ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (respectively, the "Enforcement Section" and the "Division") files this complaint (the "Complaint") in order to commence an adjudicatory proceeding against Respondent, The Bank of New York Mellon Corporation ("BNY Mellon"), for violating M.G.L. c. 110A, the Massachusetts Uniform Securities Act (the "Act"), and 950 CMR § 10.00 et seq. (the "Regulations"). The Complaint is based upon Respondent’s scheme to deceive its clients and its clients’ investment managers by misleading and omitting critical information with respect to its foreign exchange Standing Instruction Service. Respondent’s scheme was perpetrated over a minimum of ten years and garnered tens of millions in illegal profits from exorbitant undisclosed mark ups on foreign currency exchanges effected for BNY Mellon’s Massachusetts public pension fund clients, foremost among them, the Massachusetts Pension Reserves Investment Management Board ("PRIM"). BNY Mellon, through its fraudulent scheme, effectively stole tens of millions of dollars from Massachusetts state pensioners. The Complaint
also alleges that BNY Mellon’s scheme was perpetuated by a lack of transparency in the mechanics of foreign exchange standing instruction program, thereby preventing its client, PRIM and PRIM’s investment managers, from detecting the hidden mark ups for over ten years.

The Enforcement Section seeks an order of the Division requiring Respondent to permanently cease and desist from further violating the Act, disgorgement to Massachusetts public pension funds who engaged in foreign exchange trading via the Standing Instruction Service, and requiring Respondent to pay an administrative fine in an amount and upon such terms and conditions as the Director or Hearing Officer may determine. In addition, the Enforcement Section requests that the Director or Hearing Officer take any and all other necessary action which may be in the public interest and appropriate for the protection of investors.

II. SUMMARY

“Pricing is an art, not a science” is how one BNY Mellon employee described BNY Mellon’s foreign exchange offerings. Indeed, BNY Mellon’s foreign exchange Standing Instruction Service serves as a primer in the art of deception. As with most good art, BNY Mellon’s art of deception made the bank “bundles of cash” as a BNY Mellon employee heard then-CEO Bob Kelly remark at a BNY Mellon Town Hall presentation.

BNY Mellon created a Standing Instruction Service to execute foreign exchange transactions for its custodial clients that was represented as “free of charge.” BNY Mellon utilized its responses to clients’ requests for proposals for custodial services and other various materials as a canvas to paint a picture of a service that was free of charge, cost-effective, and priced within a defined range. However, BNY Mellon’s representations about its Standing Instruction Service were nothing more than an illusion. In reality, BNY Mellon’s Standing
Instruction Service was a hidden scheme that rigged the pricing of non-negotiated foreign exchange transactions, while maximizing profits for the bank.

BNY Mellon is a custodial bank that provides a variety of services to clients including foreign exchange. Foreign exchange can be negotiated or non-negotiated. Negotiated trades are transacted by the client and/or its investment manager by negotiating directly with a BNY Mellon foreign exchange trader and mutually agreeing on a price. The non-negotiated trades are done via the Standing Instruction Service on an as-needed basis for custody related foreign exchange including securities trade settlement, income conversions (including dividends and bond interest), corporate actions, tax reclaim, interest postings and residual balances.

BNY Mellon earns considerable revenues from foreign exchange (negotiated and non-negotiated). In 2010, BNY Mellon earned $787 million and in 2009, BNY Mellon earned $1 billion dollars in foreign exchange revenue. In 2008, even during the height of the financial crisis, BNY Mellon generated $1.5 billion in foreign exchange revenue. The Standing Instruction Service contributes significantly to those revenues or, as BNY Mellon head of Global Markets foreign exchange sales, Jorge Rodriguez, described, “As we all know, Standing Instruction [Service] is the most profitable form of business.”

In an internal email to his superior, Jorge Rodriguez explained how the Standing Instruction Service worked:

It offers the traders a free intra-day option to time its currency execution in the marketplace knowing it does not have to get back to the customer immediately with a deal price. Business of this type also allows us to take advantage of increased market volatility and wide intra-day trading ranges. All these pricing advantages disappear when a client trades via an e-commerce platform and full transparency is achieved.

In other words, BNY Mellon was timing the pricing of foreign exchange trade execution for clients utilizing the Standing Instruction Service at a price favorable to the bank. The BNY
Mellon earned its revenues on this scheme by applying a hidden mark up to the price it received and then assigned this fictitious rate to the client's Standing Instruction foreign exchange transaction.

BNY Mellon perpetrated the scheme by making false representations and omitting pertinent information about the Standing Instruction Service ("Service") in an effort to entice clients and clients' investment managers to utilize the Service. BNY Mellon characterized the Service as free, which was false based on the hidden mark ups that effectively were a fee unjustly earned by the bank. BNY Mellon informed clients and clients' investment managers that using Standing Instructions would be "cost-effective," yet often applied a hidden mark up of over thirty basis points versus the four basis points applied transparently in negotiated trades. BNY Mellon misled clients and clients' investment managers by representing that the Standing Instruction foreign currency trades would be executed "within a daily range" or "at a rate not less favorable than [the range]." However, BNY Mellon assigned rates consistently at the limits of the range (close to the high end for purchases and close to the low end for sales) and, in some cases, went outside of the range.

BNY Mellon employees repeatedly expressed concerns about transparency and the detrimental effect it would have on the foreign exchange revenues. One BNY Mellon employee noted that:

In general transparency adversely impacts our revenue stream and any product to distribute fee information would hurt us many times over in reduced revenue. Nothing like a rock and a hard place.

When clients and/or clients' investment managers made inquiries to BNY Mellon about its Standing Instruction Service, BNY Mellon continued to misrepresent the Service. In some instances, when clients who were unhappy with the lack of transparency terminated their use of
the Standing Instruction Service, BNY Mellon would offer an alternative pricing method with a fixed mark up. In offering an alternative, BNY Mellon could still earn a spread while offering more transparency, albeit diminished, but would be able to continue its Standing Instruction Service scheme on those clients who had yet to complain of cease utilizing the Service.

The Massachusetts Pension Reserves Investment Management Board is one such client that BNY Mellon charged hidden fees based on PRIM’s use and PRIM’s investment managers’ use of BNY Mellon’s Standing Instruction Service. A study commissioned by PRIM revealed that BNY Mellon overcharged PRIM on the “free” Standing Instruction Service by approximately $30.5 million. PRIM was often in the top twenty-five of BNY Mellon’s tax-exempt client Standing Instruction revenues and at one point was the sixth largest public fund client of BNY Mellon. PRIM was only offered an alternative to BNY Mellon’s Standing Instruction Service after PRIM directed its investment managers to cease using the Standing Instruction Service in July 2011. In early 2010, BNY-Mellon had made other such alternative pricing offers to other state pension funds, however, at better rates than what was provided to PRIM.

