

No. 16-317

IN THE
Supreme Court of the United States

DEUTSCHE BANK TRUST COMPANY AMERICAS, *et al.*,
Petitioners,

v.

ROBERT R. MCCORMICK FOUNDATION, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR RESPONDENTS

JOEL MILLAR	PHILIP D. ANKER
DAVID M. LEHN	<i>Counsel of Record</i>
WILMER CUTLER PICKERING HALE AND DORR LLP	ALAN E. SCHOENFELD WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., NW Washington, DC 20006	7 World Trade Center New York, NY 10007 (212) 230-8890
ERIC F. FLETCHER	philip.anker@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP	
60 State Street Boston, MA 02109	

Counsel for Respondents Susquehanna Capital Group, et al.

COMPLETE LIST OF PARTIES REPRESENTED
BY COUNSEL IN APPENDIX

Petitioners' supplemental brief calls attention to the recent two-to-one panel decision of the Eleventh Circuit in *In re Northington*, 876 F.3d 1302 (2017). Respondents respectfully submit this supplemental brief in response.

Contrary to petitioners' contention, the Eleventh Circuit's decision does not create, much less "deepen" (Supp. Br. 1), any circuit split on petitioners' first question presented, i.e., whether the presumption against federal preemption of state law applies in the bankruptcy context. And even if it did, that would not warrant this Court's review because the first question presented is irrelevant to the disposition of this case. Nor does the Eleventh Circuit's decision bear on the certworthiness of the third question presented, i.e., whether 11 U.S.C. § 546(e) preempts state-law fraudulent-conveyance actions brought by creditors (rather than the trustee).

1.a. At the threshold, even if there were a split of authority regarding whether the presumption against preemption applies in the bankruptcy context, this case would present a poor vehicle to review that question. As respondents explained previously, the resolution of that question would not affect the disposition of this case. Any such presumption would have to yield in the face of the manifest conflict between petitioners' state-law claims and the congressional objectives underlying § 546(e). Opp. 15.

b. Contrary to petitioners' continued mischaracterization of the Second Circuit's analysis (Suppl. Br. 1-3), the Second Circuit—like the Third, Ninth, and now Eleventh Circuits—expressly acknowledged the "recognized presumption against preemption" of state law in the bankruptcy context. Opp. 10-15; App. 20a-21a.

The Second Circuit simply noted that the presumption against preemption carries greater weight in areas traditionally regulated by state law alone and less weight in areas with a history of significant federal regulation. Opp. 10-11; App. 20a-21a. The Second Circuit accordingly concluded that the presumption carried less weight here because this case concerns the rights of creditors of debtors in bankruptcy and the securities markets, two areas that have long been the subject of extensive federal regulation. Opp. 11-13; App. 21a-24a.

There is nothing extraordinary about that conclusion warranting this Court's review. While the presumption against preemption is the starting point in all cases, petitioners are wrong in suggesting that this presumption must be given the same weight in all cases, regardless of the federal and state interests at issue. This Court has repeatedly held to the contrary—that those interests do affect the weight afforded that presumption. See *Hillman v. Maretta*, 569 U.S. 483, 490-491 (2013); *United States v. Locke*, 529 U.S. 89, 90 (2000).

The Second Circuit's conclusion likewise does not conflict with the Eleventh Circuit's decision in *Northington*. The different outcome reached in *Northington* does not reflect any difference in approach, but simply the different statutory provisions at issue. Unlike here, *Northington* did not involve § 544(b), § 546(e) or other Code provisions that concern the vesting of creditor state-law claims in the federal bankruptcy trustee and that expressly bar those claims where directed at certain securities settlement payments in furtherance of the strong federal interests in regulating the securities markets and creditor rights in bankruptcy proceedings. Opp. 11-15. Rather, *Northington* involved a dispute over a debtor's property rights, and Congress itself has made clear that those rights are primarily governed by state law.

As the Eleventh Circuit explained, the Bankruptcy Code defines the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). Because “[p]roperty interests are created and defined by state law,” “Congress has generally left the determination of property rights in the assets of a bankrupt’s estate to state law.” Suppl. Br. App. 14-15a (quoting *Butner v. United States*, 440 U.S. 48, 54-55 (1979)). Accordingly, while the Eleventh Circuit acknowledged that bankruptcy is generally a “heavily ‘federal’ area of law,” Suppl. Br. App. 4a, it concluded on the specific question presented in *Northington* that the debtor’s interest in the car was governed by state law, in accordance with the usual federal bankruptcy rule, and did not identify any federal bankruptcy provision that displaced that rule. Suppl. Br. App. 22a-24a. That unremarkable conclusion does not conflict with the Second Circuit’s consideration of the presumption against preemption in *Tribune*, a case involving an entirely different set of provisions of the Bankruptcy Code that expressly override, rather than defer to, state law.

