

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

*Carver, et al.,*

Plaintiffs,

-against-

*Bank of New York Mellon, et al.,*

Defendants.

No. 15-CV-10180 (JPO)

**ANSWER TO THE  
FIRST AMENDED CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**

Defendants The Bank of New York Mellon and BNY Mellon, N.A. (collectively “BNYM”) submit the following Answer in response to the First Amended Consolidated Class Action Complaint, ECF No. 93 (the “Complaint”).

**I. NATURE OF THE ACTION**

1. The allegations in Paragraph 1 state legal conclusions and set forth Plaintiffs’ characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 1, except BNYM lacks knowledge or information sufficient to form a belief as to the truth of the matters alleged in footnote 2 and admits that Plaintiffs purport to bring this action as a class action.

2. The allegations in Paragraph 2 state legal conclusions and set forth Plaintiffs’ characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 2.

3. The allegations in Paragraph 3 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 3.

4. The allegations in Paragraph 4 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 4 except BNYM lacks knowledge or information sufficient to form a belief as to the truth of the matters alleged in footnote 4.

5. The allegations in Paragraph 5 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 5.

6. The allegations in Paragraph 6 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 6.

7. BNYM denies the allegations in Paragraph 7. BNYM respectfully refers the Court to the article cited therein for its true and complete contents.

8. The allegations in Paragraph 8 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 8.

9. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 9.

## **II. JURISDICTION AND VENUE**

10. Paragraph 10 sets forth legal conclusions to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 10.

11. Paragraph 11 sets forth legal conclusions to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 11, except BNYM admits that this Court has subject matter jurisdiction of this action by virtue of 28 U.S.C. § 1331 and ERISA, 29 U.S.C. § 1132(e)(1).

12. Paragraph 12 sets forth a legal conclusion to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 12, except BNYM admits that venue is proper.

## **III. PARTIES**

### **A. Plaintiffs**

13. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13.

14. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14.

15. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16.

17. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17.

18. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18.

19. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19.

20. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20.

21. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21.

22. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22.

23. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23.

24. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24.

25. BNYM admits that Plaintiffs purport to have defined a putative class that is limited to the persons set forth in Paragraph 25. The second sentence of Paragraph 25 sets forth a legal conclusion to which no response is required. To the extent a response is required, BNYM denies the allegation in the second sentence of Paragraph 25.

**B. Defendants**

26. BNYM admits the allegations in the first and second sentences of Paragraph 26. BNYM respectfully refers the Court to BNYM's website for its true and complete content, and denies any allegation in the third sentence of Paragraph 26 inconsistent therewith.

27. BNYM admits the first and second sentences of Paragraph 27. BNYM denies the allegations in the third sentence of Paragraph 27. BNYM admits further that BNY Mellon Corporation's 10-K for the year ended December 2010 contains the language quoted in Paragraph 27. BNYM respectfully refers the Court to the full document for its entire contents and denies any allegations in Paragraph 26 inconsistent therewith.

28. BNYM admits the allegations in Paragraph 28.

29. BNYM denies the allegations in Paragraph 29, except BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Defendants Does 1-20 are affiliates or employees of BNY Mellon Corporation or its affiliates.

30. Paragraph 30 contains no allegations to which a response is required; to the extent a response is required, BNYM denies the allegations in Paragraph 30.

31. BNYM denies the allegations in Paragraph 31.

#### **IV. FACTUAL ALLEGATIONS**

32. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32.

33. BNYM admits the first sentence of Paragraph 33. BNYM denies the second, third, and fourth sentences of Paragraph 33, except BNYM admits that ADRs are receipts evidencing ownership of U.S. securities, called American Depositary Shares, that represent an economic interest in foreign shares issued by a non-U.S. Corporation and that ADRs may be purchased and sold in U.S. dollars. BNYM admits the fifth sentence of Paragraph 33.

34. With respect to Paragraph 34, BNYM admits the first and third sentences and footnote 6. BNYM denies the other allegations in Paragraph 34.

35. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35.

36. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36.

37. With respect to Paragraph 37, BNYM respectfully refers the Court to BNYM's website for its true and complete contents, and denies any allegations inconsistent therewith.

38. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38.

39. BNYM denies the allegations in Paragraph 39.

40. BNYM denies the allegations in Paragraph 40, except BNYM admits that the referenced Deposit Agreement (the "Baidu DA") contains the language quoted in Paragraph 40. BNYM respectfully refers the Court to the Baidu DA for its complete contents and denies any allegations inconsistent therewith.

41. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 41. The second sentence of Paragraph 41 sets forth legal conclusions to which no response is required. To the extent a response is required, BNYM denies the allegations therein.

42. BNYM denies the allegations in Paragraph 42, except BNYM admits that the Baidu DA contains the language quoted in Paragraph 42. BNYM respectfully refers the Court to the full document for its complete contents.

43. The allegations in Paragraph 43 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required,

BNYM denies the allegations therein. BNYM respectfully refers the Court to the Baidu DA for its complete contents.

44. BNYM denies the allegations in Paragraph 44.

45. BNYM denies the allegations in Paragraph 45.

46. BNYM denies the allegations in Paragraph 46.

47. BNYM admits the allegations in the first sentence of Paragraph 47, but lacks knowledge or information sufficient to form a belief as to the truth of all other matters alleged in Paragraph 46.

48. The allegations in Paragraph 48 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM admits that Plaintiffs purport to bring a claim involving spot transactions conducted by Defendants involving ERISA Plan assets in the retail FX market.

49. The allegations in Paragraph 49 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 49.

50. BNYM denies the allegations in the first sentence of Paragraph 50. The allegations in the second and third sentences of Paragraph 50 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in the second and third sentences of Paragraph 50, except BNYM admits that BNY Mellon Corporation's 2008 annual report contains the quoted language. BNYM respectfully refers the Court to the full document for its true and complete contents.

51. The allegations in Paragraph 51 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 51.

52. The allegations in Paragraph 52 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 52.

53. The allegations in Paragraph 53 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 53.

54. The allegations in Paragraph 54 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 54.

55. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 55, except BNYM admits that a Plan's ERISA custodian bank and a Plan's trustee may hold ADRs and that these ADRs may be reported as the Plan's ERISA assets on IRS Form 5500, which may serve as the annual report of the Plan filed annually with the DOL and the Internal Revenue Service.

56. The allegations in Paragraph 56 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 56.

57. The allegations in Paragraph 57 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 57.



58. The allegations in Paragraph 58 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 58.

59. The allegations in Paragraph 59 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 59.

60. The allegations in Paragraph 60 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 60.

61. The allegations in Paragraph 61 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 61, except BNYM admits that when volatility in FX prices increases the range of the day increases as well, and that BNYM Corporation's 2008 annual report contained the language quoted in Paragraph 61. BNYM respectfully refers the Court to the full document for its true and complete contents and denies any allegations inconsistent therewith.

62. The allegations in Paragraph 62 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 62.

63. The allegations in Paragraph 63 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 63.

64. BNYM denies the allegations in Paragraph 64.

65. The allegations in Paragraph 65 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 65, except BNYM admits that there are exemptions to the prohibited transaction rules.

66. The allegations in Paragraph 66 state legal conclusions to which no response is required. To the extent a response is required, BNYM admits that prohibited transactions are subject to a statutory and regulatory scheme, and respectfully refers the Court to those statutes and regulations for their true and complete contents and denies any allegations inconsistent therewith.

67. The allegations in Paragraph 67 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 67.

68. The allegations in Paragraph 68 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 68.

69. The allegations in Paragraph 69 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 69.

70. The allegations in Paragraph 70 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 70.

71. The allegations in Paragraph 71 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 71.

72. The allegations in Paragraph 72 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 72, except BNYM admits that it was involved in litigation concerning its standing instruction trades and that the email from BNYM Managing Director Jorge Rodriguez to Richard Mahoney, Executive Vice President of Global Markets at BNYM, February 1, 2008 contains the language quoted in Paragraph 72. BNYM respectfully refers the Court to the full document for its true and complete contents and denies any allegations inconsistent therewith.

73. BNYM denies the allegations in Paragraph 73.

74. The allegations in Paragraph 74 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 74, except BNYM admits that the email from David Green to James McAuliffe dated July 26, 2010 contains the language quoted in Paragraph 74. BNYM respectfully refers the Court to the full document for its true and complete contents and denies any allegations inconsistent therewith.

75. The allegations in Paragraph 75 state legal conclusions and set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 75.

76. The allegations in Paragraph 76 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 76.

77. The allegations in Paragraph 77 set forth Plaintiffs' characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 77, except BNYM admits that the email from Antonio Garcia-Meitin dated April 11, 2008 contains the language quoted in Paragraph 77. BNYM respectfully refers the Court to the full document for its true and complete contents and denies any allegations inconsistent therewith.

