

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP.
FOREX TRANSACTIONS LITIGATION

No. 12-MD-2335 (LAK)

THIS DOCUMENT RELATES TO:

*Southeastern Pennsylvania Transportation Authority v.
The Bank of New York Mellon Corporation, et al.*

No. 12-CV-3066 (LAK)

*International Union of Operating Engineers, Stationary
Engineers Local 39 Pension Trust Fund v. The Bank of
New York Mellon Corporation, et al.*

No. 12-CV-3067 (LAK)

*Ohio Police & Fire Pension Fund, et al. v. The Bank of
New York Mellon Corporation, et al.*

No. 12-CV-3470 (LAK)

Carver, et al. v. The Bank of New York Mellon, et al.

No. 12-CV-9248 (LAK)

Fletcher v. The Bank of New York Mellon, et al.

No. 14-CV-5496 (LAK)

**AFFIDAVIT OF JERRY LEE KALMAR
IN SUPPORT OF MOTION FOR FINAL APPROVAL OF
SETTLEMENT AND AWARD OF ATTORNEYS' FEES
AND SERVICE AWARDS, AND REIMBURSEMENT OF
LITIGATION EXPENSES**

STATE OF CALIFORNIA :
 : ss
COUNTY OF SACRAMENTO :

Jerry Lee Kalmar, being duly sworn, deposes and says, under penalty of perjury, that:

1. I am Co-Chair of the Board of Trustees of the International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund (“IUOE Local 39”), which serves as a lead plaintiff in the above-referenced matter. I submit this declaration in support of the final

approval of the settlement and in support of counsel's fees and expenses and requests for service awards. I have personal knowledge of the matters set forth herein based on my active supervision and participation in the prosecution and settlement of the claims asserted on behalf of IUOE Local 39 in this Action.

2. IUOE Local 39 is an employee benefit plan covered by ERISA with principal offices at 48 Julian Street, San Francisco, California. IUOE Local 39 provides retirement and survivor benefits to approximately 17,000 members predominately located in Northern California and Northern Nevada. IUOE Local 39's holdings include international assets that require FX transactions. The net value of IUOE Local 39 Pension Trust Fund is approximately \$1 billion as of June 30, 2015. BNYM provided custodial services to IUOE Local 39 during the Class Period, which included executing foreign currency exchange ("FX") transactions for IUOE Local 39 pursuant to "standing instructions."

3. IUOE Local 39 is governed by a 6 member board of trustees, comprised of three labor trustees and three management trustees. Prior to 2015, IUOE Local 39 was governed by a 4 member board of trustees, comprised of myself, Paul Bensi (Co-Chair), Bart Florence (Labor Trustee), and Lyle Setter (Management Trustee). The day-to-day operations of IUOE Local 39 are handled by a third party administrator, Benesys, Inc., who is appointed and hired by the Board of Trustees.

4. The Bank of New York Mellon and, prior to that, The Bank of New York, N.A. (collectively, "BNYM") served as IUOE Local 39's custodial bank during the period February 14, 2006 through March 31, 2012. The vast majority of IUOE Local 39's assets, including its operating, pension, and investment accounts, were maintained with BNYM.

5. This litigation relates to the undisclosed FX fees that BNYM assessed IUOE Local 39's pension funds when IUOE Local 39 or its investment managers used BNYM's standing instructions FX service to convert currency in connection with transactions in foreign currency denominated securities.

6. IUOE Local 39 first commenced its class action lawsuit against BNYM arising from BNYM's standing instructions FX service on July 22, 2011. The suit, which was filed by IUOE Local 39's counsel Hach Rose Schirripa & Cheverie, LLP ("HRSC"), Hausfeld LLP ("Hausfeld"), Lief Cabraser Heimann & Bernstein LLP ("LCHB") and Thornton Law Firm LLP ("Thornton"), in federal district court for the Northern District of California, alleged that BNYM breached its contractual obligations owed to IUOE Local 39 arising out of the custodial contracts and specific forms and procedures governing the automated foreign exchange service (the "IUOE Local 39 Action").

