



July 17, 2012

***By Electronic Filing***

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:

On behalf of The Bank of New York Mellon, the Institutional Investors, and the Steering Committee, we respectfully submit this joint letter in advance of the August 2 conference to (i) identify for the Court the issues that the parties wish to raise with the Court on August 2, and (ii) seek approval of a briefing schedule to which the parties have agreed.

**I. *Issue That Petitioners Wish to Raise***

*Stipulated pre-trial schedule.* On May 30, 2012, the parties filed with the Court a proposed discovery schedule that had been agreed to by the Steering Committee for the Intervenor-Respondents and Objectors (the “Steering Committee”), the Trustee, and the Institutional Investors. The Court has not yet entered that schedule. The Steering Committee has since withdrawn its consent and does not agree to the entry of any schedule at all. In addition, the Trustee has asked the Steering Committee to agree to a deadline for raising known (or knowable) document-related disputes so that depositions can commence without uncertainty over the scope of discovery. The Steering Committee has not agreed that any such deadline should be imposed.

The Trustee and the Institutional Investors intend to ask the Court on August 2 to enter the previously agreed schedule – or any schedule that the Court deems appropriate – and to include a date by which all parties must present any document-related disputes to the Court. This will ensure that the parties make efficient, meaningful discovery progress – a goal that all parties share.

**II. *Issues that the Intervenor-Respondents Wish to Raise***

1. *BNYM’s Status as Fiduciary and the Fiduciary Exception.* As discussed during the hearing held on June 14, 2012, the Steering Committee will brief and argue BNYM’s

status as a fiduciary, including BNYM's failure to produce documents in response to Requests for Production 23, 24, and 25, and the fiduciary exception to the attorney-client privilege.

2. *Inside Institutional Investors' Settlement Communications with BNYM and Bank of America.* The Steering Committee will also raise its motion to compel the production of the Institutional Investors' settlement communications with BNYM and with Bank of America. This issue was previously deferred by the Court until after BNYM produced its settlement communications, which the Respondents have now received.
3. *Response to Petitioners' Request for Schedule and Document-Related Disputes Deadline.* In the last two hearings, the Court rejected entering a discovery schedule, concluding that to do so would be to put "the cart before the horse." The Steering Committee agrees. There are many issues that are more pressing for the Court to consider than the entry of a schedule that would likely need to be modified multiple times. Imposing artificial deadlines would not serve the interests of the parties or the Court in efficiently completing discovery.

### **III. Briefing schedule and page limits**

*Steering Committee's position:* Given the importance of the above disputes, the Court's request for additional briefing, and the existence of new information relevant to those disputes, the Steering Committee intends to file a brief on issue II.1 and issue II.2. Each brief will be 20 pages or less. The Steering Committee's briefs will cover these issues completely and avoid the need for the Court to parse through the multiple layers of briefing that has taken place to date. If the settlement proponents wish to stand on their prior briefing, the Steering Committee has no objection.

*Petitioners' position:* At the June 14, 2012 conference, the Court scheduled a July 24, 2012 conference to hear additional argument on the fiduciary exception – if the objectors decided to pursue that issue. The Court permitted the objectors, in preparation for the then-scheduled July 24 conference, either to refer the Court to portions of previous briefs relevant to the fiduciary exception or, if necessary, to file "something clean" with additional arguments, and in any event to "decide that quickly." Four weeks have passed, and the objectors have not filed any papers. They now propose to file on July 18, 2012 up to 40 pages of briefs on issues (including issues unrelated to the fiduciary exception) that together were already briefed in less than 15 pages as part of a larger motion (Docket Nos. 213, 263, 278), and they have rejected the Trustee's proposal to file a single 15-page brief.

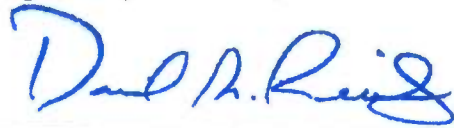
The Petitioners will attempt to respond to the objectors' briefs within nine days, by July 27, so that the Court has sufficient time to consider the papers in advance of the August 2 conference. The Petitioners have only agreed to this schedule with the understanding that the Steering Committee's papers will not be materially different from those it filed in April.

Unless otherwise requested by the Court, the Petitioners do not intend to file a brief in support of their request that the Court enter a schedule. The basis for our request – to ensure that all parties move expeditiously through discovery, guided by specific deadlines – can be addressed orally at the August 2 conference.

**IV. *Discovery master***

Finally, at the June 14, 2012 conference, the Court suggested that the parties consider engaging a discovery master for resolution of discovery disputes. The parties have agreed to a mutual exchange of names by July 20, 2012 and will confer about the individuals before the hearing so they can report their progress to the Court on August 2, 2012. We will endeavor to agree on a discovery master in the event that a discovery issue appropriate for such a discovery master should arise.

Respectfully submitted,



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Daniel Reilly  
On behalf of the Steering Committee

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Matthew D. Ingber  
Counsel for The Bank of New York Mellon

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Kathy Patrick  
Counsel for the Institutional Investors

cc: All counsel

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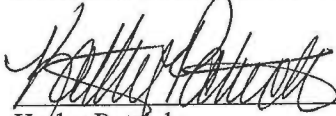
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Kathy Patfick  
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