Exhibit 6

MAYER·BROWN

Mayer Brown LLP
1675 Broadway
New York, New York 10019-5820

Main Tel +1 212 506 2500
Main Fax +1 212 262 1910
www.mayerbrown.com

Matthew D. Ingber
Direct Tel +1 212 506 2373
Direct Fax +1 212 849 5973
mingber@mayerbrown.com

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VIA ELECTRONIC MAIL

Michael Rollin, Esq.
Reilly Pozner LLP
1900 Sixteenth St., Suite 1700
Denver, CO 80202

Re: *In re The Bank of New York Mellon*

Dear Mike:

This letter responds to yours of November 8, 2012.

To begin with, the Trustee has been clear about the proper scope of discovery throughout this case. Because the issue in this proceeding is the good faith and reasonableness of the Trustee's decision to enter into the Settlement Agreement, documents that the Trustee considered in making that decision are relevant and discoverable. Documents that the Trustee did not even have access to cannot have affected its decision and, therefore, are not relevant and not discoverable. We raised this point in our motion concerning the standard of review, and you did not dispute it. You argued that the Trustee here *was* conflicted and *did* behave unreasonably, but you have not disputed that reasonableness and good faith is the standard for determining whether a court may override a trustee's discretionary decision. Nor did you argue that documents that the Trustee never saw could bear on those issues

This discovery standard is hardly novel. In fact, it is entirely consistent with, among other things, the standard governing derivative litigation, wherein courts require far less disclosure than what we already have voluntarily produced here. In those cases, where the defendants have expansive fiduciary duties to their shareholders, "[c]ourts have reached varying results on plaintiffs' entitlement to the production of all materials reviewed and relied upon by special litigation committees." *St. Clair Gen'l Empls. Ret. Sys. v. Eibeler*, 2007 WL 3071837, at *4-*5 (S.D.N.Y. 2007) ("the Court finds no occasion at this time for far-reaching and comprehensive discovery of all documents reviewed and relied upon by the SLC").[1] These cases

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[1] *See also In re Take-Two Interactive Software, Inc. Derivative Litigation*, 2008 WL 681456, at *3 (S.D.N.Y. 2008) (denying motion to compel production of legal advisors' documents "even though Plaintiffs have seen all the documents that were seen by the Committee"); *Kaplan v. Wyatt*, 499 A.2d 1184, 1192 (Del. 1985) ("[derivative plaintiff] was not entitled to discover all the information relating to the [Special Litigation] Committee's report"), *aff'g*, 9 Del. J. Corp. L. 205, 210 (Del. Ch. 1984) ("I do not feel that the total production of all other documents reviewed and relied upon by the Committee in compiling its report is necessary

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hold that discoverability extends, *at most*, to the documents that the decision-making committee actually reviewed and relied on, not to documents that formed the basis of reports by third parties.

To be sure, we have indulged your demands for documents that go well beyond what is actually required to be produced, including settlement communications, drafts of the Settlement Agreement, materials shared with the experts retained by BNYM, and communications by and between BNYM and their experts. We remind you that these documents were produced voluntarily, and the Court has never granted any of your motions to compel.

The paragraphs above should answer your first question. The documents that you request in your letter, which do not bear on BNYM's good faith or the reasonableness of its decision, and many of which BNYM never even saw, are not relevant. We will not enumerate for you every category of documents that we believe is relevant. And of course we have not produced documents that neither BNYM nor its experts saw and therefore do not have in their possession.

With respect to your second question, CPLR 3101(a) says that discovery extends only to "all matter *material and necessary* in the prosecution or defense" of the action. Siegel's Practice Commentary on this subsection explains that:

> CPLR 3101(a) sets forth the criterion for disclosure under the CPLR. It requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The key words are "material and necessary." In the leading case, *Allen*, the New York Court of Appeals interpreted the New York CPLR phrase "material and necessary" to mean ***nothing more or less than "relevant"***
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> Disclosure under the CPLR is, therefore, mandated if it is "relevant." The word "material" implies something heavier than "relevant." That which is material to the case would be relevant to it, though the converse would not necessarily hold. Nonetheless, "relevant" has been the meaning assigned to "material" by the Court of Appeals.