The first section of the Complaint provides background with respect to BNY Mellon and its fiduciary relationship with the Massachusetts Pension Reserves Investment Management Board. The second section outlines the various representations of the Standing Instruction Service, which as a result of the rigged foreign exchange pricing were false and misleading. In order to maintain the scheme, BNY Mellon viewed transparency as a threat to profits. The next section measures the success of the scheme by the profits earned for the bank. Finally, the last part of the Complaint sheds light on the continued misrepresentations and how BNY Mellon
offered certain clients partially negotiated non-negotiated trades as an alternative to the Standing Instruction Service as a way to secure and maintain profits for the bank.

III. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a Division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities as provided for by the Act. The Act authorizes the Division to regulate: 1) the offers and/or sales of securities; 2) those individuals offering and/or selling securities within the Commonwealth; and 3) those individuals transacting business as broker-dealer agents within the Commonwealth.

2. The Division brings this action pursuant to the enforcement authority conferred upon it by Section 407A of the Act and M.G.L. c. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all regulations and rules promulgated thereunder.

3. This proceeding is brought in accordance with Sections 101 and 407A of the Act and its Regulations.

4. The Division specifically reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate period of July 1, 1999 through present.

V. RESPONDENT

6. The Bank of New York Mellon Corporation ("BNY Mellon") is a Delaware corporation created as a result of the July 1, 2007 merger of the The Bank of New York Company, Inc. and
Mellon Financial Corporation. BNY Mellon is traded on the New York Stock Exchange under the symbol BK. The Bank of New York Mellon Corporation’s corporate brand is called BNY Mellon. BNY Mellon’s principal executive offices are located at One Wall Street, New York, New York 10286. BNY Mellon’s website is www.bnymellon.com. BNY Mellon also has locations in Everett, Massachusetts and Boston, Massachusetts.

VI. FACTUAL ALLEGATIONS

A. BNY Mellon Failed in its Fiduciary Obligations to the Massachusetts Pension Reserves Investment Management Board

BNY Mellon

7. Established in July 2007 from the merger of Mellon Financial Corporation and The Bank of New York Company, Inc., BNY Mellon is the world’s largest global custodian bank. BNY Mellon has $25.9 trillion in assets under custody and administration and $1.2 trillion under management.

8. BNY Mellon is a custodian bank, a financial institution that holds and safeguards financial assets of firms and individuals, such as stocks, bonds and currency. BNY Mellon provides a variety of services to clients, including settlement of any purchases and sales of securities and currency, maintaining currency/cash bank accounts, effecting deposits and withdrawals and managing other cash transactions, and performing foreign exchange (“FX”) transactions.

9. BNY Mellon’s FX securities servicing includes global securities execution, clearing, settlement, custody, reporting and accounting.

10. Many of BNY Mellon’s custodial clients invest in foreign securities, which must be purchased and sold in the currencies of the countries where the securities are issued.
11. Accordingly, to complete transactions involving the purchase or sale of foreign securities, BNY Mellon’s custodial clients who are based in the United States and invest in foreign securities must purchase and sell those foreign currencies.

12. Such foreign securities earn dividends or other income in foreign currencies that clients often choose to repatriate into U.S. dollars or assets. To facilitate these transactions, BNY Mellon offers its clients foreign exchange services.

13. BNY Mellon generally offers two principal types of foreign exchange services, namely: (1) negotiated foreign exchange execution; and (2) non-negotiated standing instruction foreign exchange execution ("Standing Instruction Service").

14. Negotiated foreign exchange involves the custodial client and/or its investment manager negotiating directly with a foreign exchange trader at BNY Mellon to purchase or sell currency at a particular price mutually agreed upon by the parties.

15. The Standing Instruction Service is conducted on a non-negotiated basis pursuant to standing instructions authorized by BNY Mellon’s custodial client and/or the custodial client’s investment managers. Under the Standing Instruction Service, BNY Mellon executes foreign exchange transactions automatically on an as needed basis (such as when a security purchased on a foreign exchange requires settlement) and BNY Mellon determines the price the client receives for the purchase or sale of the currency.

16. The Standing Instruction Service contributes a significant percentage of revenue to BNY Mellon’s foreign exchange revenues in the Asset Servicing sector.

17. BNY Mellon reported in its annual reports that foreign exchange revenue and other trading activities attributed to the Asset Servicing sector for 2010 totaled $787 million and in 2009 totaled $1 billion.
18. According to BNY Mellon's 2008 annual report, "Foreign exchange and other trading activities revenue, which is primarily reported in the Asset Servicing segment, was a record $1.5 billion in 2008, an increase of $676 million, or 86%, compared with 2007."


**BNY Mellon's Massachusetts based custodial clients**

20. BNY Mellon's Massachusetts-based custodial clients include the Massachusetts Pension Reserves Investment Management Board.

21. The PRIM Board is charged with the general supervision of the PRIT\(^1\) Fund. "PRIM's mission is to maximize the return on investment within acceptable levels of risk by broadly diversifying its investment portfolio, capitalizing on economies of scale to achieve cost-effective operations, and providing access to high quality, innovative investment management firms, all under the management of a professional staff and members of the Board."

22. Prospective custodians submit proposals to provide Master Custodian Services to PRIM based on the criteria listed in PRIM's request for proposal ("RFP").

23. As a result of the RFP process, PRIM awarded a custodial contract to BNY Mellon, thus commencing its fiduciary relationship with PRIM as of June 28, 1999\(^2\).

\(^1\) According to PRIM's website, www.mapension.com:
The Pension Reserves Investment Trust ("PRIT") Fund is a pooled investment fund established to invest the assets of the Massachusetts State Teachers' and Employees' Retirement Systems, and the assets of county, authority, district, and municipal retirement systems that choose to invest in the Fund. The PRIT Fund was created by the Legislature in December 1983 (Chapter 661 of the Acts 1983) with a mandate to accumulate assets through investment earnings and other revenue sources in order to reduce the Commonwealth's significant unfunded pension liability, and to assist local participating retirement systems in meeting their future pension obligations. The PRIT Fund merged with the Massachusetts State Teachers' and Employees' Retirement System ("MASTERS") Trust on January 1, 1997, in accordance with Chapter 315 of the Acts of 1996. As of June 30, 2010, the assets of the PRIT Fund totaled $41.3 billion (unaudited).

