

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of
PricewaterhouseCoopers LLP

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SETTLEMENT AGREEMENT

This Agreement (“Settlement Agreement”), in accordance with New York State Banking Law § 36.10 and Financial Services Law § 302(a), is made and entered by and between PricewaterhouseCoopers LLP, a Delaware limited liability partnership (“PwC”), and the New York State Department of Financial Services (the “Department” or “DFS”) (collectively, the “Parties”) to resolve the Department’s investigation of PwC’s actions in performing certain consulting services for the Tokyo Branch of The Bank of Tokyo-Mitsubishi UFJ, Ltd. (“BTMU” or the “Bank”) in 2007 and 2008, and to establish the basis for a constructive relationship between the Parties that will better protect investors and the public.

Introduction

On June 20, 2013, BTMU and the Department executed a consent order pursuant to New York Banking Law § 44 (“Consent Order”). The Consent Order resolved DFS charges that, from at least 2002 to 2007, BTMU had unlawfully cleared through the Bank’s New York State licensed branch (“BTMU NY”) approximately 28,000 U.S. dollar payments, valued at approximately \$100 billion.¹ These improper payments involved Iran, Sudan, Myanmar, and certain entities on the Specially Designated Nationals (“SDNs”) list issued by the U.S. Treasury

¹ U.S. dollar clearing is the process by which U.S. dollar-denominated transactions are satisfied between counterparties through a U.S. bank. The Society of Worldwide Interbank Financial Telecommunications (“SWIFT”) is a vehicle through which banks exchange wire transfer messages with other financial institutions, including U.S. correspondent banks. SWIFT messages contain various informational fields.

Department's Office of Foreign Asset Control ("OFAC"). The 2013 Consent Order required BTMU to: (1) pay a penalty of two hundred and fifty million U.S. dollars (\$250,000,000); and (2) hire an independent consultant to conduct a comprehensive review of the BSA/AML related sanctions compliance programs, policies, and procedures currently in place at BTMU NY.²

From approximately June 2007 through June 2008, a unit of PwC's Advisory practice conducted a Historical Transaction Review ("HTR") for BTMU. The HTR analyzed BTMU's U.S. dollar clearing activity between April 1, 2006 and March 31, 2007. Its purpose was to: (1) identify any U.S. dollar transactions that potentially should have been frozen, blocked or reported under applicable OFAC requirements; and (2) investigate the relevant transaction set for compliance with OFAC requirements. In June 2008, BTMU submitted PwC's HTR report ("HTR Report") to the Department's predecessor agency (New York State Banking Department), as well as to several other U.S. regulators. The HTR Report stated that it was the product of an objective³ and methodologically sound process. The HTR provided the cornerstone for the Consent Order. In 2013, after a year-long investigation into BTMU's past U.S. dollar clearing activities, the Department and the Bank agreed to use the HTR's findings as a basis to extrapolate the approximate number of improper transactions processed by BTMU NY from 2002 through 2007. DFS required that information in order to accurately assess the scope of the Bank's misconduct and thereby fix an appropriate penalty.

² See, *In the Matter of the Bank of Tokyo Mitsubishi –UJF, Ltd., New York Branch*, Consent Order Pursuant to Banking Law § 44, June 20, 2013. <http://www.dfs.ny.gov/about/press2013/pr201306201-tokyo.pdf>.

³ PwC represented to U.S. regulators that its services "were performed in accordance with standards for consulting established by the American Institute of Certified Public Accountants." HR Report at PwC-BTMU 0004307. Those standards include "serving the client interest by seeking to accomplish the objectives [of the engagement] while maintaining integrity and objectivity." <http://www.aicpa.org/interestareas/forensicandvaluation/resources/standards/pages/statement%20on%20standards%20for%20consulting%20services%20no.aspx> at 3.

After entering into the Consent Order, the Department continued its investigation, focusing its inquiry on the Bank's dealings with PwC. To that end, DFS reviewed voluminous documents and took sworn testimony from eight current and former PwC professionals who worked on the HTR.

Now, having fully considered the evidence, the Department and PwC agree that PwC's work as a consultant for the Bank in this matter did not demonstrate the necessary objectivity, integrity, and autonomy that is now required of consultants performing regulatory compliance work for entities supervised by the Department. At BTMU's request, PwC removed from a draft of the HTR Report a statement that, had it known from the outset of the HTR about BTMU's written instructions to strip wire messages, PwC would have recommended that BTMU undertake a forensic review of its wire transfers. PwC should have included such an express statement of its views in the HTR Report to ensure complete disclosure to the Department of potential serious limitations on the HTR process in light of the written instructions. Furthermore, PwC repeatedly acceded to the Bank's demands and redrafted the HTR Report in ways that omitted or downplayed issues of material regulatory concern.

The Department has found no evidence that PwC unlawfully advanced or participated in the conduct by BTMU giving rise to the Consent Decree.

ACCORDINGLY, in order to resolve this matter without further proceedings, the Parties agree upon the following facts and settlement provisions:

Factual Background

1. In June 2007, BTMU engaged PwC to perform the HTR. PwC completed its work one year later when it finalized the HTR Report in June 2008.
2. Two PwC partners ("Lead Partner" and "Supervising Partner") were responsible for supervising the HTR. They are now both retired from PwC.