78. Because Paragraph 78 fails to identify the source of the quoted language, BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 78. To the extent Paragraph 78 is quoting from a document, BNYM respectfully refers the Court to the full document for its true and complete contents and denies any allegations inconsistent therewith.

79. BNYM denies the allegations in the first sentence of Paragraph 79, except BNYM admits that the email from Jorge Rodriguez to Richard Mahoney dated October 15, 2009 contains the language quoted therein. BNYM respectfully refers the Court to the full document for its true and complete contents and denies any allegations inconsistent therewith. BNYM denies the allegations in the second and third sentences of Paragraph 79, except, with respect to the third sentence, BNYM admits that BNYM Corporation's Form 10-Q for the quarter ended March 31, 2012, Form 10-Q for the quarter ended June 30, 2012, and Form 10-Q for the quarter ended June 30, 2013 contain the language quoted therein. BNYM respectfully refers the Court

to the full documents for their true and complete contents and denies any allegations inconsistent therewith.

80. BNYM denies the allegations in Paragraph 80. BNYM respectfully refers the Court to the January 17, 2012 Stipulation and the April 23, 2015 Stipulation entered into in *United States v. The Bank of New York Mellon Corp.*, No. 11-cv-06969 (S.D.N.Y.) (“January 17, 2012 Stipulation” and “April 23, 2015 Stipulation” respectively) for their true and complete contents, and denies any allegations inconsistent therewith.

81. BNYM denies the allegations in Paragraph 81, except BNYM admits that the January 17, 2012 Stipulation contains the language quoted in Paragraph 81. BNYM respectfully refers the Court to the January 17, 2012 Stipulation for its true and complete contents and denies any allegations inconsistent therewith.

82. BNYM denies the allegations in Paragraph 82, except BNYM admits that the April 23, 2015 Stipulation contains the language quoted in Paragraph 82. BNYM respectfully refers the Court to the April 23, 2015 Stipulation for its true and complete contents and denies any allegations inconsistent therewith.

83. BNYM denies the allegations in Paragraph 83, except BNYM admits that the transcript of the hearing held on September 24, 2015 contains the language quoted in Paragraph 83. BNYM respectfully refers the Court to the full transcript for its true and complete contents and denies any allegations inconsistent therewith.

84. The allegations in Paragraph 84 state legal conclusions and set forth Plaintiffs’ characterization of their claims in this action to which no response is required. To the extent a response is required, BNYM denies the allegations in Paragraph 84.

85. BNYM denies the allegations in Paragraph 85, except BNYM admits that the notice cited therein contains the language quoted therein. BNYM respectfully refers the Court to the full document for its true and complete content.

86. BNYM denies the allegations in Paragraph 86, except BNYM admits that it posted the Pricing Disclosure to its website on October 1, 2015 and that it contains the language quoted in Paragraph 86. BNYM respectfully refers the Court to BNYM's website for its true and complete contents.

87. BNYM denies the allegations in Paragraph 87, except BNYM admits that "defined benefit plans" and "defined contribution plans" are two types of ERISA plans.

88. With respect to Paragraph 88, BNYM admits "defined benefit plans" and "defined contribution plans" are two types of ERISA plans, but denies Plaintiffs' characterization thereof.

89. The allegations in Paragraph 89 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 89.

90. BNYM lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 90.

91. BNYM lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 91.

92. BNYM denies the allegations in Paragraph 92, except BNYM admits that at certain times it acted as depository for certain of the ADRs Plaintiffs list in Appendix II as purportedly being held by the Baker Hughes 401(k) Plan.

93. BNYM lacks knowledge and information sufficient to form a belief as to truth of whether the Baker Hughes 401(k) Plan held any ADRs issued by Defendants or whether Plaintiffs Garrett and Watkins held ADRs in their Baker Hughes 401(k) Plan individual accounts, and otherwise denies the allegations in Paragraph 93.

94. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94.

95. The allegations in Paragraph 95 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 95.

96. The allegations in Paragraph 96 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 96.

97. The allegations in Paragraph 97 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 97.

98. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 98.

99. BNYM denies the allegations in Paragraph 99, except BNYM admits that it provided custody banking services to the Central States Plan during the purported class period.

100. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 100.

101. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 101.

102. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 102.

103. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 103.

104. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 104.

105. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 105.

106. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 106.

107. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 107.

108. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 108.

109. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 109.

110. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 110.

111. BNYM denies the allegations in Paragraph 111, except BNYM admits that at certain times it acted as depositary for certain of the ADRs that Plaintiffs list in Appendix II as purportedly being owned by the Central States Plan.