2. Nor does *Northington* bear on whether § 546(e) preempts state-law fraudulent-conveyance suits by creditors. Contrary to petitioners’ suggestion (Suppl. Br. 4), the Eleventh Circuit did not hold that preemption requires an express textual statement abrogating state law. Petitioners point (Suppl. Br. 2-3) to the court’s statement that it sought a “clear textual indication” of preemptive intent, but as the Eleventh Circuit explained, it is not “necessary for Congress to ‘override historical state practice expressly’” and “the Bankruptcy Code can supersede state-law ... ‘by implication.’” Suppl. Br. 18a-19a (quoting *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 546 (1994)). Applying those settled

principles of preemption law, the Eleventh Circuit found no indication in the Code that Congress intended to displace state property law where “[s]ection 541 [of the Bankruptcy Code] neither clearly says *nor unambiguously implies*” any such intent. Suppl. Br. App. 22a (emphasis added) (citing *BFP*, 511 U.S. at 544-45)). Nothing in that reasoning remotely suggests that the Eleventh Circuit would reach any different result from the Second Circuit’s here, where the Bankruptcy Code’s text, structure and purpose make unmistakably clear that Congress did not intend to permit creditors to “end run” § 546(e) and bring the same state-law claims to avoid the same securities settlement payments that the safe harbor bars the creditors’ statutory representative from bringing. Opp. 16-22.

3. Finally, petitioners are wrong to suggest that their second question presented—whether § 546(e) prohibits avoidance of securities settlement payments made “by or to (or for the benefit of)” specified qualifying entities where the qualifying entity acted as an intermediary rather than the ultimate beneficial owner of the transferred property—is “substantively identical” (Suppl. Br. 1) to the one on which this Court granted certiorari in *Merit Management Group, LP v. FTI Consulting, Inc.*, No. 16-784 (argued Nov. 6, 2017). Unlike *Merit Management*, which concerned claims to avoid a relatively small payment to purchase stock in a private company from a single shareholder that concededly was not a qualifying entity (*see id.* Nov. 6, 2017 Argument Tr. at 5, 15-19), this case involves claims to avoid billions of dollars of settlement payments to repurchase Tribune’s publicly held shares, which were settled through a qualifying entity (The Depository Trust Company, the nation’s central securities depository and a SEC-registered securities clearing agency)

and then transferred to other qualifying entities, including various banks and other financial institutions and/or their customers (e.g., institutional and individual investors, retirement accounts and mutual funds) for which such institutions were acting as agents or custodians in connection with the share repurchase transactions. Opp. 26; Amicus Br. Former Tribune and Lyondell Shareholders (*Merit Management Group, LP v. FTI Consulting, Inc.*, No. 16-784) at 4-11, 33-34; 11 U.S.C. § 101(22)(A) (defining “financial institution” to include specified “bank[s], ... trust compan[ies], ... and, when any such ... bank ... or entity is acting as agent or custodian for a customer ... in connection with a securities contract ... such customer”). Accordingly, even an affirmance in *Merit Management* would not govern the outcome here.

CONCLUSION

For the foregoing reasons and those set forth in respondents’ brief in opposition to the petition, the petition should be denied.

Respectfully submitted,

MARK A. NEUBAUER
 CARLTON FIELDS JORDEN
 BURT, LLP
 2000 Avenue of the Stars
 Suite 530N
 Los Angeles, CA 90067

*Counsel for The Alfred W.
 Merkel Marlowe G. Merkel
 Trust UA 11 Sept 85, et al.*

PHILIP D. ANKER
Counsel of Record
 ALAN E. SCHOENFELD
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 7 World Trade Center
 New York, NY 10007
 (212) 230-8890
 philip.anker@wilmerhale.com

ELLIOT MOSKOWITZ
 DAVIS POLK &
 WARDWELL LLP
 450 Lexington Avenue
 New York, NY 10017
*Counsel for Bear Stearns
 Asset Management, Inc. et al.*

MICHAEL S. DOLUISIO
 STUART T. STEINBERG
 ELLEN L. MOSSMAN
 DECHERT LLP
 Cira Centre
 2929 Arch Street
 Philadelphia, PA 19104-2808
*Counsel for Aegon/
 Transamerica Series Fund –
 TRP, et al.*

STEVEN R. SCHOENFELD
 DELBELLO DONNELLAN
 WEINGARTEN WISE &
 WIEDERKEHR LLP
 One North Lexington Avenue
 White Plains, NY 10601
*Counsel for College Retirement
 Equities Fund, et al.*

