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PRESS RELEASE

**THE BANK OF NEW YORK RESOLVES PARALLEL CRIMINAL
INVESTIGATIONS THROUGH NON-PROSECUTION AGREEMENT
WITH THE UNITED STATES**

Bank Acknowledges Responsibility for its Conduct

Agrees to Pay \$38 Million in Penalties and Victim Compensation

*Agrees to Adopt Sweeping Reforms to Address Reporting Failures under the Bank
Secrecy Act and Deficiencies in its Suspicious Activity and Anti-Money Laundering
Safeguards*

The Bank of New York ("BNY") has agreed to pay \$38 million in penalties and victim compensation to resolve parallel criminal investigations conducted by the United States Attorneys' Offices for the Eastern and Southern Districts of New York relating to BNY's responsibility for crimes involving fraud and money laundering, as well as BNY's failure to comply with mandatory reporting obligations under the Bank Secrecy Act. The resolution,

announced today by **ROSLYNN R. MAUSKOPF** and **MICHAEL J. GARCIA**, United States Attorneys for the Eastern and Southern Districts of New York, respectively, **MARK J. MERSHON**, Assistant Director-in-Charge, Federal Bureau of Investigation, New York Field Division, and **MICHAEL J. THOMAS**, Special Agent-in-Charge, Internal Revenue Service – Criminal Investigation, New York, represents one of the largest financial settlements ever by a U.S. financial institution.

Pursuant to an agreement signed today, BNY has admitted its criminal conduct and will forfeit \$26 million to the United States and pay \$12 million in restitution to its victims. The bank has also agreed to make sweeping internal reforms to ensure compliance with its anti-fraud and money-laundering obligations, and be monitored by an independent examiner. As a result of BNY's acceptance of responsibility, its cooperation in the investigations, and its willingness to make restitution and take significant remedial action, BNY will not be prosecuted for the unlawful practices of its officers and employees provided it fully complies with the terms of its cooperation agreement with the government for a period of three years.

BNY is the oldest bank in the United States and the principal subsidiary of The Bank of New York Company, Inc., a publicly traded corporation. BNY maintains retail branch locations across the United States, provides global financial services, and is a leading participant in capital markets throughout the world.

Overview

Today's announcement is the culmination of lengthy investigations by the two United States Attorneys' Offices, conducted between 1998 and 2004 in conjunction with the FBI and the IRS, that uncovered systemic failures in BNY's suspicious activity reporting

practices and anti-money laundering procedures.¹ These failures permitted criminal fraud and money laundering activities by BNY employees and customers to proceed undetected and unchecked for more than a decade. The SDNY investigation uncovered a scheme, which was facilitated by a corrupt BNY vice president, involving the unlicensed transmission of billions of dollars originating in Russia through BNY accounts in the United States to third-party transferees around the world. The EDNY investigation uncovered a scheme involving the submission by a BNY commercial customer of fraudulent loan applications that were supported by sham escrow agreements executed by a corrupt BNY branch manager, and that resulted in millions of dollars in losses to victim banks throughout the United States. To date, these schemes have resulted in the criminal convictions of at least nine individuals, including a former BNY vice president and a former BNY branch manager.

In admitting responsibility, BNY acknowledged, among other things, that it failed to have an effective anti-money laundering program, that it intentionally failed to take steps to report known evidence of suspected criminal conduct by a bank customer and BNY employees as required under the mandatory reporting obligations of the Bank Secrecy Act even after that evidence came to the attention of senior BNY executives, and that both the bank's general counsel, managing counsel, and other senior executives repeatedly ignored the bank's

¹ The Bank Secrecy Act requires banks to have anti-money laundering programs sufficient to identify and report suspicious financial transactions to the Financial Crimes Enforcement Network ("FinCEN"), part of the U.S. Treasury Department, by filing Suspicious Activity Reports ("SARs"). The SAR database is a valuable tool for law enforcement in areas ranging from complex financial investigations to terrorism.

legal obligations to file the required Suspicious Activity Report (“SAR”), doing so only after the principals of a BNY customer were arrested months later by federal authorities. The SAR that was ultimately filed was both inaccurate and incomplete, in that it failed to make any reference to the misconduct of BNY personnel relating to the escrow agreements, or how the escrow agreements were used to defraud other banks. During this period, BNY was already under compulsion to correct problems in its anti-money laundering program pursuant to an agreement between BNY, the Federal Reserve Bank of New York, and the New York State Banking Department that placed the bank under heightened regulatory scrutiny and required enhanced due diligence and suspicious activity reporting procedures by the bank (the “Regulator Agreement”). BNY’s failures allowed the fraudulent activities to continue, resulting in at least \$18 million in losses to victims.