112. The allegations in Paragraph 112 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 112.

113. The allegations in Paragraph 113 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 113.

114. The allegations in Paragraph 114 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 114.

115. The allegations in Paragraph 115 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 115.

116. The allegations in Paragraph 116 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 116.

117. The allegations in Paragraph 117 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 117.

118. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118.

119. The allegations in Paragraph 119 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 119.

120. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 120.

121. BNYM denies the allegations in Paragraph 121, except BNYM admits that at certain times it acted as depositary for certain of the ADRs that Plaintiffs list in Appendix II as purportedly being held by the HCA Retirement Plan and HCA 401(k) Plan.

122. BNYM denies the allegations in Paragraph 122, except BNYM admits that at certain times it acted as depositary for certain of the ADRs that Plaintiffs allege the HCA Retirement Plan, the HCA 401(k) Plan, and the HCA Master Trust held.

123. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 123.

124. The allegations in Paragraph 124 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 124.

125. The allegations in Paragraph 125 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 125.

126. The allegations in Paragraph 126 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 126.

127. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 127.

128. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 128.

129. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 129.

130. BNYM denies the allegations in Paragraph 130, except BNYM admits that at certain times it acted as depositary for certain of the ADRs that Plaintiffs list in Appendix II as purportedly being held by the Owens Corning Plan.

131. The allegations in Paragraph 131 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 131.

132. The allegations in Paragraph 132 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 132.

133. The allegations in Paragraph 133 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 133.

134. The allegations in Paragraph 134 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 134.

135. The allegations in Paragraph 135 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 135.

136. The allegations in Paragraph 136 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 136.

137. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 137.

138. BNYM denies the allegations in Paragraph 138, except BNYM admits that it provided custody banking services to the Sheet Metal Workers' Plan during the purported class period.

139. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 139.

140. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 140.

141. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 141.

142. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 142.

143. BNYM denies the allegations in Paragraph 143, except BNYM admits that at certain times it acted as depositary for certain of the ADRs that Plaintiffs list in Appendix II as purportedly being held by the Sheet Metal Workers' Plan.

144. The allegations in Paragraph 144 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 144.

145. The allegations in Paragraph 145 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 145.

146. The allegations in Paragraph 146 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 146.

147. The allegations in Paragraph 147 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 147.

148. The allegations in Paragraph 148 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 148.

149. The allegations in Paragraph 149 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 149.

150. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 150.

151. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 151.

152. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 152.

153. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 153.

154. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 154.

155. BNYM denies the allegations in Paragraph 155, except BNYM admits that at certain times it acted as depositary for certain of the ADRs that Plaintiffs list in Appendix II as purportedly being held by the Teamsters Local 945 Plan.

156. The allegations in Paragraph 156 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 156.

157. The allegations in Paragraph 157 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 157.

158. The allegations in Paragraph 158 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 158.

159. The allegations in Paragraph 159 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 159.

160. The allegations in Paragraph 160 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 160.

161. The allegations in Paragraph 161 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 161.

162. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 162.

163. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 163.

164. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 164.

165. BNYM denies the allegations in Paragraph 165, except BNYM admits that at certain times it acted as depositary for certain of the ADRs that Plaintiffs list in Appendix II as purportedly being held by the Verizon 401(k) Plan.

166. BNYM denies the allegations in Paragraph 166, except BNYM admits that at certain times it acted as depositary for certain of the ADRs that Plaintiffs allege the Verizon 401(k) Plan held.

167. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 167.

168. The allegations in Paragraph 168 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 168.

169. The allegations in Paragraph 169 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 169.

170. The allegations in Paragraph 170 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 170.

171. The allegations in Paragraph 171 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in

Paragraph 171, except BNYM admits that 29 U.S.C. § 1002(21)(A)(i) contains the language quoted in Paragraph 171.

172. The allegations in Paragraph 172 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 172, except BNYM admits that 29 U.S.C. § 1104(a)(1)(A)(i) and (ii) contain the language quoted in Paragraph 172.

173. The allegations in Paragraph 173 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 173.

174. The allegations in Paragraph 174 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 174.

175. The allegations in Paragraph 175 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 175.

176. The allegations in Paragraph 176 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 176.

177. The allegations in Paragraph 177 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 177.



178. The allegations in Paragraph 178 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 178.

179. The allegations in Paragraph 179 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 179, except BNYM admits that 29 U.S.C. § 1113 contains the language quoted in Paragraph 179.

