**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 79777 / January 12, 2017**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-17768**

**In the Matter of**

**THE BANK OF NEW YORK MELLON CORPORATION,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

## I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against The Bank of New York Mellon Corporation ("Respondent" or "BNY Mellon").

## II.

In anticipation of the institution of these proceedings, BNY Mellon has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, BNY Mellon consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

## III.

On the basis of this Order and the Offer, the Commission finds that:

## Summary

1. These proceedings arise out of BNY Mellon's failure to properly include approximately $14 billion of certain assets of variable interest entities (the "VIEs") in its calculation of risk-based capital ratios presented in annual and quarterly reports filed with the Commission. Beginning in the third quarter of 2010, BNY Mellon was required to consolidate the accounts of certain VIEs – which took the form of collateralized loan obligations ("CLOs") – onto its balance sheet pursuant to Accounting Standards Codification 810, *Consolidation* ("ASC 810"). As a result of the consolidation, risk-based capital rules required BNY Mellon to include the assets of these VIEs in its risk-weighted assets for purposes of calculating its capital ratios. BNY Mellon, however, deviated from the regulatory capital rules and excluded these assets from its capital ratios after making a determination that the VIEs did not pose a risk to the firm. BNY Mellon's exclusion of the VIEs caused the firm to misreport its risk-based capital ratios in each of its quarterly and annual reports from the third quarter of 2010 through the first quarter of 2014. Throughout this time period, BNY Mellon failed to make and keep accurate books and records with respect to its risk-weighted assets and regulatory capital ratios. BNY Mellon also failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that its financial statements were prepared in conformity with Generally Accepted Accounting Principles ("GAAP") or any other applicable criteria.

## Respondent

2. Respondent The Bank of New York Mellon Corporation is a global financial services firm incorporated in Delaware that services and manages financial assets. It is regulated as a bank holding company and a financial holding company under the Bank Holding Company Act of 1956, as amended by the Gramm-Leach-Bliley Act and by the Dodd-Frank Wall Street Reform and Consumer Protection Act. As such, it is subject to the supervision of the Board of Governors of the Federal Reserve System ("Federal Reserve Board") and the Federal Reserve Bank of New York ("FRBNY"), by delegation. BNY Mellon's common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the symbol "BK." BNY Mellon's principal offices are located in New York, New York.

## Facts

### BNY Mellon's Treatment of Certain Variable Interest Entities

3. The VIEs are CLOs that generally invest in commercial loans and were managed by BNY Mellon's indirect subsidiaries, Alcentra Limited and Alcentra NY LLC (collectively, "Alcentra"). Alcentra manages the CLO assets on behalf of third party investors who have purchased notes issued by the CLOs and are the CLO assets' principal economic owners.

4. Prior to the first quarter of 2010, the VIE accounts were not required to be consolidated. As such they were off-balance sheet interests that BNY Mellon was not required to include in its risk-based capital calculations.

5. In June 2009, the Financial Accounting Standards Board issued FAS 167, Consolidation of Variable Interest Entities, now codified in ASC 810, *Consolidation*,[1] which amended the guidance for determining whether variable interest entities need to be consolidated on an enterprise's balance sheet for U.S. GAAP financial reporting purposes. Any assets consolidated under ASC 810 were required to be included in BNY Mellon's risk-based capital calculations as of the third quarter of 2010.[2]

6. Beginning in the first quarter of 2010, BNY Mellon consolidated the VIE accounts onto its balance sheet to comply with ASC 810. The fees BNY Mellon's subsidiaries received for managing the CLOs were considered significant enough to require consolidation under the standard.

7. As a result, BNY Mellon added approximately $14 billion of CLO fund assets to its consolidated balance sheet in 2010.

8. Beginning in the third quarter 2010, regulatory risk-based capital rules required BNY Mellon to include the newly consolidated VIE assets in its risk-based capital ratios.[3] To comply with Basel I regulatory risk capital rules, BNY Mellon's VIE assets should have been classified in the banking book, where they would have been subject to 100 percent risk-weighting for regulatory capital purposes and would have added to BNY Mellon's risk-weighted assets. To the extent BNY Mellon wanted to apply different regulatory capital treatment to the VIE assets, BNY Mellon needed authorization from the Federal Reserve Board.

