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IN THE MATTER OF THE DEALER REGISTRATION OF BNY MELLON CAPITAL MARKETS, LLC	§ § §	**Order No. IC12-CAF-04**

TO: John M. Gavin, Jr.
BNY Mellon Capital Markets, LLC (CRD No. 17454)
32 Old Slip
New York, NY 10286

CONSENT ORDER

Be it remembered that BNY Mellon Capital Markets, LLC ("Respondent"), by and through John M. Gavin, Jr., its Chief Financial Officer and Chief Administrative Officer, appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and without admitting or denying any allegation contained herein, except Findings of Fact one through three, which are deemed admitted, consented to the entry of this Order and the Findings of Fact and Conclusions of Law contained herein.

I. FINDINGS OF FACT

1. Respondent has waived (a) Respondent's right to notice and hearing in this matter; (b) Respondent's right to appear and present evidence in this matter; (c) Respondent's right to appeal this order; and (d) all other procedural rights granted to the Respondent by The Securities Act, TEX. REV. CIV. STAT. ANN. art 581-1 et seq. (West 2010) ("Texas Securities Act") and the Administrative

Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (West 2008 & Supp. 2010)("Administrative Procedure Act").

2. Effective July 1, 2007, The Bank of New York and Mellon Financial Corporation merged to form The Bank of New York Mellon Corporation. In connection with that merger, BNY Capital Markets, Inc. ("BNYCM") and Mellon Financial Markets, LLC ("MFM") merged on May 1, 2008 to form Respondent. During the period from January 22, 2008 through February 22, 2008, BNYCM and MFM were still distinct entities.

3. Respondent is registered with the Securities Commissioner as a dealer.

4. Citizens Property Insurance Corporation ("Citizens") is an insurer of last resort created by the State of Florida in 2002 to provide hurricane and general casualty insurance to Florida residents. Citizens is a government corporation, and the members of its Board of Governors are appointed by the Governor of Florida, the President of the Florida Senate, the Speaker of the Florida House, and Florida's Chief Financial Officer. At all relevant times, Citizens had $4.75 billion in auction rate securities ("ARS") outstanding.

Summary

5. While conducting an unrelated investigation, the staff of the Texas State Securities Board ("Staff") discovered that, from January 22, 2008 through February 22, 2008 ("Relevant Time Period"), MFM entered bids on behalf of Citizens at auctions for Citizens' ARS. In approximately January 2008, Citizens and its financial advisor, Raymond James ("Financial Advisor"), approached MFM and requested MFM's assistance in placing bids on behalf of Citizens. Citizens asked MFM to submit bids to purchase Citizens ARS at levels that were generally below the expected clearing rates, known as "price talk," published by

the managing dealers for Citizens' ARS. The purpose of this request was for Citizens to set clearing interest rates at levels that were lower than if Citizens had not submitted its bids. Citizens' CFO advised MFM personnel that it had received an opinion from counsel that these activities were lawful, and that they were being undertaken in an effort to lower Citizens' interest cost on its outstanding ARS. Ultimately, investors holding Citizens ARS during the relevant period earned millions less in investment interest due to Citizens' bidding activity through MFM. The Respondent has agreed to pay administrative penalties to Texas, Florida, and New York, in the aggregate, of One Million Three Hundred Thousand Dollars ($1,300,000.00).

ARS Generally

6. ARS were generally long-term debt or equity instruments that paid interest at rates approximating short-term interest rates, and the rates for which were reset periodically through a "Dutch auction" process. To this end, ARS provided an attractive financing option to public entities such as Citizens because historically they had allowed issuers to obtain long-term financing at interest rates that were normally associated with shorter-term investments.

7. At each auction, existing holders of ARS could place orders to sell some or all their securities, to hold their ARS at whatever rate is set by the Dutch auction, or to hold their ARS provided that the clearing rate is at or above a certain level. Those interested in purchasing the ARS could place bids to acquire a specified par amount of ARS at a specified interest rate.

8. The interest rate determined through a Dutch auction process was commonly referred to as the "clearing rate." In order to determine the clearing rate, the buy

bids were arranged from lowest to highest interest rate. The clearing rate was the lowest interest rate at which all ARS available for sale at the auction could be sold at par value.