3. During the HTR, Lead Partner was the lead partner for PwC's Regulatory Advisory Services Group ("RAS") and the lead partner for the BTMU engagement. Lead Partner was also PwC's relationship partner for BTMU and all of its affiliates, and was therefore responsible for coordinating and facilitating client relations on all BTMU matters firm wide.

4. On May 1, 2008, prior to completing the HTR Report, the Bank and PwC representatives made an interim presentation to several U.S. regulators, including the Department's predecessor agency. At that presentation, a very senior BTMU official denied ever having stripped wire transfer messages of information that, if detected, would have triggered screening alerts for potential OFAC violations.

5. On May 23, 2008, for the very first time, the Bank disclosed to PwC a written BTMU policy to strip wire messages of information related to OFAC sanctioned countries. The Bank had included these instructions in its administrative procedures manual for foreign transfers.

6. PwC understood that improper data manipulation could significantly compromise the HTR's integrity.

7. Accordingly, in drafting the HTR Report, Lead Partner inserted into the draft an express acknowledgement informing regulators that "had PwC know[n] about these special instructions at the initial Phase of the HTR then we would have used a different approach in completing this project," a reference to the fact that PwC would have recommended at the beginning of the HTR that BTMU undertake a forensic review of its wire transfers.

8. At the Bank's request, PwC removed this statement from the final HTR Report and inserted: "[W]e have concluded that the written instructions would not have impacted the

completeness of the data available for the HTR and our methodology to process and search the HTR data was appropriate.”⁴

9. PwC did not inform regulators that the HTR should have been conducted as a forensic review.

10. At the Bank’s request, PwC also removed other information from drafts of the HTR Report. Those revisions included:

- deleting the English translation of BTMU’s wire stripping instructions, which referenced the Bank doing business with “enemy countries” of the U.S;
- deleting a regulatory term of art that PwC used throughout the report in describing BTMU’s wire-stripping instructions (“Special Instruction”) and replacing it with a nondescript reference that lacked regulatory significance (“Written Instruction”);
- deleting most of PwC’s discussion of BTMU’s wire-stripping activities;
- deleting information concerning BTMU’s potential misuse of OFAC screening software in connection with its wire-stripping activities;
- deleting several forensic questions that PwC identified as necessary for consideration in connection with the HTR Report; and
- deleting a section of the HTR Report that discussed the appearance of special characters (such as “#” “-” and “;”) in wire transfer messages, which prevented PwC’s filtering system from detecting at least several transactions involving Sudan and Myanmar.

11. Attached as Exhibit A are four versions of the relevant section of the HTR Report, each containing changes demanded by the Bank. The first three documents are late-stage drafts

⁴ BTMU’s counsel essentially dictated this statement to PwC. In an email forwarded to PwC, BTMU’s counsel stated that he “expected” the sentence to read something like:

Based on our further review, we have concluded (1) that knowledge of the written instructions would not have impacted the completeness of the data available for the HTR and (2) our methodology to process, search, and review the HTR data was appropriate.

of the HTR Report and the last document is the final version of the report that the Bank submitted to U.S. regulators.

12. During the HTR, a PwC director (“Director”) led the firm’s technology and data collection team. Director is presently a PwC partner.

13. On numerous occasions, Director made statements in emails to PwC partners and employees that elevated his apparent concern for client satisfaction over the need for objective inquiry. Director repeatedly suggested in emails that further analysis in certain areas might reveal wrongdoing by BTMU and was therefore best avoided. Those statements included:

- To “raise an issue of data completeness at this point does not do anyone, *especially the bank*, any good.” (emphasis added).
- There is “no tangible benefit by doing data mining [for missing wire messages involving improper transactions]. *It can only raise questions.*” (emphasis added).
- I’m not advocating looking for anything in the cases deemed allowable because if you find something at this point it will *open up a whole other can of worms* at this point.” (emphasis added).
- Warning that a PwC memorandum stating that language stripped from a wire message would “likely have resulted in [OFAC] alerts in the U.S.” was “probably correct, but the bank or [its attorneys] may *get all twisted up* about this affirmative statement.” (emphasis added).
- “I don’t recall OFAC asking for this and if we do find information it points the finger at another bank, *it will not make BTMU any more friends*. Just want to make sure I understand the request and that we are *sensitive* to how we work with the bank.” (emphasis added).

14. No one at PwC reprimanded or even told Director that his comments were inappropriate because they drew the firm's objectivity seriously into question.

15. This failure to repudiate Director's statements communicated a bad message to PwC engagement team members copied on the emails and anyone else who reviewed the emails. At the very least, that message silently endorsed Director's seeming willingness to compromise professional conduct in order to satisfy an important client. Nonetheless, in 2013, PwC promoted Director to partner.