7. Over the next nine-months, the IUOE Local 39 Action was vigorously prosecuted by IUOE Local 39's counsel before Judge William Alsup in the Northern District of California. Between July and December, 2011, the parties briefed and argued Defendants' motion to dismiss the Local 39 Action. Judge Alsup denied Defendants' motion to dismiss the Local 39 Action and committed the parties to an expedited case management schedule. Between December 2011 and April 2012, the parties engaged in extensive class-related document and deposition discovery, which included the depositions of IUOE Local 39 Co-Chair Paul Bensi, and representatives from IUOE Local 39's fund counsel, current and former third party administrator, investment consultant, and foreign asset investment manager.

8. Following centralization before this Court, and over the course of the next three years, this case was aggressively prosecuted by Co-Lead Counsel LCHB and co-counsel Kessler

Topaz Metzler & Check LLP (“KTMC”), with the assistance of associated counsel, and defended aggressively by BNYM’s counsel. On July 1, 2013, IUOE Local 39 joined with the other named plaintiffs in the customer class cases (the Southeastern Pennsylvania Transportation Authority (“SEPTA”), School Employees Retirement System of Ohio (“SERS”) and the Ohio Police & Fire Pension Fund (“OP&F”)) the to file a Master Customer Class Complaint (the “Complaint”), which brought together the operative claims and allegations in the customer class cases into one pleading. BNYM answered the Complaint on September 15, 2013.

9. Adding to the complexity of this Action, BNYM filed counterclaims against IUOE Local 39 and its trustees seeking to charge IUOE Local 39, its trustees and the other co-lead plaintiffs in this matter, together with all putative class members, the costs of BNYM’s attorneys fees and expenses incurred in not only defending this litigation but also the fees and expenses incurred in defending claims brought against it by the United States Department of Justice (“DOJ”) and the New York Attorney General. The claims against IUOE Local 39 and its trustees were sustained by the Court in October 2013. Because IUOE Local 39 believed in the merits of this litigation, it did not let BNYM’s threat dissuade IUOE Local 39 from pursuing claims on behalf of itself and the Class. However, the threat posed by the counterclaims, including exposure to paying large sums in attorneys’ fees, was taken very seriously and considered extensively at IUOE Local 39 before any decision to proceed notwithstanding the counterclaims.

10. In addition, BNYM’s discovery against IUOE Local 39 was extensive. Beginning in January 2012 and over the course of the next two and one-half years, BNYM served IUOE Local 39 with one hundred twenty six (126) document requests, several of which were multi-part requests. In addition, BNYM served document and deposition subpoenas on IUOE Local 39’s

fund counsel, current and former third party administrator, investment consultant, and foreign asset investment manager (“fund professionals”). In response to these requests, IUOE Local 39 and its fund professionals worked closely with HRSC and co-counsel to determine sources for potentially relevant documents. Thereafter, at HRSC and co-counsel’s instruction, IUOE Local 39 implemented search terms negotiated with BNYM to identify potentially relevant electronic documents responsive to the document requests. The search covered a period of six years. The document collection process took several weeks and included searches conducted on the electronic and paper files of no fewer than six separate entities, dozens of employees and on numerous shared computer work spaces.

11. In addition to the process of collecting electronic records, IUOE Local 39 and its fund professionals, with the assistance of HRSC and co-counsel, reviewed and gathered thousands of files maintained in hardcopy in IUOE Local 39’s archival records. Such files included the minutes and materials associated with IUOE Local 39’s board meetings also covering a span of six years. IUOE Local 39 assisted HRSC and co-counsel to procure records from IUOE Local 39’s fund professionals, including the investment manager, Eagle Global, LLC, who was responsible for executing foreign exchange transactions with BNYM over a ten year period. Ultimately, several hundred thousand pages of documents were collected and turned over its counsel through this process.

12. I understand that counsel produced more than 100,000 pages of documents on IUOE Local 39’s behalf following their review for relevance and privilege. Thereafter, BNYM sought extensive deposition discovery of IUOE Local 39 and its fund professionals. Defendants deposed nine IUOE Local 39-affiliated witnesses, including IUOE Local 39’s trustees, Paul Bensi, myself, Bart Florence, and Lyle Setter, respectively; a representative from its fund

counsel's office, Mr. William Sokol; its investment consultant, W. Craig Dobbs; a representative from its foreign asset investment manager, Eagle Global, Mr. John Gualy; the president of its former third party administrator, Associated Third Party Administrators, Mr. Michael Schumacher; and the president of its current third party administrator, Benesys, Inc., Mr. George Buhalis. IUOE Local 39 and its affiliated witnesses were thoroughly examined, by competent and experience counsel, which neared the time constraints proscribed by the Federal Rules of Civil Procedure.¹ At the time of settlement, Defendants had scheduled the further deposition of Mr. Gualy, Eagle Global's principal and former portfolio manager for IUOE Local 39's foreign investment account.

