

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

In the Matter of

THE BANK OF NEW YORK MELLON,

New York, New York, a bank holding  
company

Docket No. 17-016-CMP-HC

Consent Order of Assessment of a  
Civil Money Penalty

WHEREAS, The Bank of New York Mellon Corporation (“BNY Mellon”) is a registered bank holding company, as defined in the Bank Holding Company Act (12 U.S.C. § 1841 *et seq.*) (the “BHC Act”);

WHEREAS, in January 2010, BNY Mellon consolidated a group of variable interest entities (“VIEs”) managed by its indirect subsidiaries, Alcentra Limited and Alcentra NY LLC , referred to as “Alcentra” onto its balance sheet following a change in the relevant accounting rules. Despite bringing these assets and liabilities onto its balance sheet, BNY Mellon failed to account for them correctly in its risk-based capital ratios;

WHEREAS, from approximately 2010 to second quarter 2014, BNY Mellon accounted for the Alcentra VIE assets in its “trading book,” wherein it assigned the assets a zero-risk weighting under a value-at-risk model;

WHEREAS, BNY Mellon’s regulatory accounting of the VIE assets was improper under the then-applicable Basel I regulatory risk capital rules;

WHEREAS, BNY Mellon never sought nor obtained written approval for its regulatory accounting treatment of the Alcentra VIE assets under Regulation Y's reservation of authority process;

WHEREAS, as a result of its improper regulatory accounting treatment of the Alcentra VIEs, for nearly 14 quarters, BNY Mellon understated its risk-weighted assets and overstated BNY Mellon's risk-based capital ratios;

WHEREAS, the conduct set forth above represents or resulted in unsafe or unsound practices, and a violation of Regulation Y of the Board of Governors (12 C.F.R. § 225);

WHEREAS, the unsound practices and violations described above warrant the assessment of a civil money penalty against BNY Mellon pursuant to section 8(i)(2) of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. § 1818(i)(2));

WHEREAS, Senior Executive Vice President and General Counsel of BNY Mellon John Kevin McCarthy has been duly authorized in discharging or performing his duties in accordance with senior signing powers provided under Section 6.2 of the By-laws of BNY Mellon to enter into this Order of Assessment of a Civil Money Penalty (the "Consent Penalty Assessment") on behalf of BNY Mellon, and consenting to compliance with each and every applicable provision of this Consent Penalty Assessment by BNY Mellon, and waiving any and all rights that BNY Mellon may have pursuant to section 8 of the FDI Act (12 U.S.C. § 1818), including, but not limited to: (i) the issuance of a notice of charges on any matters set forth in this Consent Penalty Assessment; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Consent Penalty Assessment; (iii) judicial review of this Consent Penalty Assessment; and (iv) challenging or contesting, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Consent Penalty Assessment or any provision hereof.

NOW, THEREFORE, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, it is hereby ordered, pursuant to sections 8(i)(2) of the FDI Act (12 U.S.C. § 1818(i)(2)) that:

**CIVIL MONEY PENALTY**

1. The Board of Governors hereby assesses BNY Mellon a civil money penalty in the amount of \$3,000,000.00 which shall be paid upon the execution of this Order by Fedwire transfer of immediately available funds to the Federal Reserve Bank of Richmond, ABA No. 051000033, beneficiary, Board of Governors of the Federal Reserve System. This penalty is a penalty paid to a government agency for a violation of law for purposes of 26 U.S.C. § 162(f) and 26 C.F.R. § 1.162-21. The Federal Reserve Bank of Richmond, on behalf of the Board of Governors, shall distribute this sum to the U.S. Department of the Treasury, pursuant to section 8(i) of the FDI Act (12 U.S.C. § 1818(i)).

**Notices**

2. All communications regarding this Consent Penalty Assessment shall be sent to:

- (a) Richard M. Ashton  
Deputy General Counsel  
Patrick M. Bryan  
Assistant General Counsel  
Federal Reserve Board of Governors  
20<sup>th</sup> and Constitution Avenue, NW  
Washington, DC 20551
- (b) John Kevin McCarthy  
Senior Executive Vice President and General Counsel  
225 Liberty Street  
Bank of New York Mellon Corporation  
New York, NY 10286

## **Miscellaneous**

3. Each provision of this Consent Penalty Assessment shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Board of Governors.

4. The Board of Governors hereby agrees not to initiate any further enforcement actions, including for civil money penalties, against BNY Mellon and its affiliates, successors, and assigns, with respect to the conduct that has been or might have been asserted by the Board of Governors described in the WHEREAS clauses of this Consent Penalty Assessment to the extent known to the Board of Governors as of the effective date of this Consent Penalty Assessment. This release and discharge shall not preclude or affect (i) any right of the Board of Governors to determine and ensure compliance with this Consent Penalty Assessment, (ii) any proceedings brought by the Board of Governors to enforce the terms of this Consent Penalty Assessment, or (iii) any proceedings brought by the Board of Governors against individuals who are or were institution-affiliated parties of BNY Mellon.

5. Except as provided in paragraph 4, the provisions of this Consent Penalty Assessment shall not bar, estop or otherwise prevent the Board of Governors, the Federal Reserve Bank of New York, or any federal or state agency from taking any other action affecting BNY Mellon or any of its current or former institution-affiliated parties and their successors and assigns.

6. Nothing in this Consent Penalty Assessment, express or implied, shall give any person or entity, other than the parties hereto and their successors hereunder, any legal or equitable right, remedy or claim under this Consent Penalty Assessment.