Settlement Provisions

A. Monetary Payment

16. Within five (5) business days of executing the Settlement Agreement, PwC will pay to the Department twenty-five million U.S. dollars (\$25,000,000). This payment represents in the aggregate a penalty that the Department believes is commensurate with the misconduct, the approximate amount of fees and expenses received by PwC for its work on the HTR, and reimbursement to the Department for the costs of its investigation and for the costs to be incurred by the Department in connection with the development and implementation of the procedures and safeguards required by the Settlement Agreement. PwC will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the monetary penalty paid pursuant to this Settlement Agreement.

B. Monetary Impact on Director

17. After Director's misconduct during the engagement came to light during the Department's investigation, PwC withheld over 20% of Director's compensation.

C. Practice Reforms

18. PwC will establish and implement, as promptly as possible but in any event within twelve (12) months from the date of this Agreement, the procedures and safeguards for engagements set forth in Exhibit B, which are intended to raise the standards now generally viewed as applicable to independent financial services consultants. The specific design and implementation of these procedures are subject to such modification or refinement as may be agreed between PwC and the Department on the basis of further analysis and experience. The Department and PwC will meet regularly to discuss PwC's progress in implementing these procedures and safeguards.

D. Voluntary Abstention from Department Engagements

19. For twenty-four (24) months from the date of this Settlement Agreement, while it develops and implements the procedures and safeguards described above, PwC RAS will not accept any new engagements that would require the Department to approve PwC RAS as an independent consultant or to authorize the disclosure of confidential information under New York Banking Law §36.10 to PwC RAS.⁵

E. Breach of the Settlement Agreement

20. In the event that PwC is in material breach of the Settlement Agreement ("Breach"), the Department will provide written notice to PwC of the Breach and PwC must, within ten (10) business days from the date of receipt of such notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department to explain why no Breach has occurred or, to the extent pertinent, that the Breach is not material or has been cured.

⁵ Within 14 days, PwC will provide to the Department a list of RAS personnel and will provide an updated list every six months during the pendency of the abstention.

21. The Parties understand and agree that PwC's failure to timely appear before the Department in response to a notice provided in accordance with Paragraph 20 is presumptive evidence of PwC's Breach. Upon a finding of a Breach, the Department has all remedies available to it under the New York Banking and Financial Services Laws, and may use any and all evidence available to the Department for all ensuing hearings, notices, orders and other remedies that may be available under the Banking and Financial Services Laws.

F. Waiver of Rights

22. The Parties further understand and agree that no provision of the Settlement Agreement is subject to review in any court or tribunal outside the Department.

G. Parties Bound by the Settlement Agreement

23. The Settlement Agreement is binding on the Department and PwC, as well as their successors and assigns, but it specifically does not bind any federal or other state agencies or any law enforcement authorities.

24. No further action will be taken by the Department against PwC or any of PwC's past and present partners, principals or employees for conduct related to the HTR, provided that PwC complies with the terms of the Settlement Agreement. The Department will not consider PwC's role in the BTMU matter in determining whether to retain or approve PwC as an independent consultant, or in authorizing the disclosure of confidential information to PwC, in future engagements.

25. At the time PwC has fully complied with the terms of the Settlement Agreement, the Department will confirm such compliance in writing and PwC will be permitted to share the Department's written confirmation of compliance with prospective clients and other third parties.

26. This Settlement Agreement is not intended to affect engagements performed by any practice within PwC other than PwC's regulatory advisory unit. Neither the fact of this Settlement Agreement nor any of its terms is intended to be, or should be construed as, a reflection on any of the other practices within PwC, or on the standing of those practices before the Department.

Notices

All communications regarding the Agreement shall be sent to:

Department of Financial Services

Daniel S. Alter
General Counsel
New York State Department of Financial Services
One State Street
New York, NY 10004

PwC

Zachary D. Stern
Deputy General Counsel
PricewaterhouseCoopers LLP
300 Madison Avenue
New York, NY 10017

James H.R. Windels
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017

Miscellaneous

27. This Agreement may not be amended except by an instrument in writing signed on behalf of all Parties to this Agreement.

28. Each provision of the Agreement will remain in force and effect until stayed, modified, terminated or suspended in writing by the Department.

29. No promise, assurance, representation, or understanding other than those contained in the Agreement has been made to induce any party to agree to the provisions of the Agreement.

30. PwC shall, upon request by the Department, provide all documentation and information reasonably necessary for the Department to verify compliance with the Agreement.

31. This Agreement shall be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this 14th day of August, 2014.

PricewaterhouseCoopers LLP

By: Diana Weiss
Diana Weiss
General Counsel

New York State Department
of Financial Services

By: Benjamin M. Lawsky 8/18/14
Benjamin M. Lawsky
Superintendent

EXHIBIT A

Excerpt of Draft HTR

Suggested Edits from the Bank

Edits have not been agreed to by PwC and the changes reflected below are to aid our discussion

E. Subsequent Events (to be updated)

During the week of May 19, 2008 PwC became aware of several issues that were not addressed in our presentations to the Regulatory Group on April 30, 2008 and May 1, 2008.

