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MARKETS

Bank of New York to Pay $714 Million to Resolve Currency Suits

Suits claimed custody bank defrauded pension funds by overcharging on currency transactions

The trust bank previously denied claims it defrauded pension funds and other clients by overcharging them on currency transactions. *PHOTO: REUTERS*

By ARUNA VISWANATHA

Updated March 19, 2015 6:15 p.m. ET

WASHINGTON—Bank of New York Mellon Corp. agreed to pay $714 million to resolve allegations it defrauded pension funds and other clients by overcharging them on currency transactions.

The settlements, announced on Thursday, resolve long-running lawsuits from Manhattan U.S. Attorney Preet Bharara and New York Attorney General Eric Schneiderman that accused the custody bank of giving some clients worse prices on foreign currency trades than they had been promised.

It also ends certain related private lawsuits brought by bank customers and investigations by the Securities and Exchange Commission and the U.S. Department of Labor.

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Under the settlements, the bank agreed to fire "certain employees involved in the conduct," including David Nichols, a managing director and head of products management who was also charged in the federal lawsuit.

Mr. Nichols, 60 years old, doesn't have to pay any penalties under the deal. His lawyer, Stephen Fishbein, declined comment.

While prosecutors haven't traditionally forced employees to leave a company in order to resolve allegations of misconduct, authorities have pushed for such departures in several recent cases. When BNP Paribas SA last year agreed to pay $8.9 billion and plead guilty in connection with U.S. sanctions violations, for example, New York's banking regulator required more than one dozen employees to leave the bank.

Bank of New York, which refuted the lawsuits' allegations since they were first filed in 2011, admitted as part of Thursday's agreements that it told certain clients its focus was on "securing the best possible rates" even though the prices it actually gave those clients were close to the worst of the day, according to settlement documents.

"The Bank, after three years of litigation, has finally admitted what was always clear from the evidence – contrary to its various representations, including a claim of 'best rates,' the bank in fact gave clients prices at or near the worst interbank rates reported during the trading day," Mr. Bharara said in announcing the settlement.

In a statement, the bank said "We are pleased to put these legacy FX matters behind us, which is in the best interest of our company and our constituents."

The lawsuits were aided by a former bank employee, Grant Wilson, who served as a whistleblower and helped government investigators build their case. Mr. Wilson stands to collect some money from the settlements. His lawyer declined comment, citing several pending lawsuits on the issue that weren't resolved as part of Thursday's agreements.

Mr. Wilson's role in the investigation was first revealed in a front-page article in The Wall Street Journal in 2011.

Bank of New York Mellon agreed in 2012 to make changes to pricing disclosures. Last month, the bank said it would adjust its fourth-quarter results to include a $598 million litigation expense as it neared resolution of foreign-exchange and other matters.

The cases revolved around the bank's foreign exchange "standing instruction" program, between 2000 through 2011, under which pension funds and other clients allow the bank unilaterally to handle their foreign-exchange transactions. As a custody bank, BNY Mellon safeguards about $28.5 trillion in assets for money managers, companies and other clients, performing administrative functions on behalf of other banks and corporations. It is also an investment manager, with $1.7 trillion of assets under management.

The $714 million settlement will be parceled out to various parties, including $335 million split between the U.S. Justice Department and New York State. Mr. Schneiderman's office said its portion would largely go to compensating customers of the bank who were victims of the pricing strategy, including two state agencies, the New York State Deferred Compensation Plan and the State University of New York.

Another $335 million will go to resolving private class action lawsuits. Of the remainder, $14 million will resolve Labor Department claims and be used to pay some of the bank's customers, and another $30 million will resolve related claims from the Securities and Exchange Commission.

The settlements still need to be approved by the court and the SEC.

The lawsuits and investigations are separate from a broader Justice Department probe into allegations that traders at top global banks worked to manipulate foreign exchange rates to benefit their banks' trading positions.

State Street Corp. last month also revised its fourth-quarter earnings after increasing its reserves by $65 million to resolve currency claims related to its custodial clients.

The lawsuit from the U.S. Attorney's office was one of the first to draw on the 1989 Financial Institutions Reform, Recovery and Enforcement Act, a once dormant law that allows the government to go after fraud affecting federally-insured financial institutions. The Justice Department has since used FIRREA to extract billions of dollars in penalties from some of the nation's biggest banks for their alleged roles in fueling the financial crisis.

Bank of New York Mellon and other banks unsuccessfully challenged the government's use of FIRREA.

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