JOEL MILLAR
 DAVID M. LEHN
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 1875 Pennsylvania Ave., NW
 Washington, DC 20006

ERIC F. FLETCHER
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 60 State Street
 Boston, MA 02109
*Counsel for Respondents
 Susquehanna Capital Group,
 et al.*

DANIEL L. CANTOR
 DANIEL S. SHAMAH
 O'MELVENY & MYERS LLP
 Times Square Tower
 7 Times Square
 New York, NY 10036
*Counsel for Bank of America,
 N.A., et al.*

DAVID N. DUNN
 PHILLIPS, DUNN, SHRIVER
 & CARROLL, P.C.
 147 Western Avenue
 Brattleboro, VT 05301
Counsel for Ciri Gillespie, et al.

ANDREW J. ENTWISTLE ENTWISTLE & CAPPUCCI LLP 299 Park Avenue, 20th Floor New York, NY 10171 <i>Counsel for GAMCO Asset Management, Inc., The Public Employees' Retirement Association of Colorado, & the Illinois State University Re- tirement System</i>	GREGG M. MASHBERG STEPHEN L. RATNER PROSKAUER ROSE LLP 11 Times Square New York, NY 10036 <i>Counsel for 1199SEIU Health Care Employees Pension Fund, et al.</i>
MATTHEW D. MCGILL OSCAR GARZA DOUGLAS LEVIN GIBSON, DUNN & CRUTCHER LLP 1050 Connecticut Ave., NW Washington, DC 20036 <i>Counsel for Chandler Trust No. 1 & Chandler Trust No. 2</i>	DOUGLAS HALLWARD- DRIEMEIER ROPES & GRAY LLP 2009 Pennsylvania Ave., NW Washington, DC 20006 JOSHUA Y. STURM ROPES & GRAY LLP 1211 Avenue of the Americas New York, NY 10036-8704 <i>Counsel for APG Asset Man- agement US Inc. F/K/A ABP Investments US, Inc. (incor- rectly named as ABP), et al.</i>
MATTHEW L. FORNSHELL ICE MILLER LLP 250 West Street Columbus, OH 43215 <i>Counsel for Illinois Munici- pal Retirement Fund, et al.</i>	GARY STEIN DAVID K. MOMBORQUETTE WILLIAM H. GUSSMAN, JR. SCHULTE ROTH & ZABEL LLP 919 Third Avenue New York, NY 10022 <i>Counsel for Adage Capital Advisors Long, et al.</i>
DAVID C. BOHAN JOHN P. SIEGER KATTEN MUCHIN ROSENMAN LLP 525 West Monroe Street Chicago, IL 60661 <i>Counsel for Cantigny Founda- tion & The Robert R. McCor- mick Foundation</i>	

ALAN J. STONE
ANDREW M. LEBLANC
MILBANK, TWEED, HADLEY
& MCCLOY LLP
1 Chase Manhattan Plaza
New York, NY 10005

*Counsel for Amalgamated
Bank, et al.*

**COMPLETE LIST OF PARTIES REPRESENTED
BY COUNSEL IN APPENDIX**

JANUARY 2018

APPENDIX

**COMPLETE LIST OF PARTIES
REPRESENTED BY COUNSEL**

PHILIP D. ANKER

Counsel of Record

ALAN E. SCHOENFELD

WILMER CUTLER PICKERINGHALE AND DORR LLP

7 World Trade Center

New York, NY 10007

(212) 230-8890

philip.anker@wilmerhale.com

JOEL MILLAR

DAVID M. LEHN

WILMER CUTLER PICKERING HALE AND DORR LLP

1875 Pennsylvania Ave., NW

Washington, DC 20006

ERIC F. FLETCHER

WILMER CUTLER PICKERING HALE AND DORR LLP

60 State Street

Boston, MA 02109

Counsel for Respondents Susquehanna Capital Group, Susquehanna Investment Group, and Susquehanna Investment Group as custodian of the SIG-SS CBOE Joint Account

MARK A. NEUBAUER

CARLTON FIELDS JORDEN BURT, LLP

2000 Avenue of the Stars

Suite 530N

Los Angeles, CA 90067

Counsel for The Alfred W. Merkel Marlowe G. Merkel Trust U/A 11 Sept 85; Chase L. Leavitt; Darell F. Kuenzler; Darell F. Kuenzler IRA; Debra A. Gastler; Denise Palmer Revocable Trust U/A/D 10-28-1991, Denise E. Palmer, Trustee; Durham J. Monsma; Emil Kratochvil; Evelyn A. Freed Trust U/A/D 03/26/90 Brandes-All Cap Value; Javad Rassouli; Jeanette Day Family Trust U/A DTD 10/04/1994;

