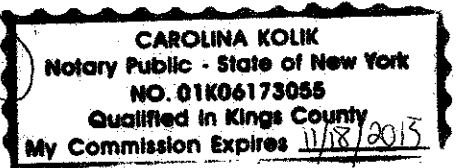
SUBSCRIBED AND SWORN BEFORE ME

THIS 3<sup>rd</sup> DAY OF December 2012.



(Notary Public)

MY COMMISSION EXPIRES: 11/18/2015



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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 Assigned to Kapnick, J.  
and Servicing Agreements and  
Indenture Trustee under various  
Indentures), et al.,  
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 \*  
VOLUME II  
VIDEOTAPED DEPOSITION  
OF  
LORETTA A. LUNDBERG  
New York, New York  
Wednesday, October 3, 2012

Reported by:  
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR  
JOB NO. 53621

1 L. Lundberg - Confidential

2 A. Again, that's my understanding.

3 Q. And the same with regard to servicing  
4 related losses; that if the settlement is  
5 approved by the court, that no certificate  
6 holder could bring a claim against Countrywide  
7 or Bank of America for losses arising out of  
8 servicing?

9 MR. INGBER: Objection. The  
10 Settlement Agreement speaks for itself.

11 A. And again, that's my general  
12 understanding, yes.

13 Q. In the process that the trustee  
14 engaged in, did the trustee evaluate the  
15 exposure of Bank of America for its own  
16 independent servicing conduct?

17 MR. INGBER: Objection. Vague.

18 A. Can you repeat the question?

19 MR. REILLY: Can you read that back?

20 (Question was read back as follows:

21 "QUESTION: In the process that the  
22 trustee engaged in, did the trustee  
23 evaluate the exposure of Bank of America  
24 for its own independent servicing  
25 conduct?")



1 L. Lundberg - Confidential

2 A. No.

3 Q. And why not?

4 MR. INGBER: You can answer -- well,  
5 I'll instruct Ms. Lundberg not to disclose  
6 any communications with counsel on the  
7 grounds that it's covered by the  
8 attorney-client and/or work product  
9 privileges.

10 A. I can't answer.

11 Q. So separate from discussions you had  
12 with counsel about the decision to not evaluate  
13 the exposure of Bank of America for its own  
14 independent servicing conduct, you don't have  
15 any personal knowledge about that issue; is that  
16 correct?

17 MR. INGBER: Object to form.

18 A. Yes, that's correct.

19 Q. You would agree that any potential  
20 liability that Bank of America had for its own  
21 servicing conduct is separate from the successor  
22 liability issues that were evaluated by the  
23 trustee, correct?

24 MR. INGBER: Objection. Calls for a  
25 legal conclusion.

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█ [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED]

█ [REDACTED]

14 Q. Are you aware of any provision in the  
15 Pooling and Servicing Agreements that are  
16 applicable in these 530 trusts that would permit  
17 the trustee to stop the event of default clock  
18 short of a cure by the master servicer?

19 MR. INGBER: That's been asked and  
20 answered several times so I'll object on  
21 that ground.

22 A. I'm not aware that the Pooling and  
23 Servicing Agreement specifically addresses  
24 forbearance agreements.

25 Q. How did Bank of New York Mellon

1 L. Lundberg - Confidential

2 determine that it was not going to engage in a  
3 review of the loan files in the settlement  
4 process?

5 MR. INGBER: Objection.

6 And I'll instruct Ms. Lundberg not to  
7 answer the question on the ground that any  
8 response will necessarily reveal privileged  
9 attorney-client communications and/or work  
10 product to the extent such conversations  
11 happened.

12 BY MR. REILLY:

13 Q. Are you going to follow the advice of  
14 counsel?

15 A. Yes, I will.

16 Q. Is it fair to say, then, that the  
17 Bank of New York Mellon as trustee in these 530  
18 trusts did discuss with its counsel the reasons  
19 why Bank of New York Mellon decided not to  
20 review loan files in the settlement process?

