

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

In the Matter of

COMMERZBANK AG,  
COMMERZBANK AG NEW YORK BRANCH

CONSENT ORDER UNDER  
NEW YORK BANKING LAW §§ 39 and 44

The New York State Department of Financial Services (the “Department”),  
Commerzbank AG New York Branch (“New York Branch”), and Commerzbank AG  
(collectively with New York Branch, “Commerzbank” or “the Bank”) stipulate that:

**WHEREAS** Commerzbank is a major international banking institution with more than  
53,000 employees and total assets exceeding \$670 billion that is licensed by the Department to  
operate a foreign bank branch in New York State;

**WHEREAS** Commerzbank failed to maintain sufficient controls, policies, and  
procedures to ensure compliance with the Bank Secrecy Act and other anti-money laundering  
laws and regulations (“BSA/AML”) of the United States and New York;

**WHEREAS** the Bank maintained ineffective compliance procedures relating to due  
diligence on its foreign branches and its customers, failed to share information about customers  
or transactions necessary for BSA/AML compliance with the appropriate New York-based  
compliance personnel, and constructed its monitoring processes and tools so as to reduce the  
number of alerts that would be generated and require further investigation;

**WHEREAS** examinations of the Bank by the Department and other regulators concluded  
that the Bank’s BSA/AML compliance program was deficient due to, among other things,

weaknesses in its transaction monitoring system and failure to implement internal controls to appropriately manage risks relating to foreign correspondent banking business;

**WHEREAS** despite repeated negative examination reports from the Department and other regulators that cited BSA/AML-related problems, the Bank failed to remedy its deficient BSA/AML compliance program;

**WHEREAS** one result of these deficiencies was Commerzbank's facilitation of numerous payments through the Bank's New York Branch that furthered a massive accounting fraud by a large international corporation;

**WHEREAS** in addition, from at least 2002 to 2008, Commerzbank used non-transparent methods and practices to conduct approximately 60,000 U.S. dollar clearing transactions<sup>1</sup> valued at over \$253 billion on behalf of Iranian and Sudanese entities<sup>2</sup> subject to U.S. economic sanctions, including entities and individuals on the Specially Designated Nationals List ("SDN") of the Office of Foreign Assets Control ("OFAC");

**WHEREAS** by knowingly processing these transactions for entities subject to U.S. sanctions using non-transparent methods, Commerzbank failed to maintain accurate records as to those transactions, vitiated its New York Branch's and correspondents' controls that were designed to detect possibly illegal transactions, and prevented effective review by regulators and authorities;

**WHEREAS** Commerzbank's conduct ran counter to U.S. foreign policy and national security interests, constitutes potential violations of New York law and regulations, and raises serious regulatory safety and soundness concerns, including concerns as to the falsification of

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<sup>1</sup> U.S. dollar clearing is the process by which U.S. dollar-denominated payments between counterparties are made through a bank in the United States.

<sup>2</sup> Commerzbank also processed a number of U.S. dollar transactions involving Burmese and Cuban entities subject to U.S. sanctions from 2002 to 2007.

business records, the offering of false instruments for filing, the failure to maintain books and records, the failure to maintain an effective BSA/AML program and to detect and report suspicious transactions, the obstruction of governmental administration, and the failure to report misconduct;

**WHEREAS** the Bank is entering into a Deferred Prosecution Agreement with the U.S. Department of Justice, in which Commerzbank AG admits that it violated Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, and that Commerzbank AG New York Branch also violated Title 31, United States Code, Sections 5318(g), 5318(h), and 5318(i), because Commerzbank AG New York Branch, acting through certain employees located in New York, willfully (i) failed to maintain an adequate anti-money laundering program; (ii) failed to establish due diligence for foreign correspondent accounts; and (iii) failed to report suspicious transactions relevant to a possible violation of law or regulations, as required by the Secretary of the Treasury.

**NOW THEREFORE**, to resolve this matter without further proceedings pursuant to the Superintendent's authority under Section 44 of the Banking Law, the Department and Commerzbank agree to the following:

**Failure to Maintain an Effective BSA/AML Compliance Program**

1. Commerzbank willfully failed to maintain an adequate BSA/AML compliance program for a number of years, in violation of U.S. and New York laws and regulations.

The Bank's Compliance Program Suffered From Structural and Procedural Deficiencies

2. While Commerzbank Group Compliance had ultimate oversight of the Bank's global legal and regulatory compliance, compliance personnel in Commerzbank's New York Branch were responsible for BSA/AML compliance.

