

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100213120-01**

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

RE: MBSC Securities Corporation ("MBSC") (BD No. 231);
BNY Mellon Capital Markets LLC (BD No. 17454); and
BNY Mellon Securities LLC ("BNYMS") (BD No. 47268)
Respondents

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, MBSC, BNY Mellon Capital Markets and BNYMS (collectively, the "Respondents") submit 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 the Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, 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

On or about July, 2007, Mellon Financial Corporation merged with The Bank of New York Company, Inc. to form The Bank of New York Mellon Corporation ("BNY Mellon"). Each of the Respondents (collectively the "legacy Mellon broker-dealers") are currently subsidiaries of BNY Mellon. The findings discussed below concern the time period from July 2006 through August 2008 (the "Relevant Period").

MBSC became a member of FINRA in 1947. Prior to July 2007, MBSC was a subsidiary of Mellon Financial Corporation. MBSC currently has approximately 626 registered persons working out of 19 branch offices.

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BNY Mellon Capital Markets, LLC ("BNY Mellon Capital Markets") (formerly known as Mellon Financial Markets LLC) became a member of FINRA in 1986. Prior to May 2008, Mellon Financial Markets LLC was a subsidiary of Mellon Financial Corporation. BNY Mellon Capital Markets currently has approximately 174 registered persons working out of six branch offices.

BNYMS (formerly known as Mellon Securities LLC) became a member of FINRA in 1999. Prior to July 2007, BNYMS was a subsidiary of Mellon Financial Corporation. BNYMS currently has approximately two registered persons working out of a single branch office location. During the Relevant Period, the firm had approximately 25 registered persons working from 2 branch office locations.

RELEVANT DISCIPLINARY HISTORY

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

OVERVIEW

This matter arises from the Respondents' failure to ensure that at least 725 associated persons' emails were retained (the "affected users") and timely reviewed during a two year time period. It is estimated that this retention failure resulted in the loss of approximately 4 million emails.

Accordingly, the Respondents each violated Section 17(a) of the Securities Exchange Act, Rule 17a-4 promulgated thereunder, and NASD Rules 3110 and 2110. Additionally, the Respondents failed to have a reasonable supervisory system and procedure in place to assure the retention of email communications and their timely review, in violation of NASD Rules 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

In July 2006, the Respondents implemented a new, third party, system for email archiving and review (the "KVS System"). In order for emails to be archived consistent with the requirements of SEC Rule 17a-4 and NASD Rule 3110, each broker-dealer relied on its personnel to properly code new and existing email accounts to ensure that emails were journaled from users' email accounts into the KVS System. When email accounts were incorrectly coded, the affected users' emails were not retained consistent with SEC and NASD Rules. Instead:

- Both sent and received emails were retained for 30 days, unless an

individual employee of the Respondent double-deleted the email (in which case it would not have been retained at all¹).

- After 30 days, any emails remaining in an individual employee's inbox or outbox would be retained for an additional 30 days.
- All emails would be deleted from the KVS System after 60 days (unless the auto-delete function was disabled) and, additionally, would not have appeared in the KVS System for Compliance Department reviews, unless an email user whose account was properly coded sent or received the email message.

During the Relevant Period, the Respondents did not properly code certain email accounts. Additionally, the Respondents did not have written guidance to ensure that all email accounts for associated persons of the Respondents were properly journaled, nor did the Respondents have evidence that they conducted any testing of the new KVS System to ensure that email accounts were being set up properly to capture emails for compliance with SEC Rule 17a-4 and NASD Rule 3110. As a result of the failure to retain emails, the Respondents also failed to timely review emails of affected users.

The failure to properly archive and review emails was discovered in August 2008, after an MBSC compliance department employee searched for an electronic copy of an email he knew to have existed, and failed to locate it. Prior to that event, the Respondents did not know that they were failing to properly archive and review emails.

Following the August 2008 discovery of the retention and review problem at the three Respondent firms, BNY Mellon retained an outside consultant to assess the scope of the retention failure. The outside consultant determined that there were 725 affected users across the three legacy Mellon broker-dealers, for whom emails were not retained consistent with SEC and NASD Rules. The outside consultant estimated that the Respondents may have lost as many as 4 million emails through the failure to properly code email accounts for journaling to the KVS System.²

Accordingly, during the relevant time period, the Respondents' violated Section 17(a) of the Exchange Act, Section 17a-4, promulgated thereunder, and NASD Rules 3110, 3010 and 2110.

¹ "Double-deleting" occurs when, for example, an email user deletes an email from his or her inbox and then empties the "deleted items" folder.

² The firms' collected approximately 1.5 million emails from users' inboxes, and emails that had not been auto-deleted from the KVS system, and remedially reviewed a sample of those emails.

OTHER FACTORS

In determining the appropriate sanction in this matter, FINRA took into consideration the Respondents' October 2008 self-report of its failure to review and retain certain emails and the steps the Respondents took to remedy those deficiencies.

B. Respondents also consent to the imposition of the following sanctions:

- A censure and a fine in the amount of \$300,000 against Respondents MBSC, BNY Mellon Capital Markets and BNYMS, jointly and severally.

Respondents agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondents have each submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim that they are 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

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against them;
- B. To be notified of the 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, Respondents specifically and voluntarily waive any rights 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.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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

Respondents understand that:

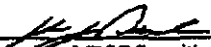
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondents;
 - 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 FINRA Rule 8313; and
 - 4. Respondents 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. Respondents 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 Respondents' right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

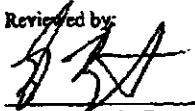
- D. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

Respondents certify that each of the undersigned, on behalf of MBSC, BNY Mellon Capital Markets, and/or BNYMS, that a person duly authorized to act on each of the behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondents have 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 Respondents to submit it.

11/30/2012
Date


Respondent, MBSC Securities Corp.

By: Kenneth J. Budic, President

Reviewed by:

Bruce Botigole, Esq.
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415

12/1/2016
Date

Dany King
Respondent, BNY Mellon Capital Markets LLC

By: Gary Strumeier

Reviewed by:

~~Bruce Bettigole, Esq.~~
Bruce Bettigole, Esq.
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415

11/30/10
Date

Stephen Duffany
Respondent, BNY Mellon Securities LLC

By: STEPHEN DUFFANY
PRESIDENT

Reviewed by:

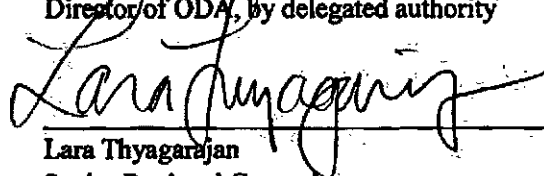
B. A.
Bruce Betngole, Esq.
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415

Accepted by FINRA:

December 30, 2010

Date

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

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

Lara Thyagarajan
Senior Regional Counsel
FINRA Department of Enforcement
One Liberty Plaza
New York, NY 10006
212-858-4176