Special-Written Operational Instructions

The Bank disclosed to PwC the existence of special-written operational instructions found in the "GSC (Global Service Center) Administrative Procedures 'Foreign Transfers' last modified on July 31, 2004". On May 22, 2008, Sullivan and Cromwell LLP provided us with the English translation of Section 1.3 of this document:

~~Banks located in countries designated by the U.S. as enemy countries hold their U.S. dollar accounts outside of the U.S. Upon receipt of U.S. dollar-denominated payment orders of which the ordering or receiving bank is such bank, use the cover payment method and not the one payment method.~~

~~The method for filling out vouchers is the same as in "Section 2 - Payments to Other Banks Located in Japan." However, exert care to avoid the funds being frozen by, among other means, providing our Bank as the ordering bank and not specifying the final receiving bank (the name of the enemy country) and the payment details, in payment orders directed to the U.S.~~

As a result of the cover payment method described above, the Bank's wire messages sent to the U.S. would not have included the names of the ordering bank or final receiving bank. Upon learning of these specialwritten operational instructions, PwC evaluated their impact on the HTR findings, and considered the following questions: (1) Did the use of cover payments impact the completeness of the HTR data? (2) How were these instructions developed and implemented? (3) Did other operating divisions of the Bank have similar instructions? (4) Did operations intentionally leave out information that would have resulted in an OFAC alert?

The Bank's cover payment method generally consisted of MT 103 messages between non-U.S. originating and receiving banks and cover MT 202 messages that were sent to the U.S. correspondent banks. As described in more detail in the Data, Preparations and Analysis section of this Report, whenever wire messages contained a common reference number the messages were linked together into a Case. The linked underlying MT 103 message to the cover MT 202 message would have included the bank information that was not sent to the US Banks. The Bank has informed PwC that the specialwritten operational instructions would not have impacted the data available for the HTR. While we agree in theory, had PwC know about these "SpecialWritten Operational Instructions" at the initial Phase of the HTR then we would have used a different approach for completing this project.

The remaining questions, such as, concerning the development, implementation and existence of similar specialwritten operational instructions procedures as well as the intentional omission of search terms are being investigated by the Bank's Internal Audit Office ("IAO") with the assistance of outside Japanese counsel. The potential impact from the findings from this investigation will need to be considered when evaluating this Report.

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06/11/2008

Excerpt of Draft HTR

Altered Wire Messages Resulting From HotScan Hits

The second issue occurred when supporting documentation from HotScan showed the search term hits for OFAC-sanctioned countries was found for nine Priority Cases. The concern was over how these transactions were processed after HotScan identification. These wires were stopped by the Bank's HotScan operations in Tokyo and either restructured as a cover payment (seven Cases) or the MT 103 message was cancelled and re-sent after the term(s) identified by the HotScan were removed (two Cases).

~~After PwC identified these re-sent messages in the Priority cases, an initial analysis of Allowable cases was performed to review cases that contained multiple MT-103 messages. This analysis found ten cancelled messages with the same issue as the Priority cases in that the message was resent after the search terms were removed. Case analysis for these ten transactions included the review of the cancelled messages with the HotScan alerts that were later removed and concluded that these ten cases were Allowable. The ten cancelled messages that were identified contained six transactions that were restructured using the cover payment method so that the MT-103 message containing the search terms was never sent to the U.S. and the remaining four transactions the MT-103 message was re-sent without the search terms.~~

Management explained to PwC that these cancelled wires were never dispatched and therefore not sent outside of BTMU-Tokyo. Further, Management believed that the HTR data captured all cancelled wire messages with the search terms that were later removed. The IAO investigation should address the compliance issue that resulted when the Bank's HotScan operation identified wire messages that were potentially restricted by OFAC, and returned them to be reworked by a Branch in Japan in an effort to circumvent OFAC HotScan checking.

~~PwC's discovery of the altered wire messages resulting from HotScan hits raised concern over the completeness of the data and resulted in the following question: If the original message was cancelled, was it included in the HTR data? In an effort to gain additional comfort that the original messages that contained the HotScan hits were included in the data provided to PwC, we requested (1) a HotScan-generated report for all hits during the HTR period and (2) supporting documentation for these cancelled messages. In response to this request, the Bank explained that a HotScan report was not available for the HTR period and provided us with supporting documentation for 91 cancelled messages. The bank represented that these 91 transactions were the entire population of wire messages that were blocked by the HotScan operation in Tokyo during the HTR. The bank indicated that there were more HotScan hits in addition to the 91 provided, but they were released or cleared. The Bank was unable to quantify the number of HotScan hits that were released during the HTR. PwC understands that HotScan can generate a "Hit Report", but BTMU did not use this feature until February 2008.~~

PwC found that all 91 wire transactions, including the cancelled and resent messages, were included in the data provided to PwC with the exception of one transaction that was covered by the Consigned Contract Data. These cancelled wire messages were found in the HTR data in their original state with the HotScan alert. Our review of HotScan search term hits for these 91 transactions found that 66 were within the scope of the HTR and the remaining 25 transactions either did not involve one of the six target countries or the transaction was not conducted in U.S. dollars.