(Citing *Allen v. Crowell-Collier Publ'g Co.*, 21 N.Y.2d 403 (1968)). *See also Patterson v. Turner Const. Co.*, 88 A.D.3d 617, 618 (1st Dep't 2011) ("we reverse and remand for a more

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to the plaintiff's right to challenge the good faith of the Committee or the reasonableness of the bases for its conclusion that the derivative action should be dismissed").

specific identification of plaintiff's Facebook information *that is relevant*, in that it contradicts or conflicts with plaintiff's alleged restrictions, disabilities, and losses, and other claims.") (emphasis added).[2] In fact, even you have acknowledged that discovery is limited to "all facts *bearing on the relief BNYM has requested in this action.*" Mem. ISO Motion to Compel, at 6 (emphasis added).

Under that standard, courts in Article 77 proceedings have held, for example, that discovery that was "either patently too broad, *or irrelevant* to the issues, or both" was improper. *Andrews v. Trustco Bank, N.A.*, 289 A.D.2d 910, 913 (3d Dep't 2001). Specifically, a demand for all documents relating to "the administration of the trust" was improper, because it "s[ought] irrelevant information" in a matter limited to a particular transaction. Similarly, *In re Beeman* limited discovery to "*the petitioner's acts as trustee* insofar as they relate to the validity of the intermediate accounts" and denied discovery relating to the "trust corpus" generally. 108 A.D.2d 1010, 1012 (3d Dep't 1985).

We do not think that this is a controversial proposition, and we note that you cite no authority suggesting that discovery of irrelevant information ever could be appropriate. It would advance our discussion considerably if you could identify any such authority for us. In the meantime, we address your requests for specific documents below:

Jason Kravitt. We generally agree that "whether *BNYM* labored under a conflict of interest is relevant," though we note that the definition of "conflict of interest" in these circumstances is extremely narrow—certainly much narrower than that applied to law firms. *Dabney v. Chase National Bank*, 196 F.2d 668, 670 (2d Cir. 1952) (trustee's duty is "not to profit at the possible expense of his beneficiary"). We do not agree, however, that whether *Mayer Brown* had a conflict of interest [redacted] has any bearing on this case. Again, if you are aware of any authority, of any type, from any state, that holds that a corporate trustee's decision may be set aside because its external counsel [redacted], please send it to us.

We further note that your assertion that your clients "have the right to know what [redacted] were" is disingenuous. Jason Kravitt testified at length that [redacted] Kravitt Tr. 101:18 – 120:17. [redacted]

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[2] The standard is even higher for non-party subpoenas. *See, e.g.*, *Tannenbaum v. City of New York*, 30 A.D.3d 357, 358 (1st Dep't 2006) (quashing subpoena "since plaintiff failed to show special circumstances or that the information sought was relevant *and* could not be obtained from other sources") (emphasis added); *Troy Sand & Gravel Co. v. Town of Nassau*, 80 A.D.3d 199, 202 (3d Dep't 2010) ("something *more than mere relevance* or materiality must be shown to obtain disclosure from a nonparty witness) (emphasis added) (quoting *Fraser v. Park Newspapers of St. Lawrence,* 257 A.D.2d 961, 962 (3d Dep't 1999)).

[redacted].[3] *See CFIP Master Fund Ltd. v. Citibank, N.A.*, 738 F. Supp. 2d 450, 475 (S.D.N.Y. 2010) (rejecting as "bald assertion[] of conflict," the allegation that trustee "was conflicted because it served as indenture trustee for other Beach Street transactions, thus generating at least $185,000 in annual revenues"); *Elliott Assocs. v. J. Henry Schroder Bank & Trust Co.*, 838 F. 2d 66, 70 (2d Cir. 1988) (same); *In re E.F. Hutton Sw. Props. II, Ltd.*, 953 F.2d 963, 972 (5th Cir. 1972) (under New York law, "[a] mere hypothetical possibility that the indenture trustee might favor the interests of the issuer merely because the former is an indenture trustee does not suffice" to show conflict).

