

How not to win friends and influence people: Internships and public officials

Sep 17 2015 [Patrick Rappo and Alexandra Melia](#)



The recent \$14.8 million [settlement](#) between the U.S. Securities and Exchange Commission (SEC) and BNY Mellon highlighted that "[f]inancial services providers face unique corruption risks when seeking to win business in international markets".



In this case, important clients who were public officials sought favours, namely internships for family members. Although hiring a family member or close associate of a public official does not result in an automatic violation of either the U.S. [Foreign Corrupt Practices Act](#) (FCPA) or the UK [Bribery Act 2010](#), internships and permanent jobs can be considered bribes if they are offered or given with the intention of inducing a public official to award business in return, or rewarding them for having done so.

This settlement represents the first enforcement action based entirely on hiring and internship practices, but it is unlikely to be the last. Such scrutiny from the SEC does not appear to be an isolated occurrence; a number of U.S. banks are reported to be under investigation for similar hiring practices.

The case has not only highlighted the prosecution and regulatory risk involved but has also offered a timely reminder to financial services firms of the importance of formulating and implementing internal controls that are appropriately geared toward assessing and mitigating the corruption risks inherent in recruitment.

Adopting a risk-based approach to corruption risk and the identification of staff who are politically exposed persons (PEPs) or otherwise connected to relevant political or administrative decision-makers forms an established part of the U.K. Financial Conduct Authority (FCA)'s guidance, [Financial Crime: a guide for firms](#) and the regulator's [Business Plan 2015/16](#) suggested that it would continue to be an important area of focus.

The BNY Mellon case

The SEC found that, during 2010 and 2011, employees of BNY Mellon had corruptly attempted to influence two Middle Eastern public officials. These foreign officials had sought, and the BNY Mellon employees had agreed to provide, valuable internships for their family members. The BNY Mellon employees were found to have bypassed the bank's usual hiring processes and the legal team to retain and win business from the sovereign wealth fund with which they were affiliated.

According to the SEC's August 18, 2015 [Administrative Order](#), the unnamed Middle Eastern sovereign wealth fund first became a client of BNY Mellon in 2000. The fees BNY Mellon earned from the relationship arose from:

- (i) government contracts awarded to the bank through a process requiring approval from particular public officials; and
- (ii) the allocation of additional assets under existing contracts with the bank at the discretion of certain public officials. During the relevant time period, BNY Mellon sought to increase the amount of the sovereign wealth fund's assets under its control.

The first public official (Official X) had authority over the allocation of new assets to fund managers such as BNY Mellon and was viewed as a "key decision-maker" by the bank. The second public official (Official Y) had authority to make decisions directly affecting BNY Mellon's business and was described in internal bank documents as "crucial to both retaining and gaining new business".

The internship requests

Related content

Related articles

- ▶ [Massachusetts regulator investigates BNY Mellon fund-pricing snafu](#) - Sep 08 2015
- ▶ [BNY Mellon system breakdown highlights problems with large vendors and risks with regulators](#) - Sep 02 2015
- ▶ [BNY Mellon in \\$14.8 million SEC foreign-bribery settlement: lure of business trumped controls](#) - Aug 19 2015
- ▶ [BNY Mellon hit by fund-pricing glitch, could persist for days](#) - Aug 28 2015
- ▶ [BREAKINGVIEWS: BNY Mellon gifts nepotism cops low-hanging fruit](#) - Aug 19 2015
- ▶ [BNY Mellon glitch roiled pricing on U.S. funds with \\$404 bln in assets](#) - Aug 31 2015

News by subject

- ▶ [Employees](#)
- ▶ [Financial crime and anti-money laundering](#)
- ▶ [Enforcements](#)
- ▶ [Corporate governance and ethics](#)
- ▶ [Compliance responsibilities and internal controls](#)
- ▶ [Regulatory oversight](#)
- ▶ [Browse all subjects](#)

News by country

- ▶ [United Kingdom](#)
- ▶ [United States](#)
- ▶ [China](#)
- ▶ [View country guides](#)

Related rulebooks

- ▶ [Financial Conduct Authority Materials](#)
- ▶ [Business Plans](#)

