

Press Release



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Prominent Russian and U.S. Legal Experts Strongly Support The Bank of New York Mellon's Motion to Dismiss Russian Court Case

Leading Russian Legal Scholars Agree that Russian Court Does Not Have Jurisdiction to Apply RICO

Leading U.S. Experts, Including Former U.S. Attorney General Dick Thornburgh, Agree that U.S. RICO Law Was Not Intended To Be Applied by Foreign Court and Its Application Here Is Not Valid

Company Remains Confident Any Adverse Judgment Could Not Be Enforced In Any Country Where The Bank Has Significant Assets and Case Will Not Have a Material Financial Impact

NEW YORK, June 30, 2008 – The Bank of New York Mellon (NYSE: BK) announced today that more than 20 of the most respected legal scholars and practitioners from Russia and the United States have submitted testimony that strongly supports The Bank of New York's motion to dismiss the legal case brought against it by Florida trial lawyers representing the Russian Federal Customs Service (FCS). The matter was the subject of a procedural hearing in the Moscow City Arbitrazh Court today at which the proceedings were adjourned until July 3, 2008.

The 22 experts who filed written opinions in support of the Bank's motion to dismiss include: former U.S. Attorney General Richard (Dick) Thornburgh; retired federal court of appeals judge and White House counsel in the Clinton administration Abner Mikva, a former U.S. Congressman who participated in the original passage of the U.S. Racketeer Influenced and Corrupt Organizations Act (RICO); attorney Gregory Joseph, who is the author of one of the definitive professional guides to RICO; and 18 leading Russian legal experts, including the former First Deputy Chairman of the Russian Federation High Arbitrazh Court, M.K. Yukov, and the former Head of the Arbitrazh Court of the City of Moscow, A.K. Bolshova.

In their submissions to the court, these leading U.S. and Russian legal experts underscored why the applicable law requires that the plaintiff's case should be dismissed. Specifically:

- The U.S. Congress never intended RICO to be used by foreign courts;
- The Bank was never convicted of, much less charged with, any underlying criminal wrongdoing, which a RICO claim requires;
- The plaintiff is unable to provide any evidence of actual financial damages, as specified under RICO;
- This particular Russian court, the arbitrazh court, is a commercial court that has no jurisdiction to interpret or apply criminal statutes, let alone U.S. RICO law; and
- This is a case to recover lost tax revenue, which is a claim that cannot be brought under RICO, and any enforcement would be precluded in most countries by the well-established Revenue Rule.

Jonathan Schiller, managing partner of Boies, Schiller & Flexner LLP and The Bank of New York Mellon’s counsel, said:

“The claims brought by the Russian Customs Service are completely invalid – and can not legitimately be brought under the law in Russia or anywhere else in the world. Three of the most distinguished jurists in America have made clear to the Court that the case is contrary to U.S. law, that it cannot appropriately be brought in Russia, and that damages may not be awarded in this case. Eighteen of the very best experts in Russian law also have testified that the arbitrazh court does not have jurisdiction to consider a RICO claim and demonstrated why this case must be dismissed”.

Matthew Biben, Executive Vice President and legal counsel for the Company, said:

“The Bank of New York Mellon, which has played an important role in the growth of Russian capital markets, supports the Russian government’s efforts to promote the rule of law in its courts. It would be contrary to the operation of the rule of law for this Russian court to allow this case to continue or to award a judgment to the FCS on the basis of these meritless claims concocted by American contingency-fee lawyers.”

While the Bank would not be surprised by an adverse judgment, given the concerns it has raised to the court about its handling of the case, it remains confident that an adverse judgment could not be enforced in any country where the Bank has significant assets, given the strong legal and financial safeguards in place. The Bank also intends to pursue every available appeal through every level of the Russian legal system and beyond. As a result, the Company is also confident there will be no material financial impact on the Bank or its shareholders.

The meritless claims in the case were devised by trial lawyers from Miami, Florida and center on unspecified customs duties that the FCS alleges were owed to Russia on funds transferred out of the country in the 1990s, some of which moved through accounts at The Bank of New York. U.S. courts have summarily dismissed attempts by these trial lawyers to use the same legal theories to bring similar claims for customs duties against U.S. tobacco companies on behalf of Belize, Ecuador and Honduras.