\(^2\) The 1999 contract was with a BNY Mellon predecessor company, Boston Safe and Deposit Trust Company. According to BNY Mellon's RFP submission to PRIM, Mellon Financial Corporation acquired The Boston Company in 1993, whose roots are with the Boston Safe Deposit and Trust Company. On July 1, 2007, The Bank of
24. The fee schedule for the period of July 1, 1999 through June 30, 2002 charged a flat fee for all custody services that included, but was not limited to, "portfolio administration, participant recordkeeping, portfolio trading, portfolio transactions, out-of-pocket expenses, and report generation."

25. The contract\(^3\) obligated BNY Mellon in pertinent part:

2.2 **Fiduciary Status of the Custodian: Chapter 268A.** With respect to the performance of its duties and responsibilities under this Agreement, the Custodian acknowledges that it is a "fiduciary" within the meaning of Chapter 32. The Custodian will discharge its duties and responsibilities under this Agreement in accordance with the fiduciary standards of conduct and other requirements as they apply to the Custodian. The Custodian is advised of the existence of Massachusetts General Laws, Chapter 268A (the Massachusetts "Conflict of Interest" statute), and is expected to act and perform its duties in accordance with such provisions.

4.2 **Standard of Care.** In addition to those requirements set forth in Section 2.2, the Custodian shall discharge all of its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent financial institution acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. The parties recognize that the Custodian's duties under this Agreement include various functions and activities (including, without limitation, those functions and activities related to custody and settlement of transactions) with regard to assets of PRIT held outside of the United States, and that in many foreign jurisdictions the practices and standards applicable to such functions and activities are not the same as they are within the United States. The parties agree that, in determining whether the Custodian has satisfied its standard of care under this Section with respect to such functions and activities the standard of care shall be that of a prudent U.S. financial institution conducting like activities within the applicable jurisdiction which is locally knowledgeable and respected and which regularly performs such functions and activities for large institutional clients.

26. The 1999 Custody Agreement was amended and restated as of November 1, 2001. There was a fee extension agreement as per the fee schedule for the period of July 1, 2002 through June

\(^3\) The 2001, 2003, and 2009 (by incorporating the 2003 Custody Agreement) Custody Agreements between BNY Mellon and PRIM contain similar, if not identical, sections as Section 2.2 Fiduciary Status of Custodian and Section 4.2 Standard of Care contract provisions.
30, 2003. This fee extension charged a flat fee for all custody services that included, but was not limited to, “portfolio administration, participant recordkeeping, portfolio trading, portfolio transactions, out-of-pocket expenses, and report generation.”

27. PRIM renewed its custodial contract with BNY Mellon for a five year period in July 2003. The fee schedule for the period of July 1, 2003 through June 30, 2008 charged a flat fee for all custody services, including, but not limited to, “portfolio administration, participant recordkeeping, portfolio trading, portfolio transactions, out-of-pocket expenses, and report generation.”

28. PRIM extended BNY Mellon’s custodial services contract in July 2008. The fee schedule for the period of July 1, 2008 through June 30, 2009 charged a flat fee for all custody services, including, but not limited to, “portfolio administration, participant recordkeeping, portfolio trading, portfolio transactions, out-of-pocket expenses, and report generation.”

29. As of July 2009, BNY Mellon contracted to provide custodial services to PRIM through June 30, 2014. The fee schedule for the period of July 1, 2009 through June 30, 2014 charges a flat fee for all custody services, including, but not limited to, “portfolio administration, participant recordkeeping, portfolio trading, portfolio transactions, out-of-pocket expenses, and report generation.”

30. When asked to produce copies of any and all agreements and/or contracts between BNY Mellon and PRIM, BNY Mellon produced the custodial contracts and the fee agreements. BNY Mellon did not produce any separate contracts produced pertaining to Standing Instruction Service.

31. In February 2009 and July 2010 BNY Mellon sent PRIM and some of PRIM’s investment managers letters. These letters state that BNY Mellon enters into foreign exchange
transactions on an arm’s length basis and “[u]nless expressly agreed in writing, the Bank and its agents are not acting as your advisor or fiduciary with respect to such transactions.” [Exhibit 2].

32. In PRIM’s case, BNY Mellon was a fiduciary, yet acted as a principal, in conducting foreign exchange transactions via the Standing Instruction Service.

33. BNY Mellon offered and marketed the Standing Instruction Service to PRIM as part of BNY Mellon’s Asset Servicing custody services.

34. PRIM required its custodian to provide FX services when PRIM stated as much under the “Scope of Services” in its RFP for Master Custodial Services.

35. One such PRIM RFP for Master Custody Services from November 2007 stated in pertinent part under the Section titled “Scope of Services,” subsection “Custodial Services”:

   PRIM has extensive developed nation and emerging market investments. The custodian must have sub-custodian relationships to service PRIM’s international investments. Knowledge of tax treaties, withholding laws and tax reclamation procedures is essential. The custodian will have a thorough knowledge of relevant securities and tax laws in each country, as well as the ability to recover assets in the event of broker bankruptcy. The custodian must have the capability to execute foreign exchange transactions for the purpose of repatriation.

   (emphasis supplied).

36. BNY Mellon employees also acknowledged that the Standing Instruction Service was part of the bank’s custody agreements. In an October 2009 email from Jorge Rodriguez, head of Global Markets FX Sales, to his superior, Richard Mahoney, Mr. Rodriguez noted that “the non-negotiated channel is an indicator of what BNY Mellon’s Asset Servicing Franchise contributes to the FX [foreign exchange] bottom line based on contractual custody agreements.” [Exhibit 3].

37. BNY Mellon’s 2010 annual report to shareholders further highlights that foreign exchange was integrated with BNY Mellon’s Asset Servicing custodial clients. The 2010 annual report states in pertinent part:
Our Asset Servicing business also generates foreign exchange trading revenues, which are influenced by the volume of client transactions and the spread realized on these transactions, market volatility in major currencies, the level of cross-border assets held in custody for clients, the level and nature of underlying cross-border investments and other transactions undertaken by corporate and institutional clients. As part of our foreign exchange business, we offer a standing instruction [service] that provides a cost-effective and efficient option, to our clients, for handling a high volume of small transactions or difficult to execute transactions in restricted and emerging markets currencies. Our foreign exchange platform provides custody clients and their investment managers an end-to-end solution that transfers to BNY Mellon much of the burden, risk and infrastructure cost associated with foreign exchange transactions. (emphasis supplied).

