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REGISTRATION & DISCLOSURE

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050006620-01**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: BNY Mellon Capital Markets, Inc., ("BNY Mellon CMI") (BD No. 17454) (formerly known as BNY Capital Markets, Inc. ("BNY CMI" or the "firm"), (BD No. 18303)), Respondent

Pursuant to NASD Rule 9216 of Code of Procedure, Respondent submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

BNY CMI (BD No. 18303) became a member of FINRA (formerly known as NASD) in 1986. On May 8, 2008, BNY CMI filed a Uniform Request for Withdrawal from Broker-Dealer Registration ("Form BDW") with FINRA. On May 9, 2008, the firm's FINRA membership was terminated and the firm was merged with BNY Mellon CMI (BD No. 17454). BNY Mellon CMI has approximately 174 registered persons working out of six branch offices.

RELEVANT PRIOR DISCIPLINARY HISTORY

Respondent has no relevant disciplinary history with the Securities Exchange Commission, FINRA, any other self-regulatory organization or any state securities regulator.

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OVERVIEW

This matter arises from BNY CMI's failure to establish, maintain and enforce a reasonable supervisory system to assure that its Equity Arbitrage Group ("EAG") complied with Securities Exchange Act Rule 14e-4 ("SEC Rule 14e-4"), the "short tender" rule. This supervisory failure existed throughout the EAG's existence, from October 2001 until October 2004. As a result of this deficiency, the firm violated SEC Rule 14e-4 in seven instances between October 2001 and October 2004. The firm's conduct also violated NASD Conduct Rules 3010 and 2110.

Rule 14e-4 governs partial tender offers. A partial tender offer is defined as "a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period." SEC Rule 14e-4(a)(5). SEC Rule 14e-4(b)(1) prohibits a participant in a partial tender offer from tendering shares in excess of its net long position. A "net long position" is the excess of a participant's long position over its short position. Essentially, a firm that tenders into a partial tender offer cannot be short in the stock it tenders. Hence, SEC Rule 14e-4 is sometimes referred to as the "short tender rule." As explained below, BNY CMI did not correctly consider its net long position and tendered short into seven partial tender offer transactions during a three year period.

FACTS AND VIOLATIVE CONDUCT

1. BNY CMI Violated SEC Rule 14e-4 and NASD Conduct Rule 2110 Through its Participation in Seven Partial Tender Offers

BNY CMI approved its EAG in early 2001 to engage in a new business line that would use proprietary trading strategies to arbitrage domestic and international corporate actions. In approving the new business line, BNY CMI considered, among other matters, the fact that the EAG would borrow shares and take short positions in order to arbitrage various types of corporate actions which could include, among other actions, spin-offs, leveraged buyouts and tender offers.

Between October 2001 and October 2004, the EAG participated in many corporate actions. Seven of those corporate actions were partial tender offers as that term is defined in SEC Rule 14e-4. The first of the seven partial tender offers occurred in October 2001 and the seventh occurred in October 2004. BNY CMI participated in each of the seven partial tender offers by tendering borrowed securities into those offers. In each case, BNY CMI tendered shares in excess of its net long position, as defined in SEC Rule 14e-4, at the time of its tender and/or

at the time when it was obligated to deliver the shares for any of the seven partial tender offer transactions.

The firm discovered that its participation in the seventh transaction violated Rule 14e-4 in October 2004. Shortly after this discovery, the firm closed down the EAG and ceased conducting a corporate action arbitrage business.

By reason of the foregoing, BNY CMI violated SEC Rule 14e-4 and NASD Conduct Rule 2110.

2. BNY CMI Violated NASD Conduct Rules 3010 and 2110 by Failing to Establish, Maintain and Enforce a Reasonable Supervisory System Designed to Achieve Compliance with SEC Rule 14e-4

When the EAG was approved in early 2001 to engage in proprietary corporate action arbitrage strategies, BNY CMI knew that these strategies would involve the use of borrowed securities and taking short positions in order to participate in corporate actions. Additionally, BNY CMI knew that tender offers were among the types of corporate actions that might be arbitrated. Nevertheless, the firm failed to establish, maintain and enforce a reasonable supervisory system designed to achieve compliance with SEC Rule 14e-4.

Specifically, BNY CMI had no written supervisory procedures in place to address compliance with SEC Rule 14e-4 and did not provide timely guidance to the EAG concerning the potential applicability of SEC Rule 14e-4 to the proprietary corporate action arbitrage strategies. While each of the seven transactions was vetted by BNY CMI prior to the firm's participation, the process did not include a review of potential applicability of Rule 14e-4. Given that the corporate action arbitrage work constituted a new business line at the firm and the firm was aware that its arbitrage strategies could implicate rules related to taking short positions in connection with tender offers, BNY CMI should have developed a reasonable supervisory system designed to achieve compliance with SEC Rule 14e-4.

By reason of the foregoing, BNY CMI violated NASD Conduct Rules 3010 and 2110.

B. Respondent also consents to the imposition of the following sanctions:

- Censure
- A fine of \$90,000

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which Respondent proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondent;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

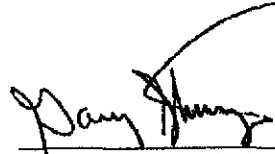
Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

Respondent certifies that it has read and understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set

forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

11/10/2008
Date


Respondent, BNY Mellon Capital Markets
BY: Gary M. Strumeyer, President

Reviewed by:

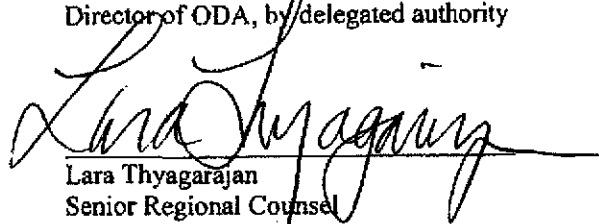

George Canellos, Esq.
Milbank, Tweed, Hadley & McCloy LLP
One Chase Manhattan Plaza
New York, NY 10005-1413

Accepted by FINRA:

January 9, 2009

Date

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read "Lara Thyagarajan", is written over a horizontal line.

Lara Thyagarajan
Senior Regional Counsel
FINRA Department of Enforcement
One Liberty Plaza
New York, NY 10162
212-858-4176