

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120329950-01**

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

RE: BNY Mellon Capital Markets, LLC (BD No. 17454)
MBSC Securities Corporation (BD No. 231)
Pershing LLC (BD No. 7560)
Pershing Advisor Solutions LLC (BD No. 36671)
Respondents

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, BNY Mellon Capital Markets, LLC ("Capital Markets"), MBSC Securities Corporation ("MBSC"), Pershing LLC ("Pershing"), and Pershing Advisor Solutions LLC ("PAS") (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. The 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

In July 2007, Mellon Financial Corporation ("Legacy Mellon") merged with The Bank of New York Company, Inc. ("Legacy BNY") to form the Bank of New York Mellon Corporation ("BNY Mellon"). Each of the Respondents are currently subsidiaries of BNY Mellon. The violations discussed below concern the time period from at least mid-2009 through June 2012.

Capital Markets became a member of FINRA in 1986 (when it was known as Mellon Financial Markets LLC). Prior to May 2008, Mellon Financial Markets LLC was a subsidiary of Legacy Mellon. In May 2008, Mellon Financial Markets LLC merged with BNY Capital Markets, Inc., forming Capital Markets. Capital Markets later acquired Mellon Securities LLC in Autumn 2009. Capital Markets

currently has approximately 280 registered persons working from ten branch offices.

MBSC became a member of FINRA in 1947. Prior to July 2007, MBSC was a subsidiary of Legacy Mellon. MBSC currently has approximately 600 registered persons working from 47 branch offices.

Pershing became a member of FINRA in 1973. In 2003, Pershing was acquired by Legacy BNY. Pershing currently has approximately 1,100 registered persons working from 14 branch offices.

PAS became a member of FINRA in 1995 (when it was known as Pershing Trading Company L.P.). PAS was renamed Pershing Advisor Solutions in October 2005, when it became an affiliate of Legacy BNY. PAS currently has approximately 130 registered persons working from eight branch offices.

RELEVANT DISCIPLINARY HISTORY

On December 1, 2010, MBSC, Capital Markets and former member firm BNY Mellon Securities LLC (BD No. 47268) submitted an AWC (No. 20100213120-01) through which they consented to findings that, from July 2006 through August 2008, the firms failed to ensure that at least 725 associated persons' emails were retained and timely reviewed. It was estimated that this retention failure resulted in the loss of approximately 4 million emails, 1.5 million of which were eventually recovered. This AWC included a censure and a fine of \$300,000.

OVERVIEW

This matter arises from two types of communication retention and supervision failures involving BlackBerry devices ("BlackBerrys") issued by BNY Mellon to associated persons of the Respondents: (i) failures regarding the retention and timely supervision of emails relating to the Respondents' business as such sent via BlackBerry to recipients outside the BNY Mellon organization that did not copy a recipient within the BNY Mellon organization (the "Email Retention Errors"); and (ii) failures regarding the retention and timely supervision of BlackBerry instant and text messages ("BlackBerry Messages") relating to the Respondents' business as such and sent or received by certain associated persons (the "Messaging Retention Errors").

The Email Retention Errors and Messaging Retention Errors impacted each of the Respondents from at least mid-2009 through May 2012 (in the case of the Email Retention Errors) or June 2012 (in the case of the Messaging Retention Errors).

The Respondents recovered approximately 11,000 emails, estimated to constitute a substantial portion of the emails that were impacted by the Email Retention

Errors. Impacted emails were not subject to timely supervisory review, including the recovered emails.

Approximately 1,100 of the BlackBerrys issued to associated persons of the Respondents during the relevant time period (approximately 55.6%) were impacted by the Messaging Retention Errors. BlackBerry Messages that were impacted by the Messaging Retention Errors were not subject to supervisory review, and none have been recovered.

Accordingly, the Respondents each violated Section 17(a) of the Securities Exchange Act of 1934 ("the Exchange Act"), Rule 17a-4 promulgated thereunder, FINRA Rule 4511 and NASD Conduct Rule 3110,¹ and FINRA Rule 2010. Additionally, the Respondents failed to have a reasonable supervisory system and procedures in place to ensure the retention and timely review of BlackBerry email communications and BlackBerry Messages, in violation of NASD Conduct Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Email Retention Errors

The Email Retention Errors were the result of the faulty configuration of the BNY Mellon BlackBerry Enterprise Server ("BES"), which was introduced to the vast majority of BlackBerry users in mid-2009 when they were migrated to the BNY Mellon email infrastructure. Due to this error, emails relating to the Respondents' business as such sent from a BlackBerry through the BES were not properly journaled to the retention system. As a result, affected emails relating to the Respondents' business as such were not retained consistent with SEC, FINRA and NASD rules. However, if the sent email included a recipient within the BNY Mellon organization, the email would be journaled to the retention system as an incoming message. As a result, the Email Retention Errors impacted emails sent from a BlackBerry to an outside recipient that did not copy anyone within the BNY Mellon organization.