9. An ARS auction was regarded as a "fail" or "failed auction" if there was not a buyer available for every ARS offered for sale at the auction. In the event of a failed auction, the issuer was required to pay investors the "fail rate" until the next successful auction. The fail rate was defined in the offering documents and was generally either a flat interest rate or an index based formulaic interest rate.

10. A broker-dealer designated as a "manager" on a particular ARS issue was generally referred to as a "managing dealer". Generally, a broker-dealer was designated a managing dealer if it was part of the underwriting syndicate for the particular ARS. Managing dealers accepted bids in relevant ARS from their clients and from other broker-dealers that had not been designated as a managing dealer in particular auctions. Furthermore, managing dealers commonly issued "price talk" on ARS issues for which they served as managers. The price talk was supposed to provide guidance to the market as to where the managing dealers expected the auction to clear that day.

11. In or about August and September 2007, some ARS auctions experienced failures (the "2007 Auction Failures"). These failures were based primarily on credit quality concerns related to the ARS at issue.

12. Various market factors caused a general increase in ARS clearing rates during the fall of 2007 and early 2008. These factors included the 2007 Auction Failures, capital constraints at the managing dealers, and the downgrading of certain bond insurers.

Citizens' ARS

13. At all times relevant to this Order, three separate series of Citizens' ARS were outstanding – the 2004, 2006, and 2007 series. These ARS had reset periods of either 7 days or 28 days and were classified as taxable municipal ARS.

14. There were a number of broker-dealers designated as managing dealers for Citizens ARS, but MFM and BNYCM were not.

15. The fail rate for Citizens ARS was fixed at 15%.

Citizens Bids in Auctions for its ARS

16. In or about August 2007, Citizens became a cash management client of MFM. Prior to January 2008, the cash held at MFM was invested primarily in various money market funds and instruments.

17. In January 2008, Citizens contacted its MFM broker ("Broker") to discuss Citizens' interest in bidding in auctions for its own ARS through Citizens' accounts at MFM. During a January 22, 2008 call, the CFO of Citizens advised the Broker that Citizens had "cleared" its "ability and authority" to purchase its ARS "through counsel."

18. The Broker testified that he discussed Citizens' interest in purchasing its own ARS with his immediate supervisor, MFM's head ARS trader ("Head Trader"), and MFM's CFO. The Broker informed the Staff that he approached his supervisor with this issue because he had not encountered a situation where the issuer wanted to bid it auctions for its own ARS, a situation he described as "unique".

19. The Head Trader and the Broker's supervisor informed the Staff that they discussed Citizens' interest in bidding for its own ARS with the President of MFM.

20. The Broker's supervisor did not seek legal advice or even discuss the issue with the compliance staff of MFM or BNYCM.

21. Nonetheless, the Broker's supervisor informed the Broker that MFM could place bids on behalf of Citizens in auctions for Citizens ARS. Thus, on January 22, 2008, after initially questioning the legality of the activity, the Broker, the Head Trader, and another MFM trader ("Trader") began to accept and place bids on behalf of Citizens.

Citizens Expressed Interest in Maintaining Confidentiality

22. On January 22, 2008, prior to placing bids in auctions for Citizens ARS, multiple representatives of Citizens – including Citizens' CFO and a representative of Raymond James, its financial advisor -- sought assurances from the Broker that Citizens would not be identified as the actual bidder to other parties, specifically the managing dealers. The Broker did not advise his supervisor, or any other supervisory personnel, about this request.

23. In explaining why Citizens was interested in maintaining the confidentiality of its bidding, Citizens' CFO stated that Citizens wanted "to keep it quiet" for strategic reasons, and a Citizens employee told MFM that Citizens sought confidentiality "because we want the broker-dealers to keep on working hard."

The General Process

24. Beginning on January 22, 2008, Citizens instructed MFM to place bids in auctions for Citizens' ARS. Citizens continued to place bids in its auctions through MFM until it was asked to stop by BNYCM *(as described in detail below)*.

