

EXHIBIT 12

**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:	
<i>Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.</i>	No. 12-CV-3066 (LAK)
<i>International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.</i>	No. 12-CV-3067 (LAK)
<i>Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.</i>	No. 12-CV-3470 (LAK)
<i>Carver, et al. v. The Bank of New York Mellon, et al.</i>	No. 12-CV-9248 (LAK)
<i>Fletcher v. The Bank of New York Mellon, et al.</i>	No. 14-CV-5496 (LAK)

**DECLARATION OF MARY BETH FOLEY, ESQ.
IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT AND
AWARD OF ATTORNEYS' FEES AND SERVICE AWARDS
AND REIMBURSEMENT OF LITIGATION EXPENSES**

I, Mary Beth Foley, do hereby declare as follows:

1. I am General Counsel for the Ohio Police & Fire Pension Fund ("OP&F"), 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 request for fees, expenses and service awards. Except where otherwise noted, 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 OP&F in this Action.

2. OP&F, located at 140 East Town Street, Columbus, OH 43215-5125, is a body corporate and politic created by the Ohio legislature to provide retirement, disability, and other benefits to active and retired police officers and firefighters as well as to their beneficiaries and survivors. OP&F's enabling statute: (i) vests the administration and management of OP&F in a board of trustees, the composition of which is defined by statute; (ii) assigns title to the assets of the system to the OP&F board; (iii) provides the terms of membership in OP&F, the conditions for receiving benefits, and the formulas for determining the amount of any benefit due; and (iv) designates the manner in which the monies of the system are kept in statutorily designated accounts. OP&F members include more than 28,000 active police officers and firefighters, more than 18,000 retired members and nearly 8,000 beneficiaries and survivors.

3. OP&F is governed by a nine member Board of Trustees. Six employee members, who are elected by the respective member groups, consist of two active representatives of police departments, two active representatives of fire departments, one retired firefighter and one retired police officer. There are also three investment members appointed to the OP&F Board of Trustees. These statutory members, who must have professional investment experience, consist of one appointed by the Governor of the State of Ohio, one appointed by the Ohio State Treasurer, and one appointed jointly by the Senate President and the Speaker of the House for the State of Ohio. The current chair of OP&F's Board is Daniel Desmond, a Toledo firefighter and paramedic since 1989. The day-to-day operations of OP&F are managed by senior staff who are appointed and hired by the Board of Trustees. OP&F's Executive Director is John J. Gallagher, Jr. and its Chief Investment Officer is Theodore (Ted) Hall.

4. OP&F employs 140 people and maintains a governmental defined pension plan for its retirees. The net value of the defined pension plan was approximately \$14.43 billion as of year-end 2014.

5. The Bank of New York Mellon and, prior to that, the Bank of New York (collectively, “BNYM”) served as OP&F’s custodial bank from May 1, 2004 to July 5, 2010. During that time, the investment assets of OP&F were custodied with BNYM.

6. This litigation relates to the undisclosed foreign exchange (“FX”) fees that BNYM assessed OP&F when OP&F or its investment managers used BNYM’s standing instructions FX service to convert currency in connection with transactions in foreign currency denominated securities.

7. After almost one year of investigation and diligence discussion with our counsel, OP&F, along with the School Employees Retirement System of Ohio (“SERS”), first commenced suit in its individual capacity against BNYM arising from BNYM’s standing instructions FX service on March 12, 2012 in the Court of Common Pleas of Franklin County, Ohio. The suit (the “Ohio Action”), which was filed by OP&F’s counsel and interim Co-Lead Class Counsel, Lieff Cabraser Heimann & Bernstein (“LCHB”), along with the Columbus, Ohio-based law firm of Murray Murphy Moul + Basil LLP (“MMMMB”), alleged that BNYM breached its contractual obligations owed to OP&F arising out of its custodial contracts and specific forms and procedures governing its standing instructions FX service, and otherwise engaged in deceptive conduct violative of Ohio statutes. Defendants shortly thereafter removed the Ohio Action to federal court, whereupon it was transferred to this District to be coordinated with the other BNYM FX-related litigation in this multidistrict (“MDL”) proceeding. On July 13, 2012,

OP&F and SERS filed an amended complaint in this District which added class allegations as well as claims for conversion and breach of the covenant of good faith and fair dealing.

8. Between August and October, 2012, the parties briefed motions to dismiss the Ohio Action. Defendants' motion to dismiss the Ohio Action was eventually denied as moot pending the filing of a combined master complaint. On July 1, 2013, OP&F and SERS joined with the other named plaintiffs in the customer class cases (the Southeastern Pennsylvania Transportation Authority ("SEPTA") and the International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund ("IUOE Local 39")) 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. From the time of its filing to the time these actions were settled, or almost three years, the Ohio Action case was aggressively prosecuted by its counsel alongside the other cases consolidated or coordinated with this MDL, and defended aggressively by BNYM's counsel. In this regard, BNYM filed "conditional" counterclaims against absent class members who would have been part of any class certified in the Ohio Action and whose contracts contained provisions that BNYM claimed to indemnify it for its costs in defending both the Ohio Action and the case brought by the United States Department of Justice ("DOJ"). Although these claims were dismissed by the Court in October 2013 without prejudice as essentially premature, the threat of such claims remained in the event that the proposed class was certified.