Jennifer Merkel, Successor Trustee of The Alfred W. Merkel Marlowe G. Merkel Trust UA 11 Sept 85; Jim Hicks as Trustee of the Jim Hicks & Co. Employee Profit-Sharing Plan; John Patinella; Leonidia Gonsalves; Mark Allen Itkin; Mary E. Day; Miles Adrian Collet Murray; Monserate Ramirez JTWROS; Muriel S. Harris; Myrna Ramirez; Nancy Lobdell; OMA OPA LLC; The Peter J. Fernald Trust U/A 1/13/92; Peter J. Fernald, Trustee of The Peter J. Fernald Trust U/A 1/13/92; Posen Family Limited Partnership; Raymond M. Luthy Trust; Renee H. Miller; Reichhold, Inc.; Richard L. Goldstein; Robbie E. Monsma; Robert N. Mohr, Successor Trustee to Joseph B. Mohr, as Trustee of the J&M Trust UA Dated 07/23/1992; Terrill F Cox & Lorraine M Cox Trust U/A DTD 3/31/98; and William F. Thomas

ELLIOT MOSKOWITZ
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017

Counsel for Bear Stearns Asset Management, Inc.; Bear Stearns & Co., Inc. (n/k/a J.P. Morgan Securities LLC); Bear Stearns Equity Strategies RT LLC; Bear Stearns Securities Corp. (n/k/a J.P. Morgan Clearing Corp.); Custodial Trust Company; JPMorgan 401(k) Savings Plan; JPMorgan Chase Bank, N.A. (which was also improperly referred to in the Amended Complaint as “Custodial Trust Company”); J.P. Morgan Clearing Corp.; J.P. Morgan; J.P. Morgan Securities LLC (formerly J.P. Morgan Securities Inc.); J.P. Morgan Securities plc (formerly J.P. Morgan Securities Ltd.); JPMSI LLC (formerly J.P. Morgan Services Inc.); JPMorgan Trust II; and J.P. Morgan Whitefriars, Inc.

MICHAEL S. DOLUISIO
STUART T. STEINBERG
ELLEN L. MOSSMAN
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808

Counsel for Aegon/Transamerica Series Fund – TRP; Aegon/Transamerica Series Trust T Rowe Price Equity Income; Board of Trustees of the Colleges of Applied Arts and Technology Pension Plan, As Administrator of Colleges of Applied Arts and Technology Pension Plan; Charles Schwab & Co. Inc; Charles Schwab & Co., Inc, as Custodian for Brent V. Woods IRA Rollover; Charles Schwab & Co., Inc, as Custodian of the George William Buck SEP-IRA DTD 04/08/93; Charles Schwab & Co., Inc, as Custodian of the Peter Marino IRA Rollover; Charles Schwab Investment Management, Inc. (incorrectly named as “Charles Schwab Inv Mgt Co”); Clearwater Growth Fund; DIA MID CAP Value Portfolio; Harbor Capital Advisors, Inc.; Harbor Capital Group Trust for Defined Benefit Plans (incorrectly named as “Harbor Capital Group Trust”); Harbor Mid Cap Value Fund; J. Goldman & Co., L.P. (incorrectly named as “Jay Goldman & Co., LP”); Jay Goldman Master Limited Partnership (incorrectly named as “Jay Goldman Master LP”); John Hancock Life Insurance Company (USA) as successor-in-interest to John Hancock Financial Services, Inc.; John Hancock Funds II; John Hancock Funds II Equity Income Fund (incorrectly named as “John Hancock Funds II (Equity-Income Fund)” and “JHF II Equity-Income Fund”); John Hancock Funds II Spectrum Income Fund (incorrectly named as “John Hancock Funds II (Spectrum Income Fund)” and “JHF II Spectrum Income Fund”); John Hancock Variable Insurance Trust New Income Trust (incorrectly named as “John Hancock Variable Insurance Trust (F/K/A John Hancock Trust (New Income Trust),” “John Hancock Variable Insurance Trust,” and “JHT New Income Trust”); Linda Molenda; Manulife Asset Management (US) LLC; Manulife Invst Ex FDS Corp.-

