

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON and
DAVID NICHOLS,

Defendants.

)
) 11 Civ. 06969 (LAK)
)
) ECF Case
) **STIPULATION AND ORDER OF**
) **SETTLEMENT AND**
) **DISMISSAL**
)
)
)

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the “Stipulation”) is entered into by and among plaintiff the United States of America (the “United States” or “Government”), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, and defendants The Bank of New York Mellon (“BNYM”) and David Nichols (“Nichols” and together with BNYM, the “Defendants”), through their respective authorized representatives (collectively, the “Parties”);

WHEREAS, BNYM is a New York State chartered trust and custody bank with certain deposits insured by the Federal Deposit Insurance Corporation headquartered at One Wall Street, New York, New York;

WHEREAS, Nichols is a Managing Director of BNYM;

WHEREAS, on October 4, 2011, the United States filed a complaint in the above captioned action against The Bank of New York Mellon Corporation (“BNYM Corp.”); on February 12, 2012, the United States filed an amended complaint substituting BNYM for BNYM Corp. as a defendant; and on June 6, 2012, the United States filed a second amended complaint against BNYM and Nichols (the “Complaint”);

WHEREAS, the Complaint alleges, *inter alia*, that BNYM and its employees, including Nichols, engaged in a scheme to defraud custodial clients by making or causing to be

made false and/or misleading representations concerning BNYM's standing instruction foreign exchange ("FX") product ("SI" or the "SI product") and concealing how BNYM priced FX transactions through the SI product, and seeks to recover civil penalties under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1833a;

WHEREAS, the conduct alleged in the Complaint shall be defined as the "Covered Conduct";

WHEREAS, on or about January 13, 2012, the United States and BNYM entered into a Stipulation of Partial Settlement and Dismissal, pursuant to which BNYM agreed to modify certain business practices with respect to the SI product in settlement of the United States' injunctive claim under the Anti-Fraud Injunction Act, 18 U.S.C. § 1345;

WHEREAS, discovery in this action has been coordinated with a number of other actions against BNYM concerning the SI product, including multiple class actions brought by customers of BNYM (the "Customer Class Actions"),¹ and an action brought by the New York State Attorney General (the "NYAG") in *The People of the State of New York v. The Bank of New York Mellon Corporation*, Index No: 09/114735 (N.Y. County, New York) (the "New York Action");

WHEREAS, on or about March 19, 2015, BNYM entered into a stipulation of settlement with plaintiffs in the Customer Class Actions pursuant to which BNYM agreed to pay plaintiffs \$335 million in settlement of the claims asserted in those actions (the "Proposed

¹ The Customer Class Actions are: *Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corp.*, 12 Civ. 3066 (LAK) (S.D.N.Y.); *International Union of Operating Engineers, Stationary Engineers Local 39 Trust Fund v. The Bank of New York Mellon Corporation*, 12 Civ. 3067 (LAK) (S.D.N.Y.); *Ohio Police & Fire Pension Fund v. The Bank of New York Mellon Corporation*, 12 Civ. 3470 (LAK) (S.D.N.Y.); *Carver v. The Bank of New York Mellon*, 12 Civ. 9248 (LAK) (S.D.N.Y.); and *Fletcher v. The Bank of New York Mellon*, 14 Civ. 5496 (LAK) (S.D.N.Y.).

Customer Class Settlement”);

WHEREAS, on or about March 19, 2015, BNYM entered into a settlement with the NYAG, pursuant to which BNYM agreed to pay the State of New York \$167.5 million in settlement of claims asserted by the NYAG in the New York Action;

WHEREAS, on or about March 19, 2015, BNYM entered into a preliminary settlement-in-principle with the Division of Enforcement of the U.S. Securities and Exchange Commission (“SEC”), pursuant to which BNYM agreed to pay \$30 million in settlement of certain claims of the SEC concerning BNYM’s conduct in connection with the SI product;