10. In addition, BNYM's discovery against OP&F was extensive. In March 2013, BNYM served OP&F with 90 document requests, several of which were multi-part requests. BNYM followed this up in November 2013 with an additional 34 document requests. In

response to these requests, OP&F worked closely with LCHB and MMMB to determine sources for potentially relevant documents, and to search for and gather hard copy documents from those sources. Thereafter, with LCHB's guidance, OP&F implemented search terms negotiated with BNYM to identify potentially relevant electronic documents responsive to the document requests. The search covered a period of more than 13 years. The document collection process took several weeks and included searches conducted on the electronic files of no fewer than 15 OP&F employees and on numerous shared computer work spaces.

11. In addition to the process of collecting electronic records, OP&F, with the assistance of counsel, reviewed and gathered thousands of files maintained in hardcopy in OP&F's archival records. Such files included the minutes and materials associated with OP&F's Board Meetings and Investment Committee meetings also covering a span of 13 years. OP&F also assisted LCHB to procure records from a number of OP&F's investment managers who were responsible for executing FX transactions with BNYM over a 5 year period. Myself and Robert Holodnak (who is a Senior Staff Attorney for OP&F), along with more than a dozen additional OP&F personnel (a number of whom, including Robert Theller, Michael Abankwah, Joseph Yeboah, Timothy O'Brien, Jeffrey Breeckner, and Ted Hall, were deposed by BNYM as described further below) provided the bulk of the assistance with these projects. I understand that LCHB produced approximately 18,000 documents (or 400,000 pages) pages of documents on OP&F's behalf following its review for relevance and privilege.

12. Thereafter, BNYM sought extensive deposition discovery of OP&F. Defendants deposed 7 different OP&F witnesses, including Michael Abankwah (Assistant Investment Officer), Jeffrey Breeckner (Systems and Network Manager), Ted Hall (Chief Investment Officer), Timothy O'Brien (Accounting Manager), Robert Theller (Senior Investment Officer),

Yvette Tubman (Records Imaging and Mail Manager), and Joseph Yeboah (Investment Operations Officer). Most of these depositions went for a full day, and Robert Theller's deposition went to a second day. I am advised by counsel that Defendants marked 108 distinct (i.e., not previously marked) exhibits at these depositions. Either I or Robert Holodnak attended the preparation sessions for these depositions, and Mr. Holodnak attended each of the OP&F depositions along with LCHB and/or MMMB.

13. OP&F also responded to 9 multi-part interrogatories served by BNYM. Defendants' efforts at OP&F-directed discovery did not end there. Defendants deposed two witnesses who were former employees of the Ohio Treasurer's Office (Denise Blain and Cynthia Beck, each of them former Directors of the Trust Department) concerning the drafting and negotiation of OP&F's custodial contracts with BNYM and other custodians. These depositions also took 5.5 to 7 hours apiece, and I am advised by counsel that Defendants marked 25 distinct exhibits at them. In addition, BNYM deposed one of OP&F's investment managers (Thornburg Investment Management (in Santa Fe, NM)) who executed FX transactions with BNYM. This deposition also went for the better part of a day (roughly 6 hours), with (I am advised by counsel) Defendants marking 14 distinct exhibits.

14. In addition to the deposition testimony and document discovery sought by Defendants, the DOJ also requested that OP&F voluntarily serve as a percipient fact witness in so far as the DOJ's case went to trial. OP&F entered into an agreement with the DOJ to appear at any trial in New York, and discussed its potential testimony. This agreement was in lieu of OP&F providing additional deposition testimony to the DOJ.

15. OP&F is a sophisticated litigant, and due to the nature of its operations, is often a party in civil litigation, having participated as an active litigant in some of the largest financial

fraud cases of the past two decades, including cases against AOL/Time Warner and AIG.

Accordingly, OP&F 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.

16. OP&F's investment portfolio of more than \$14.3 billion is self-funded by OP&F's participants. The pension plan is designed to provide reasonable income to plan participants and their beneficiaries when they need it most—when they stop working, become disabled, or in the event of death before or after retirement. Ten percent of plan participants' earnings are invested in the plan. The participants' employers also contribute a percent of payroll to fund current service costs. OP&F is thus highly attuned to practices that operate to wrongfully deprive its pension plan, and thus retirees and other plan participants, of assets.

17. It can be, and typically is, cost prohibitive for OP&F to pursue potential recoveries for its pension plan 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 in most cases 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 when analyzed under our fiduciary duty to our members. In this regard, the work of contingent fee firms like LCHB and MMMB can be invaluable. The economics of litigation such as this for a pension fund like OP&F thus only make sense through a contingency fee arrangement. OP&F is very satisfied with the work LCHB and MMMB did on its behalf and for the class, and supports Counsel's application for an attorneys' fee award and service awards for certain named Plaintiffs.

18. OP&F actively monitored this litigation, received and reviewed key pleadings in this case and regularly conferred with LCHB and MMMB 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, OP&F's willingness to serve as a class representative. In addition to the outstanding cash recovery for class members from the global settlement 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 FX practices, and greater transparency in the custodial FX business generally. From a business perspective for OP&F, this means greater disclosure about custodians' FX pricing practices and improved products and services. OP&F is extremely proud to have played an integral part in bringing about this transformative change in BNYM's custodial business, and in the custodial FX space more broadly.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed this 14th day of August, 2015, in Columbus, Ohio.

Mary Beth Foley, Esq.
General Counsel
Ohio Police & Fire Pension Fund