25. During the period from January 22, 2008 through February 19, 2008, the following process was generally followed in connection with Citizens' bids:

a. Early on each trading day, the Broker provided Citizens with a spreadsheet that attempted to list each Citizens ARS auction that would be held on that particular day. For each ARS issue auctioning that day, the spreadsheet identified relevant information, including:

    i. The CUSIP;
    ii. The number of days in the auction period (either 7 or 28);
    iii. The next auction date;
    iv. Certain credit ratings;
    v. The relevant insurer;
    vi. Various price talk ranges from the participating broker-dealers; and
    vii. The total par value of the ARS.

b. Furthermore, the spreadsheet provided by the Broker contained columns for Citizens to identify the interest rate of its buy bid; the total number of ARS units that it was bidding for; and how it wanted the bid amount to be allocated among the relevant managing dealers.

c. When Citizens was interested in placing a buy bid, Citizens or its financial adviser completed the spreadsheet to identify the interest rate for each bid and how it wanted the total amount of its bid allocated among various managing dealers.

d. After receiving the spreadsheet from Citizens, the Broker passed this information to the MFM trading desk. The trading desk then conveyed the bids to the relevant managing dealers based upon Citizens' instructions. As a matter of industry practice, the participating broker-dealers would see the bids as an order by MFM – not Citizens.

e. After the auctions were completed for the day, MFM completed the spreadsheet to show the value of the ARS purchased by Citizens that day and identify the balance of each ARS issue still held by investors.

26. Citizens typically instructed MFM to place bids at the historical trading levels for Citizens ARS, which was generally below the price talk issued by the managing dealers. Citizens additionally instructed MFM to break up its total bids across multiple managing dealers. Neither the Broker nor the Head Trader advised supervisory personnel of these aspects of Citizens' purchase orders.

Auction Failures and Increasing Clearing Rates

27. On or about February 13, 2008, and in the days that followed, a large number of auctions for ARS failed as managing dealers stopped placing support bids in the auctions for these ARS. The clearing rates for other ARS increased significantly. During this time period, issuers and industry groups such as the Securities Industry and Financial Markets Association ("SIFMA") began looking for ways to address the market disruption and to stabilize the clearing rates for ARS. Many issuers additionally began to look for ways to refinance their outstanding ARS.

Events of February 19, 2008

28. On February 19, 2008, two significant chain of events occurred at MFM related to issuer bidding.

Another Issuer Indicates Interest in Bidding

29. On or about February 19, 2008, another ARS issuer approached a MFM employee to request that MFM place bids on behalf of the issuer for that issuer's ARS. This MFM employee discussed the issue with MFM's CFO, MFM's Compliance Officer, and BNYCM's Chief Compliance Officer. As described further in Findings of Fact 36 through 40, these discussions ultimately led to

changes in MFM's practice of placing orders on behalf of Citizens for Citizens ARS.

30. On February 19, 2008, after the Head Trader learned of the discussions related to the other issuer, he discussed Citizens with the Broker and the Trader. Despite the fact that Citizens had actually chosen its bid rates, the Head Trader told the Broker and the Trader that, if questioned about the transactions by MFM supervisory personnel, they should act as if MFM had actually suggested the rates for Citizens' bids. During this conversation, the Head Trader stated, "They're not manipulating the market, ok."..."That's our standard line".

<u>A Managing Dealer Questions the Bidding</u>

31. Shortly after the conversation described in Finding of Fact 30, a trader at one of the managing dealers contacted the Trader regarding Citizens' ARS. On February 19, 2008, MFM placed an order with the managing dealer pursuant to Citizens' specific instructions. The trader at the managing dealer asked the Trader if the order placed by MFM was actually on behalf of Citizens and stated that his broker-dealer would not allow him to accept an order directly or indirectly on behalf of an issuer for the issuer's own ARS.

32. Pursuant to MFM and industry standards, the Trader did not identify Citizens as the bidder. Instead, the Trader said that she would have to check the client account.

33. The Head Trader and the Trader then informed the Broker that the managing dealer was not going to accept the order unless MFM confirmed that the order was not on behalf of Citizens. The Broker contacted Citizens to ask if MFM could let the managing dealer know that MFM had submitted the order on behalf of Citizens. The Citizens representative stated that the managing dealers "know

that we are out there picking up our own paper," and that Citizens would decide how to proceed and let MFM know. Citizens subsequently informed MFM that it did not want to be identified as the actual bidder, and stated that Citizens' CFO "does not want them to know who we are."