MIX; Manulife Investments (f/k/a “Manulife Mutual Funds”); Manulife U.S. Equity Fund; MassMutual Premier Enhanced Index Value Fund (currently known as MassMutual Premier Disciplined Value Fund); MassMutual Premier Funds; MassMutual Premier Main Street Small/Mid Cap Fund (f/k/a “MassMutual Premier Main Street Small Cap Fund”); MassMutual Premier Small Company Opportunities Fund (currently known as MassMutual Premier Small Cap Opportunities Fund); MassMutual Select Diversified Value Fund; MassMutual Select Funds; MassMutual Select Indexed Equity Fund (currently known as MM S&P 500 Index Fund); MML Blend Fund; MML Equity Income Fund; MML Series Investment Fund; MML Series Investment Fund II; Monumental Life Insurance Company; Monumental Life Insurance Co. F/K/A Peoples Benefit Life Insurance Company; Monumental Life Insurance Co., as Owner of Teamsters Separate Account (Monumental Life Insurance Company, on Behalf of Separate Account L-32) (incorrectly named as “Monumental Life Insurance Co., as Owner of Teamsters Separate Account (Monumental Life Insurance Company, on Behalf of Separate Account L-23)”); OFI Private Investments, Inc.; Oppenheimer Main Street Select Fund (formerly known as Oppenheimer Main Street Opportunity Fund); Oppenheimer Main Street Mid Cap Fund (formerly known as Oppenheimer Main Street Small Cap Fund); Oppenheimer Variable Account Funds doing business as Oppenheimer Main Street Small & Mid-Cap Fund/VA (formerly known as Oppenheimer Main Street Small Cap Fund/VA); OppenheimerFunds, Inc.; optionsXpress, Inc.; Pacific Select Fund; ProShares Ultra S&P500 (incorrectly named as “Pro Shares Ultra S&P 500”); Russell Investment Company; Russell Investment Group; Russell Investments Trust Company (f/k/a “Frank Russell Trust Company”); Russell U.S. Core Equity Fund (incorrectly named as “Russell US Core Equity Fund,” and f/k/a “Russell Equity I Fund” and “Russell Investment Company Diversified Equity Funds”); Rydex ETF Trust (Guggenheim S&P 500 Pure Value ETF) (incorrectly named as “Rydex ETF Trust (Rydex S&P 500

Pure Value ETF”); *Rydex ETF Trust (Guggenheim S&P 500 Equal Weight Consumer Discretionary ETF)* (incorrectly named as “*Rydex ETF Trust (Rydex S&P Equal Weight Consumer Discretionary ETF)*”); *Rydex ETF Trust (Guggenheim S&P 500 Equal Weight ETF)* (incorrectly named as “*Rydex ETF Trust (Rydex S&P Equal Weight ETF)*”); *Rydex Investments*; *Rydex Series Funds*; *Rydex Series Funds Multi-Hedge Strategies Fund*; *Rydex Series Funds S&P 500 Pure Value Fund*; *Rydex Variable S&P 500 Pure Value Fund*; *Rydex Variable Trust*; *Rydex Variable Trust Multi-Hedge Strategies Fund*; *SBL Fund Series H*; *SBL Fund Series O*; *Schwab 1000 Index Fund*; *Schwab Capital Trust*; *Schwab Fundamental US Large Company Index Fund*; *Schwab Investments*; *Schwab S&P 500 Index Fund*; *Schwab S&P 500 Index Fund (F/K/A Schwab Institutional Select S&P 500 Fund)*; *Schwab Total Stock Market Index Fund*; *Security Global Investors-Rydex/SGI*; *Security Investors, LLC*; *Transamerica Asset Management, as owner of the DIA Mid Cap Value Portfolio*; *Transamerica Blackrock Large Cap Value VP (F/K/A Transamerica T. Rowe Price Equity Income VP)*; *Transamerica Partners Mid Cap Value*; *Transamerica Partners Mid Cap Value F/K/A Diversified Investors Portfolios*; *Transamerica Partners Mid Value Portfolio (f/k/a Transamerica Partners Mid-Cap Value Portfolio f/k/a/ Diversified Investors Mid-Cap Value Portfolio)*; *Transamerica Partners Portfolios (F/K/A Diversified Investors Portfolios)*; *Transamerica Series Trust (F/K/A Aegon/Transamerica Series Trust)*; *The Vanguard Group, Inc.*; *Vanguard 500 Index Fund* (incorrectly named as “*Vanguard Index 500 Fund*” and f/k/a “*Vanguard Tax-Managed Growth & Income Fund*”); *Vanguard Asset Allocation Fund*; *Vanguard Balanced Index Fund* (incorrectly named as “*Vanguard Balanced Index Fund (a/k/a Vanguard Balanced Index Equity Fund)*”); *Vanguard Consumer Discretionary Index Fund*; *Vanguard Equity Income Fund*; *Vanguard Fenway Funds*; *Vanguard Fiduciary Trust Company*; *Vanguard FTSE Social Index Fund*; *Vanguard Growth and Income Fund*; *Vanguard High Dividend Yield Index Fund*; *Vanguard Index Funds*; *Vanguard Insti-*