“Banks occupy a pivotal position of trust in both our financial system and our system of law enforcement, one that requires diligence and dispatch in detecting and reporting clear evidence of criminal conduct,” stated United States Attorney **MAUSKOPF**. “When that trust is knowingly violated at the highest levels of a financial institution, as happened here, fraud and other criminal activities continue unabated, victims suffer staggering losses, and the integrity of our financial systems is seriously undermined. This agreement fixes responsibility for the illegal conduct by bank executives, officers, and employees, secures immediate compensation for victims, and ensures accountability going forward in the exercise of an essential public trust.”

“The Bank Secrecy Act and the anti-money laundering laws are critical to protecting our financial system, and all United States banks must be vigilant in complying with

them,” said United States Attorney **GARCIA**. “Although this agreement closes the book on BNY’s role in an underground Russian money transfer system that moved \$7 billion through BNY accounts, the agreement requires BNY to continue and enhance its money laundering compliance programs and subjects BNY to oversight by an independent examiner for a period of three years.”

The Southern District of New York Investigation

The Southern District of New York investigation focused on misconduct related to the opening in 1996 of accounts at a retail branch of BNY in the names of Benex International Co., Inc. (“Benex”) and BECS International LLC (“BECS”). These accounts were opened by Peter Berlin, a Russian émigré, with the assistance of his wife, Lucy Edwards, also a Russian émigré, who was a BNY vice president. During the next three and one-half years, approximately \$7 billion originating in Russia flowed through the Benex and BECS accounts to third-party transferees around the world.

The Benex and BECS accounts were part of an underground money transfer business that was operated by a bank located in Moscow and a company located in Queens, New York. From a small single-room office in Queens, company employees executed hundreds of wire transfers per day from the Benex and BECS accounts, using electronic banking software provided by BNY to carry out wire transfer instructions provided by the Moscow bank.

Despite the obvious money laundering risks associated with such an operation, BNY failed to conduct adequate due diligence or make “know your customer” inquiries with regard to Berlin or the Benex and BECS accounts. Some BNY executives in the Retail

Banking Division believed, incorrectly, that Berlin was in the “import/export” business, but no employee ever sought to verify that belief. Other BNY executives in the Cash Management Division understood, correctly, that Benex and BECS essentially acted as payment brokers or money transmitters, whose businesses consisted solely of transferring funds on behalf of other parties, but those executives did not make any inquiry as to whether Benex and BECS were properly licensed as money transmitters.

BNY also failed to monitor adequately the activity in the Benex and BECS accounts, which were the highest fee-producing accounts in the One Wall Street Branch where they were located. Indeed, on the two occasions that employees in the Cash Management Division sought to conduct a money laundering review of Benex and BECS accounts, they were advised by a manager in the Funds Transfer Division that BNY did not have an automated system for reviewing account activity and that it would be impractical to conduct a manual review of the Benex and BECS accounts, given the tremendous volume of activity in those accounts. As a result of the failure to monitor the activity in the Benex and BECS accounts, a number of highly suspicious circumstances that should have raised flags about money laundering went undetected.

In February 2000, Berlin and Edwards pled guilty to, among other crimes, conspiring to conduct unauthorized and unregulated banking activities, operate an illegal money transmitting business, and launder money to promote wire fraud, in connection with the operation of the Benex and BECS accounts at BNY. Berlin and Edwards acknowledged that the illegal banking network of which the Benex and BECS accounts were a part was designed, in part, to allow Russian individuals and businesses to wire transfer funds in and out of Russia

in violation of Russian currency controls, and thereby to defraud the Russian government of customs duties and tax revenues.

Also in February 2000, as a result of the investigation into the Benex and BECS accounts, BNY entered into the Regulator Agreement with the Federal Reserve and NYSBD, referred to above.

The Eastern District of New York Investigation

The Eastern District of New York investigation uncovered that from approximately 1991 to 2002, BNY branch managers and employees working at a BNY retail branch in Island Park, New York, executed unauthorized and materially false and misleading escrow agreements for a BNY commercial customer, RW Professional Leasing Services Corp. (“PLS”) in Island Park, New York, that was engaged in the business of arranging financing for medical providers, ostensibly for the leasing of medical equipment. Although the escrow agreements obligated BNY to act as an escrow agent for other banks that were financing the medical equipment leases, BNY deliberately failed to establish any escrow accounts or perform any terms of the escrow agreements. The financing banks relied on the escrow agreements in approving loan requests totaling tens of millions of dollars.

In October 2005, Myrna Katz, a former BNY branch manager at the Island Park branch, pled guilty to making false statements to insured banks in connection with the phony escrow agreements.² In pleading guilty, Katz admitted that she executed the escrow agreements

² On March 5, 2004, PLS and seven individual defendants, including Myrna Katz, were charged in a superseding indictment for crimes arising from their involvement in the scheme. Five of the defendants have pled guilty, including Katz. Two defendants, Barry Drayer and Stephen Barker, are scheduled to be tried before United States District Judge Arthur D. Spatt.

to assist a highly valued customer of the branch secure approval of its loan requests, and that she knew at the time she executed the agreements that they would not be implemented and that no escrow accounts would be established.