21 MR. INGBER: Objection to form.

22 You can answer yes, no, I don't know  
23 or I don't recall.

24 And just for the record, I'll make it  
25 clear that I'm giving that instruction

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2 We're back on the record.

3 MS. BRASWELL: We have no further  
4 questions.

5 MR. INGBER: Okay. Thank you.

6 THE VIDEOGRAPHER: The time is 5:18.

7 This is the end of the deposition

8 October 3rd, 2012.

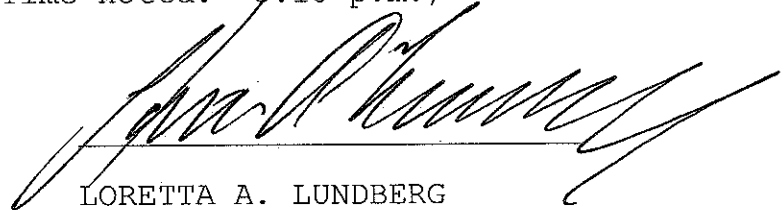
9 (Time noted: 5:18 p.m.)

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LORETTA A. LUNDBERG

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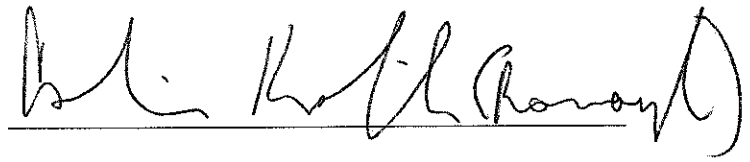
Subscribed and sworn to before me

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this <sup>3<sup>rd</sup></sup> day of December 2012.

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**CAROLINA KOLIK**  
**Notary Public - State of New York**  
**NO. 01K06173055**  
**Qualified in Kings County**  
**My Commission Expires 11/18/2015**

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C E R T I F I C A T E

STATE OF NEW YORK            )  
                                  ) ss.:  
COUNTY OF WESTCHESTER    )

I, ANNETTE ARLEQUIN, a Notary Public  
within and for the State of New York, do  
hereby certify:

That LORETTA A. LUNDBERG, 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 October, 2012.

\_\_\_\_\_  
ANNETTE ARLEQUIN, CSR, RPR, CRR, CLR

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ERRATA SHEET FOR THE TRANSCRIPT OF:

3

CASE NAME: IN THE MATTER OF THE BNYM

4

DATE: OCTOBER 3, 2012

5

DEPONENT: LORETTA A. LUNDBERG - CONFIDENTIAL

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7	433 25	Chyrsanthis	Chrysanthis	misspelling
8	446 12	Deborah	Debra	misspelling
9	482 12	didn't not	did not	misspoke
10	484 18	can	can't	incorrect transcription
11	---	---	---	---
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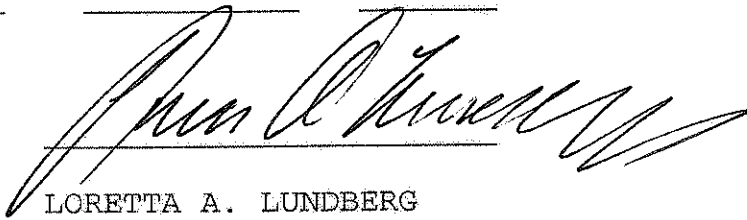
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 LORETTA A. LUNDBERG

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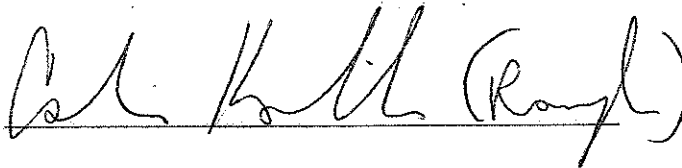
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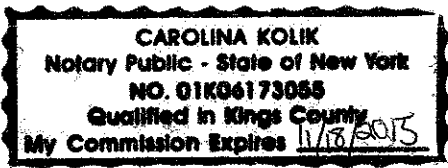
THIS 3<sup>rd</sup> DAY OF December 2012.

