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Rakoff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

BANK OF AMERICA CORPORATION, :

Defendant. :

No. 09-CIV.-6829 (JSR)

STIPULATION AND [PROPOSED] ORDER GOVERNING  
EXPERT REPORTS, DISCLOSURES AND DISCOVERY

*[Handwritten mark]*

IT IS HEREBY STIPULATED AND AGREED, by and among the parties to the above-captioned action presently pending before the Hon. Jed S. Rakoff in the United States District Court for the Southern District of New York (the "Action"), through their counsel, that the following provisions of this Order shall govern expert reports, disclosures and discovery in the Action:

1. Notwithstanding the language in Rule 26(a)(2)(B) (or any other potentially applicable rule) regarding the "data or other information considered" by the expert in rendering the report or forming the expert's opinions, the parties shall not be required to disclose or produce in discovery or at trial any:

(a) drafts of expert reports, regardless of whether such drafts have been disclosed or otherwise transmitted to in-house or outside counsel, employees, or consultants for the party or parties who have retained such expert;

(b) notes or other documents prepared by the expert, or his or her staff, unless relied upon as a basis for his or her opinions;

(c) documents or information constituting or reflecting oral or written communications between the expert and his or her staff, unless relied upon as a basis for his or her opinions; or

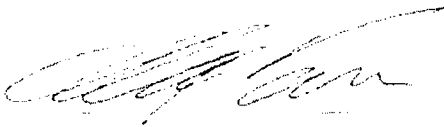
(d) documents or information constituting or reflecting oral or written communications between the expert and the party, parties, or counsel who retained the expert in the Action, unless relied upon as a basis for his or her opinions.

2. Experts, their staff and counsel are free to discard, and need not preserve, copies of any of the documents listed in paragraphs 1(a) through 1(d) above.

3. Each expert shall be required to (i) identify all documents produced by any party or nonparty in discovery and all deposition testimony on which he or she has relied as a basis for his or her opinions and (ii) identify and (if requested) produce copies of all other documents, deposition testimony or other information not included in clause (i) above on which he or she has relied as a basis for his or her opinions. Parties shall identify the documents referenced in clause (i) by "Bates" numbers and shall identify the deposition testimony by deponent name.

4. Any expert may be examined at deposition or trial with respect to documents or information on which he or she did not rely as a basis for his or her opinions, other than the documents or information listed in Paragraphs 1(a) – 1(d) hereof.

Dated: October 27, 2009  
New York, New York

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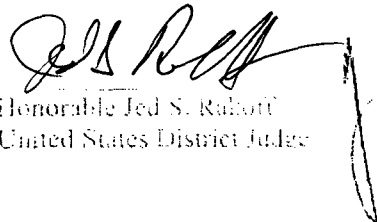
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SO ORDERED.

  
Honorable Jed S. Rulf  
United States District Judge

Dated: 10/30/09