9. From the third quarter of 2010 and until the second quarter of 2014, BNY Mellon excluded the VIE assets from its risk-weighted assets calculation by applying a zero risk-weighting – rather than the required 100 percent risk-weighting – to the VIEs when it calculated and reported its regulatory capital. BNY Mellon applied this alternative treatment based on its independent determination that the VIE assets did not pose risks to the firm and thus should not affect the firm's regulatory capital. During this period, BNY Mellon discussed certain aspects of the accounting treatment for the VIE assets with FRBNY staff, but these discussions were not primarily about an alternative risk-weight treatment for the VIE assets, and BNY Mellon did not obtain authorization from the Federal Reserve Board to use this alternative capital ratio calculation.

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[1] FAS 167 was superseded by ASC 810 upon the adoption of the Accounting Standards Codification, which was effective for interim and annual periods ending after September 15, 2009.

[2] GAAP requires banking organizations to disclose regulatory capital ratios and requirements in notes to the financial statements. *See* Accounting Standards Codification 942-505-50. Basel I, which became effective in 1988, was the first international uniform framework developed to calculate regulatory capital. Basel III, which became effective for certain banking organizations, including BNY Mellon, beginning with the quarter ended March 31, 2014, is the latest international uniform framework developed to calculate regulatory capital.

[3] "Regulatory capital" is the amount of capital that a banking organization must maintain as required by, among others, the Federal Reserve Board. Regulatory capital requirements were put in place to ensure that banking organizations have sufficient capital to sustain operating losses while still honoring withdrawals and so that they do not excessively leverage the assets they hold. The measure of a bank's regulatory capital typically is expressed in ratios calculated by dividing the sum of certain defined categories of assets (regulatory capital) by the sum of the bank's total risk-weighted assets.

10. By applying this alternative treatment, BNY Mellon understated its risk-weighted assets that served as the denominator for certain of its capital ratios. This understatement resulted in the overstatement of BNY Mellon's three capital ratios reported under Basel I: the Tier 1 capital ratio, the total capital ratio, and the Tier 1 common equity to risk-weighted assets ratio (together, the "Risk Capital Ratios").

11. As a result of the inaccuracies in BNY Mellon's books and records and the deficiencies in its internal accounting controls, these regulatory capital figures were misstated in all of BNY Mellon's Form 10-Q filings and Form 10-K filings that it made with the Commission from November 8, 2010 through May 9, 2014. At the end of each year, the amount of VIE assets excluded from BNY Mellon's risk-weighted assets, and the resulting impact on BNY's Tier 1 capital ratio was as follows:

| Form 10-K (for fiscal year) | Consolidated VIE Assets at Fair Value (in millions) | Reported Tier 1 Capital Ratio | Tier 1 Capital Ratio if 100% Risk Weighting VIEs |
|---|---|---|---|
| 2010 | $14,121 | 13.4% | 11.8% |
| 2011 | $10,751 | 15.0% | 13.6% |
| 2012 | $10,961 | 15.0% | 13.7% |
| 2013 | $10,397 | 16.2% | 14.8% |

BNY Mellon Did Not Obtain Approval for its Alternative Regulatory Capital Treatment

12. From the time the VIE assets were consolidated onto BNY Mellon's balance sheet in 2010, BNY Mellon evaluated how to classify these VIE assets in a manner that, consistent with BNY Mellon's view that the VIE assets posed no risk to the company, would mitigate their impact on its risk-based capital ratios.

13. Basel I required banks to record their assets and liabilities either in their "trading book" or their "banking book." For assets and liabilities in the trading book, BNY Mellon calculated the value of risk-weighted assets included in the denominator of Risk Capital Ratios on a portfolio basis using a value-at-risk model. By recording the VIE assets and liabilities in the trading book, BNY Mellon offset the VIE assets against their associated liabilities, which were the CLO notes issued to third-party investors. BNY Mellon thus sought to classify the VIE assets as trading so that this offsetting of VIE assets and liabilities would result in a zero risk-weighting treatment for the VIE assets. BNY Mellon took the position that this treatment was commensurate with the assets' risk profile for the bank, and thus effectively excluded the VIE assets from BNY Mellon's risk-weighted assets and its Risk Capital Ratios.