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 (Notary Public)

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MY COMMISSION EXPIRES: 11/18/2015

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ERRATA SHEET FOR THE TRANSCRIPT OF:

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CASE NAME: IN THE MATTER OF THE BNYM

4

DATE: OCTOBER 3, 2012

5

DEPONENT: LORETTA A. LUNDBERG - CONFIDENTIAL

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Pg.	Ln.	Now Reads	Should Read	Reason	
7	290	13	Deborah	Debra	misspelling
8	338	8	NO	Correct	clarifying a double negative
9	338	10	Emphysis	Emphasys Technologies, Inc.	misspelling
10	343	24	he also	else	incorrect transcription
11	344	5	NO	Correct	clarifying a double negative.
12	382	8	NO	Correct	clarifying a double negative
13	400	18	vis--vis	vis-a-vis	misspelling
14	401	2	vis--vis	vis-a-vis	misspelling
15	406	4	vis--vis	vis-a-vis	misspelling

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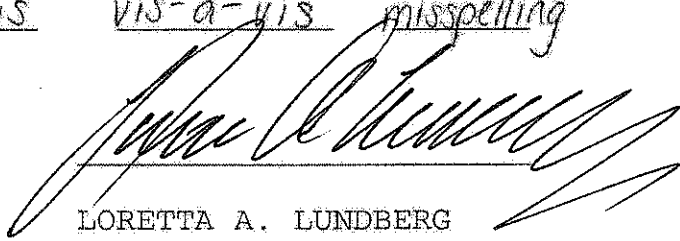
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LORETTA A. LUNDBERG

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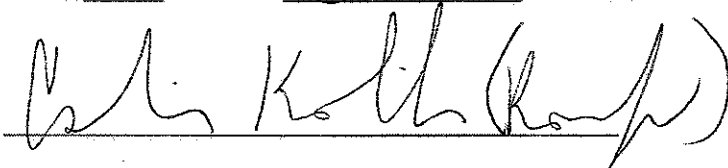
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THIS 3<sup>rd</sup> DAY OF December 2012.

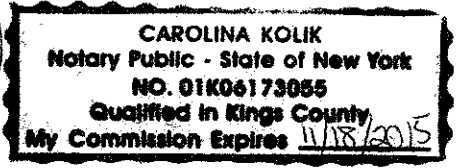
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(Notary Public)



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MY COMMISSION EXPIRES: 11/18/2015

Mayer Brown LLP  
 1675 Broadway  
 New York, New York 10019-5820

Main Tel +1 212 506 2500  
 Main Fax +1 212 262 1910  
 www.mayerbrown.com

**Matthew D. Ingber**  
 Direct Tel +1 212 506 2373  
 Direct Fax +1 212 849 5973  
 mingber@mayerbrown.com

October 16, 2012

**VIA ELECTRONIC MAIL**

**TO: COUNSEL OF RECORD FOR INTERVENOR-  
 RESPONDENTS AND OBJECTORS**

Re: *In re the Application of The Bank of New York  
 Mellon* (Index No. 6517876-2011)

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 Loretta Lundberg as “Confidential,” as defined in the Protective Order:

<b>October 2, 2012 Transcript Page/Line Designation</b>	<b>October 3, 2012 Transcript Page/Line Designation</b>
10:22-14:3	274:11-276:12
18:13-24:7	282:16-316:3
33:3-36:14	321:7-328:22
38:14-46:5	334:4-335:24
48:19-50:15	389:12-411:24
56:20-64:24	441:24-446:12
65:18-78:4	449:6-452:17
96:10-99:21	459:2-476:8
107:13-108:8	486:19-513:11
109:14-110:6	



October 16, 2012

Page 2

<b>October 2, 2012 Transcript Page/Line Designation</b>
120:2-125:5
134:10-135:22
147:21-160:3
195:4-223:4

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

Very truly yours,

*Matthew Ingber (DC)*

Matthew D. Ingber

Mayer Brown LLP  
1675 Broadway  
New York, New York 10019-5820

Main Tel +1 212 506 2500  
Main Fax +1 212 262 1910  
www.mayerbrown.com

**Matthew D. Ingber**  
Direct Tel +1 212 506 2373  
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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