The faulty configuration responsible for the Email Retention Errors was discovered and corrected in May 2012. The Respondents subsequently recovered approximately 11,000 emails from a secondary email archive system that was installed in November 2010. The emails that were recovered from this system included those emails sent from a BlackBerry that: (i) did not copy any recipients in the BNY Mellon organization; and (ii) were not deleted by the user within 90 days of the date that the email was sent. Based on an analysis of the number of impacted BlackBerrys and contents of the secondary archive, the recovered emails represent a substantial portion of the emails that were impacted by the

¹ The applicable portion of NASD Conduct Rule 3110 was consolidated into FINRA Rule 4511 on December 5, 2011, during the period of time relevant to this matter. Therefore the Respondents are found to have violated both rules.

Email Retention Errors.

2. Messaging Retention Errors

As a result of the Messaging Retention Errors, the Respondents did not retain or review any BlackBerry Messages sent or received between at least mid-2009 and June 9, 2012, including SMS, BBM, Pin-to-Pin and MMS messages. The Respondents' respective policies specifically prohibited the use of BlackBerry Messages for business purposes by associated persons of the Respondents. These policies were to be enforced, in part, by having the BlackBerry Messaging functionality disabled on BlackBerrys issued to associated persons of the Respondents. The Messaging Retention Errors resulted from the failure of Legacy BNY and/or BNY Mellon technology groups to consistently configure newly-issued BlackBerrys to disable BlackBerry Messages, as directed by the Respondents.

The Messaging Retention Errors were discovered in June 2012, at which time the Respondents universally blocked MMS messages and integrated other forms of BlackBerry Messages into the retention and supervisory system. A retroactive analysis found that approximately 1,100 BlackBerrys issued during the relevant time period (or approximately 55.6%) had at least one form of messaging enabled.

* * *

As a result of the Respondents' failure to retain or review emails and BlackBerry Messages due to the Email Retention Errors and Messaging Retention Errors during the relevant period, the Respondents each violated Section 17(a) of the Exchange Act, Rule 17a-4 promulgated thereunder, FINRA Rules 4511 and 2010, and NASD Conduct Rules 3010 and 3110.

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

- a censure; and
- a fine in the amount of \$275,000, to be assessed jointly and severally.

The 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. The Respondents have submitted Election of Payment forms showing the method by which they propose to pay the fine imposed.

The 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

The 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, the Respondents specifically and voluntarily waive 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.

The 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

The 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 the Respondents; and
- C. If accepted:

1. this AWC will become part of the Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against them;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Respondents' 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. The 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. The 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 the Respondents': (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. The Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The 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.

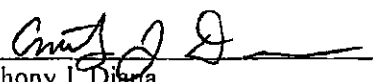
The undersigned, on behalf of the Respondents, certifies that a person duly authorized to act on their behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that the Respondents have agreed to its provisions voluntarily; and 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 the Respondents to submit it.

12/2/13
Date (mm/dd/yyyy)


BNY Mellon Capital Markets, LLC
Respondent

By: Gary Strumeyer, President - BNY Mellon Capital Markets, LLC
[Name and Title]

Reviewed by:


Anthony J. Diana
Counsel for Respondent
Mayer Brown LLP
1675 Broadway
New York, NY 10019

11/22/2013
Date (mm/dd/yyyy)


MBSC Securities Corporation
Respondent

By: Kenneth Gracie President
[Name and Title]

Reviewed by:


Anthony J. Diana
Counsel for Respondent
Mayer Brown LLP
1675 Broadway
New York, NY 10019

11/26/13
Date (mm/dd/yyyy)

Lisa Dally
Pershing LLC
Respondent

By: LISA DALLY COO
[Name and Title]

Reviewed by:

Anthony J. Diana
Anthony J. Diana
Counsel for Respondent
Mayer Brown LLP
1675 Broadway
New York, NY 10019

12/2/2013

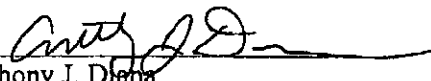
Date (mm/dd/yyyy)



Pershing Advisor Solutions LLC
Respondent

By: KAREN NWAILI Chief Operating Officer
[Name and Title]

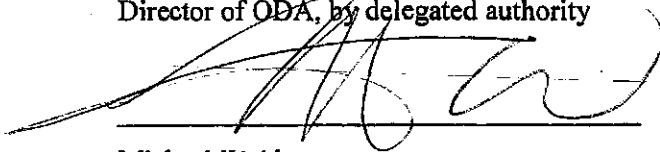
Reviewed by:


Anthony J. Diana
Counsel for Respondent
Mayer Brown LLP
1675 Broadway
New York, NY 10019

Accepted by FINRA:

December 16, 2013
Date

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

A handwritten signature in black ink, appearing to read 'Michael Wajda', is written over a horizontal line.

Michael Wajda
Principal Counsel
FINRA Department of Enforcement
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New York, NY 10281-1003
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