WHEREAS, on or about March 19, 2015, BNYM entered into an agreement-in-principle with the U.S. Department of Labor (“DOL”), pursuant to which BNYM agreed to pay \$14 million for the benefit of BNYM customers that are plans covered by the Employee Retirement Income Security Act (“ERISA”) in settlement of claims of DOL concerning BNYM’s conduct in connection with the SI product (in addition to amounts that will be paid to ERISA plans pursuant to the Proposed Customer Class Settlement); and

WHEREAS, the Parties have reached a full and final mutually agreeable resolution of the Government’s claims for the Covered Conduct as set forth below;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Court’s subject matter jurisdiction is undisputed and Defendants consent to the Court’s exercise of personal jurisdiction over them.
2. BNYM admits, acknowledges and accepts responsibility for the following conduct:

a. BNYM's Standing Instruction Service

i. BNYM and its predecessors The Bank of New York and Mellon Bank (collectively, the "Bank") act as a custody and trust bank providing an array of custodial services to clients, including public pension funds, states, colleges, charities and foundations. In providing such custodial services, the Bank is obligated to act in certain circumstances as a fiduciary with respect to those clients.

ii. From at least 2000 through 2011, the Bank provided FX products to its custodial clients, which clients utilized when purchasing or selling foreign securities or repatriating income from foreign investments to U.S. dollars. One of the FX products the Bank provided was the SI product. When clients or their investment managers selected the SI product in accordance with the terms of the SI product, the Bank would automatically process and execute the clients' FX trades without supervision or direct involvement from clients.

b. How BNYM Priced Standing Instruction Foreign Exchange Transactions

i. Throughout a trading day or session (which could be as long as 24 hours), as each custodial client's account generated FX transactions to be executed pursuant to SIs, the Bank's practice was to aggregate those FX transactions for all SI clients and group them by currency pair. Near the end of the trading day or session, the Bank priced those SI FX trade requests it had received throughout that day or session.

ii. To determine the price for each SI FX transaction for most currencies, the Bank examined the range of reported interbank rates from the trading day or session and assigned the rate on SI trades as follows: if the client was purchasing foreign currency, the client received a price at or close to the highest reported interbank rate for that day or session (at or near the least favorable interbank price for the client reported during the trading

day or session), and if the client was selling foreign currency, the client received a price at or close to the lowest reported interbank rate of the day or session (also at or near the least favorable interbank price for the client reported during the trading day or session).

iii. Because SI clients received pricing at or near the high end of the reported interbank range for their currency purchases and at or near the low end of the reported interbank range for their sales, the Bank was generally buying low from, and selling high to, its own clients. The Bank recorded the difference or “spread” between the rates it gave clients and the interbank market price at the time the SI transactions were priced as “sales margin.”

c. BNYM’s Representations to Its Clients

i. The Bank made representations to existing and potential custodial clients concerning the SI product. The Bank made these representations in various written and oral communications with clients, including certain responses to requests for proposals and on the Bank’s website.

ii. Specifically, the Bank made the following representations to certain existing and potential clients concerning the SI product:

- (1) The service provided “benefits” to its clients, including “FX execution according to best execution standards.”
- (2) The Bank “ensures best execution on foreign exchange transactions through the following mechanisms: As a major market participant, the Bank is actively engaged in making markets and taking position in numerous currencies so that we can provide the best rates for our clients.”
- (3) “Understanding the fiduciary role of the fund manager, it is our goal to provide best execution for all foreign exchange executed in support of our clients’ transactions.”
- (4) “Best execution encompasses a variety of services designed to maximize the proceeds of each trade, while containing inherent risks and the total cost of processing.”