Loretta Lundberg. You assert that "[a]s you know, BNYM negotiated for certain releases of its own liability in the course of its Trustee Settlement Activities." As *you* know, that is not true. A proposed finding, to be entered by a court at the close of litigation, if and only if the court concludes that the finding is appropriate, is a far cry from a release that simply expunges liability. As you should know, Bank of America could not, even if it wanted to, release claims that belong to Certificateholders. And as you must know, the possibility that a trustee may obtain judicial guidance that its proposed conduct is proper does not establish a conflict of interest.

The documents that you seek—[redacted]—are precisely the kind of documents relating generally to trust administration that were held irrelevant and non-discoverable in *Andrews* and *Beeman*, because they have nothing to do with the transaction at issue in the proceeding. They are also the very documents that were the subject of prior, unsuccessful motions to compel by the objectors.

Brian Lin. You assert that "BNYM has . . . placed in issue what its purported experts did and did not do, considered and did not consider, relied on and rejected." Again, this statement is bereft of factual and legal support, and decisions in closely analogous situations consistently come out the opposite way. For example, an advice-of-counsel defense to a claim of willful patent infringement does not make drafts of the attorney's opinion, or other documents not shown to the client, discoverable. *See, e.g.*, *Simmons, Inc. v. Bombardier, Inc.*, 221 F.R.D. 4, 9 (D.D.C. 2004) ("To the extent that Simmons will challenge the competency of the opinions and Bombardier's reasonable reliance on them, therefore, drafts of the opinions not shared with Bombardier are irrelevant."); *Intex Recreation Corp. v. Metalast, S.A.*, 2005 WL 5099032, at *4 (D.D.C. 2005) (endorsing "broad" view of privilege waiver but holding only that "not just the opinion letters themselves and communications with the client about them must be produced, but also those materials that counsel actually relied upon in rendering an opinion, *to the extent those documents were provided to the client*. The waiver also includes all documents that refer or relate to the subject matter addressed in counsel's opinion letter, *to the extent those documents were*

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[3] We note that *Sankel v. Spector* did not involve a securitization or indenture trustee, but rather the trustee of an inter vivos trust. 33 A.D.3d 167, 172 (1st Dep't 2006). But "[a]n indenture trustee is not subject to the ordinary trustee's duty of undivided loyalty." *Philip v. L.F. Rothschild & Co.*, 1999 WL 771354, at *1 (S.D.N.Y. 1999).

provided to the client.") (emphasis added) (citation omitted); *Static Control Components, Inc. v. Lexmark Int'l, Inc.*, 250 F.R.D. 575, 580 (D. Colo. 2007) ("Documents and information not provided to the alleged infringer, and which therefore played no part in its decisions concerning the alleged infringement, maintain their privileged nature.").[4]

Nor do your proffered factual theories make any sense. For example, how would [redacted] that he never even saw provide "indicia of bias" by the expert? And how could any of these documents bear on "whether *BNYM's* reliance on the experts was in good faith?"

Finally, as to the [redacted] we reiterate what Mr. Lin testified to, and what we told you in our November 2 letter—to the best of our knowledge, neither BNYM nor RRMS have, or ever had, these documents. Even if they were somehow relevant, we cannot produce them, because we do not have them.

Depositions. We asked you on October 26 to explain why depositions of Gavin Tsang, Brian Rogan, or Courtney Bartholomew were necessary or appropriate. Specifically, we asked you to identify the relevant topics on which you believe that these witnesses have knowledge, particularly knowledge that other witnesses do not have. While your letter offers to withdraw certain of these requests if BNYM produced various documents, you still have not explained why these depositions are necessary.

If your footnote 1 means that you think that Courtney Bartholomew has unique knowledge of "BNYM's receipt of the documents required to be provided to the Trustee under the Governing Agreements," I can inform you that Terry Chavez is the head of the document custody group and can testify about this topic. As to the others, we still await your response.

Rather than continued letter writing in lieu of our suggested meet and confer, we offer, again, to meet and confer on these issues.

Sincerely,

Matthew D. Ingber

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[4] The issue in these cases is whether an advice-of-counsel defense waives attorney-client privilege, but BNYM has not, of course, ever asserted attorney-client privilege over the expert reports. These cases are directly apposite, however, because the reason that the defense does not waive privilege as to documents that the client never saw is that those documents are irrelevant to the client's good faith or reasonable reliance.