

A.G. Schneiderman And U.S. Attorney Bharara Announce Groundbreaking Settlement With Bank Of New York Mellon Over Fraudulent Foreign Exchange Practices

Bank Of New York Mellon Admits It Promised Customers Best Price Of Day On Foreign Exchange Transactions But Instead Gave Worst Price

\$714 Million Announced Today In Settlements With Bank Of New York Mellon

Bank Of New York Mellon Will End Employment Of Executives Involved In The Fraud

Schneiderman: Institutions And Individuals Responsible For Defrauding Investors Will Be Held Accountable

NEW YORK –Attorney General Eric T. Schneiderman and United States Attorney for the Southern District of New York Preet Bharara today announced a settlement with the Bank of New York Mellon (“BNYM”) that resolves cases brought by the New York State Office of the Attorney General and the U.S. Attorney’s Office regarding BNYM’s fraudulent foreign exchange (“FX”) practices. BNYM has agreed to pay \$714 million to resolve the federal and state governments’ cases, certain private cases that arose as a result of the same fraud, and investigations by the Securities and Exchange Commission and the U.S. Department of Labor. In addition to the significant monetary recovery, Attorney General Schneiderman and U.S. Attorney Bharara obtained additional key settlement terms: namely, BNYM has admitted the factual details of its fraud, will end the employment of certain executives involved in the fraud, will reform its practices to improve and increase the information it provides to its customers, and will waive the deductibility of New York State and local taxes with respect to the New York State portion of the settlement.

“Investors count on financial institutions to tell them the truth about how their investments are being managed. But Bank of New York Mellon misled customers and traded at their expense,” said **Attorney General Schneiderman**. “Today’s settlement shows that institutions and individuals responsible for defrauding investors will be held accountable and face serious consequences for their wrongdoing. The outcome also shows what can be achieved when law enforcement agencies collaborate on an important matter such as this one.”

Manhattan U.S. Attorney Preet Bharara said: “The Bank of New York Mellon’s custody clients, many of whom are public pension funds and non-profit organizations, trusted the Bank to be honest about the financial services it was providing and to deal with them fairly. BNYM and its executives, motivated by

outsized profits and bonuses, breached this trust and repeatedly misled clients to believe that the pricing they were getting on foreign exchange was far better than it actually was. The Bank, after three years of litigation, has finally admitted what was always clear from the evidence – contrary to its various representations, including a claim of ‘best rates,’ the bank in fact gave clients prices at or near the worst interbank rates reported during the trading day. The bank repeatedly deceived its customers and is paying a heavy penalty for it. We will not hesitate to pursue and punish financial institutions and their executives who exploit their customer base to improve their bottom lines.”

Of the \$714 million in settlement funds announced today, New York State and the Department of Justice will each be allocated \$167.5 million, and Attorney General Schneiderman will direct nearly the entire New York State amount to compensate BNYM’s customers who were victims of BNYM’s fraud. Two New York State agencies – the New York State Deferred Compensation Plan and SUNY – were among the customers BNYM defrauded and will be fully compensated for their losses.

As alleged in this case, BNYM systematically misrepresented how it handled its customers’ FX transactions. BNYM told customers that its Standing Instruction FX program was an automated service that allowed a client to rely upon BNYM to obtain an FX rate and execute FX trades on the customer’s behalf without any supervision or direct involvement by the customer, and that BNYM would obtain the “best rates” available for its customers. Senior BNYM executives knew that BNYM’s representations about FX pricing were false. In fact, BNYM obtained the best FX rates for itself, gave its customers the worst or close to the worst rates, and kept the difference for itself.

BNYM is a custody and trust bank that provides a variety of custodial services to large investors, including public pension funds, states, colleges, charities, and foundations. BNYM’s customers use its FX services when purchasing or selling foreign securities or converting income from foreign investments to U.S. dollars.

As outlined in the state and federal complaints, BNYM widely disseminated numerous misrepresentations about its Standing Instruction FX service, including that BNYM would conduct Standing Instruction transactions pursuant to “best execution” standards, in a manner designed to “maximize the proceeds of each trade,” that it would obtain the “best rates” available or rates pursuant to “the prevailing global interbank market,” and that the Standing Instruction FX service was “free of charge.” In truth, BNYM never offered clients “best execution” or the “best rates,” the service was far from free, and certain senior BNYM FX executives knew that BNYM’s representations about the pricing of the Standing Instruction FX service were false. Instead of the service they promised, BNYM monitored FX rate fluctuations throughout the trading day or session and at the end of each trading day or session, assigned customers the worst or close to the worst rates from that day or session. At the same time, BNYM was obtaining more favorable rates for itself, and profiting on the difference or “spread” between the two rates.

The New York case began when a whistleblower filed a complaint with the Attorney General’s office in 2009 under the New York False Claims Act. The New York False Claims Act provides incentives for

whistleblowers to report matters where governmental entities, such as pension funds, have been defrauded. As a state senator, Attorney General Schneiderman authored amendments to strengthen the New York False Claims Act. Those enhancements, known as the Fraud Enforcement and Recovery Act, expanded the state's ability to collect damages and penalties from corporations or people who defraud the government, or violate their obligations to pay government entities. The New York False Claims Act also allows a whistleblower to receive a percentage of any recovery made on behalf of the State of New York. The Attorney General expresses his thanks to the whistleblower in this case for helping to bring BNYM's conduct to light.

The settlement announced today is the product of a joint effort by the New York Attorney General's office and the United States Attorney's office. After each office separately investigated BNYM's fraudulent practices and each filed lawsuits against BNYM in 2011, the two offices worked together on discovery and on negotiating this significant settlement. Attorney General Schneiderman appreciates the successful collaboration with the U.S. Attorney's Office on this matter, which has produced an outstanding result for the public.

The state's case was handled by Karla G. Sanchez, Executive Deputy Attorney General for the Division of Economic Justice, Roger Waldman, Senior Enforcement Counsel, Katherine Milgram, Deputy Chief of the Investor Protection Bureau, Assistant Attorneys General David Castleman, Brian Whitehurst, and Melissa Gable, and Chad Johnson, Chief of the Investor Protection Bureau.

The False Claims Act aspects of the case were handled by Assistant Attorneys General Bryan Kessler and Gregory Krakower and Deputy Bureau Chief Scott Spiegelman, of the Taxpayer Protection Bureau in the Criminal Justice Division. Kelly Donovan is Executive Deputy Attorney General for Criminal Justice, and Thomas Teige Carroll is Chief of the Taxpayer Protection Bureau. Attorney General Schneiderman created the Taxpayer Protection Bureau in January 2011 specifically to handle cases where the government itself has been defrauded.