- (5) “We price foreign exchange at levels generally reflecting the interbank market at the time the trade is executed by the foreign exchange desk.”
- (6) “We also support post-trade analysis . . . to assist the fund manager in demonstrating that the execution of each trade was consistent with the goal of maximizing the value of the client portfolio.”
- (7) “If the client has standing income exchange instructions with us, our system automates the conversion process based on the current foreign exchange rate input.”
- (8) The Bank’s “primary focus is on securing the best possible rates for our clients rather than on trading for the bank’s own account.”
- (9) “Operationally simple, free of charge and integrated with the client’s activity on the various securities markets, FX standing instruction is designed to help clients minimize risks and costs related to the foreign exchange and concentrate on their core business.”

d. BNYM Did Not Provide Its SI Clients with the Best Price

- i. Contrary to the representations set forth above, including that BNYM offered “best rates,” the Bank gave SI clients prices that were at or near the worst interbank rates reported during the trading day or session.
- ii. The Bank generally did not disclose its SI FX pricing methodology discussed above to its custodial clients or their investment managers.
- iii. The Bank was aware that many clients did not fully understand the Bank’s pricing methodology for SI transactions.
- iv. The Bank was aware that many market participants equated “best execution” with best price or considered best price to be one of the most important factors in determining best execution.

3. Nichols admits, acknowledges and accepts responsibility for the following

conduct:

a. From 2002 through 2011, Nichols was a Managing Director at the Bank who, among other duties, participated in the drafting and dissemination of the Bank's description of "best execution" and the SI product. The description was disseminated to certain existing and prospective custody clients through RFP responses and in other communications, and included the following statements:

i. "Understanding the fiduciary role of the fund manager, it is our goal to provide best execution for all foreign exchange executed in support of our clients' transactions."

ii. "Since The Bank of New York Mellon is one of the largest global custodians, our clients gain the ongoing benefit of aggregation of transactions across our broad customer base; accordingly, we price foreign exchange at levels generally reflecting the interbank market at the time the trade is executed by the foreign exchange desk."

iii. "Best execution encompasses a variety of services designed to maximize the proceeds of each trade, while containing inherent risks and the total cost of processing."

b. Nichols had oversight of the Global Markets website and approved the content, which included the following statement: the Bank's SI clients "benefit from . . . FX execution according to best execution standards."

c. Nichols understood how the Bank priced SI transactions. He understood that to determine the price for SI FX transactions for most currencies, the Bank examined the range of reported interbank rates from the trading day or session (which he understood to mean the period from the opening of the relevant trading desk to the time of execution) and assigned

the rate on SI trades generally as follows: if the client was purchasing foreign currency, the client received a price at or close to the highest reported interbank rate for that day or session (at or near the least favorable interbank price for the client reported during the trading day or session), and if the client was selling foreign currency, the client received a price at or close to the lowest reported interbank rate of the day or session (also at or near the least favorable interbank price for the client reported during the trading day or session).

d. Nichols also knew the following:

i. The Bank generally did not disclose its SI FX pricing methodology discussed above to its custodial clients or their investment managers.

ii. Many clients did not fully understand the Bank's pricing methodology for SI transactions.

iii. Many market participants equated "best execution" with best price or considered best price to be one of the most important factors in determining best execution.

4. In settlement of the United States' claims against Defendants in this action, BNYM shall pay the United States \$167,500,000 as a civil penalty pursuant to FIRREA (the "Settlement Amount"). No later than thirty (30) business days after the Effective Date, BNYM shall deposit the Settlement Amount in an account of a third party escrow agent (the "Escrow Agent") for the sole benefit of and ultimate disbursement to the United States (the "Escrow Account"). The United States and BNYM shall negotiate in good faith the terms of an escrow agreement that will establish the Escrow Account (the "Escrow Agreement"), and shall execute the Escrow Agreement no later than twenty (20) business days after the Effective Date. Upon the expiration of any time for appeal of the order and final judgment entered by the United States District Court for the Southern District of New York approving the Proposed Customer Class

Settlement, or, if any appeal that could materially impact the disbursement of funds pursuant to the Proposed Customer Class Settlement is filed and not dismissed, after the order and final judgment entered by the United States District Court for the Southern District of New York is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by *certiorari* or otherwise, and the time for any petition for reargument, appeal, or review, by *certiorari* or otherwise, has expired, the United States and BNYM shall direct the Escrow Agent to disburse to the United States all funds maintained in the Escrow Account, including the Settlement Amount and all interest, income and gains accrued thereon (collectively, the “Escrow Funds”). BNYM shall pay any and all escrow agent fees or other costs associated with the Escrow Account, which fees or costs shall not be deducted from the Escrow Funds, if such fees or other costs are not waived by the Escrow Agent.