3. Commerzbank's New York Branch maintained correspondent accounts for Commerzbank's foreign branches, but it did not maintain or have access to due diligence information about those branches' customers, which information was necessary to conduct effective BSA/AML monitoring.

4. Foreign branches often transmitted payment requests to Commerzbank's New York Branch using non-transparent SWIFT payments messages<sup>3</sup> that did not disclose the identity of the remitter or beneficiary. As a result of not having a complete picture of the transactions, Commerzbank's New York Branch's compliance processes and controls were ineffective, and fewer alerts or red flags were raised than would have been if full information had been shared.

5. The Bank's global compliance program also suffered from serious deficiencies and contributed to significant failings. Even when transactions from foreign branches did trigger alerts in New York, the New York compliance staff did not have access to the customer information necessary to investigate the alert; they had to request relevant information directly from the foreign branch or from the Home Office in Frankfurt.

6. Overseas personnel, however, often did not respond to those requests by New York staff for many months or sent inadequate or insufficient responses. This practice prevented Commerzbank's New York Branch personnel from adequately investigating alerts and led to alert backlogs.

7. For example, a member of the New York compliance staff told investigators that many foreign relationship managers did not maintain customer due diligence and know-your-customer material in a manner consistent with U.S. regulations, keeping little formal documentation that could be shared with New York staff when they needed to investigate alerts.

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<sup>3</sup> The Society of Worldwide Interbank Financial Telecommunications, or SWIFT, provides an international network through which banks exchange electronic wire transfer messages. SWIFT messages contain various informational fields.

And many overseas employees were uncooperative or did not respond to requests for more information by those investigating alerts – they felt that New York compliance staff were simply “crying wolf” when they raised BSA/AML compliance issues.

8. On some occasions, because information from overseas offices was not provided, New York staff “cleared” or closed alerts based on its own perfunctory internet searches and searches of public source databases, without ever receiving responses to its requests for information from the foreign offices.

9. In some instances, when compliance personnel in New York attempted to strengthen the transaction monitoring filters, business personnel in Frankfurt overruled those efforts. For example, New York compliance staff reported that on at least two occasions they sought to add the names of particular foreign branch clients, whom they judged to be high-risk, to their transaction monitoring filters, so as to ensure that those clients’ transactions received extra scrutiny. But employees in Germany initially overruled those steps and forbade the New York Branch from adding client names to its filters on its own initiative, instead demanding that New York compliance staff consult with business-side personnel in Germany before taking such actions. Eventually, after consultation between New York compliance staff and business-side personnel in Germany, those customer names were added to the transaction monitoring filters.

10. Furthermore, a New York compliance staff member (discussed below in Paragraphs 12 and 13) told investigators that when he joined the bank in late 2009, the compliance department in New York did not have an adequate number of employees or sufficiently experienced personnel.

### Compliance Management Altered the Transaction Monitoring System to Reduce Alert Output

11. In an interview with investigators, a New York-based vice president in compliance who was involved in establishing the thresholds used by Commerzbank's New York Branch's monitoring software in effect until 2010 reported that, while the goal of the threshold-setting process was to identify suspicious transactions and exclude irrelevant alerts, the threshold floors were driven by the volume of the output of alerts – that is, the threshold floors were set based on a desire not to generate “too many alerts.”

12. In addition, the New York compliance staff member charged with overseeing the implementation of a new transaction monitoring tool told investigators that the Head of Regional Compliance for Commerzbank's New York Branch (who is also discussed below, in Paragraph 22) required a weekly update as to the number of alerts generated by the transaction monitoring system.

13. Furthermore, the compliance staff member reported that in 2011, both the Head of Regional Compliance and the Head of AML Compliance asked him to change the thresholds in the automated system to reduce the number of alerts generated. The compliance staff member reported that he refused to do so.

### Compliance Failings Resulted in the Bank's Facilitation of a Massive Fraud by an Overseas Affiliate's Customer

14. Commerzbank's BSA/AML compliance deficiencies allowed a customer to operate a massive corporate accounting fraud through the Bank, during which time some senior bank officials in Singapore – two of whom later held senior positions in Commerzbank's New York Branch while the fraud was ongoing – had suspicions about the business but failed to convey those suspicions to compliance personnel in Commerzbank's New York Branch or take adequate steps to stop fraudulent transactions.