13. IUOE Local 39 also responded to 12 multi-part interrogatories served by BNYM.

14. IUOE Local 39 is a sophisticated litigant, and due to the nature of its operations, is often a party in civil litigation. Accordingly, IUOE Local 39 is highly cognizant of the important role that counsel provides in dictating the outcome of litigation, the risks and costs of litigation and the merits of settlement.

15. IUOE Local 39's investment portfolio of approximately \$1 billion is self-funded by IUOE Local 39's employees. As such, IUOE Local 39 is highly attuned to practices that operate to wrongfully deprive its pension plan, and thus retirees, of assets. IUOE Local 39 has

¹ Paul Bensi (IUOE trustee) (17 new exhibits, 4 previously marked (7 hrs.)), George Buhalis (BeneSys (fund administrator)) (19 new exhibits (2 hrs. 23 mins.)), W. Craig Dobbs (The Dobbs Group (investment consultant)) (8 new exhibits, 5 previously marked (5 hrs. 26 mins.)), John Gualy (Eagle Global Advisors (investment manager)) (22 new exhibits (6 hrs.)), Michael Schumacher (ATPA (fund administrator) (7 new exhibits, 3 previously marked (2 hrs. 54 mins.)), William Sokol (Weinberg, Roger & Rosenfeld (fund counsel) (5 new exhibits, 1 previously marked (2 hrs. 23 mins.)), Bart Florence (IUOE trustee) (3 new exhibits, 23 previously marked (6 hrs.)), Lyle Setter (IUOE trustee) (1 new exhibit, 23 previously marked (7 hrs.)), and Jerry Kalmar (IUOE trustee) (31 new exhibits (6 hrs.)).

occasionally served as a named plaintiff or class representative in class action lawsuits which seek to recover investment losses suffered by the wrongful conduct of others.

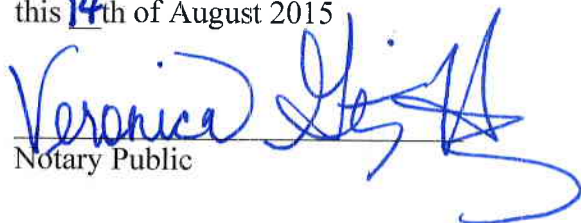
16. In this type of case, it is cost prohibitive for IUOE Local 39 to pursue potential recoveries for its pension funds through direct actions where it would be forced to shoulder individually attorneys' fees and litigation expenses and the risk of non-recovery. This is because the potential recovery would be dwarfed by the cost of the litigation and the risk of non-recovery would outweigh any benefit achieved in the litigation. In this regard, the work of firms like Co-Lead Counsel, HRSC, and others, which shoulder the entire risk of the litigation in exchange for a contingent fee, is invaluable. The economics of such litigation for an operating company like IUOE Local 39 thus only make sense through a contingency class action. IUOE Local 39 is very satisfied with the work Co-Lead Counsel, HRSC, and co-counsel did on its behalf and for the class and supports Counsel's application for an attorneys' fee award.

17. IUOE Local 39 actively monitored this litigation, received and reviewed key pleadings in this case and regularly conferred with HRSC regarding the status of the litigation. We are extremely pleased with the outcome of the litigation and the results, based on my understanding of the record in this case, could only have been achieved through the aggressive advocacy of our lawyers in this case and, respectfully, IUOE Local 39's willingness to serve as a class representative. In addition to the outstanding cash recovery for class members which amounts to approximately 35% of the margins that BNYM earned from class members during the Class Period, the litigation has also produced the additional benefit of a complete overhaul by BNYM of its foreign exchange practices. From a business perspective for IUOE Local 39, this means greater disclosure about BNYM's pricing practices for automated FX services and improved products and services. IUOE Local 39 is extremely proud to have played an integral

part in bringing about this transformative change in BNYM's custodial business and the custodial FX space generally.


Jerry Lee Kalmar

Sworn to before me
this 14th of August 2015


Notary Public