38. BNY Mellon’s client PRIM and PRIM’s investment managers have utilized BNY Mellon’s Standing Instruction Service offered as a result of the custodial relationship with the bank.

B. BNY Mellon Misled and Omitted Pertinent Information to Entice Clients and Clients’ Investment Managers to Utilize the Standing Instruction Service

39. BNY Mellon affirmatively misled prospective customers, including its custodial clients and clients’ investment managers, about its Standing Instruction Service. BNY Mellon continued to mislead its clients and omit pertinent information when seeking to retain the existing custodial relationships.

40. BNY Mellon’s misrepresentations to PRIM began when BNY Mellon submitted proposals in response to PRIM’s RFPs.

41. BNY Mellon in a 2002 RFP response to PRIM marketed its foreign exchange capabilities as:

*Foreign Exchange Trading Desk.* Mellon operates full service trading rooms in London, Boston, and Pittsburgh providing 24-hour market access for our clients. We have an extensive Foreign Exchange Division. We provide investment managers of our clients with access to one of the most competitive and efficient foreign exchange operations in the industry.

...
In addition to these services, Mellon [Global Securities Services] can accommodate standing instructions to convert and transfer specified currencies upon receipt. With such instructions in place, clients can avoid spending time and effort monitoring currency balances and issuing specific routine instructions.

(emphasis supplied).

42. BNY Mellon provided the following description of its Standing Instruction Service to PRIM in both its January 2008 and November 2008\textsuperscript{4} proposals responding to PRIM’s RFPs for Master Custody Services.

[A] simple, flexible, and complete service solution that automates the capture of all types of custody-related foreign exchange, including securities trade settlement, income conversions, corporate actions, tax reclaim, interest postings and residual balances. 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 businesses.

(emphasis supplied).

43. After a custodial client relationship commenced as a result of the RFP process, BNY Mellon continued to misrepresent and omit pertinent information regarding its Standing Instruction Service in its various materials, such as its Foreign Exchange Procedure Form, Foreign Exchange Procedures, Guide to Trading Around the World, and Welcome Package for U.S. Investment Managers.

44. BNY Mellon clients and/or clients’ investment managers utilizing the Standing Instruction Service acknowledged use of the Standing Instruction Service by filling out a Foreign Exchange Procedure Form contained in the Global Account Opening Documentation Package. [See Exhibits 4 and 5, reproduced in pertinent part].

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\textsuperscript{4} PRIM issued an RFP in November 2007 that resulted in extending BNY Mellon’s services for one year. As a result, PRIM issued a second RFP which ultimately awarded BNY Mellon with a custodial contract for five more years.
45. In signing a *Foreign Exchange Procedure Form*, clients and/or clients' investment managers acknowledged receipt of *BNY Mellon's Foreign Exchange Procedures*.

46. PRIM's investment managers executed such *Foreign Exchange Procedure Forms* and acknowledged receipt of the *Foreign Exchange Procedures*.

47. PRIM submitted Standing Instructions to BNY Mellon in 2003 to “immediately repatriate all distributions and other inflows of foreign currency from alternative investment partnerships,” PRIM submitted the Standing Instructions on its letterhead and did not use BNY Mellon’s *Foreign Exchange Procedure Form*. [Exhibit 6]. [See also Exhibits 4 and 5, reproduced in pertinent part].

48. PRIM’s 2003 Standing Instructions to BNY Mellon did not acknowledge receipt of the *Foreign Exchange Procedures*. [Exhibit 6].

49. BNY Mellon represented on its *Foreign Exchange Procedures* that its clients' foreign exchange transactions via the Standing Instruction Service would be priced “at a rate not less favorable than indicated on the Daily Schedule for that day.” [See Exhibits 4 and 5, reproduced in pertinent part]. (emphasis supplied).

50. BNY Mellon also made the following representations in the *Foreign Exchange Procedures* that the Standing Instruction Service included netting: “Currency purchases and sales effected pursuant to [Foreign Exchange] Procedures in the same currency and having the same trade and value date may be netted for pricing purposes within a customer account.” [See Exhibits 4 and 5, reproduced in pertinent part].

51. BNY Mellon directed clients and/or clients’ investment managers utilizing the Standing Instruction Service to a reference book named *The Guide to Trading Around the World* and also provided them with a *Welcome Package for U.S. Investment Managers*.
BNY Mellon represented to the Division that PRIM's investment managers would have received a copy of the *Welcome Package for U.S. Investment Managers* in the normal course of business.

BNY Mellon provided the following description of the Standing Instruction Service in its Global Custody Services *Welcome Package for U.S. Investment Managers*:

> We offer an exceptional "standing instructions" service that allows clients to designate at the portfolio, currency or event level, how they would like the income proceeds dispersed.

> FX Standing Instructions are supported via INFORM's Internet Instruction Capture (IIC). This service automates all types of foreign exchange, including securities trade settlement, income conversions, corporate actions, tax reclaims, interest postings and residual balances. FX Standing Instructions is operationally simple, **free of charge** and integrated with our mutual client's activity on the various securities markets.

(emphasis supplied).

**C.  BNY Mellon's Standing Instruction Service was a Fraudulent Scheme Designed to Maximize Profits for the Bank**

BNY Mellon's representations concerning its Standing Instruction Service were false and/or misleading information about how it determines what currency exchange rates or prices would be used for the Standing Instruction Service transactions.

BNY Mellon represented that Standing Instruction Service was "free of charge"; however, BNY Mellon charged exorbitant mark ups to the foreign exchange transactions executed for PRIM's accounts.

BNY Mellon represented that its Standing Instruction Service was "cost-effective"; however, BNY Mellon charged exorbitant mark ups to the foreign exchange transactions executed for PRIM's accounts.
57. BNY Mellon represented that Standing Instruction Service trades would be executed within a daily range; however, there are numerous instances where BNY Mellon executed trades outside of the range for PRIM’s accounts.

58. BNY Mellon represented that Standing Instruction Service trades would be executed within a daily range; however, BNY Mellon omitted to inform PRIM and/or PRIM’s investment managers that BNY Mellon would execute the trades at the high end of the range for foreign currency purchases and the low end of the day for foreign currency sales to maximize revenues for BNY Mellon.

59. Upon information and belief BNY Mellon represented that the Standing Instruction Service netted trades; however, there are numerous instances where BNY Mellon did not net trades for PRIM’s accounts.