The scheme proceeded undetected for more than a decade and continued during the period that BNY was bound by the enhanced due diligence and reporting requirements of the Regulator Agreement. As noted, after learning in early 2002 of the illegal conduct at the Island Park branch, BNY executives, including its general counsel and managing counsel, continued to ignore the bank's reporting obligations under the Bank Secrecy Act, and intentionally failed to take steps to file a SAR and notify law enforcement authorities in a timely manner.³ In fact, the investigation disclosed that BNY did not file a SAR, or otherwise notify law enforcement of any problem, even after the bank had computed a potential liability of \$72 million arising from its dissemination of the sham escrow agreements and had learned of allegations of the fraud from BNY's outside counsel and various bank funding institutions. Instead, BNY denied any wrongdoing relating to the escrow agreements in communications with various bank funding institutions, concealed information about the employee misconduct that had caused the escrow agreements to be issued, and directed BNY personnel not to discuss the bank's culpability or liability with any third parties. The report that BNY ultimately filed in July 2002 was both incomplete and inaccurate.

³ SARs generally must be filed by a bank within 30 days after detecting facts constituting the suspicious activity, and in no event later than 60 days after the detection of suspicious activity. In cases calling for immediate attention, a bank is required to provide telephonic notification to an appropriate law enforcement authority in addition to filing a written report.

Provisions of the Agreement

The United States Attorneys' Offices for the Eastern and Southern Districts of New York have entered into a written agreement with BNY to resolve the criminal investigations of the bank. Significantly, this agreement secures immediate compensation for victimized bank funding institutions. Under the terms of the agreement executed today:

- BNY has accepted responsibility for its criminal conduct, and its chairman of the board of directors has signed a statement admitting the criminal conduct in detail.
- BNY has agreed to pay \$12 million for purposes of compensating banks for losses arising out of the company's criminal conduct, and to forfeit an additional \$26 million as a penalty for its illegal conduct.
- BNY has agreed to continue cooperating with the investigations in the Eastern and the Southern Districts of New York and has begun to take steps to prevent repetition of the misconduct and criminal activity uncovered during those investigations. BNY fired three branch managers who were involved in overseeing the execution of the sham escrow agreements at the Island Park branch, and terminated or disciplined 16 others who were involved in the misconduct. BNY has shared the substance of numerous interviews conducted with current and former BNY employees, as well as tens of thousands of pages of documents, including internal memoranda and email messages. BNY also waived the attorney-client and work-product privileges to assist the investigations, adopted remedial measures, and made available numerous witnesses for government interviews.
- BNY has agreed to take numerous remedial actions in response to the misconduct at BNY, including but not limited to the following:

the termination or disciplining of employees at all levels of the company whose improper activities and/or lax supervision resulted either in the execution of the sham escrow agreements or the failure to report criminal activity as required by BNY policy and the Bank Secrecy Act;

the creation of a new senior-level position within the Legal Division called Head of Law Enforcement and Investigations, with responsibility for responding to all law enforcement

inquiries and coordinating the preparation of Suspicious Activity Reports throughout BNY;

the introduction of new policies and procedures for, among other things, the auditing of retail branches; identifying, investigating and reporting illegal, suspicious or unusual activity; and using and signing forms for customers;

the training of BNY employees to identify and report suspicious activities, including the dissemination of false statements to financial institutions;

the investigation of counterparties to the largest retail account holders and other suspect account holders to check whether the counterparty is a real entity; and

the adoption of procedures to ensure that information concerning possible criminal activity is shared with BNY departments responsible for filing SARs as required under the Bank Secrecy Act.

- BNY has agreed to the appointment of an independent examiner to serve for three years to monitor and report to the government, the Federal Reserve Bank of New York, the New York State Banking Department and BNY on BNY's suspicious activity reporting practices, its anti-money laundering procedures relating to those practices, and its compliance with the agreement reached with the government.

In light of BNY's acceptance of responsibility, continued cooperation, remedial measures, and agreement to compensate the victims of its unlawful conduct, the United States Attorneys' Offices for the Eastern and Southern Districts of New York have agreed not to prosecute BNY for the unlawful practices engaged in by its executives and employees, provided that BNY complies for three years with all the terms of the agreement executed today. Should BNY violate the terms of the agreement, or commit any other crimes, it shall be subject to prosecution, including prosecution for the criminal conduct described in the agreement.

In addition to recognizing the outstanding investigative work conducted by the Special Agents of the Federal Bureau of Investigation and Internal Revenue Service, United States Attorneys **GARCIA** and **MAUSKOPF** thanked the Federal Reserve Bank of New York and the New York State Banking Department for their assistance.

The Eastern District of New York case was prosecuted by Assistant United States Attorneys Geoffrey Kaiser and Richard Lunger.

The Southern District of New York case was prosecuted by Assistant United States Attorneys Celeste L. Koeleveld, Barbara A. Ward, and Michael G. McGovern.