Former U.S. Attorney General Richard Thornburgh commented:

“U.S. RICO law simply doesn't apply in this case. The law is quite clear. In order to render judgment on the plaintiff’s RICO claim for damages, a court would first have to determine that the Bank had violated a number of U.S. criminal laws. Given that no U.S. court has ever found that The Bank of New York committed any violations of U.S. law in connection with the events referenced in the FCS’s claim – and given that the Moscow Arbitrazh Court lacks jurisdiction to make such determinations – this case should be dismissed.”

Former Congressman Abner Mikva, who helped pass the original RICO statute, said:

“I served as a member of the House of Representatives and its Judiciary Committee when Congress passed the RICO statute, and it was never that body’s intention to have cases based on U.S. RICO law – one of our nation’s most complicated criminal statutes – heard by non-U.S. courts. It is well-established in U.S. law that a country’s criminal laws do not extend beyond its borders, nor can they be enforced by any other country. That is why other foreign governments have brought their RICO claims in U.S. courts – and that is why this case should be dismissed by the arbitrazh court.”

M.K. Yukov, the former First Deputy Chairman of Russian Federation High Arbitrazh Court, said the Moscow court has no power to hear cases involving interpretations of criminal law:

“Independent establishment by the arbitrazh court of the fact of existence or non-existence of components of crime in respondent’s actions is inadmissible and impossible... Therefore the application of criminal law rules by the arbitrazh court is beyond the powers for the administration of justice.”

The Plaintiff’s Case Is Centered On Previously Rejected RICO Theories and Contradictory Opinions From Their Experts

The Bank also noted that the plaintiff’s expert filings confirm what The Bank of New York Mellon has been saying throughout the course of this case, including that:

- **The plaintiff’s lawyers and expert witnesses are asking the Court to accept legal theories roundly rejected by U.S. courts – including in cases brought by these very same lawyers and experts.**
 - When FCS expert Robert Blakey tried a similar argument in the *Canada v. RJR* case, the Court held: “The language and structure of RICO and its legislative history offer no hint that Congress intended the statute to afford a civil remedy to foreign nations for the evasion of foreign taxes.” (*Canada v. R.J. Reynolds*, 268 F.3d 103 (2d Cir. 2001)).
 - Dismissal of Blakey’s case was upheld by the Second Circuit Court of Appeals, the same court on which FCS expert George C. Pratt previously served.
- **The plaintiff’s experts previously argued that foreign application of RICO is not appropriate – directly contradicting the testimony they have now offered in this case.**
 - When the plaintiff’s lawyers brought a similar RICO case in the U.S., they argued that: “This [U.S.] Court is the only appropriate forum to redress misconduct by American defendants in violation of U.S. law.” (*Ecuador v. Philip Morris Cos.* (S.D. Fla., January 17, 2002))
 - FCS expert Bruce Marks argued in a prior case that, “Russia is not an adequate alternative forum [for a RICO case] because of the alleged corruption of the Russian courts, and the Arbitrazh courts that dealt with the NKAZ and GOK bankruptcies in particular.” (*Base Metal Trading SA v. Russian Aluminum*, 253 F.Supp.2d 681, 698 -699 (S.D.N.Y. 2003))
 - In the *Norex Petroleum RICO* case, Blakey, Pratt and Bruce Marks all collectively argued for the plaintiff in that case that Russia provided an inadequate forum because of rampant judicial corruption and asserted that the plaintiff would not be able to pursue their RICO claims there.
- **The plaintiff’s experts have admitted that the FCS’ claims are based on criminal statutes – but the arbitrazh court cannot rule on criminal statutes.**
 - Though Blakey says in this opinion that a RICO suit for damages is a matter of private law, he has argued in previous academic writings that RICO “plays an important public law function.” (*Blakey, Of Characterization and Other Matters: Thoughts about Multiple Damages*, 60 *Law & Contemp. Probs.* 97 (1997))
 - For the Russian court to adjudicate this claim, it would have to violate the well-established International Law principle that one country will not apply the public law of another country.
- **The experts admit in their testimony that this is a case to recover lost tax revenues – although RICO does not allow such a claim and the FCS acknowledges it has no evidence of actual damages.**
 - Blakey admits in his testimony that “actual damages” is the correct measure of injury in a RICO case for damages. And yet the FCS has admitted in court that it has no evidence of actual damages and is not able to estimate any such damages.

