# Foreign Kickshaws

***by Bill Johnston***

## BNY Mellon

The world's largest global custody bank by safe custody assets, the Bank of New York Mellon, has been fined £126m by the UK's regulator, the Financial Conduct Authority (FCA), for breaking rules designed to protect more than £1tn worth of assets held on behalf of UK-based clients.

The bank stands accused of "failing to implement adequate organisational arrangements for safeguarding client assets" and ignoring rules published by the FCA in 2010 aimed at protecting client custody assets in the event of insolvency by keeping what are known as "entity specific records".

Regulations obliging custodians to keep specific records about each client and their assets and accounts are in place to help an Insolvency Practitioner identify who owns which assets and ensure for these to be returned to them as quickly as possible.

BNY Mellon failed to keep clients' money separate from its own funds and used global platforms to manage clients' safe custody assets instead, making it impossible to maintain books and records on an entity-specific basis. More worryingly still, some clients' assets lodged in omnibus accounts, were being used without consent to settle other clients' trades, highlighting once again the continued issue in terms of shareholder rights for those investors **whose shareholdings are stuck in such nominee or omnibus accounts (!)**

## Deutsche Bank

Deutsche Bank, one of Europe's largest investment banks, is making headlines again. As one of the most highly leveraged banks in Europe at the beginning of the crisis, the bank has been subject to continuous scrutiny by the press, seeing the bank's persistent failure to adequately deal with the fallout of regulatory fines and address its chronic undercapitalization.

Now Germany's largest association for private investors and Better Finance member http://www.betterfinance.eu/membership/member-organisations/#germany organization, the Deutsche Schutzvereinigung für Wertpapierbesitz or DSW http://www.dsw-info.de/, is taking the bull by the horns in the name of the banks private investors by requesting the appointment of a special auditor to investigate whether the management and supervisory board of Deutsche Bank violated their legal duties and thereby harmed the company.

On the one hand, DSW is calling for an external special audit into the adequacy of the reserves established by Deutsche Bank in view of the risks deriving from all the ongoing legal and supervisory proceedings against the bank. At the very least the special audit should cover the 20 largest legal proceedings against the bank, including the international investigation into the manipulation of interbank offered lending rates, also known as the LIBOR http://www.bloomberg.com/news/articles/2014-08-03/bafin-extends-deutsche-bank-libor-investigation-spiegel-says scandal.

On the other hand, the audit should look into whether all necessary preparations and precautions are taken in terms of compliance with the outcome of the legal proceedings, in order to identify and avoid similar cases in the future.

DSW added this request for a special audit to the agenda of the Deutsche Bank's annual general meeting of 21 May 2015, in order for the bank's shareholders to be adequately informed about the established reserves that are necessary to ensure the bank's future profitability. Shareholders who would like to support DSW's proposals should contact DSW directly via dsw@dsw-info.de.

For more information, please consult the agenda https://hauptversammlung.db.com/en/docs/HV2015_Agenda_Extension.pdf of Deutsche Bank's annual general meeting.

***Recently a fresh opportunity has arisen to be involved with a part of the European Securities and Markets Authority regulator based in Paris and known by the acronym ESMA. We consider it a singular mark of approbation that our own Roger Collinge has been invited to join this important body.***

ESMA's website says its mission is to enhance the protection of investors and reinforce stable and well-functioning financial markets in the European Union. ESMA, as an independent EU Authority, says it achieves this mission by building a single rule book for EU financial markets and ensuring its consistent application and supervision across the EU. It has a division which deals with reporting and a part of that division has what it calls a Consultative Working Group. Roger Collinge has been appointed to that Group and we regard this as good opportunity to further our agenda in a new forum, this time European.

Roger is keen to hear of any contact any member may have had with ESMA and also of any comments members may like to make. Please contact him at uksa@uksa.org.uk.