

**Exhibit 94**  
**to**  
**Affidavit of Daniel M. Reilly**  
**in Support of Joint Memorandum of**  
**Law in Opposition to Proposed Settlement**

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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.

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\* C O N F I D E N T I A L \*

VIDEOTAPED DEPOSITION  
OF  
Faten Sabry Ph. D.  
New York, New York  
Tuesday, December 04, 2012

Reported by:  
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR  
JOB NO. 55545

1 F. Sabry - Confidential  
2 is the marginal contribution of changes in FICOs  
3 or doc type to default behavior or for different  
4 deals, it can be done, but we were not asked to  
5 do that.

6 Q. And I apologize for any confusion.

7 I wanted to know with respect to --  
8 that was very helpful.

9 With respect to the work product that  
10 NERA has been asked to produce in this case,  
11 will any of that information be reflected, and  
12 specifically I would like to know whether or not  
13 we will be able to attribute certain dollar  
14 amounts to particular types of  
15 misrepresentations.

16 MR. HOUPPT: Objection to form.

17 A. We will -- what are the  
18 misrepresentation -- are the misrepresentations  
19 reflected in some of the variables we are  
20 controlling for?

21 If that's the case, then absolutely,  
22 the NERA's report should list in detail every  
23 single variable and the marginal contribution of  
24 that variable to losses.

25 Q. What variables will you be listing

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2 out in your work product in this case like that?

3 A. We have not completed our analysis as  
4 of yet. I wanted to make that clear.

5 Q. Understood.

6 Sort of tell me where you are and  
7 where you think you're going with that.

8 A. We would -- I would speak more from  
9 the, based on the work product we've already  
10 produced which is the methodology. As we said  
11 in this, we would consider a variety of  
12 variables, not just the variables that were in  
13 the loan tapes, but we would consider what we  
14 call time varying variables, like the change in  
15 the mortgage rate, for example, that the  
16 borrower pays over time. If it's an adjustable  
17 rate mortgage. The changes in unemployment by  
18 county or metropolitan statistical areas. We  
19 would take into account changes in housing  
20 prices and how that affects the -- to the extent  
21 that it affects the equity or the leverage of  
22 the borrower, as this is a variable that  
23 actually it's one of the key variables that  
24 various market participants have identified in  
25 their own estimation as critical in determining

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2 default behavior.

3 Q. Are there other variables that you  
4 can think of that you think will or may be part  
5 of your final work product?

6 MR. HOUPT: Objection to form.

7 A. Well, we have not -- we don't have a  
8 final work product yet, so I would say we would  
9 consider any variables that we think are -- we  
10 could -- that we think are -- would improve the  
11 estimation of our models.

12 So we would definitely try to do  
13 this, separate out the loans by vintage and  
14 product type because the behavior and -- the  
15 default behavior and the severity are known to  
16 have differed quite a bit among those variables.

17 And we may also -- if we believe that  
18 certain variables have measurement errors, for  
19 example, we would try to adjust for that. There  
20 are certain statistical tools one can apply to  
21 address these issues.

22 But at the end of the day, you  
23 will -- NERA's work product, which would be the  
24 result of a statistical model, would be similar  
25 to what we would do in other matters. We would

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2 report all the results, the estimates, the  
3 margin of errors, which data sets we have used,  
4 what sources we have relied on and we usually  
5 produce a fair amount of backup material for how  
6 we've constructed certain variables and all  
7 that.

8 Q. What prevents you from doing that  
9 right now?

10 MR. HOUPT: Object to form.

11 A. We have been asked by counsel to stop  
12 working over a year-and-a-half ago.

13 Q. No. I mean from the perspective of  
14 what it is that you need to perform that final  
15 task, this final work product that you're  
16 talking about, does that information -- strike  
17 that.

18 Does the information that you need to  
19 perform that analysis exist today?

20 A. For the most part. We would need to  
21 update some of the variables we've compiled and  
22 analyzed, yes.

23 Q. What variables would you have to  
24 update?

25 A. Well, for example, we would need to

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2 Could we just clarify which work  
3 you're talking about?

4 BY MR. ROLLIN:

5 Q. I'm talking about the final work  
6 product that we talked about earlier that would  
7 result in the actual trust-by-trust allocation.

8 A. No, I don't recall that was the  
9 sequence of events.

10 Q. Well, do you recall anything about  
11 the sequencing of your final work product as it  
12 related to the court filing?