15. From in or about the late 1990s through in or about 2011, the Olympus Corporation, a Japanese optics and medical device manufacturer, perpetuated a massive accounting fraud designed to conceal from its auditors and investors hundreds of millions of dollars in losses. Olympus perpetuated its fraud through Commerzbank's private banking business in Singapore, known as Commerzbank (Southeast Asia) Ltd. ("COSEA"), and a trusts business in Singapore, Commerzbank International Trusts (Singapore) Ltd., and the New York Branch, through its correspondent banking business. Among other things, the fraud was perpetuated by Olympus through special purpose vehicles, some of which were created by Commerzbank – including several executives based in Singapore – at Olympus's direction, using funding from Commerzbank. One of those Singapore-based Commerzbank executives, Chan Ming Fong – who was involved both in creating the Olympus structure in 1999 while at COSEA, and who later on his own managed an Olympus-related entity in 2005-2010 on behalf of which Chan submitted false confirmations to Olympus's auditor – subsequently pled guilty in the United States District Court for the Southern District of New York to conspiracy to commit wire fraud.

16. Starting as early as 1999 and continuing intermittently until 2010, Commerzbank facilitated numerous transactions through New York, totaling more than \$1.6 billion, that supported the accounting fraud by Olympus.<sup>4</sup>

17. Over the life of the fraud, numerous Commerzbank employees in Singapore raised concerns about the Olympus business and related transactions. But those concerns did not lead to effective investigation of the business and were not shared with relevant staff in New York responsible for BSA/AML compliance, even as numerous transactions in furtherance of the

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<sup>4</sup> The corporation and three of its former executives pled guilty to criminal charges in Japan relating to the years-long fraud in 2012.

fraud were processed through New York. Indeed, certain Commerzbank personnel who investigated the compliance issues relating to the Olympus business in Singapore or who had otherwise been made aware of the concerns about the Singapore affiliates' business with Olympus later held senior positions at Commerzbank's New York Branch, yet they never related their concerns to New York compliance staff.

18. For example, when Commerzbank sent a London-based compliance officer on special assignment to Singapore in 2008 to analyze and help enhance compliance efforts there, he was told by the Bank's Asian Regional Head of Compliance and Legal to pay particular attention to the Olympus-related business. The Regional Head of Compliance warned him that, while the business yielded "very substantial" fees for Commerzbank, the structure of the business was "complex" and "extraordinarily elaborate and redolent of layering" and that it raised suspicions of money laundering, "fraud, asset stripping, market manipulation, and derivative Tax offences."

19. The compliance officer did investigate the Olympus-related business that Commerzbank's Singapore affiliates were conducting; he became "concerned about the complex nature" of the business and concluded that Commerzbank "may have to terminate the relationship if we can't get to the bottom of the structure." He ordered Singapore staff to meet with Olympus representatives to get more information about the business, and he criticized those employees when they dragged their feet and urged them to get more information quickly. By the time he left Singapore, however, the issue was not resolved.

20. During his time in Singapore, he also learned of more general compliance deficiencies there. He learned that the compliance controls there had been weak for some time, ever since management-directed cost cutting significantly reduced compliance resources. He

discovered that relationship managers were slow to conduct customer due diligence he requested. Indeed, the compliance officer criticized staff in Singapore for their lax attitude toward customer due diligence. And he and others noted that recent departures of compliance staff and relationship managers had left the Singapore affiliates “very very weak in regards to control and support.”

21. Soon after his special assignment in Singapore concluded in late 2008, the compliance officer took over as head of compliance in Commerzbank’s New York Branch in approximately April 2009. Yet despite all he had learned about compliance deficiencies in Singapore generally and about the suspicious Olympus-related business specifically, at no time during his tenure in New York did the compliance officer convey negative information or raise any issues about Olympus or any related entity to the New York Branch.

22. A new staff member was installed as Head of Regional Compliance for the New York Branch in approximately June 2010. He, too, had spent time at Commerzbank’s Singapore affiliates before coming to New York. And he, too, was aware of the compliance deficiencies in Singapore and of the suspicious nature of the Olympus-related business, which he also knew involved wire transactions through New York. For example, while he was working in Singapore, a resigning compliance staff member told him that Singapore compliance was “a time bomb ready to go off.” And after the previous compliance officer’s special assignment ended in late 2008, he was made aware of the specific suspicions surrounding the Olympus-related business. Yet after moving to the New York Branch, he also failed to share any concerns with the New York compliance staff who would have been in a position to scrutinize the fraudulent transactions being processed through New York.

