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March 26, 2013

VIA E-FILING

The Honorable Barbara R. Kapnick
Supreme Court of the State of New York
60 Centre Street
New York, NY 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 Steering Committee to respond to The Bank of New York Mellon's March 26, 2013 correspondence regarding the letter submitted by the Steering Committee on March 25, 2013 with regard to motion sequence 31 (the fiduciary duty exception and at-issue waiver motion to compel). BNYM argues that the Court should ignore the Steering Committee's March 25, 2013 letter pursuant to Commercial Division Rule 18. We are puzzled by BNYM's invocation of the rule. To date in this proceeding, the settlement proponents have submitted eight post-submission letters to the Court.¹ BNYM itself authored four of these letters. Indeed, the Court has entertained substantive letters on a regular basis following briefings and prior to hearings, though the Court has indicated its frustration with letters submitted on the eve of hearings. Mindful of this frustration, the Steering Committee submitted its letter eighteen days before the April 12, 2013 hearing. The purpose of the letter is to summarize the arguments in advance of the Court's April 12, 2013 hearing, particularly since the issues raised by motion sequence 31 have spanned multiple briefs and hearings over the past year. In addition, the letter

¹ See, e.g., Doc. Nos. 315, 321, 325, 329, 331, 370, 371, and 516.

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addresses discovery obtained since the February 7, 2013 hearing when the Court last heard argument on motion sequence 31, which could not be addressed in prior briefing.

To the extent the Court deems it necessary for the Steering Committee to obtain permission to submit the March 25, 2013 letter, we hereby request leave to file the letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Derek W. Loeser", with a long horizontal flourish extending to the right.

Derek W. Loeser