The Standing Instruction Service was not FREE

60. BNY Mellon’s Standing Instruction Service was not “free of charge.”

61. BNY Mellon’s pricing scheme permitted the bank to earn a substantial and yet undisclosed fee, namely the spreads or differences between the inflated prices provided to custodial clients, including PRIM, and the actual prices BNY Mellon obtained for itself on the spot market.

62. In a February 2008 email from Jorge Rodriguez, head of Global Markets FX Sales, to his superior, Richard Mahoney—Chairman of BNY Mellon’s U.S. Foreign Exchange Committee and head of BNY Mellon’s Global Markets and Capital Markets groups, Mr. Rodriguez explained:

As we all know, Standing Instruction [Service] is the most profitable form of business. It offers the traders a free intra-day option to time its currency execution in the marketplace knowing it does not have to get back to the customer immediately with the deal price. Business of this type also allows us to
take advantage of increased market volatility and wide intra-day trading ranges. All these pricing advantages disappear when a client trades via an e-commerce platform and full transparency is achieved. Based on our actual records, in 2007, non-negotiated business generated an average profit of 9 basis points.

[Exhibit 7]. (emphasis supplied).

63. Then-CEO, Bob Kelly, received a similar explanation of how the mechanics of the Standing Instruction Service trades worked from Mr. Mahoney, who had repackaged Mr. Rodriguez’s email. Mr. Mahoney explained:

Standing instruction also offers the traders a free intra-day option to time the currency execution in the marketplace knowing we don’t have to get back to the customer immediately with the deal price. Business of this type also allows us to take advantage of increased market volatility and wide intra-day trading ranges. All these pricing advantages disappear when a client trades via an e-commerce platform and full transparency is achieved. (comparison pricing, execution, and confirmation in real time.)

[Exhibit 8]. (emphasis supplied).

64. Acting as principal, in the best interest of the Bank and not the client, BNY Mellon extracted these secret profits by assigning clients’ FX trades a fabricated exchange rate (or price) that was unrelated to the rate paid by BNY Mellon or the prevailing market rate (i.e., the Interbank rate) at the time the trade was executed.

65. Rather than charging clients the prevailing FX rate at the time of the actual transaction, BNY Mellon observed post-trade movements in the FX market rates and charged clients as if the trade had occurred at either the high of the day for purchases or the low of the day for sales,

66. BNY Mellon then pocketed the difference between the price actually paid for the currency, or the market rate at the time the FX trade was executed, and the amount ultimately debited or credited to clients’ accounts.
67. Volatility in currency prices allows BNY Mellon to reap large trading gains at the expense of its clients. The greater the volatility, the greater the difference between BNY Mellon's price and the price given to Standing Instruction Service clients.

68. BNY Mellon failed to disclose to clients and clients' investment managers how revenue was actually generated from the Standing Instruction Service, namely, in a hidden mark up captured in how BNY Mellon priced the foreign exchange transactions.

69. BNY Mellon created the perception that its Standing Instruction Service was "free of charge," while secretly maximizing profit margins through its pricing of foreign exchange trades for the Standing Instruction Service.

70. By systematically failing to provide full transparency of foreign exchange pricing for at least ten years, BNY Mellon hid how the bank generated revenue from custodial client accounts.

**BNY Mellon Failed to Inform Clients that Standing Instruction Service trades would be executed at the limits of the published range**

71. The more specific information BNY Mellon provided to its clients about the Standing Instruction Service the more it magnified the incomplete and misleading information that enticed PRIM and PRIM's investment managers to utilize the service.

72. BNY Mellon informed Standing Instruction clients that the prices they received for currency purchases and sales would fall within daily ranges for various currencies that BNY Mellon published each morning on a *Daily Schedule*.

73. At times over the ten plus years that PRIM and PRIM's investment managers utilized the Standing Instruction Service, the *Daily Schedule* would be posted by 8:30 a.m. Currently, the *Daily Schedule* is published by 9:00 a.m.
74. The *Foreign Exchange Procedures* provided to investment managers noted that the trades would be executed on a principal basis “at a rate not less favorable than indicated on the Daily Schedule for that day.” [Exhibits 4 and 5].

75. The pricing disclosures omitted that BNY Mellon’s clients and/or clients’ investment managers would almost always receive near the high end of the range for foreign currency purchases and near the low end of the range for foreign currency sales.

76. In July 2010, a BNY Mellon Global Markets employee, David Green, noted in response to requests for comments about the Standing Instruction Service, “The current menu available to me, is to say: ‘We price at the high and low of the day.’ There is no other way to say this, - since it’s the truth and can be tested by any fund manager willing to do a little bit of work with the empirical data at their disposal.” [Exhibit 9].

77. Currently, the published procedures on the BNY Mellon website describe that standing instruction trade requests on a given day “will be executed that day with BNY [Mellon] on a principal basis at rates that will not deviate by more or less than three (3) percent from the relevant Interbank bid [i.e., purchase] or ask [i.e., sale] rates and will not be less favorable to the account than the corresponding rates indicated on the Daily Schedule for that day.” [Exhibit 10].


79. After a standing instruction foreign exchange trade has been executed, the only pricing information that BNY Mellon provides to clients is the final exchange rate assigned.
80. What Mr. Green failed to note in his email as referenced in Exhibit 9 is that BNY Mellon does not provide the investment manager with enough information to test the Standing Instruction Service pricing.

81. BNY Mellon does not provide time stamps for the trades, which clients and/or clients’ investment managers could use to verify whether they received a fair and reasonable exchange rate.

82. Due to fluctuations in exchange rates during the trading day, it is very difficult, if not impossible, for a client and/or client’s investment manager, to gauge whether a rate is favorable or unfavorable without BNY Mellon providing a time stamp specifying when during the day the trade was executed.

83. As of June 2011, time stamping was still not available to BNY Mellon clients and/or clients’ investment managers utilizing the Standing Instruction Service.

84. Not only did BNY Mellon not disclose to PRIM and PRIM’s investment managers that the foreign exchange transactions executed via the Standing Instruction Service would be repeatedly priced at the extreme ends of the range provided on the Daily Schedule, BNY Mellon violated its own policies by pricing PRIM’s transactions outside of the published range.

85. In PRIM’s case, based on reports provided to the Massachusetts pension fund, foreign currency trades executed via the Standing Instruction Service on behalf of PRIM through its investment managers fell outside of the Reuters published high and low range.

86. The FX Trade Deal Rate versus the Reuters High/Lows report was run for PRIM’s accounts from January 1, 2009 to December 31, 2009. During the 2009 time period, the report shows that nearly eleven thousand foreign currency transactions were executed via the Standing Instruction Service.
87. The report also shows that of the foreign currency transactions executed via the Standing Instruction Service over 10% of the trades fell outside of the Reuters High/Low range for the day of the trade.