tutional Index Fund (incorrectly named as “Vanguard Institutional Index Funds”); Vanguard Institutional Total Stock Market Index Fund; Vanguard Large Cap Index Fund; Vanguard Malvern Funds; Vanguard Mid-Cap Index Fund; Vanguard Mid-Cap Value Index Fund; Vanguard Quantitative Funds; Vanguard Scottsdale Funds; Vanguard Structured Large-Cap Equity Fund; Vanguard Tax-Managed Funds; Vanguard Total Stock Market Index Fund; Vanguard Valley Forge Funds; Vanguard Value Index Fund; Vanguard Variable Insurance Fund; Vanguard Variable Insurance Funds; Vanguard VVIF Equity Fund Index; Vanguard VVIF Equity Income VGI; Vanguard VVIF Midcap Index Fund; Vanguard Whitehall Funds; Vanguard Windsor Funds; Vanguard Windsor II Fund; Vanguard World Fund (f/k/a Vanguard World Funds); VFTC - Vanguard Company Stock Account 21; and Woodmont Investments Ltd.

STEVEN R. SCHOENFELD
DELBELLO DONNELLAN WEINGARTEN WISE
& WIEDERKEHR LLP
One North Lexington Avenue
White Plains, NY 10601

Counsel for College Retirement Equities Fund; Teachers Insurance and Annuity Association of America; TIAA Board of Overseers; TIAA-CREF Funds (formerly known as TIAA-CREF Institutional Mutual Funds); TIAA-CREF Investment Management, LLC; and TIAA-CREF Life Funds

ANDREW J. ENTWISTLE
ENTWISTLE & CAPPUCCI LLP
299 Park Avenue, 20th Floor
New York, NY 10171

Counsel for GAMCO Asset Management, Inc.; The Public Employees’ Retirement Association of Colorado; and the Illinois State University Retirement System

MATTHEW D. MCGILL
OSCAR GARZA
DOUGLAS LEVIN
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., NW
Washington, DC 20036

Counsel for Chandler Trust No. 1 and Chandler Trust No. 2

MATTHEW L. FORNSHELL
ICE MILLER LLP
250 West Street
Columbus, OH 43215

Counsel for Illinois Municipal Retirement Fund, School Employees Retirement System of Ohio, Ohio Public Employees Retirement System, Pensions Reserve Investment Management Board of Massachusetts, Texas Education Agency, and Employee Retirement System of Texas

DAVID C. BOHAN
JOHN P. SIEGER
KATTEN MUCHIN ROSENMAN LLP
525 West Monroe Street
Chicago, IL 60661

Counsel for Cantigny Foundation and The Robert R. McCormick Foundation

ALAN J. STONE
ANDREW M. LEBLANC
MILBANK, TWEED, HADLEY & MCCLOY LLP
1 Chase Manhattan Plaza
New York, NY 10005

Counsel for Amalgamated Bank; Barclays Bank PLC; Barclays Capital Inc.; Barclays Capital Securities Ltd.; Bessemer Trust Company; BHF-Bank Aktiengesellschaft; BMO Nesbitt Burns Employee Co-Investment Fund I (U.S.), L.P.; BMO Nesbitt Burns Employee Co-Investment Fund I Management (U.S.), Inc.; BMO Nesbitt Burns Inc.; Bank of Montreal Holding Inc. (as successor in interest to BMO