34. Neither the Broker, the Head Trader, nor the Trader informed any supervisory personnel about any of these communications.

35. Ultimately, Citizens' bid order was filled by the managing dealer because it was not canceled by MFM or by the managing dealer.

Change in the Bidding Process

36. On February 20, 2008, MFM's President spoke with the Head Trader regarding Citizens' bidding activity. During this conversation, the President asked the Head Trader if Citizens was bidding at market rates, to which the Head Trader replied, "Not at current market rates, no." MFM's President was concerned with the Head Trader's response, and at one point advised him that "we cannot be setting ... arbitrarily low levels for [Citizens]".

37. On February 20, 2008, as a result of the discussions going on within MFM and BNYCM concerning the other ARS issuer, and after SIFMA circulated a no-action request to the Securities and Exchange Commission concerning issuer bids, MFM personnel discussed implementing a new process with respect to Citizens' ARS orders.

38. Under the new process, Citizens would still select the auctions in which it bid. However, the Head Trader and the Trader would select the interest rate of the bid. In doing so, the Head Trader and the Trader would select an interest rate based on the price talk issued by the relevant participating broker-dealers.

39. The new process was implemented on February 21, 2008. Prior to placing any bids for Citizens ARS on February 21, the Broker had multiple conversations with key Citizens employees and representatives. During these conversations, the Broker described the new process and discussed specific related issues.

a. One of the key issues discussed was how to handle situations where one participating dealer issued a particular price talk range and another participating dealer issued a higher range (i.e. Broker-dealer A issued price talk at 3.0 – 3.5% and Broker-dealer B issued price talk at 8 – 10%).

b. The Broker informed Citizens that MFM management would permit using the high end of the lowest price talk.

40. On February 21, MFM placed bids, on behalf of Citizens, in auctions for five Citizens ARS. Consistent with the new process, MFM bid in one auction at 3.3% because the high end of price talk for that issue was at 3.3%. However, in the other four auctions, MFM placed the bids at an interest rate of 3.50% despite the fact that the price talk for those issues was as follows:

a. In two of the issues, one managing dealer had issued price talk in the 3-3.5% range, while the other managing dealer had issued price talk in the 8-10% range. One of these issues was a 28-day ARS, and one was a 7-day ARS.

b. In the other two issues, the only price talk issued by managing dealers was 8-10%. Both of these issues were 7-day ARS.

41. In selecting the rate, the Broker, the Head Trader and the Trader focused on serving Citizens' wishes, selecting the rate from the lower price talk issued that day.

42. To this end, on February 22, 2008, the Broker said to a Citizens employee, "...I can't take a direct bid from you. But I can also, you know, work with you and make sure we get the best one out there."

43. On February 22, 2008, MFM again utilized its new process in placing bids in auctions for Citizens ARS on behalf of Citizens. Notably, on February 22, 2008, MFM executives and MFM compliance staff discussed formalizing the new process. To that end, they created written procedures describing the steps to take if an issuer wanted MFM to place bids in the issuer's auctions on behalf of the issuer. However, as described below and as a result of the efforts of BNYCM personnel, February 22 was the last day that MFM placed bids in Citizens auctions on behalf of Citizens.

Termination of Bidding on Behalf of Citizens

44. The BNYCM compliance staff led efforts to closely examine MFM's bidding on behalf of Citizens in Citizens' ARS auctions. BNYCM first learned of MFM's bidding on behalf of Citizens on or about February 21, 2008. The following day, BNYCM directed MFM to cease accepting bids from Citizens pending further review.

45. BNYCM's legal and compliance departments commenced an investigation, and on February 26, 2008, they advised MFM and Citizens that MFM would not accept any further orders from Citizens.