- **FCS experts cite NO case where a foreign court has adjudicated a RICO claim because there simply are no cases to cite. The fact is that no foreign court has EVER adjudicated a RICO claim because the US Congress did not intend for them to do so.**

For a full list of the U.S. and Russian experts who submitted testimony in support of the Bank of New York Mellon's motion to dismiss and additional background about the case, please visit www.bnymellon.com/russiacase/index.html.

Any Adverse Judgment Could Not Be Enforced – The Bank Is Confident There Will Be No Material Financial Impact on the Company or Its Shareholders

While the Company would not be surprised by an adverse judgment, given the concerns it has raised to the court about its handling of the case, it remains confident that any adverse judgment would not be enforceable in countries where The Bank of New York has significant assets, given the substantial, well-established legal and financial safeguards in place.

- The well-established Revenue Rule prevents enforcement in the U.S., the U.K. and other countries where The Bank of New York has significant assets.
- The claim the plaintiff is trying to make is also clearly time-barred by the statute of limitations in both Russia and the U.S.

As a result, the Company is confident that any adverse decision would have no material financial impact on the company or its shareholders.

Background on the Russian Court Case

The underlying facts of this case involve a series of unauthorized fund transfers through The Bank of New York nearly ten years ago that were facilitated by a former, self-admitted "rogue" employee of the Bank without the knowledge of the Bank. Investigations of these transfers in the late 1990s by the U.S. government, working in concert with U.K. and Russian authorities, were concluded and resolved by agreements between the Bank and regulatory and legal authorities.

The Bank of New York was never charged with any wrongdoing nor was it accused of the crimes upon which the Russian claims are purportedly based. As part of a non-prosecution agreement with the U.S. Department of Justice, the Bank acknowledged a failure to adequately monitor and supervise wire transfer activity and paid a fine of \$14 million. The former employee and her husband pled guilty in February 2000 to conspiracy and assisting the operation of an unlicensed foreign bank in the U.S. The Bank took swift disciplinary action against the employee and took corrective action to help prevent such activity from occurring in the future.

The Bank of New York Mellon Corporation is a global financial services company focused on helping clients manage and service their financial assets, operating in 34 countries and serving more than 100 markets. The company is a leading provider of financial services for institutions, corporations and high-net-worth individuals, providing superior asset management and wealth management, asset servicing, issuer services, clearing services and treasury services through a worldwide client-focused team. It has more than \$23 trillion in assets under custody and administration, more than \$1.1 trillion in assets under management and services \$12 trillion in outstanding debt. Additional information is available at bnymellon.com.

This document contains statements relating to future events that are considered "forward-looking statements." These statements, which may be expressed in a variety of ways, including the use of future or present tense language, relate to, among other things, the potential outcomes and impact of the claim

made by the Federal Customs Service of the Russian Federation on The Bank of New York Mellon Corporation. These forward-looking statements are based on assumptions that involve risks and uncertainties and are subject to change based on various important factors (some of which are beyond the control of The Bank of New York Mellon Corporation). Actual results may differ materially from those expressed or implied as a result of these risks and uncertainties, including but not limited to the risk factors and other uncertainties detailed in the annual report on Form 10-K for the year ended December 31, 2007 filed by The Bank of New York Mellon Corporation with the Securities and Exchange Commission and other reports filed with the Commission pursuant to the Securities Exchange Act of 1934. All statements in this document speak only as of June 30, 2008, and The Bank of New York Mellon Corporation undertakes no obligation to update any statement to reflect events or circumstances after June 30, 2008 or to reflect the occurrence of unanticipated events.