**BNY Mellon’s Standing Instruction Service Pricing Scheme Led to Internal Concerns About Transparency**

88. As David Nichols, a BNY Mellon Global Markets Managing Director, noted in April 2010, “**Pricing is an art, not a science.**” [Exhibit 11]. (emphasis supplied).

89. Internally, BNY Mellon employees have repeatedly expressed concerns over transparency. As one BNY Mellon employee on the Revenue/Fee Disclosure Team noted, “[i]n general **transparency adversely impacts our revenue stream** and any product to distribute fee information would hurt us many times over in reduced revenue. Nothing like a rock and a hard place.” [Exhibit 12]. (emphasis supplied).

90. Internal BNY Mellon documents identify transparency as a threat with respect to BNY Mellon’s margin on the foreign currency spreads earned by the bank from the Standing Instruction Service.

91. As Richard Mahoney described for then-CEO Bob Kelly in February 2008 with respect to the Standing Instruction Service:

    Standing instruction also offers the traders a free intra-day option to time the currency execution in the marketplace knowing we don’t have to get back to the customer immediately with the deal price. Business of this type also allows us to take advantage of increased market volatility and wide intra-day trading ranges. **All these pricing advantages disappear when a client trades via an e-commerce platform and full transparency is achieved. (comparison pricing, execution, and confirmation in real time.)**

[Exhibit 8]. (emphasis supplied).

92. In a July 2010 email discussing how BNY Mellon has maintained the largest foreign exchange market share among fiduciary banks, Robert Near, BNY Mellon’s Director of Foreign Exchange Sales in New York, stated that “BNY Mellon has been more successful in maintaining
spreads in the SI [standing instruction] space compared to these peers,” that “BNY Mellon is ‘late’ to the transparency space,” and that BNY Mellon was “hearing from our clients that our competitors are offering time stamping and fixed spreads across all currencies.” [Exhibit 13].

93. BNY Mellon’s execution of foreign currency transactions for its Standing Instruction Service was not transparent to the client or the clients’ investment managers, thus allowing the bank to reap exorbitant profits at the expense of state pensioners.

94. BNY Mellon’s revenue generated from foreign exchange trades done via the Standing Instruction Service is the difference between the price obtained by the spot trader and the price from the day provided to the client.

95. Jorge Rodriguez, head of BNY Mellon’s Global Markets FX Sales, testified to the Division that if the trader got out of the market at a better rate than the published range, the client would get “the price at or near the high and low of the day.”

96. With this rigged pricing model, BNY Mellon generally cannot lose money. At best, BNY Mellon makes a huge spread and at worst, it breaks even.

D. BNY Mellon’s Reaped Profits with its Rigged Standing Instruction Service Pricing to the Detriment of its Clients.

97. BNY Mellon’s conduct in profiting at the expense of its custodial clients, including PRIM, was at its most egregious during the financial crisis in 2008. During the financial crisis, currency prices fluctuated widely.

98. This unprecedented volatility allowed BNY Mellon to pass on extremely poor pricing to its clients while earning massive gains on the much better pricing BNY Mellon was able to obtain on the spot market.

99. BNY Mellon generated substantial revenue from its Standing Instruction Service.
100. Internally at BNY Mellon, the Standing Instruction Service was repeatedly recognized as a “high margin” product.

101. The bulk of BNY Mellon’s foreign exchange profits are derived from non-negotiated standing instruction foreign currency transactions. By contrast, the spreads that BNY Mellon obtains on negotiated foreign exchange transactions are typically modest, as two parties are negotiating a price based on prevailing market rates at the time of the trade.

102. As explained above, the spreads for the foreign currency non-negotiated trades for the Standing Instruction Service exchange trades can be enormous because the clients receive the prices at the high and low end of the range published on the Daily Schedule.

103. BNY Mellon tracked the revenues/margin earned on trades executed via the Standing Instruction Service. [See Exhibit 14 for a representative example of revenues tracked].

104. The “free of charge” Standing Instruction Service was often referred to within BNY Mellon as the most profitable form of the foreign exchange business.

105. For example, the “free of charge” Standing Instruction Service also contributed to the $1.5 billion in foreign currency revenues earned by BNY Mellon in 2008.

106. BNY Mellon earned substantial profits off of PRIM’s and PRIM’s investment managers’ use of the Standing Instruction Service.

107. A study commissioned by PRIM in 2011 revealed that:

BYN Mellon charged PRIM an average of nearly 33 basis points for non-negotiated foreign exchange transactions, while industry fees averaged 4 basis points. Costs were lower still when BYN [sic] Mellon was required to negotiate its price by PRIM managers, demonstrating its institutional capacity to execute foreign currency trades at a much lower rate.

(emphasis supplied).
108. BNY Mellon tracked its revenues earned off of PRIM’s account for foreign exchange trades executed via custody\(^5\):

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>$4,343,965</td>
</tr>
<tr>
<td>2009</td>
<td>$5,806,511</td>
</tr>
<tr>
<td>2008</td>
<td>$6,734,327</td>
</tr>
<tr>
<td>2007</td>
<td>$2,441,847</td>
</tr>
<tr>
<td>2006</td>
<td>$2,652,462</td>
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<tr>
<td>2005</td>
<td>$1,530,452</td>
</tr>
<tr>
<td>2004</td>
<td>$1,354,307</td>
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<tr>
<td>2003</td>
<td>$1,428,918</td>
</tr>
<tr>
<td>2002</td>
<td>$229,984</td>
</tr>
<tr>
<td>2001</td>
<td>$77,939</td>
</tr>
<tr>
<td>Total</td>
<td>$26,600,712</td>
</tr>
</tbody>
</table>

109. The study also revealed that PRIM “ha[d] been overcharged $30.5 million by BNY Mellon since 2000 during foreign currency exchange transactions.”

E. BNY Mellon Misled Clients and Clients’ Investment Managers Who Inquired About Standing Instruction Pricing

110. From time to time, BNY Mellon custodial clients, including federally insured financial institutions (and/or subsidiaries or affiliates of these institutions), inquired to BNY Mellon about the pricing of trades executed via the Standing Instruction Service and asked BNY Mellon to provide time stamps for the trade and/or explain how BNY Mellon priced the transactions.

111. BNY Mellon understood that providing pricing transparency to its clients would eliminate the enormous spreads it was able to achieve at the expense of its clients. To compensate for that loss of revenue, BNY Mellon believed that it would be necessary to increase the volume of its negotiated foreign exchange business.