14. In the banking book, on the other hand, each category of assets was prescribed a certain risk-weighting based on its credit profile. Under this approach, BNY Mellon could not apply a zero risk-weighting to the VIEs. If BNY Mellon sought different treatment than was required by Basel I, it needed to obtain authorization from the Federal Reserve Board. The FRBNY does not have the authority to approve any such requests.

15. BNY Mellon contacted members of the FRBNY in 2010 and presented its proposed accounting treatment of the VIE assets. The FRBNY disagreed with BNY Mellon's proposed trading classification of the VIE assets.

16. BNY Mellon continued to engage in discussions with the FRBNY in 2010 regarding the VIEs. These discussions primarily focused on the classification of the VIE assets and liabilities for regulatory reporting purposes. BNY Mellon never obtained approval from the FRBNY or the Federal Reserve Board to deviate from Basel I regulatory risk capital rules and zero risk-weight the VIE assets.

17. Following these discussions there was confusion within BNY Mellon as to whether BNY Mellon was permitted to zero risk-weight the VIE assets. BNY Mellon subsequently proceeded with applying a zero risk-weight to the VIE assets.

BNY Mellon's Books and Records and Internal Accounting Control Deficiencies

18. By applying non-standard regulatory capital treatment for the VIE assets without proper approval, BNY Mellon failed to make and keep accurate books and records with respect to its risk-weighted assets and its Risk Capital Ratios.

19. BNY Mellon also failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that its financial statements were prepared in accordance with GAAP or any other applicable criteria. BNY Mellon lacked adequate internal accounting controls to ensure that the company would receive the necessary approval from the Federal Reserve Board before departing from the required regulatory capital treatment of its assets.

20. From November 2010 through July 2014, BNY Mellon did not consider adequately whether its internal process for reporting its regulatory capital was operating as intended or required. As a result, BNY Mellon misreported its Risk Capital Ratios and risk-weighted assets, failed to make and keep accurate books and records, and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements over this time period.

BNY Mellon Includes VIEs in Risk-Weighted Assets Beginning July 2014

21. In anticipation of Basel III regulatory risk capital rules going into effect, BNY Mellon contacted the FRBNY in the second quarter of 2014 to discuss its regulatory capital treatment of the VIE assets under Basel III. In these communications, BNY Mellon confirmed that it had applied a zero risk-weighting to the VIE assets under Basel I. The FRBNY disagreed that a zero risk-weighting of the VIE assets was appropriate under Basel I or going forward under Basel III. BNY Mellon agreed to fully risk-weight the consolidated VIE assets going forward.

22. Consequently, on July 18, 2014, BNY Mellon announced in its Form 8-K filing that its risk-based capital ratios now reflected the inclusion of over $10 billion of CLOs as risk-weighted assets. The inclusion of the CLOs negatively impacted BNY Mellon's Risk Capital Ratios beginning in the second quarter of 2014.

## Violations

23. As a result of the conduct described above, BNY Mellon violated Section 13(b)(2)(A) of the Exchange Act, which requires public companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

24. As a result of the conduct describes above, BNY Mellon violated Section 13(b)(2)(B) of the Exchange Act, which requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements.

## BNY Mellon's Remedial Efforts

25. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and substantial cooperation afforded the Commission staff. Among other things, BNY Mellon has voluntarily undertaken steps to remediate and address, among other things, the inadequate books and records and internal accounting control deficiencies and procedures relating to regulatory capital treatment that are the subject of this proceeding.

## IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in BNY Mellon's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, BNY Mellon cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. BNY Mellon shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $6,600,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

(1) BNY Mellon may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) BNY Mellon may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) BNY Mellon may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying BNY Mellon as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jeffrey A. Shank, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, BNY Mellon agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of BNY Mellon's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, BNY Mellon agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against BNY Mellon by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary