

A.G. SCHNEIDERMAN & NYC SUE BANK OF NEW YORK MELLON FOR DEFRAUDING PENSION FUNDS, OTHER CUSTOMERS IN FOREIGN CURRENCY TRADING

BNY Mellon Promised Customers “Best Rate” On Foreign Currency Exchange Transactions – Instead Gave Worst & Pocketed Difference

A.G. Seeks Nationwide Recovery of Nearly \$2 Billion

[\[En Español\]](#)

NEW YORK – Attorney General Eric T. Schneiderman and the City of New York today filed a lawsuit against the Bank of New York Mellon (BNY Mellon) for defrauding clients in foreign currency exchange transactions. The lawsuit seeks to recover the profits BNY Mellon illegally earned by deceiving its customer. The victims include both public and private pension funds, including those of the New York City Employee Retirement System (NYCERS) and the State University of New York.

Over a 10-year period, BNY Mellon consistently misrepresented to customers the rates it would give foreign currency transactions. Instead of providing the best interbank rates– as it promised – BNY Mellon gave the worst or nearly the worst rates of the trading day. The Bank made nearly \$2 billion from these trades, accounting for over 65 percent of its foreign exchange revenues.

“This landmark case uncovered a fraud committed against both government and private pension funds,” **Executive Deputy Attorney General Karla G. Sanchez** said. “This office will continue to commit its full resources to hold those responsible accountable, seek restitution for the victims, ensure that our markets are fair and transparent, and uphold one set of rules for all market participants.”

New York City pension funds were among the most impacted of BNY Mellon’s clients and lost tens of millions of dollars as a result of its fraudulent rates. In addition to NYCERS, those funds include the Teachers Retirement System of the City of New York, the New York City Police

Pension Fund, Subchapter 2, and the New York City Fire Department Pension Fund, Subchapter 2.

Therefore, the Attorney General's Office worked with the New York City Corporation Counsel and the Office of the New York City Comptroller.

"As we've demonstrated many times, we will use litigation to ensure that our pension funds are not shortchanged, now or in the future," **New York City Assistant Corporation Counsel John Low-Beer** said. "We have therefore brought this suit to recover the damages we are entitled to under the law."

"Banks are expected to provide a reliable and honest service to their customers. Unfortunately, this does not seem to be the case as it relates to the Bank of New York Mellon and their foreign exchange services provided to the New York City Pension Funds," **Deputy Comptroller for Legal Affairs / General Counsel Ricardo Morales** said. "We remain confident that New York City's pensioners and taxpayers will recoup what they are rightfully owed."

The lawsuit follows a lengthy investigation during which the Attorney General's office uncovered extensive evidence and sworn testimony that revealed BNY Mellon's elaborate scheme to lure customers with promises it did not intend to keep. The Bank guaranteed customers of its Standing Instructions program that they would receive the "best rate of the day" or the "most competitive/attractive FX [foreign exchange] rates available to us." It claimed to monitor exchanges agents completed "to ensure that the best rate is attained for our clients," and advertised that the Bank netted buy and sell orders for the benefit of clients and that Standing Instructions execution was "free of charge."

The Attorney General's investigation found that BNY Mellon's statements were false. Far from giving clients who used the Standing Instructions program the "best rate of the day," or "best execution," the Bank provided the opposite: the worst or nearly the worst of the pricing rates available to the Bank that day. BNY Mellon employee testimony admitted the Bank neither sought the best rates for Standing Instructions customers nor provided best execution. BNY Mellon concealed its pricing practices from its

clients, and made its profit by pocketing the difference between the worst price of the day, which it charged its clients, and the actual market price at the time of the trades.

BNY Mellon profited enormously from its deceptive conduct. The currency exchange trades through its Standing Instructions program were seven times more profitable to it than foreign currency transactions that were directly negotiated, earning it an average additional 15 basis points per transaction. While the Standing Instructions program accounted for only 20 percent of BNY Mellon's foreign currency exchange transactions, it equaled 65 to 75 percent of its foreign exchange sales revenue.

The case began when a whistleblower filed a complaint with the Attorney General's office. The whistleblower action was originally filed by FX Analytics in 2009. In compliance with the New York False Claims Act, the whistleblower's complaint was filed under seal while the Attorney General had the opportunity to investigate the matter.

By filing the current complaint, the Attorney General has superseded the whistleblower in the action, and added new claims. The new claims uncovered by the Attorney General's office include securities violations under New York's Martin Act. This lawsuit represents the first time that the Attorney General's Office has applied both its False Claims Act and the Martin Act in the same case. The complaint also asserts that BNY Mellon violated New York Executive Law sections 63(12), and 63-C; committed common law fraud; and breached the Bank's fiduciary duty to clients who utilized the Standing Instructions program. The City and City Comptroller have joined the State in this action, adding claims for breach of contract and breach of the New York City False Claims Act.

For these violations, the Attorney General seeks to force BNY Mellon to return its profits, restitution, damages, and with respect to the False Claims Act violations, triple damages and penalties of \$12,000 per violation. A full copy of the complaint is available [here](#).

The case is being handled jointly by the Attorney General's Investor Protection and Taxpayer Protection Bureaus by Senior Enforcement Counsel Roger Waldman (IPB), and Assistant Attorneys General Shmuel

Kadosh (IPB) and Deputy Bureau Chief John Carroll (TPB) under the supervision of Bureau Chiefs Marc Minor (IPB) and Randall Fox (TPB) and the Executive Deputy Attorney General for Economic Justice Karla G. Sanchez. For New York City Corporation Counsel's Office, the case is being handled by Affirmative Litigation Division Senior Counsel John Low-Ber.

BACKGROUND

The New York State False Claims Act provides incentives for whistleblowers to report matters where governmental entities, such as pension funds, have been defrauded. The provision allows whistleblower to recover between 15 and 25 percent of the recovery made on behalf of New York.

As a state senator, Attorney General Schneiderman authored amendments to strengthen the False Claims Act. These enhancements, known as the Fraud Enforcement and Recovery Act, allow the state to collect triple damages and penalties from corporations or people who defraud the government, or violate their obligations to pay government entities.

Attorney General Schneiderman created the Taxpayer Protection Bureau in January 2011 specifically to handle whistleblower cases and cases where the government itself has been victimized.

The Martin Act empowers the Attorney General to protect investors from fraud occurring from or within the State of New York.