\(^5\) “The ‘Via Custody’ section of the report shows foreign exchange transactions processed through BNY Mellon’s custody systems. These transactions may include transactions conducted through the standing instruction process, as well as transactions conducted by other means.”
112. On October 20, 2009, the California Attorney General brought a civil fraud action in California Superior Court against State Street Bank and Trust Co. ("State Street"), another large custody bank. California alleged that State Street had charged state pension funds that were custodial clients of State Street fraudulent currency exchange rates in connection with its standing instruction foreign exchange service.

113. BNY Mellon was immediately flooded with inquiries from custodial clients and/or their investment managers about whether BNY Mellon was engaging in similar pricing conduct. In response to these inquiries, BNY Mellon continued to hide its pricing scheme from its clients and simply referred them to BNY Mellon’s website, which provided a false, incomplete and misleading description of BNY Mellon’s standing instruction foreign exchange service.

**PRIM’s Inquiry**

114. PRIM and at least two of PRIM’s investment managers made separate inquiries into BNY Mellon’s pricing scheme in the wake of the State Street lawsuit.

115. BNY Mellon continued its pricing scheme when responding to PRIM’s inquiry into the State Street lawsuit.

116. As a result of PRIM’s initial inquiry into the State Street matter in October 2009, PRIM was provided a link to BNY Mellon’s website through Bruce Shain.⁶ [Exhibit 15].

117. This was also noted on BNY Mellon’s FX inquiry log created as a result of the State Street lawsuit.

118. Mr. Shain highlighted the following from the BNY Mellon website for PRIM:

We publish exchange rates on the morning of every business day and guarantee them for the day. Custody clients and their investment managers then transact FX with us knowing that they will get rates at least as good as our published rates for that day. Of

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⁶ Bruce Shain is the BNY Mellon Relationship Manager for the PRIM account and has served in that capacity since the inception of the relationship in 1999.
course, clients and their managers may also elect to transact FX with other providers, or to deal directly with our FX trading operation.

[Exhibit 15]. (emphasis supplied).

119. BNY Mellon’s representation that the clients would get rates at least as good as the published rates was patently false. PRIM and PRIM’s investment managers repeatedly received rates at the high end of the range for purchases and the low end of the range for sales, thereby not receiving a favorable published rate.

120. Again, despite BNY Mellon’s representations, PRIM’s investment managers received rates not only at the high end of the range for purchases and low end of the range for sales, but for 10% of the trades in 2009, received rates outside of the Reuters High/Low range.

121. Bruce Shain testified to the Division that at some point he considered PRIM’s inquiry into the Standing Instruction Service following the State Street lawsuit closed.

122. Mr. Shain explained to the Division that “we had provided responses to [PRIM’s] questions and at whatever time that was, there didn’t appear to be any follow-up questions.”

123. Mr. Shain told the Division that he considered the PRIM inquiry into foreign exchange to be open again around March/April 2011 when “PRIM informed me that they had hired an external consultant to review foreign exchange transactions.”

124. In February 2011, Bruce Shain provided a FX Trading Fact Sheet (“Fact Sheet”) to PRIM. [Exhibit 16].

125. The Fact Sheet, titled BNY Mellon’s Standing Instruction Foreign Exchange Service: A Valuable Service at Competitive Prices, stated:

Our U.S. trading desks published a guaranteed range of foreign exchange prices every morning and ensure that standing instruction transactions they process will receive execution at rates within that published range and consistent with ERISA protections (even for transactions less than the minimum required for an interbank trade).
Based on the Fact Sheet provided to PRIM in February 2011, BNY Mellon still failed to fully disclose to PRIM that their trades would be repeatedly executed at the high and low ends of the range provided.

**PRIM Investment Manager A’s Inquiry**

127. On November 12, 2009, Investment Manager A made an inquiry into BNY Mellon’s Standing Instruction Service. [Exhibit 17].

128. In response to Investment Manager A’s inquiry into the Standing Instruction execution process, Investment Manager A was, in part, pointed to BNY Mellon’s website. [Exhibit 17].

129. In pointing Investment Manager A to the website, BNY Mellon also represented that “BNY [Mellon] publishes exchange rates each morning and guarantees that trades executed through the program that day will receive rates no worse than the published rates.” [Exhibit 17].

130. BNY Mellon went on to inform Investment Manager A that “transactions in this program tend to be priced towards the limits of the respective currency’s daily pricing range for directly executed, marketable size FX transactions between financial institutions.” [Exhibit 17].

131. BNY Mellon failed to inform Investment Manager A that their Standing Instruction transactions did not “tend” towards the limits, but were in fact repeatedly placed at the limits of the published range.

132. BNY Mellon also failed to inform Investment Manager A that for Standing Instruction trades placed for its client PRIM, trades fell outside of the Reuters High/Low range.
PRIM's Investment Manager B's Inquiry

133. On February 18, 2011, Investment Manager B submitted a foreign currency survey to BNY Mellon inquiring about the custodian’s current procedures for income repatriations and transactions in restricted currencies. [Exhibit 18].

134. In its response to Investment Manager B, BNY Mellon made several misrepresentations and omissions.

135. For example, BNY Mellon represented the following to Investment Manager B with respect to the Standing Instruction Service:

Per terms of this program, BNY Mellon publishes exchange rates each morning and guarantees that trades executed through the program that day will receive rates no worse than the published rates.

... BNY Mellon typically derives pricing for standing instruction trades (whether processed in the U.S. or elsewhere) from the currency’s daily pricing range for directly executed size FX transactions between financial institutions; we tend to price our purchases of currencies towards the low end of this range and our sales of currencies towards the high end, regardless of trade size. Standing instructions pricing is often less favorable to the client than FX rates on directly negotiated trades.

[Exhibit 18]. (emphasis supplied).

136. BNY Mellon misrepresented that the Standing Instruction Service foreign currency trades were executed at the high end for sales and the low end for purchases, but for the client it was just the opposite.

137. Although other custodian banks have taken steps to disclose the way in which standing instruction foreign exchange trades will be priced by offering fixed spreads and time stamping, BNY Mellon has refused to do so, still attempting to pocket “quality spreads” at its clients' expense. BNY Mellon does not currently provide time stamping for standing instruction foreign exchange trades.
138. On June 28, 2011, PRIM inquired of Investment Manager B if it was able to switch from the Standing Instruction Service to negotiated trades. [Exhibit 19].