5. BNYM agrees to effectuate the separation of certain employees involved in the conduct at issue from further employment with BNYM, including Nichols.

6. BNYM agrees to provide functionality allowing clients to compare the pricing of BNYM’s “session range” and “defined spread” standing instruction foreign exchange products.

7. Subject to the exceptions in Paragraph 8 below (concerning excluded claims), and conditioned upon BNYM’s full payment of the full Settlement Amount and disbursement of all Escrow Funds to the United States pursuant to paragraph 4 and full performance of the other terms set forth herein, the United States, on behalf of itself, its officers, agencies and departments, releases BNYM and all of its parents, subsidiaries, affiliates, and its current and former officers, directors, employees, shareholders, and assigns, including Nichols, from any civil or administrative monetary claim the United States has under FIRREA; the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a; the

Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308; and the common law or equitable theories of payment by mistake, unjust enrichment, negligence, and fraud; for the Covered Conduct (the “Released Claims”).

8. Notwithstanding the release given in Paragraph 7 of this Stipulation, or any other term of this Stipulation, the following claims of the Government are specifically reserved, are not released by this Stipulation, and are not Released Claims:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as expressly stated in Paragraph 7, any administrative liability;
- d. Any liability arising from standing instruction foreign exchange transactions involving the Bank’s custodial clients who were located outside the United States and whose standing instruction transactions were processed and/or executed by the Bank outside the United States;
- e. Any liability arising from foreign exchange transactions involving American Depository Receipts;
- f. All civil claims of the United States related to the allegations in the complaint filed in *[Under Seal] v. [Under Seal]*, Docket No. 11-CV-3784 (E.D.N.Y.);
- g. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and
- h. Any liability based on obligations created by the settlement.

9. Defendants shall be in default of this Stipulation if BNYM fails to pay the

Settlement Amount as set forth in Paragraph 4 above or to comply materially with any other obligations under this Stipulation ("Default"). The Government shall provide written notice to Defendants of any Default, to be sent in the manner set forth in Paragraph 23 below. Defendants shall then have an opportunity to cure the Default within seven business days from the date of receipt of the notice of Default. In the event that a Default involving failure to pay the Settlement Amount is not fully cured within seven business days of the receipt of the notice of Default ("Uncured Default"), the full Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of nine percent per annum compounded annually on the remaining unpaid principal balance, beginning seven business days after mailing of the notice of Default. In the event of BNYM's failure to pay the Settlement Amount as set forth in Paragraph 4 above, BNYM agrees to the entry of a consent judgment in the form attached hereto as Exhibit A. In the event of an Uncured Default, Defendants further agree that the United States, at its option, may (a) rescind this Stipulation and reinstate the Complaint; (b) seek specific performance of this Stipulation; (c) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing BNYM by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. BNYM shall not contest any offset imposed or any collection undertaken by the Government pursuant to this Paragraph, either administratively or in any court. In addition, BNYM shall pay the Government all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses. In the event that this Stipulation is rescinded pursuant to this Paragraph or Paragraph 10, Defendants shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate

to the Covered Conduct, except to the extent such defenses were available on October 4, 2011.

