

# Bank's Internships Violate Foreign Corrupt Practices Act

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The U.S. Securities and Exchange Commission (SEC) obtained an unprecedented result when The Bank of New York Mellon (BNY Mellon) agreed to settle charges that it violated the Foreign Corrupt Practices Act (FCPA) by providing internships to relatives of officers of a Middle Eastern sovereign wealth fund. BNY Mellon will pay US\$14.8 million in penalties, disgorgement and interest.

The FCPA applies to issuers whose securities are traded on a U.S. stock exchange or over-the-counter market, business entities organized or based in the U.S., and foreign entities that act in the U.S. in furtherance of a corrupt payment, as well as the officers, directors and employees of such entities. It prohibits those entities and persons from giving anything of value to a foreign official to influence him or her in order to obtain or retain business.

The BNY Mellon situation is noteworthy for several reasons. BNY Mellon did not pay a "bribe" in the usual sense of that word. It offered internships, one of which was unpaid, not to foreign officials themselves (the sovereign wealth fund officers) but to their relatives. The SEC did not identify any specific business BNY Mellon secured as a result of providing the internships, but found that BNY retained and increased its existing business with the fund.

In many ways, BNY Mellon's conduct was not unusual as Wall Street firms regularly do favors to woo client business. In this case, however, the client was affiliated with a foreign government, the internships were provided outside BNY Mellon's established intern program, and e-mails among BNY Mellon employees suggested that the internships were a *quid pro quo* to assure continued business from the fund. For example, a BNY Mellon employee with primary responsibility for the asset management relationship with the foreign fund wrote, "I am working on an expensive 'favor' for [Official X] – an internship for his son and cousin (don't mention to him as this is not official)." The SEC also concluded that the interns "were less than exemplary employees," observing that two were repeatedly absent and the third "wasn't actually as hardworking" as expected.

BNY Mellon had a code of conduct and specific FCPA policy that prohibited employees from providing money, gifts or anything of value to foreign officials. The SEC found, however, that BNY Mellon did not ensure that all employees received training for or understood the policy and that senior managers were able to approve hires requested by foreign officials with no mechanism to ensure that potential violations were reviewed by BNY Mellon's legal or compliance departments.

Remedial steps BNY Mellon is required to take include amending its FCPA policy to address the hiring of foreign officials' relatives; requiring that all employment and internship applications route through a centralized process; mandating that employees certify on an annual basis that they have not hired through a non-centralized process; and requiring all employment applicants to disclose relationships with government officials.

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