180. The allegations in Paragraph 180 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 180.

181. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 181.

182. BNYM denies the allegations in Paragraph 182.

183. BNYM denies the allegations in Paragraph 183.

184. BNYM denies the allegations in Paragraph 184.

185. BNYM denies the allegations in Paragraph 185, and respectfully refers the Court to the document quoted for its true and complete contents.

186. BNYM denies the allegations in Paragraph 186, except BNYM admits that the letter cited therein contains the language quoted in Paragraph 186 and respectfully refers the Court to the document quoted for its true and complete contents.

187. BNYM denies the allegations in Paragraph 187.

## **V. CLASS ALLEGATIONS**

188. BNYM denies the allegations in Paragraph 188, except BNYM admits that Plaintiffs purport to bring this action under Rule 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3).

189. The allegations in Paragraph 189 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 189.

190. The first sentence of Paragraph 190 sets forth a legal conclusion to which no response is required. To the extent that a response is required, BNYM denies the allegations in the first sentence of Paragraph 190. BNYM denies knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 190.

191. The allegations in Paragraph 191 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 191.

192. The allegations in Paragraph 192 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 192.

193. BNYM denies the allegations in the first sentence of Paragraph 193. BNYM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 193.

194. BNYM denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 194.

195. The allegations in Paragraph 195 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 195.

196. The allegations in Paragraph 196 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 196.

197. The allegations in Paragraph 197 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 197.

## **VI. CLAIMS FOR RELIEF**

### **COUNT I**

#### **Breach of Duties of Prudence and Loyalty (Violation of ERISA, 29 U.S.C. §§ 1104 and 1109 by All Defendants)**

198. BNYM repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

199. The allegations in Paragraph 199 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 199.

200. The allegations in Paragraph 200 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 200.

201. The allegations in Paragraph 201 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 201.

202. The allegations in Paragraph 202 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 202.

203. The allegations in Paragraph 203 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 203.

204. The allegations in Paragraph 204 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 204.

205. The allegations in Paragraph 205 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 205.

## COUNT II

### **Engaging in Self-Interested Prohibited Transactions with Plan Assets (Violation of ERISA, 29 U.S.C. § 1106(b) by All Defendants)**

206. BNYM repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

207. The allegations in Paragraph 207 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 207 and respectfully refers the Court to the full document cited therein for its true and complete contents.

208. The allegations in Paragraph 208 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 208.

209. The allegations in Paragraph 209 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 209.

210. The allegations in Paragraph 210 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 210.

211. The allegations in Paragraph 211 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 211.

212. The allegations in Paragraph 212 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 212.

### COUNT III

#### **Causing the Plans to Engage in Party in Interest Prohibited Transactions (Violation of ERISA, 29 U.S.C. § 1106(a) by All Defendants)**

213. BNYM repeats and incorporates each of its responses to each paragraph above as though fully set forth herein.

214. The allegations in Paragraph 214 state legal conclusions to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 214 and respectfully refers the Court to the full document cited therein for its true and complete contents.

215. The allegations in Paragraph 215 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a

response is required, BNYM denies the allegations in Paragraph 215 and respectfully refers the Court to the full document cited therein for its true and complete contents.

216. The allegations in Paragraph 216 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 216.

217. The allegations in Paragraph 217 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 217.

218. The allegations in Paragraph 218 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 218.

219. The allegations in Paragraph 219 state legal conclusions and set forth Plaintiffs' characterization of their claim to which no response is required. To the extent that a response is required, BNYM denies the allegations in Paragraph 219.

#### **JURY DEMAND**

220. The Court has denied Plaintiffs' demand for a jury trial. Op. & Order, 20-22, Dkt. 81.

#### **VII. PRAYER FOR RELIEF**

BNYM denies that Plaintiffs are entitled to any of the relief requested in their prayer for relief.

#### **Affirmative Defenses**

BNYM asserts the following affirmative and additional defenses, without the burden of proof for any issues to which applicable law places the burden on Plaintiffs.

Moreover, nothing stated herein is intended to be construed as an acknowledgement that any

particular issue or subject matter is relevant to plaintiffs' allegations. Furthermore, all defenses are pleaded in the alternative, and none constitutes an admission of liability or that Plaintiffs are entitled to relief on its claim. BNYM reserves the right to raise additional defenses, counterclaims, cross-claims, and third-party claims not asserted herein of which it may become aware through discovery or other investigation, or as otherwise may be appropriate.

**First Affirmative Defense**

The Complaint fails to state a claim upon which relief may be granted.