23. Between 1999 and 2010, Commerzbank's New York Branch processed transactions worth more than \$1.6 billion that supported or helped facilitate the Olympus fraud. Most of those transactions did not trigger alerts in the New York Branch's transaction monitoring system and thus were not scrutinized by New York compliance staff.

24. Alerts were triggered, however, regarding two large transactions in March 2010. In response to the alerts, compliance officers in New York sent a request for information directly to Singapore as well as to a dedicated mailbox for information requests in Frankfurt, asking for information about the identities of the ultimate originator and recipient of the transactions, the main business of the parties, and the purpose of the transactions. Compliance officers in Singapore had previously identified the same two Olympus-related transactions as potentially suspicious and investigated and closed the alerts. In response to the New York Branch's request for information, however, compliance personnel in Singapore did not relay any of the concerns about the Olympus-sponsored structures or transactions. Instead, the only response to the request for information came in the form of a brief email. New York staff eventually cleared the alerts as not suspicious.

#### Internal and External Reviews Repeatedly Highlighted Compliance Failures

25. The Bank received numerous warnings and criticisms about its BSA/AML compliance deficiencies from internal auditors, the Department, and other regulators in the United States during the relevant time period, but the Bank failed to remedy its deficient BSA/AML compliance program.

26. The Bank recognized it faced BSA/AML challenges arising from its 2008 acquisition of Dresdner Bank, which had been subject to a Cease and Desist Order issued by the Department and the Board of Governors of the Federal Reserve System. The Bank hired a

consultant to advise about integration issues. The consultant identified various aspects of BSA/AML compliance that needed to be addressed and identified enhancements that the Bank should make to the transaction monitoring process, including the implementation of a new transaction monitoring system. The Bank committed to enhancing its BSA/AML compliance in a joint letter agreement with the Department and the Federal Reserve Bank of New York (“NYFRB”) in May 2009 and reported regularly to regulators about its integration progress.

27. In 2009, Commerzbank Group Audit conducted an audit of the New York Branch’s compliance program. The overall assessment of the New York Branch’s AML compliance program was “fair,” which equated to a score of three on a five-point scale. According to numerous Commerzbank New York Branch compliance officials, the 2009 AML audit report of New York Branch was among the most negative internal audit reports in memory. The audit found the New York Branch’s AML compliance program lacking in several important ways. The report detailed weaknesses in transaction monitoring, customer profile monitoring, and know-your-customer processes, as well as general IT infrastructure deficiencies that affected the AML program.

28. The following year, a joint examination by the Department and NYFRB analyzed the Bank’s progress in meeting the terms of the May 2009 agreement. The examiners once again found several significant BSA/AML weaknesses, concluding that the BSA/AML program was “adequate, but require[d] management’s further focused attention to certain areas that need improvement.” For example, the examination team concluded that while the Bank had implemented some changes to its transaction monitoring system recommended by the outside consultant described above in Paragraph 26, the monitoring system lacked “other fundamental rules typically used to monitor wire activity” and that these failings “heightened the risk that [the

Bank] did not detect suspicious activity for approximately nine months.” The examiners also pointed out weaknesses in other areas such as alert investigation and customer due diligence.

29. The Bank’s BSA/AML compliance problems persisted, however. A NYFRB examination that concluded in May 2012 found yet more deficiencies and lapses in the BSA/AML program, this time relating to Commerzbank’s New York Branch’s involvement in the banknotes business conducted by the Home Office in Germany. That finding led to formal supervisory action by the NYFRB. As late as July 2014, however, the NYFRB found that the Bank had not yet satisfied or only partially satisfied most of the remedial measures that it required as a result of its negative assessment of the Bank’s deficiencies in monitoring the (now closed) banknotes business.

30. Despite the deficiencies identified in this string of negative reports by internal auditors and outside regulators and the series of remedial efforts ordered and undertaken as a result, BSA/AML compliance problems persisted. A joint examination by the Department and NYFRB, concluded in July 2013, found continued inadequacies in the core BSA/AML compliance program elements at Commerzbank’s New York Branch. The Department and NYFRB concluded that “management has failed to implement internal controls to appropriately identify, mitigate, and manage BSA/AML risks associated with the branch’s foreign correspondent banking business.” The examiners’ report also criticized management for failing to conduct appropriate due diligence on Commerzbank’s foreign branches, for whose customers business was conducted through the New York Branch. And they found “violations of BSA/AML laws and regulations that were the result of systemic internal control weaknesses with the branch’s customer risk rating, [customer due diligence], and suspicious activity monitoring programs” that helped “increase the branch’s risk to money laundering activities.”

