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# Foreign Corrupt Practices Act Alert

## Bank of New York Mellon Corp. Agrees to Pay $14.8 Million to Settle SEC Corruption Charges Arising Out of Internships for Family Members of Sovereign Wealth Fund Officials

### SUMMARY

The U.S. Securities & Exchange Commission (SEC) announced today that Bank of New York Mellon Corp. (BNY Mellon) has agreed to pay $14.8 million in penalties, including a $5 million civil monetary penalty, $8.3 million in disgorgement, and $1.5 million in prejudgment interest, to settle charges that the bank violated the anti-bribery and the books and records and internal control provisions of the Foreign Corrupt Practices Act (FCPA). The SEC alleged that BNY Mellon provided internships to family members of officials of a Middle Eastern sovereign wealth fund "to corruptly influence [those] officials in order to retain and win business managing and servicing the assets of" the sovereign wealth fund.

### BACKGROUND AND DISCUSSION

The SEC alleged that, in 2009, an unidentified Middle East sovereign wealth fund entered into an agreement with BNY Mellon to manage approximately $711 million in assets. In 2010, BNY Mellon provided internships to three family members of certain fund officials, allegedly at the repeated insistence of those officials or fund employees acting on the officials' behalf. According to the SEC, BNY Mellon viewed the hiring of the family members "as a way to influence the officials' decisions" and to retain and increase BNY Mellon's business with the sovereign wealth fund. The SEC cited specific statements by bank employees expressing concern that failure to hire the family members would jeopardize business opportunities with the fund, a concern that allegedly was acute at the time of the requests, when client service issues had threatened to weaken the bank's relationship with the fund. The SEC alleged that "BNY Mellon provided the internships without following its standard hiring procedures for interns," that "the interns were not qualified for BNY Mellon's existing internship programs," and that the interns "were

less than exemplary employees." The SEC further alleged that the internships were more valuable than the typical internship offered by BNY Mellon insofar as they were "significantly longer than the work experiences typically afforded to BNY Mellon interns" and were "rotational in nature," providing the interns with "the opportunity to work in a number of different BNY Mellon business units, enhancing the value of the work experience beyond that normally provided."

The SEC did not provide specifics regarding its calculation of disgorgement or the amount of revenue and/or profit that allegedly resulted from the internships. The SEC did, however, allege that after agreeing to hire the family members, BNY Mellon retained specific business with the fund, and that the fund increased its business with BNY Mellon within a few months after providing the internships. The SEC also appears to have applied an expansive view of the scope of the FCPA's internal accounting controls provisions in concluding that BNY Mellon violated those provisions by failing "to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that its employees were not bribing foreign officials."

Although BNY Mellon had an existing FCPA compliance policy in place at the time of the internship decisions, the SEC characterized the company's controls, including those relating to the hiring of relatives of governmental customers as inadequate, and as providing to BNY Mellon personnel excessively broad discretion in, and insufficient training for, hiring decisions. The order further suggests that the bank's anti-bribery and corruption policies did not explicitly address the hiring of individuals connected to foreign officials and that there was no process in place for review by the bank's compliance department of internship placements at the time the internships were awarded.

The resolution of the action underscores again that the mere existence of corporate anti-corruption policies will be insufficient to insulate a company from enforcement actions. Instead, the United States authorities have emphasized the necessity for compliance controls to include appropriate oversight and training and careful implementation. In particular, anti-corruption controls should include training in appropriate hiring practices and the need to flag potentially problematic hires, and those decisions should be subject to scrutiny by legal and other compliance personnel.

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## CONTACTS

| | | |
|---|---|---|
| **New York** | | |
| Nicolas Bourtin | +1-212-558-3920 | bourtinn@sullcrom.com |
| Justin J. DeCamp | +1-212-558-1688 | decampj@sullcrom.com |
| Theodore Edelman | +1-212-558-3436 | edelmant@sullcrom.com |
| Robert J. Giuffra Jr. | +1-212-558-3121 | giuffrar@sullcrom.com |
| John L. Hardiman | +1-212-558-4070 | hardimanj@sullcrom.com |
| Steven R. Peikin | +1-212-558-7228 | peikins@sullcrom.com |
| Karen Patton Seymour | +1-212-558-3196 | seymourk@sullcrom.com |
| Samuel W. Seymour | +1-212-558-3156 | seymours@sullcrom.com |
| Alexander J. Willscher | +1-212-558-4104 | willschera@sullcrom.com |
| **Washington, D.C.** | | |
| Daryl A. Libow | +1-202-956-7650 | libowd@sullcrom.com |
| **Palo Alto** | | |
| Brendan P. Cullen | +1-650-461-5650 | cullenb@sullcrom.com |
| Laura Kabler Oswell | +1-650-461-5679 | oswelll@sullcrom.com |