In our April 30, 2008 and May 1, 2008 presentations to Regulatory Group, we reported that the number of total cases reviewed was 11,325. As a result of the analysis of additional

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6/11/2008

Excerpt of Draft HTR

HotScan documentation the total cases reviewed increased to 11,330 and our number of Priority Cases increased by three. The additional priority cases were the result of wires transfers to Sudan and Burma that cleared through a U.S. bank and the original wire messages that contained the alerts were cancelled and resent without the HotScan alert. The details for these three priority cases (14234, 14235 and 14236) are described in Appendices I and J.

Separate from the analysis described above, there was one Case that changed from Priority to Allowable since the beneficiary bank was previously considered to be a branch of a US bank when it was in fact a subsidiary and therefore qualified for the U-Turn exemption. The total number of Priority Cases that was previously reported as 190 increased to 192, the net effect of the three additions and one subtraction.

Data Processing

As a result of the review of the HotScan data additional cases were identified for investigation. One of the cases was flagged by HotScan on the word "Sudan". The wire was in the HTR population; however it was not identified as a Case. This was due to the tag 70 field of the MT 103 message containing a hyphen before the word Sudan. This text in the field was "Remittance Information/Regulatory Reporting-Sudan-Related-Business Accountability-Consultation".

Subsequent investigation showed that BTMU's ALT system merges two SWIFT message tags together into one field. These tags are tag 70 (Remittance Information) and tag 77B (Regulatory Reporting). Both of these tags are freeform text fields and were provided to PwC as the merged field. To annotate this data in the HTR population as the merged result of two message tags, the label "Remittance Information/Regulatory Reporting-" was inserted into the corresponding field in the HTR database. No extra space was put after the hyphen, resulting in the label being inserted directly next to the beginning of the text in the field.

As described in the Search Term Methodology section of this report, the Code matching approach uses a space before and after the search term. As the term Sudan was searched as Code, this Case was not identified due to the hyphen directly before Sudan. As of the date of publishing this report, we did not further investigate the contents of this field.

Another new case was identified resulting from the search term Sudan having a pound sign in front of the term (e.g., #SUDAN). Subsequent review of our project documentation indicated that ALT data was processed by the Bank into a more usable format by using code to convert UNIX linebreaks (carriage returns) into pound signs (#). As carriage returns were randomly dispersed throughout the data, in some instances # symbols appear embedded in terms that were split across two lines of text in the wire. The example #SUDAN is one of these cases and would have caused the Code search methodology not to work. As of the date of publishing this report, we did not further investigate the impact of carriage returns.

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6/11/2008

Excerpt of Draft HTR

Subsequent Events [INSERT]

During the week of May 19, 2008 PwC became aware of two issues that were not addressed in our presentations to the Regulatory Group on April 30, 2008 and May 1, 2008.

Cancelled Wire Messages

While PwC was responding to questions raised at the May 1, 2008 presentation to the Regulatory Group, supporting HotScan documentation for nine Priority Cases was analyzed. This documentation showed the HotScan hits for OFAC-sanctioned countries and the corresponding wire messages stopped by the Bank's HotScan operations in Tokyo. These stopped transactions were either restructured as a cover payment (seven Cases) or the MT 103 message was cancelled and re-sent after the term(s) identified by HotScan were removed (two Cases). In addition, based on our initial analysis, we identified ten additional non-Priority cases where it appeared that the initial MT 103 message had been modified or restructured.

PwC's discovery of the cancelled wire messages resulting from HotScan hits raised concern over the completeness of the data and resulted in the following question: If the original message that contained the HotScan hit was cancelled, was it included in the HTR data?

Management explained to PwC that these cancelled wires were never dispatched and therefore not sent outside of BTMU-Tokyo and that the HTR data captured all cancelled wire messages with the search terms that were later removed. In order to determine that the HotScan hits were included in the data provided to PwC, we requested (1) a HotScan-generated report for all hits during the HTR period and (2) supporting documentation for these cancelled messages. In response to this request, the Bank explained that a HotScan report was not available for the HTR period and provided us with supporting documentation for 91 cancelled messages. The bank represented to PwC that these 91 transactions were the entire population of wire messages that were blocked by the HotScan operation in Tokyo during the HTR.

PwC found that all 91 wire transactions, including the cancelled and re-sent messages, were included in the data provided to PwC with the exception of one transaction that was covered by the Consigned Contract Data.

Additional Cases

In our April 30, 2008 and May 1, 2008 presentations to Regulatory Group, we reported that the number of total cases reviewed was 11,325. As a result of the analysis of additional HotScan documentation, an additional five cases were identified for review and increased our total to 11,330. These five cases involved wire transfers to Sudan and Burma and cleared through a U.S. bank.

The review of the five cases resulted in three additional priority cases (14234, 14235 and 14236) that are described in Appendices I and J. In addition to these five Cases, there was one Case that changed from Priority to Allowable because the beneficiary bank had

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06/16/2008

Excerpt of Draft HTR

been incorrectly identified as a foreign branch of a US bank instead of a subsidiary and therefore qualified for the U-Turn exemption. The total number of Priority Cases that was previously reported as 190 increased to 192, the net effect of the three additions and one subtraction.