Search

Subject browser ➔

Advanced ➔

Most read articles

- ▶ [IMPACT ANALYSIS: Wolfsberg FAQ on financial crime risk assessments](#)
- ▶ [COLUMN: The definition of conduct risk](#)
- ▶ [SEC casts insider as victim in case that baffles compliance, legal teams](#)
- ▶ [Ex-Citi trader points finger at bosses for culture that allowed breaches](#)
- ▶ [COLUMN: Market manipulation and algo trading: developments in law and regulation](#)

Message boards

Show all messages

UDAAP

General Discussion
1 post (last post Sep 14, 2015)
[See this](#)

AML Policy

General Discussion
5 posts (last post Sep 14, 2015)
Do firms apply their AML Policy against their non-...

Appointing a new CF1

General Discussion
4 posts (last post Sep 11, 2015)
Our firm is a small asset management subsidiary (1...

[Add a post](#) ➔

[More messages](#) ➔

Reference Library

- ▶ [Practitioner's Guide for Broker-Dealers](#)
- ▶ [The MLRO Handbook](#)
- ▶ [The Compliance Handbook](#)
- ▶ [MiFID Survival Guide](#)
- ▶ [The Insurance Practitioner's](#)

In February 2010, Official X requested that BNY Mellon provide internships to his son and nephew. In a subsequent exchange regarding the status of his internship request, Official X told his primary contact at the bank that the request represented an "opportunity" for the bank. He also threatened that internships could be secured with one of BNY Mellon's competitors if the bank failed to satisfy his request.

This threat was clearly understood by an account manager at the bank, who noted that BNY Mellon was "not in a position to reject the request from a commercial point of view", even though it was a personal request made by Official X. Once the bank had agreed to provide the internships, Official X's department placed further assets under BNY Mellon's management within a few months.

Around the same time as Official X made his request, Official Y asked BNY Mellon to provide an internship for his son. At the time the request was made, a number of recent client service issues had threatened to weaken BNY Mellon's relationship with the sovereign wealth fund, and the bank employee who was primarily responsible for managing the sovereign wealth fund relationship said: "It's silly things like this that help influence who ends up with more assets/retaining a dominant position."

He suggested that it was the "only way" to increase BNY Mellon's share of business from the fund's European office. Here too, once it had agreed to provide the internship, BNY Mellon retained and grew its business from the sovereign wealth fund's European office.

The internships

Significantly, the three interns retained by BNY Mellon following the requests from Officials X and Y were not required to apply to participate in either of the bank's established internship programmes and did not meet the stringent hiring criteria required for admission to those programmes.

The internships provided by BNY Mellon to the relatives of Officials X and Y were customised, one-of-a-kind training programmes that lasted six months and enabled the interns to rotate through several of the bank's business units: enhancements not available to interns completing the bank's established internship programmes. The bank also obtained and paid for visas to enable the interns to take up their placements and overlooked the interns' repeated absences from work and failure to perform tasks satisfactorily during the internships.

Implications for financial services firms

The BNY Mellon case has demonstrated the unique corruption risks that financial services firms face when seeking to win business in international markets. In particular, the case has highlighted the importance of developing sufficient internal controls to prevent and detect improper hiring practices in connection with both internships and permanent hires. Potentially improper requests can take many forms, including requests from customers or public officials to provide a family member or close associate with:

- work experience;
- an internship;
- a permanent job;
- a consultancy contract; or
- valuable work-related training.

The SEC found that BNY Mellon did not have sufficient internal controls, and highlighted the bank's lack of specific controls relating to the hiring of customers and relatives of customers, including foreign public officials. In particular, the SEC criticised BNY Mellon for:

- Permitting client relationship managers and sales staff wide discretion in making initial hiring decisions.
- Failing to train human resources staff to identify potentially problematic hires.
- Allowing senior managers to approve hires requested by foreign public officials without a mechanism for involving the bank's legal or compliance team in the approvals process.