13 A. I recall that the work, that there  
14 was a tight time schedule, that we need to start  
15 working right away and by work I mean the actual  
16 analysis and compilation of the data, and  
17 getting ready to do the modeling and all that,  
18 with everything, that there was a very tight  
19 time schedule.

20 Q. And when were you -- when did you  
21 understand that the -- strike all that. That's  
22 a terrible question.

23 Did somebody at any point tell you to  
24 stop working on that?

25 A. Yes.

1 F. Sabry - Confidential

2 Q. And who was that?

3 A. Jason Kravitt.

4 Q. And when was that?

5 A. It must be either July or -- probably  
6 August 2011.

7 Q. Did he tell you why?

8 A. I don't recall the exact reasoning  
9 other than the schedule has changed, things are  
10 not going as fast as we'd hoped at this point  
11 and -- but that's -- I don't recall that it was  
12 a call specifically to ask us to stop working at  
13 this point.

14 Q. And did he express to you whether or  
15 not it was the schedule that wasn't moving as  
16 fast as they would like related to the court  
17 proceedings?

18 A. He didn't say a whole lot. He just  
19 said please stop working for now and the  
20 schedule has changed. That's not uncommon in  
21 cases. Things happen, yeah.

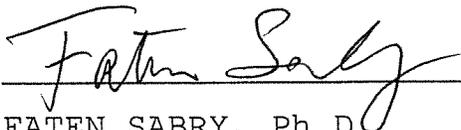
22 MR. ROLLIN: Okay. Let's take lunch  
23 now.

24 THE VIDEOGRAPHER: The time is 12:41  
25 p.m. We're off the record.

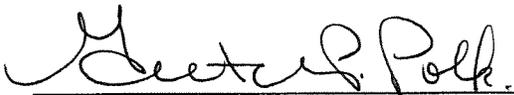
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THE VIDEOGRAPHER: This concludes  
today's deposition. The time is 4:33 p.m.  
We're off the record.

(Time noted: 4:33 p.m.)

  
FATEN SABRY, Ph.D.

Subscribed and sworn to before me  
this 4<sup>th</sup> day of February 2012<sup>3</sup>.



GRETCHEN P. POLK  
Notary Public, State of New York  
No. 5003066  
Qualified in Westchester County  
Commission Expires October 13, 2014

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ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME:

DATE:

DEPONENT:

Pg.	Ln.	Now Reads	Should Read	Reason
3	5	for Bank	for The Bank	party name
158	9	efficiencies	deficiencies	typo
162	18	the on	to	typo
171	6	Fannie Freddie	Fannie Mae	typo
218	18	Langbein	Langbein	typo
218	20	Langbein	Langbein	typo
13	4	hospital	hostile	incorrect transcription
14	2	target	acquirer	misstatement
—	—	—	—	—

Father Long

SUBSCRIBED AND SWORN BEFORE ME

THIS 4<sup>th</sup> DAY OF February 2012<sup>3</sup>.

Gretchen P. Polk

(Notary Public)

GRETCHEN P. POLK  
Notary Public, State of New York  
No. 5003088  
Qualified in Westchester County  
Commission Expires October 13, 2014

MY COMMISSION EXPIRES: 10/13/2014

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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 Faten Sabry as "Confidential," as it is defined in the Protective Order:

<b>December 4, 2012 Transcript Page/Line Designation</b>
16:20-29:15
36:3-54:19
55:2-97:17
98:5-133:21
135:10-167:6
172:6-198:2
198:11-241:12
241:22-255:18

December 18, 2012

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

Very truly yours,

A handwritten signature in black ink that reads "Matthew Ingber (DC)". The signature is written in a cursive style.

Matthew D. Ingber

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April 26, 2013

**VIA ELECTRONIC MAIL**

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

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

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  
Page 2

# EXHIBIT A

Michael A. Rollin  
April 26, 2013  
Page 9

226:19-229:5
241:23-243:9
245:2-246:16
262:15-266:10
269:3-273:4
279:24-287:13

<b><u>Baker</u></b>
8:3-8:17
8:23-8:25
9:1-10:8
11:16-11:22
12:20-15:8
15:9-16:9
16:10-17:13
18:14-19:16
35:1-36:22
37:3-38:21
43:5-43:20
69:10-73:3
74:3-10
74:16-75:18
76:2-76:15
83:7-84:16
97:1-98:20

<b><u>Sabry</u></b>
Entire Transcript

<b><u>Bingham</u></b>
Entire Transcript