

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the matter of the application of :

THE BANK OF NEW YORK MELLON (as Trustee under various Pooling and :
Servicing Agreements and Indenture Trustee under various Indentures), :
BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. :
(intervenor), Maiden Lane, LLC (intervenor), Maiden Lane II, LLC (intervenor), :
Maiden Lane III, LLC (intervenor), Metropolitan Life Insurance Company :
(intervenor), Trust Company of the West and affiliated companies controlled by :
The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited :
(intervenor), Pacific Investment Management Company LLC (intervenor), :
Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and :
Annuity Association of America (intervenor), Invesco Advisers, Inc. (intervenor), :
Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg :
(intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING :
Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment :
Management LLC (intervenor), New York Life Investment Management LLC :
(intervenor), Nationwide Mutual Insurance Company and its affiliated companies :
(intervenor), AEGON USA Investment Management LLC, authorized signatory :
for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland :
Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life :
Insurance Company, Transamerica Advisors Life Insurance Company, AEGON :
Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., :
Transamerica Financial Life Insurance Company, Stonebridge Life insurance :
Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal :
Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), :
Prudential Investment Management, Inc. (intervenor), and Western Asset :
Management Company (intervenor),

Index No. 651786/2011
Kapnick, J.

Petitioner,

for an order, pursuant to CPLR § 7701, seeking judicial instructions and approval :
of a proposed settlement;

-against-

POLICEMEN'S ANNUITY & BENEFIT FUND OF CHICAGO, :
WESTMORELAND COUNTY EMPLOYEE RETIREMENT SYSTEM, CITY :
OF GRAND RAPIDS GENERAL RETIREMENT SYSTEM, and CITY OF :
GRAND RAPIDS POLICE AND FIRE RETIREMENT SYSTEM (proposed :
intervenors),

Respondents.

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**THE BANK OF NEW YORK MELLON'S RESPONSE TO
POLICEMEN'S FUND'S PETITION TO INTERVENE**

Petitioner The Bank of New York Mellon (“BNY Mellon” or “Trustee”) submits this response to the Petition To Intervene (“Pet.”), dated July 6, 2011, filed by Policemen’s Annuity & Benefit Fund of Chicago, Westmoreland County Employee Retirement System, City of Grand Rapids General Retirement System, and City of Grand Rapids Police and Fire Retirement System (collectively “Policemen’s Fund”).¹

This is the second attempt by a group of Certificateholders to intervene as respondents in this Article 77 proceeding. The Trustee takes no position with respect to Policemen’s Fund’s request to intervene as a respondent. Nonetheless, as the Trustee noted in its response to the petition filed by Walnut Place,² intervention is unnecessary given the pre-existing mechanism for Certificateholders (and other Potentially Interested Persons) to object to the Settlement.³ In its June 29, 2011 order (“Preliminary Order”), the Court directed the Trustee to implement a robust notice program that involved a combination of individual notice of the Settlement, notice through the Depository Trust Company, advertising on the internet, publication of the notice in at least six domestic publications, publication of a translated version of the notice in at least ten international publications, and notice through a website created and maintained by the Trustee. That notice program is well underway and will be completed by the Court-imposed deadline of August 12, 2011. The Preliminary Order also directs any and all objectors to submit written objections shortly thereafter, by August 30, 2011. That date was selected by the Trustee and

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in BNY Mellon’s Verified Petition, dated June 28, 2011 (“Verified Petition”) or the Affirmation of Matthew D. Ingber, dated June 28, 2011.

² “Walnut Place” refers to the eleven entities that filed a petition to intervene in this Article 77 Proceeding on July 5, 2011.

³ For this reason, there is no intervention as of right pursuant to CPLR § 1012. Policemen’s Fund’s interests will be adequately represented. They will be represented by Policemen’s Fund itself.

approved by the Court to allow *all* potential objectors (among others) to receive notice of the Settlement and to consider whether, and how, they wished to object.

Now that two separate groups of Certificateholders have filed petitions to intervene as respondents, and seek (or threaten to seek) different forms of discovery, it is not unreasonable to expect that other groups of Certificateholders will follow the same course. Accordingly, we respectfully request that the Court enter the proposed order, which directs that any petition to intervene (as respondents) be treated as an objection under the Preliminary Order, and that any requests by intervenors or other Potentially Interested Persons be considered only after all Certificateholders have had an opportunity to object pursuant to the Preliminary Order. This will allow the Court to take into account requests from *all* objectors, consider the grounds for the objections, consider whether and to what extent coordinated discovery is appropriate, and modify the Preliminary Order as necessary. Permitting individual Certificateholder groups to make piecemeal requests at this stage would be inefficient and disruptive to the process expressly contemplated in the Preliminary Order, and would be unfair to other Certificateholders who opt to follow the Preliminary Order.⁴

Finally, we note that the petition filed by the Policemen's Fund contains a number of substantive misstatements about the Settlement that overlap with those contained in the Walnut Place petition. The Trustee refers to its response to the Walnut Place petition and will respond to the other misstatements at the appropriate time and in accordance with the Preliminary Order.

⁴ On July 12, 2011, counsel for Policemen's Fund contacted counsel for the Trustee to discuss the possibility of a meet and confer concerning its request for discovery. For the reasons discussed above, the Trustee believes that the correct approach is first to allow other objectors to respond and, after all objections have been filed, to consider and respond to all requests in a coordinated manner.

Dated: New York, New York
July 12, 2011

MAYER BROWN LLP

By: _____



Matthew D. Ingber
Jason H. P. Kravitt
Hector Gonzalez

1675 Broadway
New York, New York 10019
(212) 506-2500

Attorneys for Petitioner
The Bank of New York Mellon