**Second Affirmative Defense**

Plaintiffs lack standing to bring this action.

**Third Affirmative Defense**

Plaintiffs lack standing to bring suit on behalf of participants, beneficiaries, trustees and named fiduciaries of any ERISA plan, where such ERISA plan is, or was, a holder of any ADR representing unsponsored American Depositary Shares.

**Fourth Affirmative Defense**

Plaintiffs lack standing to bring suit on behalf of participants, beneficiaries, trustees and named fiduciaries of any ERISA plan with respect to any ADRs held by such ERISA plan that the ERISA plans of which plaintiffs purport to be participants, beneficiaries, trustees, or named fiduciaries did not hold.

**Fifth Affirmative Defense**

Plaintiffs lack standing to bring suit on behalf of putative class members for times during the putative class period when the ERISA plans of which plaintiffs purport to be participants, beneficiaries, trustees, or named fiduciaries did not hold ADRs.

**Sixth Affirmative Defense**

Plaintiffs lack standing to bring suit on behalf of putative class members with respect to any ADR for times during the putative class period when the ERISA plans of which plaintiffs purport to be participants, beneficiaries, trustees, or named fiduciaries did not hold that ADR.

**Seventh Affirmative Defense**

Plaintiffs' claims are barred in whole or in part because BNYM acted in compliance with ERISA.

**Eighth Affirmative Defense**

Plaintiffs' claims under ERISA are barred to the extent they are based on alleged actions not taken in a fiduciary capacity.

**Ninth Affirmative Defense**

Plaintiffs' claims under ERISA are barred in whole or in part because some or all of the Deposited Securities underlying the ADRs, and some or all of the ADRs themselves, were or are "publicly-offered securities" within the meaning of 29 C.F.R. § 2510.3-101.

**Tenth Affirmative Defense**

Plaintiffs' claims under ERISA are barred in whole or in part because some or all of the ADRs in which the Plans invested are investments in "operating companies" within the meaning of 29 C.F.R. § 2510.3-101.

**Eleventh Affirmative Defense**

Plaintiffs' claims under ERISA are barred in whole or in part because the Plans' equity participation in some or all of the Deposited Securities underlying the ADRs, and in some or all of the ADRs themselves, is not "significant" (*i.e.*, 25% or more) within the meaning of 29 C.F.R. § 2510.3-101.



**Twelfth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part because in its role as depository BNYM did not exercise discretionary authority or control over "plan assets" within the meaning of ERISA and the regulations promulgated thereunder.

**Thirteenth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part because in its role as depository BNYM did not engage in any prohibited transactions within the meaning of ERISA; or, in the alternative, even if BNYM is found to have engaged in prohibited transactions in its role as depository, such transactions are exempt under ERISA as well as the regulations, rules, and administrative exemptions promulgated thereunder.

**Fourteenth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part because all of the challenged actions and decisions by BNYM in its role as depository complied with any fiduciary or other obligations it may have had under ERISA.

**Fifteenth Affirmative Defense**

BNYM is not liable for any claims in connection with any cash distributions converted on or after BNYM's Pricing Disclosure on October 1, 2015.

**Sixteenth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part by doctrine of waiver, estoppel, and/or release.

**Seventeenth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part by doctrine of laches.

**Eighteenth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations.

**Nineteenth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part by the applicable statute of repose.

**Twentieth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part by the terms of the deposit agreements.

**Twenty-First Affirmative Defense**

Plaintiffs' claims are barred in whole or in part because BNYM complied with all applicable laws, rules, regulations, codes, market practices, and standards.

**Twenty-Second Affirmative Defense**

Plaintiffs' prohibited transaction claims are barred in whole or in part because BNYM did not undertake any prohibited transaction within the meaning of 29 U.S.C. § 1106, or any other law or regulation, because in its role as depository BNYM lacked the requisite knowledge.

**Twenty-Third Affirmative Defense**

This action cannot proceed as a class action because the requirements of commonality, typicality, adequacy, predominance, superiority, and manageability are not met.

**Twenty-Fourth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part to the extent they have agreed to arbitrate disputes with BNYM.

**Reservation of Rights**

BNYM expressly reserves the right to amend and/or supplement this Answer and the Affirmative Defenses. BNYM reserves the right to raise any additional defenses not asserted herein that may be revealed during the course of discovery or other investigation, or that otherwise are found applicable to it.

Dated: New York, New York  
June 22, 2017

PAUL, WEISS, RIFKIND, WHARTON &  
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