August 14, 2015

VIA NYSCEF AND HAND DELIVERY

The Honorable Marcy S. Friedman
Justice of the Supreme Court
New York Supreme Court—Commercial Division
60 Centre Street
New York, NY 10007

Re: *In the Matter of U.S. Bank National Association, et al.*, Index No. 652382/2014 (Sup. Ct. N.Y. Cty.)

Your Honor:

We write on behalf of the Petitioners-Trustees, the Co-Petitioners-Institutional Investors and JPMorgan Chase & Co. to submit a proposed order for appointment of Retired Justice Stephen Crane as Special Master for discovery purposes in this Article 77 proceeding. The Petitioners and Respondents have agreed on all aspects of the proposed order, save for the provision concerning allocation of costs and which discovery disputes may be submitted to the Special Master. This dispute over costs arose for the first time this morning, when after having the Petitioners' draft order for four days, the Respondents informed us by phone that they disagreed with Petitioners' proposal for an even split of costs between the Petitioners and Respondents. As we understand the Respondents' counterproposal, which they have not provided in writing, they are asking the Court to enter an order that would allocate costs per party, such that the Petitioners and Co-Petitioners (26 different entities) would bear more than 80% of the costs of proceedings before the special master while the Respondents (6 entities) would bear less than 20%. The Petitioners' proposal for sharing of costs is the most equitable allocation and will promote the efficient resolution of any discovery disputes that arise. As explained below, the Respondents' proposal would do exactly the opposite.

First, the Respondents' proposal would be fundamentally inequitable. The purpose for a special master is to streamline the process of discovery for all parties. The costs of paying for the special master should therefore be allocated in a way that ensures that one side does not have an incentive to precipitate disputes simply because the other side will incur the costs to resolve it. A reasonable way to achieve this objective is to divide the cost of the special master equally between the sides, leaving it to each side to apportion its share of the costs among

its constituent parties. This 50/50 allocation avoids creating any incentive for one side to precipitate motion practice to impose costs on the other.

The Respondents' proposal, in contrast, would require the Petitioners and Co-Petitioners to subsidize the Respondents' penchant for discovery motion practice. Incredibly, though the Institutional Investors and JPMorgan have not precipitated a single discovery dispute to date (while Respondents have unsuccessfully brought four), the Respondents urge the Institutional Investors to bear 57% of the cost of the discovery master, with all Petitioners and JPMorgan bearing more than 80%. This is unfair and irrational.

Second, by placing more than 80% of the costs on the Petitioners and Co-Petitioners, the Respondents have very little incentive to resolve disputes without the special master's intervention. An allocation that does not tax the Petitioners and Respondents equally is likely to lead to more (unnecessary) discovery disputes.

Third, the Respondents raised this issue two months ago by arguing that JPMorgan should pay all costs related to a special master and the Court advised that the parties should arrive at a resolution that included Respondents paying their way. The Respondents' counsel stated at the time "that reaching a reasonable payment arrangement shouldn't be an obstacle." (June 19, 2015 Tr. of Proceedings, at 45:4-20.) Respondents' delay in raising this issue until *this morning* is entirely inconsistent with the assurance they gave the Court and smacks of bad faith.

With regard to which disputes may be submitted to the Special Master, all parties agree that the Special Master has authority to adjudicate disputes concerning any revised document demand served by Respondents in accordance with the Court's July 23, 2015 bench ruling or any party's privilege log. However, the Petitioners also proposed a third category of discovery disputes which may be submitted to the Special Master – those which arise between the parties that the Court refers to the Special Master. The Respondents refuse to agree to this language and instead want the third category of disputes to encompass any discovery dispute whatsoever, so long as it has not been adjudicated by the Court (as determined by the Special Master). Such a plan, of course, would allow the Respondents to, among other things, revisit issues on which the parties themselves reached agreement or which the Respondents should have raised in their Omnibus Motions to Compel. Petitioners agree that the Special Master may hear any dispute referred to him by the Court, but do not want to engage in a series of four-step disputes in which (i) the parties litigate over whether a dispute is properly before the Special Master; (ii) the losing party then appeals that decision on the scope of the Special Master's authority to the Court; then (iii) the parties litigate the substance of the dispute in front of the Special Master; followed by (iv) an appeal of the Special Master's substantive decision to the Court. The Petitioners believe the Special Master's jurisdiction should be clearly defined by the Court.

For the foregoing reasons, we respectfully request that the Court enter the Proposed Special Master Order enclosed as Exhibit A. Should Your Honor have any questions, counsel are available at the Court's convenience.

Respectfully submitted,

JONES DAY

/s/ Robert C. Micheletto
Robert C. Micheletto
Nina Yadava
222 East 41st Street
New York, New York 10017
(212) 326-3939

Matthew A. Martel
Joseph B. Sconyers
100 High Street, 21st Floor
Boston, Massachusetts 02110
(617) 960-3939

Attorneys for Petitioner
U.S. Bank National Association

MAYER BROWN LLP

/s/ Matthew D. Ingber
Matthew D. Ingber
Christopher J. Houpt
1221 Avenue of the Americas
New York, New York 10020
(212) 506-2500

Attorneys for Petitioners
The Bank of New York Mellon and
The Bank of New York Mellon
Trust Company, N.A.

ALSTON & BIRD LLP

/s/ Michael E. Johnson
Michael E. Johnson
James Tourangeau
90 Park Avenue
New York, New York 10016
(212) 210-9400

Attorneys for Petitioner
Wilmington Trust, National Association

SEWARD & KISSEL LLP

/s/ M. William Munno
M. William Munno
Dale C. Christensen, Jr.
Thomas Ross Hooper
One Battery Park Plaza
New York, New York 10004
(212) 574-1200

Attorneys for Petitioner Law Debenture Trust Company of New York

FAEGRE BAKER DANIELS LLP

/s/ Robert L. Schnell
Robert L. Schnell
Stephen M. Mertz
Michael M. Krauss
2200 Wells Fargo Center
90 S. Seventh Street
Minneapolis, Minnesota 55402
(612) 766-7000

Attorneys for Petitioner Wells Fargo Bank, National Association

MAYER BROWN LLP

/s/ Jean-Marie L. Atamian
Jean-Marie L. Atamian
James Ancone
1221 Avenue of the Americas
New York, New York 10020
(212) 506-2500

Attorneys for Petitioner HSBC Bank USA, N.A.

MORGAN, LEWIS & BOCKIUS LLP

/s/ Kurt W. Rademacher
Michael S. Kraut
Kurt W. Rademacher
101 Park Avenue
New York, New York 10178-0060
(212) 309-6000

Attorneys for Petitioner
Deutsche Bank National Trust Company

SULLIVAN & CROMWELL LLP

/s/ Robert A. Sacks
Robert A. Sacks
Sharon L. Nelles
Darrell S. Cafasso
125 Broad Street
New York, New York 10004
(212) 558-400

Attorneys for JPMorgan Chase & Co.

WARNER PARTNERS, P.C.

/s/ Kenneth E. Warner
Kenneth E. Warner
950 Third Avenue, 32nd Floor
New York, New York 10022
(212) 593-8000

GIBBS & BRUNS LLP
Kathy D. Patrick
Robert J. Madden
David Sheeren
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713) 650-8805

Attorneys for the Intervenor-Petitioners, the
Institutional Investors

(Enclosure: Exhibit A)

cc: Counsel to Respondent-Objectors (by NYSCEF)