Nesbitt Burns Trading Corp. S.A.); BMO Nesbitt Burns U.S. Blocker Inc.; BNP Paribas Securities Corp.; Brown Brothers Harriman & Co.; Canadian Imperial Holdings, Inc.; CIBC World Markets Corp.; CIBC World Markets, Inc.; Commerz Markets LLC; Commerzbank AG; Cooper Neff Advisors, Inc. now known as Harewood Asset Management (US) Inc.; Credit Suisse (USA), Inc.; Credit Suisse Securities (Europe) Ltd.; Credit Suisse Securities (USA) LLC; D.E. Shaw Valence Portfolios, L.L.C.; Deutsche Bank AG; Deutsche Bank AG, Filiale Amsterdam; Deutsche Bank Securities Inc.; Deutsche Investment Management Americas Inc.; Eaton Vance Multi Cap Growth Portfolio; Eaton Vance Tax Managed Global Buy Write Opportunities Fund; Eaton Vance Tax Managed Growth Portfolio; Eaton Vance Tax Managed Multi-Cap Growth Portfolio; Edward D. Jones & Co., L.P.; Fidelity Advisor Series I; Fidelity Commonwealth Trust; Fidelity Concord Street Trust; Fidelity Securities Fund – Leveraged Company Stock Fund; Fidelity U.S. Equity Index Commingled Pool; Goldman Sachs Execution & Clearing, L.P.; Goldman Sachs International Holdings LLC; Goldman Sachs Variable Insurance Trust; Goldman, Sachs & Co.; GS Investment Strategies LLC; Liberty Harbor Master Fund I, L.P.; Lyxor/Canyon Value Realization Fund Ltd.; National Financial Services LLC; Neuberger Berman LLC; PNC Bank, National Association; RBC Capital Markets Arbitrage, LLC; RBC Capital Markets, LLC; RBC Global Asset Management, Inc.; RBC O’Shaughnessy U.S. Value Fund; Royal Bank of Canada; Royal Trust Corporation of Canada; Schultze Asset Management LLC; Scotia Capital (USA) Inc.; Scotia Capital Inc.; SG Americas Securities, LLC; State Street Bank and Trust Company; State Street Bank Luxembourg, S.A.; State Street Global Advisors (Japan) Co., Ltd.; State Street Global Advisors, Inc.; State Street Trust and Banking Company, Limited; SunTrust Bank; Swiss American Corporation; Swiss American Securities, Inc.; TD Ameritrade Clearing, Inc.; TD Equity Options LLC, f/k/a TD Options LLC; The Bank of Nova Scotia; U.S. Bancorp Investments, Inc.; U.S. Bank N.A.; UBS AG; UBS Financial Services, Inc.; UBS

Global Asset Management (Americas) Inc.; UBS Global Asset Management (US) Inc.; UBS O'Connor LLC; UBS Securities LLC; Union Bank, N.A., formerly known as Union Bank of California, N.A.; Variable Insurance Products Fund II – Index 500 Portfolio; and Workers Compensation Board

DANIEL L. CANTOR
DANIEL S. SHAMAH
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, NY 10036

Counsel for Bank of America, N.A.; Bank of America, N.A. / LaSalle Bank, N.A.; Bank of America Corporation; Bank of America; Bank of America Structured Research; Banc of America Securities LLC; Bank of America N.A./ GWIM Trust Operations; BNP Paribas Prime Brokerage Inc.; Columbia Management Group; Forrester Funding Master Trust; LaSalle Bank, N.A.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Merrill Lynch, Pierce, Fenner & Smith as successor to Banc of America Securities LLC, Securities Lending Services; Merrill Lynch; Merrill Lynch & Co., Inc.; Merrill Lynch Capital Corp.; Merrill Lynch Financial Markets, Inc.; Merrill Lynch Trust Co.; Merrill Lynch, Pierce, Fenner & Smith, Inc. – Safekeeping; Merrill Lynch, Pierce, Fenner & Smith, Inc. – Securities Lending; 1IA SPX1; US Trust Co. N.A.; and U.S. Trust Company of Delaware

DAVID N. DUNN
PHILLIPS, DUNN, SHRIVER & CARROLL, P.C.
147 Western Avenue
Brattleboro, VT 05301

Counsel for Ciri Gillespie, Cara-Leigh Gillespie-Wilson, John and Carol Jansson, Kirsten & John Gibbs, Walter Lang, Joel Marks, Steven and Susan Miller, Richard DeFoe, Kevin Domkowski, Richard & Lynda Freedman, Paul Gerken, Susan Gail Harwood Trust, Peter & Janice Howe,

William H. Johnson, KWK Management, McConnell Foundation, Lili Charlotte Sarnoff, Spindle Limited Partnership, Maud P. Barton Revocable Trust, Cornelia Tobey, Richard Triest, Jerold Jay Wichtel, James & Eileen Wirth, Eileen S. Buckley, Willowlake Development, and Lu Ann Sodano

GREGG M. MASHBERG
STEPHEN L. RATNER
PROSKAUER ROSE LLP
11 Times Square
New York, NY 10036

