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Via Hand Delivery
The Honorable Eileen Bransten
Supreme Court of the State of New York
60 Centre Street
New York, New York 10007

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: ***MBIA Ins. Corp. v. Countrywide Home Loans, Inc. et al.***
(Index No. 602825/2008)

In re the application of The Bank of New York Mellon
(Index No. 651786/2011)

Dear Justice Bransten and Justice Kapnick:

The Steering Committee submits this letter to express disappointment with counsel's characterization that our August 15th letter is allegedly improper. The original August 15th letter simply supported MBIA's effort to make certain Bank of America information regarding its residential mortgage loan liability publicly available.[1] In their August 16th letter (the "Patrick letter"), certain Inside Institutional Investors, joined by the Bank of New York Mellon (the "Settlement Proponents"), mischaracterize the Steering Committee's support for MBIA's effort as an improper "attack" on Justice Kapnick's jurisdiction and an improper effort to seek "discovery" in the Article 77 case, which they incorrectly suggest Justice Kapnick has already denied. None of these claims are true.

Fundamentally, the Patrick letter claims the Steering Committee's support for MBIA is improper because it supposedly seeks "discovery" from the *MBIA* Court. However, the Settlement Proponents wholly ignore that the Steering Committee is not and could not be seeking "discovery" in the *MBIA* case. We are not parties in the *MBIA* action and the Bank of America information we seek to have access to would not be produced via any discovery request. Rather,

[1] MBIA seeks to lift the confidentiality restrictions on deposition testimony and exhibits that it intends to use in support of its summary judgment briefing. The Steering Committee believes that public disclosure of this Bank of America information may be relevant to loan file integrity, putback liability, successor liability, servicing deficiencies and resulting losses and therefore will help to evaluate the fairness of the proposed settlement in the Article 77 proceeding.

we, on behalf of all interested persons, including the countless RMBS investors who have been harmed by Bank of America's actions, support lifting the confidentiality designations so that the information would be made available for all to consider. This information is of significant public importance. It is deeply troubling that Ms. Patrick, on behalf of a select group of investors, and the Bank of New York Mellon, as trustee for all investors, would be in any way opposed to making it publicly available. Their opposition in this regard raises a fundamental question—what possibly is there to hide? One would think that the Inside Institutional Investors (who supposedly negotiated the $8.5 billion settlement they support in the Article 77 case) would be acutely interested in having access to information that might shed light on whether the $8.5 billion settlement is either fair and reasonable or not. Instead, they accuse their fellow investors of procedural "improprieties" in an effort to deter honest efforts for transparency.

The Patrick letter fails to acknowledge that it is common for non-parties to request that key court documents be made public where, as here, there is an overarching public interest to do so. *Danco Laboratories, Ltd. v. Chem. Works of Gedeon Richter, Ltd.*, 274 A.D.2d 1, 7, 711 N.Y.S.2d 419, 424 (1st Dep't 2000) ("The public interest in openness is particularly important on matters of public concern, even if the issues arise in the context of a private dispute, about which secrecy, then, may well prove the greater detriment to the public"). Documents filed in a court proceeding may be shielded from public view only in "compelling circumstances," such as where trade secrets are involved. *Mosallem v. Berenoson*, 905 N.Y.S.2d 575, 579-80 (1st Dep't 2010). The Patrick letter cites no authority to justify why the information at issue here should be kept confidential, and makes no attempt to explain what if any compelling circumstances exist.

The Settlement Proponents' mischaracterization of the Steering Committee's support for MBIA as an "attack" on Justice Kapnick's jurisdiction is also incorrect. If Justice Bransten grants MBIA's request to lift the confidentiality restrictions over the documents pending before her—which is, unquestionably, a matter in her Honor's jurisdiction—the Steering Committee would have the opportunity to review the materials and decide which ones may be relevant in evaluating the proposed settlement agreement. At that point, the Settlement Proponents would likewise have the opportunity to review the materials and submit any materials they believe pertinent.[2] Contrary to the false assertions in the Patrick letter, the Steering Committee absolutely agrees (and has never suggested to the contrary) that the relevance and admissibility of such information will be matters for Justice Kapnick to decide in the Article 77 proceeding.[3]

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[2] Of course, MBIA's request that certain materials become public places no burden on the Settlement Proponents. The Inside Institutional Investors and Bank of New York Mellon are free to not look at the information.

[3] Also contrary to the Patrick letter (which suggests that discovery in the Article 77 proceeding is closed), discovery is ongoing. Any information that could easily be obtained from public sources would obviously streamline discovery and would serve all parties, the Court, and judicial economy. While the Steering Committee is trying to efficiently develop the factual record, the Settlement Proponents continue to restrict these efforts. The consequence is likely to cause delay and may limit the amount and quality of information available to the Article 77 Court.

The Patrick letter also suggests that Justice Kapnick has somehow already determined that the information that MBIA seeks to make public is irrelevant to the Article 77 proceeding. Justice Kapnick's comments distinguishing the procedural posture of the *MBIA* case were not evidentiary or discovery rulings in the Article 77 proceeding, and do not support the Settlement Proponents' prediction that the Court would refuse to consider documents made available from the *MBIA* matter in its evaluation of the proposed settlement. The Settlement Proponents completely ignore that the information MBIA seeks to make publicly available has never been before Justice Kapnick in any way, shape, or form. The papers filed by Bank of America in opposition to MBIA's application indicate that the materials at issue cover a wide range of RMBS trusts beyond those at issue in the *MBIA* case. And a recently published news article indicates that the evidence at issue includes testimony from Bank of America's current and former CEOs, as well as the former CEO of Countrywide. David Bario, *Discovery Spat Jumps Rails in $8.5 Billion BofA Deal, MBIA Case*, AmLaw Litigation Daily, Aug. 20, 2012. Thus, it appears that Ms. Patrick's statements regarding relevance are incorrect. At this point, neither the Steering Committee nor Justice Kapnick know what information MBIA will include in support of its summary judgment briefing.

The only question now before Justice Bransten is whether the Bank of America documents should be made public. To suggest that it is "improper" for the Steering Committee to weigh in on this public policy issue raises serious concerns about what might be in the information the Settlement Proponents seek to keep secret. This is especially true since the Patrick letter adds nothing to the question before Justice Bransten and instead makes precipitous arguments to Justice Kapnick about whether Bank of America information, the contents of which are not yet even known, is relevant to the Article 77 proceeding.

For these reasons as well as those stated in the Steering Committee's August 15th letter, the Steering Committee asks that the Patrick letter be treated for what it is—a calculated and preemptive effort to distort the Steering Committee's good faith support for MBIA's effort to remove confidential designations from Bank of America testimony and exhibits.

Respectfully submitted,

Daniel M. Reilly
On Behalf of the Members of the Steering Committee