FCA fines The Bank of New York Mellon London branch and The Bank of New York Mellon International Limited £126 million for failure to comply with the Custody Rules

The Financial Conduct Authority (FCA) has today fined The Bank of New York Mellon London Branch (BNYMLB) and The Bank of New York Mellon International Limited (BNYMIL) (together 'the Firms') £126 million for failing to comply with the FCA Client Assets Sourcebook (Custody Rules, or CASS), which applies to safe custody assets and to client money. The Custody Rules are there to protect safe custody assets if a firm becomes insolvent and to ensure those assets can be returned to clients as quickly and easily as possible. Each regulated firm is required to ensure they have adequate systems, controls and records to facilitate this.

Georgina Philippou, acting director of enforcement and market oversight at the FCA said:

"Our Custody Rules are in place to ensure that clients are protected in the event of insolvency. The Firms' failure to comply with our rules including their failure to adequately record, reconcile and protect safe custody assets was particularly serious given the systemically important nature of the Firms and the fact that safeguarding assets is core to their business. Had the Firms become insolvent, the total value of safe custody assets at risk would have been significant. This is compounded by the fact that the breaches took place at a time when there was considerable stress in the market.

"The size of the fine today reflects the value of safe custody assets held by the Firms as well as the seriousness of the failings and the fact that these failings were not identified by the Firms' own compliance monitoring. Other firms with responsibility for client assets should take this as a further warning that there is no excuse for failing to safeguard client assets and to ensure their own processes comply with our rules.

"Client assets protection continues to be a priority for the FCA and firms who hold client assets should review their processes in line with these findings to ensure full compliance with the Custody Rules."

The Bank of New York Mellon Group (the BNY Mellon Group), of which the Firms are a part, is the world's largest global custody bank by safe custody assets. BNYMLB and BNYMIL are the third and eighth largest custody banks in the UK respectively and provide custody services jointly to 6,089 UK-based clients. During the period of their breaches, the safe custody asset balances held by BNYMLB and BNYMIL peaked at approximately £1.3 trillion and £236 billion respectively. As a result of this, the Firms are systemically important to the UK market.

The Custody Rules require firms to keep entity-specific records and accounts. Entity-specific records and accounts are important in the event of an insolvency as they will be used by an Insolvency Practitioner to identify those clients whose assets are safeguarded and are due to be returned. Instead, the Firms used global platforms to manage clients' safe custody assets, which did not record with which BNY Mellon Group entity clients had contracted. This failing meant that the Firms were unable to meet their other obligations under the Custody Rules, such as the requirements to:

- conduct entity-specific external reconciliations;
- maintain an adequate CASS resolution pack (from 1 October 2012 when the requirement to do so came into force); and
- submit accurate Client Money and Asset Returns (CMAR) (from October 2011 when the requirement to do so came into force).

The FCA also found a number of other failings by the Firms including:

- failing to take the necessary steps to prevent the commingling of safe custody assets with firm assets from 13 proprietary accounts;
- on occasion using safe custody assets held in omnibus accounts to settle other clients' transactions without the express prior consent of all clients whose assets were held in those accounts; and
- failing to implement CASS-specific governance arrangements that were sufficient given the nature of the Firms' business and their failure to identify and remedy the failings identified.

These failings reflected a failure by the Firms to consider properly the interests of their clients. The Firms' failings occurred between 1 November 2007 and 12 August 2013. The FCA's specialist client assets supervisors identified most of the failings as part of their regular review of such firms. The Firms agreed to settle at an early stage of the FCA's investigation and therefore qualified for a 30% (stage 1) discount. Were it not for this discount, the financial penalty would have been £180 million.

Notes to editors

1. The final notice for **The Bank of New York Mellon London Branch / The Bank of New York Mellon (International) Ltd**.
2. Following the insolvency of Lehman Brothers in 2008, the FCA's predecessor, the Financial Services Authority (FSA), wrote to compliance officers in March 2009 and chief executives in January 2010 highlighting concerns about the management of client assets. Chief executives were asked to confirm that their firms fully complied with the Rules.
3. The FSA established a specialist Client Asset Unit in 2010. The Unit carries out specialist and intensive supervision of client assets, with the aim of ensuring that firms have robust systems in place to ensure the swift return of client assets in the event of firm insolvency.
4. The FCA continues to focus on the protection of client assets and, following consultation in 2013, published substantial amendments to the Custody Rules in June 2014. The changes aim to improve firms' systems and controls around segregation, record keeping and reconciliations and set out how investment firms must address client assets risks within their business.
5. The FCA has an overarching strategic objective of ensuring the relevant markets function well. To support this it has three operational objectives: to secure an appropriate degree of protection for consumers; to protect and enhance the integrity of the UK financial system; and to promote effective competition in the interests of consumers.
6. Find out **more information about the FCA**.