Counsel for 1199SEIU Health Care Employees Pension Fund; 1199SEIU Home Care Employees Fund; 1199SEIU Greater New York Pension Fund; A.G. Edwards & Sons, LLC; A.G. Edwards Private Equity Partners III, L.P.; A.G. Edwards, Inc.; AG Edwards & Sons, Inc.; Baldwin Enterprises, Inc.; The Bank of New York Mellon Corporation Retirement Plans Master Trust; BNY Mellon Investment Servicing (US) Inc. (f/k/a PFPC, Inc.); BNY Mellon Trust of Delaware; BNY Mellon, N.A., as Successor-In-Interest to Mellon Trust of New England, N.A.; Cede & Co.; Dreyfus Index Fund, Inc.; Dreyfus Stock Index Fund, Inc.; Equity League Pension Trust Fund; Evergreen Asset Management Corp.; First Clearing, LLC; Iolaire Investors LLP; Jefferies Bache Securities, LLC (formerly Prudential Bache Securities, LLC); Jefferies LLC (formerly Jefferies & Company, Inc.); Mellon Bank N.A. Employees Benefit Collective Investment Plan; Mellon Bank, N.A. Employee Benefit Plan; Mellon Capital Management Corporation; New Eagle Holdings LLC; Newedge USA, LLC; Oppenheimer & Co., Inc.; Paper Products, Miscellaneous Chauffeurs, Warehousemen, Helpers, Messengers, Production and Office Workers Local 27 Pension Fund; Pershing LLC; Producers-Writers Guild of America Pension Plan; Reed Elsevier Inc.; Reed Elsevier U.S. Retirement Plan; Reliance Trust Company; Strategic Funds, Inc.; The Bank of New York Mellon; The Bank of New York Mellon as trustee of The Bank of New York Mellon Employee Benefit Collective Investment Fund Plan f/k/a Mellon Bank, N.A. Employee Benefit Collective In-

vestment Fund Plan; The Bank of New York Mellon as trustee of The Collective Trust of The Bank of New York; The Bank of New York Mellon as trustee of the PG&E Nuclear Facilities Qualified CPUC Decommissioning Master Trust; The Bank of New York Mellon as trustee of the PG&E Postretirement Medical Plan Trust; The Bank of New York Mellon as trustee of the R.E. Ginna Nuclear Power Plant LLC Master Decommissioning Trust; The Bank of New York Mellon Corporation; The Depository Trust & Clearing Corporation; The Depository Trust Company; The Dreyfus Corporation; The Dreyfus/Laurel Funds, Inc.; Wachovia Bank, N.A.; Wells Fargo Bank, N.A.; and Wells Fargo Investments, LLC

DOUGLAS HALLWARD-DRIEMEIER
 ROPES & GRAY LLP
 2009 Pennsylvania Ave., NW
 Washington, DC 20006

JOSHUA Y. STURM
 ROPES & GRAY LLP
 1211 Avenue of the Americas
 New York, NY 10036-8704

Counsel for APG Asset Management US Inc. F/K/A ABP Investments US, Inc. (incorrectly named as ABP); Francis L. Coolidge, Guardian Investors Services LLC; Guardian VC 500 Index Fund, John Doe as Owner of; Harvard University; Harvard Management Co.; President and Fellows of Harvard College; Loomis Sayles Credit Alpha Fund; LPL Financial LLC; Mutual of America Investment Corp.; Stichting Pensioenfond van de ABN AMRO N.V.; Stichting Pensioenfond ABP; Stichting Pensioenfond Hoogovens; Stichting Pensioenfond Zorg En Welzijn; Stichting Shell Pensioenfond; Tribune Company Master Retirement Savings Trust; Tribune Employee Stock Ownership Plan; Times Mirror Savings Plan; Tribune Company 401(k) Savings Plan; Trustees of Boston College; and Welch & Forbes LLC.

GARY STEIN
DAVID K. MOMBORQUETTE
WILLIAM H. GUSSMAN, JR.
SCHULTE ROTH & ZABEL LLP
919 Third Avenue
New York, NY 10022

Counsel for Adage Capital Advisors Long, Adage Capital Partners LP, Cougar Trading, LLC, Del Mar Master Fund, Ltd., DiMaio Ahmad Capital LLC, Emanuel E. Geduld 2005 Family Trust, GPC LX LLC, Gryphon Hidden Values VIII Ltd., Guggenheim Advisors, LLC, Guggenheim Portfolio Company XXXI, LLC, Guggenheim Portfolio LIX, LLC, Halcyon Asset Management LLC, Halcyon Diversified Fund LP, Halcyon Fund, LP, Halcyon Master Fund LP, Harvest AA Capital LP, Harvest Capital LP, Howard Berkowitz, Hudson Bay Fund LP, Hudson Bay Master Fund Ltd., Hussman Econometrics Advisors, Inc., Hussman Investment Trust, Hussman Strategic Growth Fund, John Splain, as Trustee of the Hussman Investment Trust, Lispenard Street Credit Fund LLP, Lispenard Street Credit Master Fund, Lispenard Street Credit Master Fund Ltd., Lockheed Martin Corporation, Lockheed Martin Corporation Master Retirement Trust, New Americans LLC, Pond View Credit (Master) LP, QVT Fund LP, Sowood Alpha Fund LP, Stark Global Opportunities Master Fund Ltd., Stark Investments, Stark Master Fund Ltd., Swiss Re Financial Products Corp., TOA Reinsurance Company of America, Towerview LLC, Twin Securities, Inc., and Wabash/Harvest Partners LP