

Press Release



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The Bank Of New York Mellon Submits Evidence from U.S. Department of Justice That Invalidates Central Claim Made by U.S. Plaintiff's Lawyer in Russian Court Case

Leading Russian and U.S. Legal Experts To Testify In Support of Bank's Motion to Dismiss

Moscow, October 6, 2008 – The Bank of New York Mellon Corporation (NYSE: BK) said today that it is presenting evidence from the U.S. Department of Justice to the Arbitrazh Court of the City of Moscow that invalidates the central claim made by the Miami plaintiff lawyer representing the Russian Federal Customs Service (FCS). The Bank has consistently said that it did not admit to, or engage in, any criminal conduct in the transfer of funds from Russia in the 1990s, as claimed by the plaintiff's lawyer. The evidence presented today fully confirms what the Bank has always maintained and demonstrates that the plaintiff's case is meritless. The Bank also said that leading Russian and U.S. legal experts are in Moscow to testify in support of the Bank's motion to dismiss the case.

The evidence the Bank is presenting today includes a letter from the U.S. Attorney's Office for the Southern District of New York which states unequivocally that "the Bank did not admit criminal culpability" with respect to the unauthorized transfer of Russian funds in a scheme devised by a rogue employee without the Bank's knowledge. While this was made clear in a Non-Prosecution Agreement signed by the Bank in November 2005, the Miami plaintiff attorney behind this suit misused a press release issued by the U.S. Attorney's Office at the time in his attempt to construct a claim for damages under the U.S. Racketeer Influenced and Corrupt Organizations Act (RICO). The U.S. Attorney's Office has now issued an amended version of the press release, which the Bank also is presenting to the court.

The plaintiff's lead attorney, Miami-based trial lawyer Steven Marks, knowing that the Non-Prosecution Agreement said otherwise, utilized the original press release to concoct the FCS's RICO claims. The plaintiff's expert, Harvard Professor Alan Dershowitz, then submitted a certified witness statement to the court, without regard to the language of the Non-Prosecution Agreement, in which he inaccurately stated, "BoNY itself has admitted and accepted its responsibility for the crime of money laundering."¹

The evidence submitted today fundamentally negates these demonstrably false claims – and thus fundamentally negates the plaintiff's case.

Jonathan Schiller, managing partner of Boies, Schiller & Flexner LLP and The Bank of New York Mellon's counsel, said:

"The plaintiff's U.S. attorney has continuously based his meritless claims on the false assertion that the Bank engaged in and admitted criminal conduct. The plaintiff's legal experts also repeated these misstatements in their testimony to the court. The evidence we are presenting today unequivocally proves the false and inaccurate assertions at the heart of this case, and makes clear that The Bank of New York did not admit to or engage in criminal wrongdoing as the plaintiff's lawyer has claimed."

¹ Legal Expert Witness Statement of Alan M. Dershowitz, Certified June 27, 2008

LEADING U.S. AND RUSSIAN LEGAL EXPERTS SAY CASE SHOULD BE DISMISSED

Former U.S. Attorney General Dick Thornburgh and U.S. attorney Gregory Joseph, Esq., author of one of the definitive professional guides to RICO, are due to testify in court this week that the meritless case brought against the Bank should be dismissed.

Several leading Russian legal experts are also expected to testify, including G.A. Esakov, Associate Professor of the Criminal Law Department at the Moscow State Academy of Law; Prof. A.P. Sergeev, Head of Department of Civil Law of the Law Faculty of the Saint Petersburg State University for Economic and Finance; and Professor V.V. Yarkov, Head of the Civil Procedure Department at Urals State Law Academy.

They are among 22 preeminent Russian and U.S. legal scholars and practitioners who have filed written opinions with the court that strongly support the Bank's motion to dismiss. In their submissions to the court, these experts underscored why the case must be dismissed. Specifically:

- The U.S. Congress never intended RICO to be used by foreign courts;
- Contrary to the claims of FCS's lawyer, the Bank did not admit to criminal conduct and was never convicted of (or even charged with) any criminal wrongdoing in the U.S. proceedings;
- Any RICO claim requires proof that certain criminal statutes were violated; and
- Therefore, the Arbitrazh Court would be required to interpret and apply U.S. criminal law, which the Arbitrazh Court lacks jurisdiction to do under Russian law.

Former U.S. Attorney General Thornburgh commented:

"The irrefutable fact is that The Bank of New York never admitted to, or was even charged with, criminal wrongdoing. U.S. RICO law simply doesn't apply in this case. A RICO claim would require that a court first determine that the Company had violated a number of U.S. criminal laws and that has not happened in this case. The evidence presented today confirms what the Bank has always maintained - that there was never an admission of criminal conduct by the Bank, and that this case should be dismissed."

ANY ADVERSE JUDGMENT COULD NOT BE ENFORCED – BANK IS CONFIDENT THERE WILL BE NO MATERIAL FINANCIAL IMPACT FROM THIS CASE

While the Bank would not be surprised by an adverse judgment, given the concerns it has raised to the court about this case, it remains confident that any adverse judgment would not be enforceable in countries where The Bank of New York Mellon has significant assets, given the substantial, well-established safeguards in place.

- The well-established Revenue Rule prevents enforcement in the U.S., the UK and other countries where The Bank of New York Mellon has significant assets.
- The claim the plaintiff is trying to make is also clearly time-barred by the statute of limitations in both Russia and the U.S.

The Bank also intends to pursue every available route of appeal through all levels of the Russian legal system and beyond. As a result, the Company is confident there will be no material financial impact from this case.

For a full list of the U.S. and Russian experts who submitted testimony in support of The Bank's motion to dismiss and additional background about the case, please visit www.bnymellon.com/russiacase.

The Bank of New York Mellon Corporation is a global financial services company focused on helping clients manage and service their financial assets, operating in 34 countries and serving more than 100 markets. The company is a leading provider of financial services for institutions, corporations and high-net-worth individuals, providing superior asset management and wealth management, asset servicing, issuer services, clearing services and treasury services through a worldwide client-focused team. It has more than \$23 trillion in assets under custody and administration, more than \$1.1 trillion in assets under management and services \$12 trillion in outstanding debt. Additional information is available at bnymellon.com.

This document contains statements relating to future events that are considered "forward-looking statements." These statements, which may be expressed in a variety of ways, including the use of future or present tense language, relate to, among other things, the potential outcomes and impact of the claim made by the Federal Customs Service of the Russian Federation on The Bank of New York Mellon Corporation. These forward-looking statements are based on assumptions that involve risks and uncertainties and are subject to change based on various important factors (some of which are beyond the control of The Bank of New York Mellon Corporation). Actual results may differ materially from those expressed or implied as a result of these risks and uncertainties, including but not limited to the risk factors and other uncertainties detailed in the annual report on Form 10-K for the year ended December 31, 2007 filed by The Bank of New York Mellon Corporation with the Securities and Exchange Commission and other reports filed with the Commission pursuant to the Securities Exchange Act of 1934. All statements in this document speak only as of October 6, 2008, and The Bank of New York Mellon Corporation undertakes no obligation to update any statement to reflect events or circumstances after October 6, 2008 or to reflect the occurrence of unanticipated events.