139. Subsequent to Investment Manager B’s confirmation that it was possible, on July 13, 2011, PRIM requested that Investment Manager B start executing all FX transactions via negotiated trades, effectively stopping the Standing Instruction Service. [Exhibit 19].

140. That same day, July 13, 2011, Investment Manager B confirmed to PRIM that it sent a request that Investment Manager B does not want BNY Mellon to execute foreign exchange related to income items. Investment Manager B confirmed with PRIM that restricted currencies were exempt from this request. [Exhibit 19].

141. BNY Mellon attempted to maintain PRIM as a Standing Instruction Service client by proposing a partially negotiated Standing Instruction Service, which still lacked a fully transparent pricing model.

142. On July 20, 2011, Bruce Shain, BNY Mellon’s Relationship Manager, forwarded PRIM a term sheet for an alternative pricing scheme to the Standing Instruction Service. [Exhibit 20].

143. The alternative pricing offered a partially negotiated Standing Instruction with a benchmark price plus a fixed spread on transactions of 15 basis points. [Exhibit 20].

**Other State Pension Fund Inquiries**

144. In response to inquiries into BNY Mellon’s Standing Instruction Service, BNY Mellon offered a partially negotiated Standing Instruction Service to some state public pension funds, similar to the alternative pricing provided to PRIM.

145. The partially negotiated Standing Instruction Service continues to protect the most profitable part of BNY Mellon’s business and the custodial revenue flows generated by the high foreign exchange margins.
146. In one such instance, in February 2010, a large state pension fund requested BNY Mellon “to change how we price their non-negotiated FX trades.” [Exhibit 21].

147. In February 2010, BNY Mellon offered this large state pension fund a partially negotiated Standing Instruction Service with fixed spreads of “2-3 [basis points] on transactions over $1 million and 10 basis points on transactions below $1 million.” [Exhibit 22].

148. This particular state pension fund received a more favorable partially negotiated Standing Instruction Service offer than the “benchmarking” alternative offered to PRIM in July 2011-with a fixed 15 basis points spread.

149. In both instances of PRIM and the large state pension fund, BNY Mellon did not disclose the fees or mark ups for foreign exchange services actually rendered via the existing Standing Instruction Service.

150. When the Division asked Mr. Rodriguez “[a]nd how did customers find out that the pricing of non-negotiated trades is, in fact, negotiable?” Mr. Rodriguez replied, “I don’t know.”

151. Yet Mr. Rodriguez was often asked for his approval, which he provided, on negotiating rates for a non-negotiated Standing Instruction Service. [See Exhibits 21 and 22].

152. These creative partially negotiated Standing Instruction Services were only offered to clients who inquired or ceased utilizing the Standing Instruction Service or demanded lower revenue spreads and full transparency. These offerings ensured that the bank could still generate profits off of the client’s foreign exchange transactions, albeit at compressed margins.

153. Even within the client base that was able to negotiate their non-negotiated Standing Instruction Service, such offerings varied based on the customer’s ability to generate revenue for the bank.
154. In another attempt to shield itself from the inquiries into the transparency of its Standing Instruction Service pricing after the State Street lawsuit, one BNY Mellon employee noted that “we have also been more cautious, post the State Street announcements, in the pricing of our [S]tanding [I]nstructions [Service].” [Exhibit 23].

155. Another BNY Mellon employee also noted that “I think we are consciously or subconsciously pricing some of the business tighter. Call it the State Street effect.” [Exhibit 23].

156. BNY Mellon’s hidden scheme and lack of transparency with respect to how foreign currency was priced for the Standing Instruction Service allowed them to further manipulate the pricing alternatives for certain clients in the face of client scrutiny.

157. In the wake of the increased public scrutiny of its foreign exchange pricing, BNY Mellon deleted from its website some, but not all, of the misrepresentations concerning its standing instruction foreign exchange service.

158. For example, BNY Mellon’s website no longer states that the service is “free of charge,” and BNY Mellon added a vague definition for “best execution standards” that does not reference providing clients the best available price.

159. The fraud described in this Complaint has affected the custodial clients of BNY Mellon that use the Standing Instruction Service for foreign exchange trades, in that BNY Mellon profited at the expense of these clients by effectively charging these clients an undisclosed fee for their foreign exchange trades.
VII. VIOLATIONS OF SECURITIES LAWS

A. COUNT I. VIOLATION OF § 101(1)

160. Section 101(1) of the Act provides in pertinent part:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

(1) to employ any device, scheme, or artifice to defraud,

161. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1-159 above.

162. The conduct of the Respondent, as described above, constitutes a violation of M.G.L. c. 110A, § 101(1).

B. COUNT II. VIOLATION OF § 101(2)

163. Section 101(2) of the Act provides in pertinent part:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading,

164. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1-159 above.

165. The conduct of the Respondent, as described above, constitutes a violation of M.G.L. c. 110A, § 101(2).

C. COUNT III. VIOLATION OF § 101(3)

166. Section 101(3) of the Act provides in pertinent part:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
167. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1-159 above.

168. The conduct of the Respondent, as described above, constitutes a violation of M.G.L. c. 110A, § 101(3).

VIII. STATUTORY BASIS FOR DIVISION ACTION

Section 407A of the Act relates to Violations, Cease and Desist Orders and Costs and it provides in pertinent part that:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors to: 1) obtain a permanent cease and desist order barring the Respondent from further violating the Act; 2) disgorgement to Massachusetts public pension funds who engaged in foreign exchange trading via the Standing Instruction Service; 3) require the Respondent to pay an administrative fine in an amount and upon such terms and conditions as the Director or Hearing Officer may determine; and 4) for the Director or Hearing Officer take any and all other necessary actions which may be in the public interest and appropriate for the protection of investors.

X. RELIEF REQUESTED

WHEREFORE, the Enforcement Section of the Division requests that the Director or Hearing Officer take the following actions:
A. Find that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;

B. Find as fact the allegations set forth in paragraph 1-159, inclusive, of the Complaint;

C. Enter a permanent Order against the Respondent ordering it to cease and desist from further violations of the Act;

D. Disgorgement to Massachusetts public pension funds who engaged in foreign exchange trading via the Standing Instruction Service;

E. Impose an administrative fine on the Respondent in such amount and upon such terms and conditions as the Director or Hearing Officer may determine; and

F. Take such further action, such as requiring the Respondent to engage an independent compliance consultant as may be deemed just and appropriate for the protection of investors as provided by M.G.L. c. 110A, § 407A.

ENFORCEMENT SECTION
MASSACHUSETTS SECURITIES DIVISION
By its attorneys,

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Dated: October 26, 2011