Written Operational Instructions

Shortly after the Bank disclosed to OFAC the existence of written operational instructions, PwC was provided a copy of the *GSC (Global Service Center) Administrative Procedures 'Foreign Transfers'*. Management's Report to OFAC included the following description:

These instructions were mainly for U.S. dollar payment orders relating to vostro accounts of banks in countries sanctioned by the United States. The instructions were to use the cover payment method, to indicate our Bank as the ordering bank and not to include the name of the final receiving bank, so that the funds would not be frozen.

Upon learning of these written operational instructions, PwC evaluated the use of cover payments on the completeness of the HTR data. The scope of the HTR did not include a forensic investigation or process review to understand the full impact of these written instructions on the operation of BTMU's international wire remittance and trade finance activity.

The Bank's cover payment method generally consisted of MT 103 messages between non-U.S. originating and receiving banks and cover MT 202 messages that were sent to the U.S. correspondent banks. As described in more detail in the Data, Preparations and Analysis section of this Report, whenever wire messages contained a common reference number the messages were linked together into a Case. The linked underlying MT 103 message to the cover MT 202 message would have included the bank information that was not sent to the US Banks. Alternatively, a cover MT 202 without mention of a search term and did not contain a common reference number would not have been linked to the underlying MT 103 message. Thus, this un-linked MT 202 message would not have been identified for detailed review. Based on the assumption that a common reference number was available, our understanding is that the written instructions would not have impacted the completeness of data available for the HTR and our methodology to process, search and review the HTR data was appropriate.

Impact of the IAO Investigation

Management informed PwC that as a result of these subsequent events, BTMU's Internal Audit Office has initiated an investigation as described in Management's Report to OFAC. Their findings from this investigation need to be considered when evaluating this Report. PwC has forwarded our initial findings relating to cancelled wire messages to Management to be further analyzed as part of the Internal Audit Office investigation.

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06/16/2008

Excerpt of Draft HTR

Subsequent Events [INSERT]

During the week of May 19, 2008 PwC became aware of two issues that were not addressed in our presentations to the Regulatory Group on April 30, 2008 and May 1, 2008.

Cancelled Wire Messages

~~While PwC was responding to questions raised at the~~ After the April 30 and May 1, 2008 presentations to the Regulatory Group, supporting HotScan documentation for ~~nine~~ Priority Cases was analyzed for quality control purposes. This documentation showed the HotScan hits for OFAC-sanctioned countries and the corresponding wire messages stopped by the Bank's HotScan operations in Tokyo. Through our analysis, we noted that nine of these stopped transactions were either restructured as a cover payment (sixteen Cases) or the MT 103 message was cancelled and re-sent after the term(s) identified by HotScan were removed (threetwo Cases). In addition, based on our initial analysis, we identified ten additional non-Priority cases where it appeared that the initial MT 103 message had been modified or restructured.

PwC's discovery of the cancelled wire messages resulting from HotScan hits raised concern over the completeness of the data and resulted in the following question: If the original message that contained the HotScan hit was cancelled, was it included in the HTR data?

Management explained to PwC that these cancelled wires were never dispatched and therefore not sent outside of BTMU-Tokyo and that the HTR data captured all cancelled wire messages with the search terms that were later removed. In order to determine that the HotScan hits were included in the data provided to PwC, we requested (1) a HotScan-generated report for all hits during the HTR period and (2) supporting documentation for these cancelled messages. In response to this request, the Bank explained that a HotScan report was not available for the HTR period and provided us with supporting documentation for 91 cancelled messages. The bank represented to PwC that these 91 transactions were the entire population of wire messages that were blocked by the HotScan operation in Tokyo during the HTR.

PwC found that all 91 wire transactions, including the cancelled and re-sent messages, were included in the data provided to PwC with the exception of one transaction that was covered by the Consigned Contract Data.

Additional Cases

In our April 30, 2008 and May 1, 2008 presentations to Regulatory Group, we reported that the number of total cases reviewed was 11,325. As a result of the analysis of additional HotScan documentation, an additional five cases were identified for review and increased our total to 11,330. These five cases involved wire transfers to Sudan and Burma and cleared through a U.S. bank.

The review of the five cases resulted in three additional priority cases (14234, 14235 and 14236) that are described in Appendices I and J. In addition to these five Cases, there

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06/17/2008

Excerpt of Draft HTR

was one Case that changed from Priority to Allowable because the beneficiary bank had been incorrectly identified as a foreign branch of a US bank instead of a subsidiary and therefore qualified for the U-Turn exemption. The total number of Priority Cases that was previously reported as 190 increased to 192, the net effect of the three additions and one subtraction.

Written Operational Instructions

Shortly after the Bank disclosed to OFAC the existence of written operational instructions, PwC was provided a copy of the *GSC (Global Service Center) Administrative Procedures 'Foreign Transfers'*. Management's Report to OFAC included the following description:

These instructions were mainly for U.S. dollar payment orders relating to vostro accounts of banks in countries sanctioned by the United States. The instructions were to use the cover payment method, to indicate our Bank as the ordering bank and not to include the name of the final receiving bank, so that the funds would not be frozen.

Upon learning of these written operational instructions, PwC evaluated the use of cover payments on the completeness of the HTR data. The scope of the HTR did not include a forensic investigation or process review to understand the full impact of these written instructions on the operation of BTMU's international wire remittance and trade finance activity.

