

# Exhibit C

The Trustees<sup>1</sup> respond to the Court's request for a joint statement on the status of discovery in this special proceeding as follows.

As in any case, the issues to be litigated determine the scope of permissible discovery. The First Department has just ruled that, in an Article 77 Proceeding such as this one, the exercise of discretion by a trustee to enter a settlement is not subject to oversight by courts except to determine whether the trustee acted in bad faith such that its decision constituted an abuse of discretion. *See In re The Bank of New York Mellon, et al.*, No. 651786-11 (N.Y. App. Div., 1st Dep't, March 5, 2015) at 9, 13. ("The ultimate issue for determination here is whether the trustee's discretionary power was exercised reasonably and in good faith...It is not the task of the court to decide whether we agree with the Trustee's judgment; rather, our task is limited to ensuring that the trustee has not acted in bad faith such that his conduct constituted an abuse of discretion . . . [I]n [disregarding the standard of deference,] the [lower] court was, in effect, improperly imposing a stricter and far less deferential standard, one that allows a court to micromanage and second guess the reasoned, and reasonable, decisions of a Trustee."). This is the same standard the Trustees have advocated since the outset of this proceeding and there is now no basis on which the Objectors can dispute that this is the standard that applies. *See Trustees' December 9, 2014 Memorandum of Law* (Dkt. No. 231).

Under this standard, the only documents relevant and discoverable are those that relate to the Trustees' decision to accept the Settlement for the trusts in which the objectors have a beneficial ownership or other interest (the "Subject Trusts").

The Trustees have agreed to produce not only these relevant documents—they have agreed to produce documents far beyond that limited scope of discovery, in an effort to avoid the need to present discovery disputes to the Court. These documents are more than sufficient to permit the Objectors and the Court to assess whether the Trustees' decision to accept the settlement was undertaken in such "bad faith . . . that [it] constituted an abuse of discretion." *In re The Bank of New York Mellon, et al.* at 9. The documents the Trustees have agreed to produce are some 135,000 pages that have already been produced, and several million pages more that will be produced once the protective order is entered. Included among these documents are the following major categories of (non-privileged) documents:

- All documents and communications concerning the Trustees' evaluation and retention of Jeremy E. Reifsnnyder, Boston Portfolio Advisors, Inc.; Faten Sabry, PhD, National Economic Research Associates, Inc.; and Daniel R. Fischel, Compass Lexecon LLC (collectively, the "Financial Advisors");
- All documents the Trustees provided to their Financial Advisors for use in evaluating the Settlement;

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<sup>1</sup> "Trustees" refers to the petitioners U.S. Bank National Association, The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., Wilmington Trust, National Association, Law Debenture Trust Company of New York, Wells Fargo Bank, National Association, HSBC Bank USA, N.A., and Deutsche Bank National Trust Company, solely in their respective capacities as trustees, indenture trustees, successor trustees, and/or separate trustees. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Modified Proposed Settlement Agreement, dated August 1, 2014 (the "Settlement" or "Settlement Agreement").

- All other communications between the Trustees and their Financial Advisors (or the professional staff of such advisors) concerning the Settlement;
- All communications with JPMorgan and the Institutional Investors concerning the Settlement;
- All correspondence between the Trustees and investors in the Subject Trusts, other than the Institutional Investors, concerning the Settlement; and
- All documents considered by each Trustee's committee or other relevant decision maker(s) when determining whether to accept the Settlement.

For each of these categories of documents, as well as the many others that the Trustees have agreed to produce, each Trustee is searching the files of the persons primarily responsible for the Trustee's evaluation of and decision to accept the Settlement (the "Trustee Settlement Custodians") for the period corresponding to each custodian's involvement in the matter. They are also searching the files of each Trustee's outside counsel (the "Trustee Outside Counsel Custodians").<sup>2</sup>

The Trustees anticipate that they are producing substantially all or all of the non-privileged documents related to the Settlement in their own possession, as well as substantially all or all of the non-privileged documents related to the Settlement in the files of the Trustee Outside Counsel Custodians.

The Trustees have not agreed to produce (or search for) documents that may (or may not) exist, or that might be buried in archives or in separate business units, that the Trustee Settlement Custodians did not consider, or even know about, in evaluating the Settlement. These documents are not relevant to any issue in this case. The Trustees do not seek an advisory opinion on a hypothetical, counter-factual evaluation process; they are seeking a declaratory judgment, pursuant to Article 77, on the process that they actually undertook. The documents described above, which far exceed the documents produced in the recently upheld Countrywide proceeding, should be more than enough to evaluate those proposed findings.

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<sup>2</sup> The Trustees have separately identified the Trustee Settlement Custodians and the Trustee Outside Counsel Custodians in a letter to the Objectors dated March 6, 2015.