10. Notwithstanding any provision herein, if the United States District Court issues an order denying preliminary or final approval of the Proposed Customer Class Settlement, or if any appellate court overturns in any material respect the order and final judgment entered by the United States District Court for the Southern District of New York approving the Proposed Customer Class Settlement, this Stipulation shall be deemed rescinded and vacated and (i) the United States and BNYM shall direct the Escrow Agent to disburse the Escrow Funds to BNYM; (ii) the United States shall have the right to reinstate the Complaint; and (iii) upon reinstatement of this action, the Parties shall have the right to complete all fact and expert discovery remaining as of March 19, 2015. The Parties agree that if this Stipulation is rescinded and the Complaint reinstated pursuant to this Paragraph, any discovery taken on or between March 19, 2015 and the date that this Stipulation is rescinded in the following lawsuits shall not be admissible or otherwise used in any way in this action other than for purposes of impeachment, absent the consent of the Parties: (1) any lawsuit that is or has been part of the Multi-District Litigation captioned *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, 12 MD 2335 (LAK), including but not limited to *La. Mun. Police Emps. Ret. Sys. v. The Bank of New York Mellon Corp.*, 11 Civ. 09175 (LAK); *Los Angeles Cty. Emp. Ret. Ass'n ex rel. FX Analytics v. The Bank of New York Mellon Corp.*, 12 Civ. 8990 (LAK); *In re Bank of New York Mellon Corp. False Claims Act Foreign Exch. Litig.*, 12 Civ. 3064 (LAK); and (2) *The People of the State of New York, et al. v. The Bank of New York Mellon*, Index No: 09/114735 (New York Supreme Court).

11. Defendants waive and shall not assert any defenses they may have to any criminal prosecution relating to the Covered Conduct that may be based in whole or in part on a

contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or under the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution. Nothing in this Paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. Defendants fully and finally release the Government, and its agencies, officers, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Government, and its agencies, officers, employees, servants, and agents, related to the Covered Conduct and the Government's investigation and prosecution thereof.

13. Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of BNYM, its present or former officers, employees, and agents, including Nichols, in connection with: (1) the matters covered by this Stipulation; (2) the Government's civil investigation of the Covered Conduct; (3) the investigation, defense, and corrective actions undertaken by Defendants in response to the Government's civil investigation of the Covered Conduct (including attorney's fees); (4) the negotiation and performance of this Stipulation; (5) the payment BNYM makes to the Government pursuant to this Stipulation, including costs and attorney's fees; and

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify and repay by adjustment any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States. Defendants agree that the Government, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. The Government reserves its rights to disagree with any calculations submitted by Defendants or any of its rights to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph, and to disagree with any calculations submitted by Defendants concerning any Unallowable Costs included in payments previously sought by Defendants, or the effect of any such Unallowable Costs on the amount of such payments.

14. Except as expressly provided in this Stipulation, this Stipulation is intended to be for the benefit of the Parties only. The Parties are not releasing any claims against any other person or entity except as expressly provided in this Stipulation.

15. BNYM represents and warrants that it has reviewed its financial situation, that it is currently not insolvent as such term is defined in 11 U.S.C. § 101(32) and that it reasonably believes that it shall remain solvent following payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they

(a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to BNYM, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which BNYM was or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

16. If within 91 days of the Effective Date of this Stipulation or any payment made under this Stipulation, BNYM commences any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or a third party commences any case, action, or other proceeding under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of BNYM's debts, or seeking to adjudicate BNYM as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for BNYM or for all or part of BNYM's assets, BNYM agrees as follows:

a. BNYM's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and BNYM shall not argue or otherwise take the position in any such case, action, or proceeding that (i) BNYM's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) BNYM was insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to BNYM.

b. If any of BNYM's obligations under this Stipulation are avoided for any

reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its option, may rescind the release in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the release in Paragraph 7 above. BNYM agrees that (i) any such claim, action, or proceeding brought by the Government would not be subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first sentence of this Paragraph, and BNYM shall not argue or otherwise contend that the Government's claim, action, or proceeding is subject to an automatic stay; (ii) BNYM shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government within 60 calendar days of written notification to BNYM that the release has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on October 4, 2011; and (iii) the Government has a valid claim against BNYM in the amount of \$167,500,000 and the Government may pursue its claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

c. BNYM acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

17. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, it shall be deemed to have been drafted by the Government and Defendants and shall not, therefore, be construed against either party for that reason in any subsequent dispute.

