

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71638 / February 28, 2014

ADMINISTRATIVE PROCEEDING
File Nos. 3-14191 and 3-14192

In the Matters of

BNY Mellon Securities, LCC

and

Mark Shaw,

Respondents.

**ORDER APPROVING MODIFIED
PLAN OF DISTRIBUTION,
APPOINTING FUND
ADMINISTRATOR, AND SETTING
FUND ADMINISTRATOR BOND
AMOUNT**

On January 14, 2011, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions against BNY Mellon Securities LLC (“Mellon Securities”) (Exchange Act Rel. No. 63724 (Jan. 14, 2011)) (“Mellon Securities Order”). On the same day, the Commission issued a Corrected Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against Mark Shaw (“Shaw”) (Securities Act Rel. No. 9174 (Jan. 14, 2011)) (“Shaw Order”). The Mellon Securities Order, among other things, required Mellon Securities to pay \$19,297,016 disgorgement, plus prejudgment interest thereon of \$3,748,431, and a civil penalty of \$1,000,000, and created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of

2002, to compensate investors for losses attributable to certain cross trades conducted on their behalf by Mellon Securities (“Fair Fund”). The Shaw Order required Shaw to pay \$195,300 disgorgement, plus prejudgment interest thereon of \$23,291, and a civil penalty of \$150,000, and provided that the monies paid by Shaw may be distributed by the Fair Fund established in the Mellon Securities Order. Both Mellon Securities and Shaw paid the sums the Commission ordered to be paid, creating a \$24,414,038 Fair Fund, which is currently on deposit with the United States Treasury.

On January 31, 2013, pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103, the Commission issued a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”) for the distribution of monies placed into the Fair Fund to affected investors (Exchange Act Rel. No. 68796 (Jan. 31, 2013)). The Notice provided all interested parties thirty (30) days to submit a comment on the proposed Plan of Distribution (“Plan”). Where sufficient data is available (“in-sample period”), the Plan would compensate affected investors based on the difference between the prices that could have been expected had the cross trades at issue received best execution and the prices actually received due to the conduct described in the Mellon Securities and Shaw Orders. Where sufficient data is not available, the Plan would compensate affected investors based on an algorithm (developed utilizing data from the in-sample period, publicly available data, and regression analysis) designed to determine the impact on affected investors due to the conduct described in the Mellon Securities and Shaw Orders. No comments were received on the Plan.

The Division of Enforcement (“Division”) now seeks approval of the Plan with a modification to require the fund administrator to obtain a bond in the amount of \$24,414,038 pursuant to Rule 1105(c), 17 C.F.R. § 201.1105(c). The Plan, at the time of the Notice,

contemplated waiver of the bond. The Division believes requiring a bond is advisable because it provides protections to investors for errors resulting from negligence rather than the “gross negligence” standard of most insurance, and it provides the most direct recovery for the Fair Fund. In addition, the amount of the bond will cost approximately \$80,000 per annum and, as compared to the coverage afforded, is a reasonable cost associated with the distribution. The cost of the bond will be paid from the Fair Fund, first from the interest earned, and if the interest is insufficient, then from its corpus.

As proposed in the Plan, the Division further seeks appointment of Boston Financial Data Services (“BFDS”) as the fund administrator pursuant to Rule 1105(a), 17 C.F.R. § 201.1105(a). BFDS’s fees and expenses will be paid by Mellon Securities.

Accordingly, IT IS HEREBY ORDERED that:

- A. Pursuant to Rule 1104, 17 C.F.R. § 201.1104, the Plan is modified as described above, and approved with such modification;
- B. BFDS is appointed as Fund Administrator for the Fair Fund pursuant to Rule 1105(a), 17 C.F.R. § 201.1105(a); and
- C. The Fund Administrator, BFDS, shall obtain a bond in the manner prescribed in Rule 1105(c), 17 C.F.R. § 201.1105(c), in the approved amount of \$24,414,038.

By the Commission.

Elizabeth M. Murphy
Secretary