

**Exhibit 33**  
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

-----x  
In the Matter of the Application of

THE BANK OF NEW YORK MELLON (as                   Index No.  
Trustee under various Pooling and               651786/2011  
Servicing Agreements and Indenture  
Trustee under various Indentures),  
et al.

Petitioners,

for an order, pursuant to C.P.L.R  
§ 7701, seeking judicial instructions  
and approval of a proposed  
settlement.

-----x

CONFIDENTIAL VIDEOTAPED  
DEPOSITION OF TERRY CHAVEZ

New York, New York

Friday, November 30, 2012

Reported by:  
FRANCIS X. FREDERICK, CSR, RPR, RMR  
JOB NO. 55405



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CONFIDENTIAL - T. CHAVEZ

■ [REDACTED]

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CONFIDENTIAL - T. CHAVEZ

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1 CONFIDENTIAL - T. CHAVEZ

2 Q. Sections 2.01 and 2.02 of the  
3 governing agreements, do you know what that  
4 refers to?

5 A. Yes.

6 Q. What does it refer to?

7 A. Our duties and obligations related  
8 to the files and documents.

9 Q. Do those sections also contain the  
10 duties and responsibilities of the master  
11 servicer with regard to those documents?

12 MR. INGBER: Object to form.

13 A. I don't recall.

14 Q. But those are the provisions of  
15 the PSAs that you were most familiar with,  
16 correct?

17 A. Yes.

18 Q. And those are the provisions of  
19 the PSAs which contain the trustee's duties  
20 with respect to these documents, correct?

21 MR. INGBER: Object to form.

22 A. I don't know if it contains all of  
23 the duties but it contains duties.

24 Q. At least some of them?

25 A. Yes.

1 CONFIDENTIAL - T. CHAVEZ

2 Q. There may be others?

3 A. Yes.

4 Q. Those are the ones that you and  
5 your group deal with, though, correct?

6 A. Correct.

7 Q. I'm handing you what's been marked  
8 as Deposition Exhibit 13.

9 Do you recognize what this exhibit  
10 is?

11 A. Yes.

12 Q. What is it?

13 A. It's an agreement.

14 Q. What type of agreement?

15 A. A pooling and servicing agreement.

16 Q. Which trust is this agreement for?

17 A. It's for 2003-35CB.

18 Q. And the shelf is CWALT, correct?

19 A. Yes.

20 Q. Is this a shelf that your group  
21 has responsibility for?

22 A. Yes.

23 Q. And this is one of the trusts that  
24 is at issue in the settlement, correct?

25 A. I'm not sure.





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CONFIDENTIAL - T. CHAVEZ

[REDACTED]

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[REDACTED]

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[REDACTED]



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CONFIDENTIAL - T. CHAVEZ

[REDACTED]

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Q. Were the final certifications

9

missing for any of those 530 trusts?

10

MR. INGBER: Let me interject

11

here. If your answer requires that you

12

disclose communications that you had with

13

counsel about this issue, I'm going to

14

instruct you not to answer the question.

15

And I'm also going to state on the record

16

that Ms. Chavez is here as a fact

17

witness. Many of her communications may

18

well have been with counsel. We're

19

trying to navigate the privilege issues

20

during this deposition, as you know.

21

None of what she says should be

22

interpreted as a waiver of the privilege.

23

To the extent privileged information is

24

disclosed it is -- will have been

25

disclosed unintentionally, inadvertently,

1

CONFIDENTIAL - T. CHAVEZ

[REDACTED]

[REDACTED]

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[REDACTED]

1 CONFIDENTIAL - T. CHAVEZ

2 MS. KASWAN: And I have no  
3 questions.

4 THE WITNESS: Thank you.

5 THE VIDEOGRAPHER: The time is  
6 5:10 p.m. we're going off the record.

7 (Time Noted: 5:11 p.m.)

8

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TERRY CHAVEZ

21

22 Subscribed and sworn to before me

23 this 30 day of January, 2012.

24

25



1

2 NAME OF CASE: IN RE BANK OF NEW YORK MELLON

3 DATE OF DEPOSITION: NOVEMBER 30, 2012

4 NAME OF WITNESS: TERRY CHAVEZ

5 Reason codes:

- 6 1. To clarify the record.  
 7 2. To conform to the facts.  
 8 3. To correct transcription errors.

9 Page 3 Line 5 Reason Party name  
 10 From for Bank to for The Bank

11 Page 10 Line 15 Reason typo  
 12 From Vaults to vaults

13 Page 10 Line 17 Reason incorrect transcription  
 14 From With to Where

15 Page 15 Line 9 Reason incorrect transcription  
 16 From Cover to covered

17 Page 18 Line 4 Reason incorrectly stated  
 18 From 2010 to 2011

19 Page 19 Line 3 Reason incorrectly stated  
 20 From 2010 to 2011

21 Page 22 Line 14 Reason incorrect transcription  
 22 From relayed to relates

23 Page 37 Line 17 Reason incorrectly stated  
 24 From that we -- the to that -- the

25 Page 101 Line 14 Reason misspelling  
 From Pauly to Pauley

Page 111 Line 4 Reason incorrect transcription  
 From or the to or that the

Page 188 Line 14 Reason incorrect transcription  
 From responsibility to responsibilities

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 TERRY CHAVEZ

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NAME OF CASE: IN RE BANK OF NEW YORK MELLON

DATE OF DEPOSITION: NOVEMBER 30, 2012

NAME OF WITNESS: TERRY CHAVEZ

Reason codes:

- 1. To clarify the record.
- 2. To conform to the facts.
- 3. To correct transcription errors.

Page 193 Line 13 Reason incorrect transcription  
From Bailey to bailee

Page 211 Line 15 Reason typo  
From smych to sync

Page 211 Line 22 Reason typo  
From smych to sync

Page 175 Line 22-25 Reason Clarification  
 From delete 175:22-25. to Mo. BNUM did not always receive hard copy paper assignments for MERS registered loans. If the PSA language required that we did not have to have the hard copy, then we would not have it.

Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_

Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_

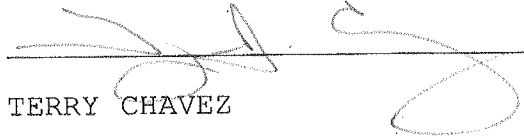
Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_

Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
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From \_\_\_\_\_ to \_\_\_\_\_

Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_

  
 TERRY CHAVEZ

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[mingber@mayerbrown.com](mailto:mingber@mayerbrown.com)

December 14, 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 Terry Chavez as "Confidential," as it is defined in the Protective Order:

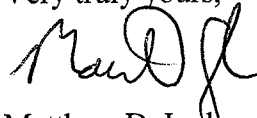
<b>November 30, 2012 Transcript Page/Line Designation</b>
13:5-50:17
51:3-66:4
66:13-82:1
82:10-125:19
126:4-142:13
142:24-178:10
179:21-203:6
203:18-287:13



December 14, 2012  
Page 2

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew D. Ingher". The signature is written in a cursive style with a large, prominent "M" and "D".

Matthew D. Ingher

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April 26, 2013

**VIA ELECTRONIC MAIL**

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

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  
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# EXHIBIT A

Michael A. Rollin  
April 26, 2013  
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<b>Adler</b>
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Michael A. Rollin

April 26, 2013

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

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