

MEMO ENDORSED

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VIA HAND DELIVERY

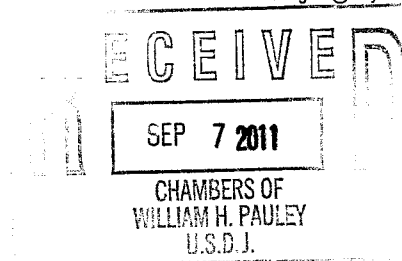
Hon. William H. Pauley
United States District Court for the
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *The Bank of New York Mellon et al. v. Walnut
Place LLC et al.* (11-cv-5988(WHP))

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Dear Judge Pauley:

We represent Petitioner The Bank of New York Mellon (“BNYM”). During the September 1 conference, we promised to inform the Court and the parties of our position on the pending motions to intervene. 9/1/11 Transcript at 34:8–13. There are six pending motions to intervene.

- Motion by Triaxx Prime CDO 2006-1, Ltd. and related parties (filed August 24 in the state court and re-filed with a certificate of service in this court August 30).
- Motion by Commonwealth Advisors, Inc. (filed August 30 in this Court and in the state court).
- Motion by Monarch Debt Recovery Master Fund Ltd. and related parties (filed August 30 in the state court).
- Motion by AMBAC Assurance Corp. and a related party (filed August 30 in this Court).
- Motion by American International Group, Inc. and related parties (filed in this Court on September 6).
- Motion by Mary Ellen Iesu and putative class of borrowers (filed August 30 in this Court).


As with previous motions to intervene by Certificateholders, BNYM does not oppose the first five motions listed above, all of which are brought by Certificateholders or, in the case of AMBAC, an insurer of Certificates. BNYM will likely oppose Ms. Iesu’s motion, as she is not a Trust beneficiary or a party to the PSAs that form the basis of the claims being settled. BNYM respectfully submits that, in light of the pending motion to remand, and the serious doubts that

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that motion raises about whether this Court has jurisdiction over the case at all, the parties and the Court should defer consideration of that intervention motion or any other applications until after the Court's jurisdiction under CAFA is resolved.¹

On the subject of these intervenors (or the 7 groups whose unopposed motions to intervene were granted in state court prior to the removal by the Walnut intervenors), should any of those parties wish to be heard on the remand motion, BNYM respectfully submits that the Court should require consolidated briefing. All intervenor-respondents who oppose remand are similarly situated with respect to the legal issues surrounding removal and remand, suggesting that there is no need for duplicative briefing on the motion.

Respectfully submitted,


Matthew D. Ingber

cc: All counsel who have registered for ECF notice in the S.D.N.Y. case
All counsel who have appeared in the state proceeding

In view of the fact that The Bank of New York Mellon does not oppose the first five motions to intervene listed above those motions are granted. If the intervenors wish to be heard on The Bank of New York Mellon's motion to remand they shall file a single consolidated brief by September 19, 2011 at 12:00 pm. However, the intervenors are directed to coordinate with the Walnut Place entities to avoid duplicative briefing.

SO ORDERED:


WILLIAM H. PAULEY III U.S.D.J.

9/13/11

¹ See also *Verizon N.Y. Inc. v. Choice One Commc'ns of N.Y., Inc.*, 499 F. Supp. 2d 326, 340 n.93 (S.D.N.Y. 2007) ("when a defendant improperly removes a case to a court that lacks jurisdiction, the court must remand and has no authority to make any substantive rulings"); *Borden v. Blue Cross & Blue Shield of Western N.Y.*, 418 F. Supp. 2d 266, 270 (W.D.N.Y. 2006) ("When an action is removed from state court, the district court must initially determine whether it has subject matter jurisdiction over a plaintiff's claim before reaching the merits of a motion to dismiss, for summary judgment, or for other relief.").