Impact on the Interest Rates of Citizens ARS

46. The bids placed by MFM on behalf of Citizens during the Relevant Period had a significant impact on the clearing rates set in the auctions where Citizens bid. The impact of bond insurer downgrades and credit issues in the market resulted in a general increase of the clearing rates for taxable municipal ARS. Bids

placed by MFM on behalf of Citizens during the Relevant Period impacted the clearing rates of Citizens ARS as indicated by the following table:

Table 1

Citizens ARS CUSIP id	Auction Date	Clearing rate (as impacted by Citizens bid)	Clearing rate (without Citizens bid)
AGO	1/22/2008	3.78%	4.25%
AM7	1/22/2008	3.78%	4.75%
AN5	1/22/2008	3.78%	5.50%
CL7	1/22/2008	3.78%	4.50%
CR4	1/22/2008	3.78%	5.50%
AB1	1/24/2008	3.26%	5.35%
CN3	1/24/2008	3.25%	5.00%
AT2	1/25/2008	3.29%	4.40%
AU9	1/25/2008	3.30%	4.31%
BA2	1/25/2008	3.33%	5.50%
CP8	1/25/2008	3.34%	4.00%
CU7	1/25/2008	3.31%	3.75%
AK1	1/28/2008	3.29%	4.00%
BE4	1/28/2008	3.31%	5.75%
CK9	1/28/2008	3.30%	5.00%
AC9	1/29/2008	3.20%	4.50%
AQ8	1/30/2008	3.28%	4.50%
BF1	1/30/2008	3.29%	5.75%
CM5	1/30/2008	3.27%	5.28%
AT2	2/1/2008	3.20%	4.35%
BG9	2/1/2008	5.75%	6.00%
AK1	2/4/2008	3.22%	5.25%
AL9	2/4/2008	3.19%	4.50%
BBO	2/4/2008	3.22%	5.75%
AQ8	2/6/2008	3.22%	5.25%
BC8	2/6/2008	3.23%	7.00%
AV7	2/11/2008	3.16%	5.25%
AW5	2/13/2008	3.14%	10.00%
AA3	2/14/2008	3.13%	12.00%
AR6	2/14/2008	3.12%	15.00%
AS4	2/14/2008	3.12%	12.50%
CN3	2/14/2008	3.12%	15.00%
CT0	2/14/2008	3.12%	12.00%
AK1	2/15/2008	3.12%	15.00%
AL9	2/15/2008	3.12%	10.47%
AT2	2/15/2008	3.12%	10.47%
AU9	2/15/2008	3.12%	12.00%
AX3	2/15/2008	3.13%	10.00%

Table 1 (cont'd)			
Citizens ARS CUSIP id	**Auction Date**	**Clearing rate (as impacted by Citizens bid)**	**Clearing rate (without Citizens bid)**
AY1	2/15/2008	3.13%	10.00%
CK9	2/15/2008	3.12%	10.00%
CP8	2/15/2008	3.12%	10.00%
CQ6	2/15/2008	3.12%	10.22%
CU7	2/15/2008	3.12%	10.00%
AGO	2/19/2008	3.13%	10.90%
AM7	2/19/2008	3.12%	12.00%
AN5	2/19/2008	3.12%	11.47%
CL7	2/19/2008	3.12%	10.90%
CR4	2/19/2008	3.12%	15.00%
AP0	2/20/2008	3.13%	15.00%
AQ8	2/20/2008	3.13%	9.16%
AZ8	2/20/2008	3.14%	9.60%
CM5	2/20/2008	3.13%	12.00%
CS2	2/20/2008	3.13%	8.46%
AB1	2/21/2008	3.50%	10.97%
AR6	2/21/2008	3.50%	10.97%
AS4	2/21/2008	3.30%	9.95%
CN3	2/21/2008	3.50%	10.47%
CT0	2/21/2008	3.50%	10.97%
AT2	2/22/2008	3.50%	10.00%
BA2	2/22/2008	3.50%	15.00%
CP8	2/22/2008	3.50%	7.63%
CU7	2/22/2008	3.50%	10.00%

47. During the Relevant Period, Citizens' bids through MFM reduced the clearing rate by over 520 basis points on average. Ultimately, this resulted in investors that held Citizens ARS earning approximately $6.7 million less in interest than they would have if Citizens had not bid in its own auctions.