The Bank's cover payment method generally consisted of MT 103/202 messages between non-U.S. originating and receiving banks and cover MT 202 messages that were sent to the U.S. correspondent banks. As described in more detail in the Data, Preparations and Analysis section of this Report, whenever wire messages contained a common reference number the messages were then linked together into a Case. The linked underlying MT 103/202 messages to the cover MT 202 message would have included the bank information that was not sent to the US Banks. ~~Alternatively, a cover MT 202 without mention of a search term and did not contain a common reference number would not have been linked to the underlying MT 103 message. Thus, this un-linked MT 202 message would not have been identified for detailed review. Based on the assumption that a common reference number was available, our understanding is that the written instructions would not have impacted the completeness of data available for the HTR, and our methodology to process, search and review the HTR data was appropriate.~~

Impact of the IAO Investigation

Management informed PwC that as a result of these subsequent events, BTMU's Internal Audit Office has initiated an investigation as described in Management's Report to OFAC. Their findings from this investigation need to be considered when evaluating this Report. PwC has forwarded our initial findings relating to cancelled wire messages to Management to be further analyzed as part of the Internal Audit Office investigation.

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E. Subsequent Events

During the week of May 19, 2008 PwC became aware of some issues that were not addressed in our presentations to the Regulatory Group on April 30, 2008 and May 1, 2008.

Canceled Wire Messages

After the April 30 and May 1, 2008 presentations to the Regulatory Group, supporting HotScan documentation for Priority Cases was analyzed for quality control purposes. This documentation showed the HotScan hits for OFAC-sanctioned countries and the corresponding wire messages stopped by the Bank's HotScan operations in Tokyo. Through our analysis, we noted that nine of these stopped transactions were restructured as a cover payment (4 cases), or the MT 103 message was canceled and re-sent after the term(s) identified by HotScan were removed (4 cases), or were restructured as a cover payment and the search term removed in the MT 103 (1 case). In addition, based on our initial analysis, we identified ten additional non-Priority cases where it appeared that the initial MT 103 message had been modified or restructured. PwC's discovery of the canceled wire messages resulting from HotScan hits raised concern over the completeness of the data and resulted in the following question: If the original message that contained the HotScan hit was canceled, was it included in the HTR data?

Management explained to PwC that these canceled wires were never dispatched and therefore not sent outside of BTMU-TKY and that the HTR data captured all canceled wire messages with the search terms that were later removed. In order to determine that the HotScan hits were included in the data provided to PwC, we requested (1) a HotScan-generated report for all hits during the HTR period and (2) supporting documentation for these canceled messages. In response to this request, the Bank explained that a HotScan report was not available for the HTR period and provided us with supporting documentation for 91 transactions. The bank represented to PwC that these 91 transactions were the entire population of wire messages that were blocked by the HotScan operation in Tokyo during the HTR.

PwC found that all 91 wire transactions, including the canceled and re-sent messages, were included in the data provided to PwC with the exception of one transaction that was covered by the Consigned Contract Data.

Additional Cases

In our April 30, 2008 and May 1, 2008 presentations to Regulatory Group, we reported that the number of total cases reviewed was 11,325. As a result of the analysis of additional HotScan documentation, an additional five cases were identified for review and increased our total to 11,330. These five cases involved wire transfers to Sudan and Burma and cleared through a U.S. bank.

The review of the five cases resulted in three additional priority cases (14234, 14235 and 14236) that are described in Appendix I. In addition to these five Cases, there was one Case that changed from Priority to Allowable because the beneficiary bank had been incorrectly identified as a foreign branch of a US

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bank instead of a subsidiary and therefore qualified for the U-Turn exemption. The total number of Priority Cases that was previously reported as 190 increased to 192, the net effect of the three additions and one subtraction.

Written Operational Instructions

Shortly after the Bank disclosed to OFAC the Existence of written operational instructions, PwC was provided a copy of the GSC (Global Service Center) Administrative Procedures 'Foreign Transfers'. Management's report to OFAC included the following description:

These instructions were mainly for U.S. dollar payment orders relating to vostro accounts of banks in countries sanctioned by the United States. The instructions were to use the cover payment method, to indicate our Bank as the ordering bank and not to include the name of the final receiving bank, so that the funds would not be frozen.

Upon learning of these written operational instructions, PwC evaluated the use of cover payments on the completeness of the HTR data. The scope of the HTR did not include a forensic investigation or process review to understand the full impact of these written instructions on the operation of BTMU's international wire remittance and trade finance activity.

The Bank's cover payment method generally consisted of MT 103/102 messages between non-U.S. originating and receiving banks and cover MT 202 messages that were sent to the U.S. correspondent banks. As described in more detail in the *Data Preparation and Analysis* section of this Report, whenever wire messages contained a common reference number the messages were then linked together into a Case. The linked underlying MT 103/102 messages to the cover MT 202 message would have included the bank information that was not sent to the US Banks. We have concluded that the written instructions would not have impacted the completeness of data available for the HTR and our methodology to process and search the HTR data was appropriate.