18. Any failure by the Government to insist upon the strict performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Stipulation.

19. Subject to the exceptions set forth in this Stipulation, in consideration of the obligations of Defendants set forth in this Stipulation, and conditioned upon Defendants' full compliance with the terms of this Stipulation, the Complaint shall be deemed dismissed without prejudice upon entry of this Stipulation. The Complaint shall be deemed dismissed with prejudice as to the Released Claims upon the disbursement of the Escrow Funds to the United States pursuant to Paragraph 4. Notwithstanding the foregoing, the Court shall retain jurisdiction over this Stipulation and each Party to enforce the obligations of each Party under this Stipulation.

20. The Government and Defendants shall each bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

21. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and entities indicated below.

22. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

23. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by express courier and by e-mail transmission, followed by postage-prepaid mail, to the following representatives:

To the Government:

Pierre G. Armand
Lawrence H. Fogelman
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel: (212) 637-2724/2719
Fax: (212) 637-2730/2686
Email: Pierre.Armand@usdoj.gov; Lawrence.Fogelman@usdoj.gov

To BNYM:

Reid M. Figel, Esq.
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Washington, DC 20036
Tel: (202) 326-7918
Fax: (202) 326-7999
Email: rfigel@khhte.com

To Nichols:

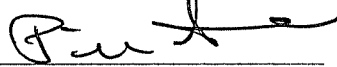
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Email: sfishbein@shearman.com

24. The effective date of this Stipulation is the date upon which this Stipulation is entered by the Court (the "Effective Date").

25. This Stipulation constitutes the complete agreement between the Government and Defendants. This Stipulation may not be amended except by written consent of the Government and Defendants.

Dated: March 19, 2015
New York, New York

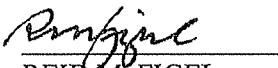
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Dated: March 19, 2015
New York, New York

KELLOGG, HUBER, HANSEN, TODD,
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Attorney for the Bank of New York Mellon

Dated: March 19, 2015
New York, New York

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Attorney for David Nichols

Dated: March 17, 2015
New York, New York

PREET BHARARA
United States Attorney
Southern District of New York

By:

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Dated: March 17, 2015
New York, New York

KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.

By:

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Attorney for the Bank of New York Mellon

*19 Bank
per SE
Authentication*
Dated: March 17, 2015
New York, New York

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By:

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Email: sfishbein@shearman.com

Attorney for David Nichols

Dated: _____, 2015
New York, New York

SO ORDERED:

HON. LEWIS A. KAPLAN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON and
DAVID NICHOLS,

Defendants.

)
)
) 11 Civ. 06969 (LAK)
)
) ECF Case
) **CONSENT JUDGMENT**

Upon the consent of plaintiff the United States of America (the "Government") and defendant The Bank of New York Mellon ("BNYM"), following entry of a stipulation and order of settlement and dismissal; it is hereby

ORDERED, ADJUDGED AND DECREED: that the Government is awarded judgment in the sum of \$167,500,000 as of March 17, 2015, as against BNYM and any and all applicable post-judgment interest as permitted by law.

Consented to by:

Dated: March 19, 2015
New York, New York

PREET BHAHARA
United States Attorney
Southern District of New York

By: _____

PIERRE G. ARMAND
LAWRENCE H. FOGELMAN
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Dated: March 19, 2015
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Attorney for the Bank of New York Mellon

Dated: _____
New York, New York

SO ORDERED:

HON. LEWIS A. KAPLAN
UNITED STATES DISTRICT JUDGE