48. The Broker, the Head Trader, and the Trader understood that Citizens' goal in bidding in its auctions was to reduce its interest expense by (i) lowering the clearing rate and (ii) preventing failed auctions that would cause Citizens to pay 15% interest to investors holding relevant Citizens ARS.

49. They also understood that holders of Citizens ARS would earn more without Citizens' bidding activity. This understanding was pointedly displayed during discussions on amending the bidding process when the Trader stated, "We have to set it at market. We can't let [Citizens] like, we can't let them put the market and gouge people, because that's what they've been doing."

50. Nonetheless, MFM never attempted to identify if its other clients were negatively impacted by MFM's activity on behalf of Citizens. In fact, MFM had one client invested in Citizens ARS during the Relevant Period.

Additional Considerations

51. The conduct described above was often based on the independent judgment of the Broker, the Head Trader, and/or the Trader.

52. Notably, the Broker, the Head Trader, and the Trader are no longer employed by BNYCM.

53. The Broker, the Head Trader, and the Trader are not currently registered with the Securities Commissioner.

Remedial Measures and Cooperation

54. Shortly after learning of and stopping the Citizens bidding activity at MFM, BNYCM took active steps to conduct an extensive internal investigation of this matter. BNYCM hired outside counsel and directed them to conduct a thorough inquiry. Counsel conducted interviews and collected documents, and BNYCM voluntarily disclosed the activity to its primary regulator.

55. BNYCM additionally pledged and provided complete cooperation to the Staff. Among other things, BNYCM ensured the preservation of evidence related to Citizens' bidding and MFM's conduct, and met repeatedly with the Staff to ensure that BNYCM had produced all relevant materials.

56. BNYCM has consistently and timely responded to the Staff's requests, and often volunteered valuable evidence related to this entire matter.

II. CONCLUSIONS OF LAW

1. The TSSB has jurisdiction over this matter pursuant to Sections 14, 28, and 23-1 of the Texas Securities Act.

2. Respondent's conduct described in the Findings of Fact constitutes: (1) inequitable practices in connection with the sale of securities and (2) failures to establish, maintain, and enforce reasonably designed supervisory procedures in violation of §115.10(b)(1) of the Rules and Regulations of the Texas State Securities Board.

III. ORDER

1. It is therefore ORDERED that BNY Mellon Capital Markets, LLC is hereby reprimanded.

2. It is further ORDERED that BNY Mellon Capital Markets, LLC is hereby ASSESSED AN ADMINISTRATIVE FINE in the amount of Five Hundred Thousand Dollars ($500,000.00). Payment shall be made in the amount of Five Hundred Thousand Dollars ($500,000.00), payable to the State of Texas, within ten (10) days of the date of this Order.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 22nd day of December, 2011.

John R. Morgan

JOHN R. MORGAN
Securities Commissioner

Respondent:

BNY Mellon Capital Markets, LLC

By: John M. Gavin, Jr., CFO/CAO

Approved as to Form:

Ronak V. Patel
Director
Inspections and Compliance Division

Reid M. Figel, Esq.
Attorney for Respondent

Respondent:

BNY Mellon Capital Markets, LLC

By: John M. Gavin, Jr., CFO/CAO

Approved as to Form:

Ronak V. Patel
Director
Inspections and Compliance Division

Reid M. Figel, Esq.
Attorney for Respondent

ACKNOWLEDGMENT

On the 21 day of December, 2011, BNY Mellon Capital Markets, LLC ("Respondent"), by and through John M. Gavin, Jr., its Chief Financial Officer and Chief Administrative Officer, personally appeared before me, executed the foregoing Order, and acknowledged that:

1. John M. Gavin, Jr. is duly authorized to enter into the foregoing Order on behalf of Respondent;

2. John M. Gavin, Jr. has read the foregoing Order;

3. Respondent has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;

4. Respondent knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained therein; and,

5. Respondent, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.

Notary Public in and for
the State of New York

My commission expires on: April 8, 2014

[affix notary seal here]

CHRISTOPHER P. RONCO
NOTARY PUBLIC, State of New York
No. 01RO6072541
Qualified in Westchester County
Commission Expires April 8, 20 14