The penalties that were imposed on BNY Mellon were, however, mitigated by the extensive remedial action that the bank undertook, namely:

- Changing its anti-corruption policy so that it explicitly addressed the hiring of government officials' relatives.
- Requiring that every full-time hire or internship application be routed through a centralised HR application process.
- Enhancing its code of conduct to require each employee to certify annually that he or she is not responsible for hiring through a non-centralised channel.
- Requiring each applicant to indicate as part of the centralised application process whether he or she, or a close

personal associate, is or has recently been a government official and, if the question is answered affirmatively, mandating an additional review by BNY Mellon's anti-corruption office.

The issues raised by the BNY Mellon case are not limited in relevance either to firms subject to the FCPA, or to improper exchanges of favours with foreign public officials. The principles outlined in the case apply with equal force to private sector clients who ask for "expensive favours", as these could amount to bribes under other U.S. legislation and also under the UK Bribery Act, which prohibits both public and private sector bribery.

Furthermore, the need for proper internal systems and controls extends beyond the regulatory provisions of the SEC. The UK FCA's [Financial Crime: a guide for firms](#) repeatedly advocates a risk-based approach to assessing and dealing with financial crime.

The importance of systems and controls to detect, prevent and deter financial crime has also emerged from the numerous thematic reviews that have been undertaken in recent years, and this trend is set to continue.

In its [Business Plan 2015/16](#), the FCA listed financial crime as one of seven significant areas of risk, and said that firms which failed to implement adequate systems and controls were more vulnerable to being used to further financial crime.

The FCA has also said that, "(d)uring 2015/16 [it] will continue to focus on both anti-money laundering (including terrorist financing and sanctions) and anti-bribery and corruption measures, as these are the areas in which [it] consider[s] [it] can deliver the most value".

These words have also been put into practice, with action being taken against firms (see the [Bank of Beirut fine](#)) and individual managers (see the [Martin Brokers fine](#)) that have failed to implement adequate systems and controls to combat financial crime risk.

Lessons to be learned

Although the remedial actions taken by BNY Mellon were not mandated by the SEC's Administrative Order, they are likely to be indicative of the types of procedures that the SEC, and thus perhaps the FCA, would deem suitable to prevent the corruption risks inherent in hiring practices.

As well as seeking expert advice at an early stage when considering unusual or potentially problematic hiring requests, financial services firms should consider incorporating the following guidelines into their internal control environment:

- Set clear standards Ensure that the hiring of family members/close associates of customers and public officials (e.g., employees of state-owned pension funds and sovereign wealth funds) is expressly addressed in the firm's anti-corruption policy.
- Limit exceptions to the firm's general hiring process Consider routing applications for internships or permanent jobs through a centralised human resources application process. Consider asking employees to certify periodically that they have not circumvented the centralised application process when hiring for an internship or permanent job.
- Be transparent Require all applicants for internships and permanent jobs to indicate whether they are, or are a family member/close personal associate of, a public official or customer of the firm.
- Be consistent Family members/close associates of customers and public officials should be assessed and hired based on the same standards that would apply to any other candidate for the same position. Resist requests to waive or modify assessment criteria for a candidate who is associated with a customer or public official.
- Train the right people Make sure that employees have been trained to identify and respond appropriately to problematic hiring situations. In particular, consider training business development personnel and relationship managers on how to handle unexpected hiring requests from customers/public officials. Furthermore, it is essential to train human resources personnel on the identification of "red flag" hires.
- Ensure independent oversight Consider requiring a member of the firm's legal or compliance team to review and sign off on all potentially problematic hiring decisions.

Step toe

STEPTOE & JOHNSON LLP

Patrick Rappo is a partner in Steptoe's London office and is a member of the FCPA and Anti-Corruption Group. Prior to joining Steptoe, Mr Rappo was joint head of Bribery and Corruption at the UK Serious Fraud Office (SFO). Alex Melia is an associate in Steptoe's London office and a member of the International Regulation & Compliance Group. The views expressed are their own.

Subject*

Name or pseudonym*

Message*

[Submit Message](#)

THOMSON REUTERS GRC | © 2011 THOMSON REUTERS. ALL RIGHTS RESERVED

[CONTACT US](#) [DISCLAIMER](#) [TERMS & CONDITIONS](#) [PRIVACY STATEMENT](#) [ACCESSIBILITY](#) [RSS](#) [TWITTER](#)
[GRC CONNECTS](#) [LINKEDIN](#)