Impact of the IAO Investigation

Management informed PwC that as a result of these subsequent events, BTMU's Internal Audit Office has initiated an investigation as described in Management's Report to OFAC. Their findings from this investigation need to be considered when evaluating this Report. PwC has forwarded our initial findings relating to canceled wire messages to Management to be further analyzed as part of the Internal Audit Office investigation.

CONFIDENTIAL TREATMENT REQUESTED PricewaterhouseCoopers LLP

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This information has been prepared solely for the use and benefit of The Bank of Tokyo-Mitsubishi UFJ, Ltd. and is not intended for reliance by any other Third Party, with the exception of S&C and the Regulatory Group as defined in the Disclaimer.

EXHIBIT B

Exhibit B
New York Department of Financial Services
Independent Consultant Practices for Department Engagements

- When a firm is engaged by a financial institution (“Financial Institution”) as an independent consultant (a “Consultant”) pursuant to a Written Agreement, Consent Order or other type of regulatory agreement (“Consent Order”) with the New York Department of Financial Services (“DFS”), the Consultant, the Financial Institution and DFS will adhere to the practices set forth below in order to provide DFS with better transparency regarding the work performed by the Consultant during the course of an engagement.
- The process by which DFS determines whether a Consultant engaged by a Financial Institution pursuant to a Consent Order is acceptable to DFS shall include disclosure by the Financial Institution and the Consultant of all prior work by the Consultant (not including non-U.S. member firms or non-U.S. affiliates) for the Financial Institution in the previous 3 years, subject to privilege and confidentiality constraints.
 - DFS shall directly contact the Consultant and the Financial Institution if it believes that any of the prior work may impair the Consultant’s independence with respect to the services to be provided pursuant to the Consent Order.
 - Resolution of the issue shall be discussed among the parties prior to a final determination by DFS.
- The engagement letter between the Consultant and the Financial Institution shall require that although the Consultant may take into account the expressed views of the Financial Institution, the ultimate conclusions and judgments will be that of the Consultant based upon the exercise of its own independent judgment.
- The Consultant and the Financial Institution shall submit a work plan to DFS setting forth the proposed procedures to be followed during the course of the engagement and the proposed time line for the completion of the work.
 - The work plan submitted to DFS by the Financial Institution and the Consultant shall, among other components, confirm the location(s) from which the transaction and account data planned to be reviewed during the engagement will be obtained, as applicable.
 - Any material modifications or additions to the work plan shall be submitted to DFS for approval prior to commencement of the modified or additional work.

- DFS and the Consultant will maintain an open line of communication during the course of the engagement.
 - DFS will identify key personnel at DFS with whom the Consultant will have ongoing contact. The Consultant shall do the same. The Consultant will notify DFS and the Financial Institution in writing should there be a need to make a change in the identity of any key personnel at the Consultant.
 - The Financial Institution will consent that contacts between the Consultant and DFS may occur outside of the presence of the Financial Institution, during which information can be shared, including information regarding difficult or contentious judgments made in the course of the engagement. Such meetings shall take place on a monthly basis unless otherwise agreed among the parties.

- Should a disagreement about a material matter relating to the engagement arise between the Consultant and the Financial Institution during the course of an engagement relating to the work plan, a particular finding by the Consultant, the scope of the review, interpretation of the engagement letter, or the inclusion or exclusion of information from the final report, and the disagreement cannot be resolved through discussions between the Consultant and the Financial Institution, such disagreement shall be brought to the attention of DFS. Such a procedure should be memorialized in the Consent Order.

- The Consultant and Financial Institution shall maintain records of recommendations to the Financial Institution relating to Suspicious Activity Report filings that the Financial Institution did not adopt, and provide such records to DFS at DFS's request. The Financial Institution should consent to provision of such records to DFS in the engagement letter governing the project or such a requirement should be memorialized in the Consent Order.

- The Consent Order shall require that a final report be issued by the Consultant in an engagement. The Consultant may share drafts of the final report with the Financial Institution prior to submission. The Financial Institution shall be required by the Consent Order to disclose to the Consultant who within the Financial Institution has reviewed or commented on drafts of the findings, conclusions and recommendations to be included in the final report. The final report shall contain a listing of all of the personnel from the Financial Institution made known to the Consultant who substantively reviewed or commented on drafts of the findings, conclusions and recommendations to be included in the final report.

- The Consultant shall have in place policies and procedures designed specifically to maintain the confidentiality of bank supervisory material, which would provide, among other things, that such material would not be shared with anyone

who was not authorized by law or regulation to receive such material.

- The Consultant shall develop a comprehensive training program regarding the requirements of New York Banking Law § 36(10) governing confidential supervisory information, and shall provide such training to all of its partners, principals and employees assigned to engagements in which it is expected that the Consultant will have access to materials covered by New York Banking Law § 36(10).
- PwC RAS shall draft, in consultation with DFS, a handbook providing guidance as to what materials are covered by New York Banking Law § 36(10) governing confidential supervisory information and how such materials should be handled. DFS shall approve the final version of the handbook. The Consultant shall circulate copies of the handbook to its personnel assigned to engagements in which it is expected that the Consultant will have access to materials covered by New York Banking Law § 36(10).