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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 on behalf of the parties that submitted the proposed order to show cause why the Court should not continue the trial following the September trial dates to allow discovery concerning newly disclosed evidence (Doc. No. 924) and in response to the letters submitted by the Bank of New York Mellon and the investor group represented by Gibbs & Bruns (Doc. Nos. 933 & 934). We ask that the Court decline their request that the Court not sign the proposed order to show cause.

BNYM's claim that we did not forcefully protect our rights with respect to their use and subsequent waiver of the privilege is belied by our repeated objections to this tactic. The tactic is detailed in our memorandum of law in support of the order to show cause (Doc. No. 926). Further, during trial in July, the Court advised us with respect to this issue to "put it all together so I don't have to deal with it piecemeal." Trial Tr. at 2375:11-16. After extensive review of deposition and trial transcripts, we have now done so. The issue is addressed in a fulsome manner in the memorandum of law in support of the order to show cause.

The subject motion raises important issues regarding BNYM's discovery and trial tactics which should be considered and ruled on with a complete record. In light of the importance of the issues, we do not oppose Petitioners' request for two weeks to submit a responsive brief. We further request that oral argument be allowed as soon as practicable after briefing is complete.

Respectfully submitted,

Daniel M. Reilly

cc: Counsel of record (via ECF)

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