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June 10, 2011

**VIA FACSIMILE AND U.S. MAIL**

The Honorable Judge Victor Marrero  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Room 660  
New York, NY 10007-1312

USDC SDNY  
C #:  
6/14/11

Re: *In re Municipal Derivatives Antitrust Litigation*,  
MDL No. 1950; Master Docket No. 08-cv-02516-(VM) (GWG)

Dear Judge Marrero:

We represent the Puerto Rico Electric Power Authority ("PREPA"), an absent class member in the above MDL litigation. We also serve as one of the firms representing Class Plaintiffs in the above case. We write regarding the Agreement Among the Attorneys General and Bank of America Corporation<sup>1</sup> dated December 7, 2010 ("State Agreement").

We understand that under the State Agreement, certain entities harmed by the underlying alleged conduct will receive Notice of the State Agreement and will be offered the option of opting-in to the settlement. To recover money, the State Agreement requires entities that opt-in to the deal to sign a release that will extinguish their claims in the ongoing MDL litigation.

In their proposed Notice (Docket #1305), the Attorneys General do not provide any information about allocation of the settlement funds. The State Agreement simply provides that payments shall be made "pursuant to a formula developed by the Attorneys General in consultation with BAC" and that "[n]otwithstanding the foregoing, the Attorneys General shall have the right to adopt a formula they deem appropriate for payments from the Fund." (State Agreement, p. 15, ¶ 10.) The proposed Notice does not provide information about the existence or specifics of any allocation plan or formula that will be used to determine what payments eligible entities who opt-in to the settlement can anticipate receiving. Because of this complete lack of disclosure, if PREPA receives notice pursuant to the State Agreement, it would have no reasoned basis to make an informed determination whether to opt-in to the State Agreement or remain as part of the ongoing MDL litigation. There can be numerous methodologies for distributing settlement funds (e.g., pro rata based on relevant dollar totals; fixed payments based on transactions or years; capped payments; etc.). At a minimum, to make an informed decision,

<sup>1</sup> Bank of America Corporation is referred to as "BAC" in the State Agreement and "BoA" here.

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PREPA needs to know the basis on which the funds are being allocated in order to fairly assess and make the decision presented in the Notice.

In addition to the complete lack of information about the basis of the allocation, a closely related issue arises from the fact that under the State Agreement, PREPA, and other entities receiving notice, are required as a condition of opting-in to the settlement to release Bank of America not only for deals in which Bank of America was awarded the bid (transactions in which an "eligible counterparty" entered into a "Covered Derivative" transaction with BoA), but also for each and every deal in which Bank of America engaged in separate, allegedly unlawful conduct, such as submitting a non-winning, cover or sham conspiratorial bid. It is not clear whether PREPA's distribution under the plan of allocation contemplated by the State Agreement would take into account the damage caused by transactions in which Bank of America was not awarded the contract or was not the other transactional party but, again for example, submitted a non-winning, sham bid. Under traditional settlement practices involving claims implicating the joint and several liability of antitrust defendants, an allocation plan would reflect in the distribution amount the losses suffered by the injured recipient from the full range of the settling party's conduct. Whether both types of the conspiratorial transactions are included or excluded in the allocation plan is important in evaluating whether the plan of allocation properly reflects the scope and breadth of the corresponding release being provided to Bank of America as a condition of opting-in.


Without the above essential information - the basis for allocating funds under the settlement and whether any allocation plan or formula accounts for the losses suffered by PREPA as a result of the unlawful conduct of Bank of America - PREPA, and we would submit other similarly situated entities, cannot make an informed decision about protecting their interests by electing to receive or decline any partial reimbursement under the State Agreement for losses suffered as a result of Bank of America's conduct.

The requested plan of allocation information should be made available by the Attorneys General and should be provided in any notice distributed to eligible entities to ensure that the notice serves its core purpose of clearly providing essential information to allow recipients to protect their rights and make a meaningful, informed decision.

Respectfully submitted,



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The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by *absent class member Puerto Rico Electric Power Authority*  
**SO ORDERED.**  
*6-14-11*  
DATE  VICTOR MARRERO, U.S.D.J.

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s/ David C. Indiano

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cc: PREPA  
Counsel of Record (via email)