## **Use of Wire Stripping and Non-Transparent Cover Payments to Disguise Transactions**

31. Commerzbank also used altered or non-transparent payment messages to process tens of thousands of transactions through New York on behalf of customers subject to U.S. economic sanctions.

32. In an effort to grow its business relationships with Iranian customers in the early 2000s, Commerzbank created internal procedures for processing U.S. dollar payments to enable those clients, which included state-controlled financial institutions such as Bank Sepah and Bank Melli, to clear U.S. dollar payments through the U.S. financial system without detection.

33. From at least May 2003 to July 2004, Commerzbank altered or stripped information from wire messages for payments involving Iranian parties subject to U.S. sanctions so as to hide the true nature of those payments and circumvent sanctions-related protections.

34. The Bank designated a special team of employees to manually process Iranian transactions – specifically, to strip from SWIFT payment messages any identifying information that could trigger OFAC-related controls and possibly lead to delay or outright rejection of the transaction in the United States. Bank employees circulated both formal written instructions and informal guidance via email directing lower-level staff to strip information that could identify sanctioned parties from wire messages before sending the payment messages to U.S. clearing banks.

35. The Bank advised customers subject to U.S. sanctions to omit sanctions-related information from payment messages, to complement Commerzbank's special processing. And some customers included notes such as "do not mention our name in USA" in their payment requests so as to ensure Bank employees applied special processing before sending those payment requests to U.S. correspondents.

36. This conduct continued into July 2004 because senior management failed to institute effective controls or procedures to ensure the practice ceased even after announcing a prohibition on wire stripping in 2003.

37. From at least 2002 to 2007, Commerzbank also relied heavily on the use of non-transparent cover payments to process tens of thousands of U.S. dollar transactions for Iranian and other clients subject to U.S. sanctions as part of a strategy to evade scrutiny in the U.S.

38. Employees followed Bank instructions that required them to split incoming payment messages into two outgoing messages – one message that was sent directly to the beneficiary’s bank and a second MT202 cover message that was sent to the U.S. clearing bank, which did not require or contain any information about the remitter – with the intent of preventing such transactions from being detected and possibly frozen, blocked, or delayed in the United States.

39. Commerzbank usually processed U.S. dollar payments for sanctioned customers through its own New York Branch; however, in some instances involving Iranian clients, Commerzbank refrained from processing the payment through its own New York Branch and in one instance routed the payment through a U.S. correspondent bank so that their “own branch would not be involved” in case “the going [got] tough.”

40. Beginning in 2005, Commerzbank processed U.S. dollar payments for an Iranian subsidiary of the Islamic Republic of Iran Shipping Lines (“IRISL”) using the accounts of a different, non-Iranian IRISL affiliate in order to avoid detection by correspondents and regulators in the U.S. Later, after the Bank instituted a policy limiting its business with Iranian customers in 2007, Hamburg branch employees moved the accounts of two Iranian IRISL subsidiaries into sub-accounts under the account of one of IRISL’s European affiliates and also

changed the country identification codes for certain IRISL affiliates in the Bank's internal records so as to obfuscate these entities' true Iranian relationship.

41. In addition, the Bank recognized that other international financial institutions declined to process Sudanese U.S. dollar transactions, due to U.S. sanctions, and therefore that Sudan represented a potentially profitable market. From at least 2002 to 2006, the Bank maintained U.S. dollar accounts for as many as 17 Sudanese banks, including five SDNs, and processed approximately 1,800 U.S. dollar transactions valued at more than \$224 million through the U.S. using non-transparent methods for these clients and other Sudanese entities.

42. Commerzbank's New York Branch also helped hide the true nature of the Bank's U.S. dollar clearing activities by failing to act on numerous indications that payment requests were being submitted in a non-transparent manner; in 2004, an employee even called upon the Frankfurt office to "suppress" the creation of MT210s<sup>5</sup> relating to payments ordered by Iranian banks because "authorities could view our handling of them as problematic."

### **Violations of Law and Regulations**

43. Commerzbank AG and Commerzbank's New York Branch failed to maintain an effective and compliant anti-money laundering program and OFAC compliance program, in violation of 3 NYCRR § 116.2.

44. Commerzbank failed to maintain or make available at its New York Branch true and accurate books, accounts, and records reflecting all transactions and actions, in violation of New York Banking Law § 200-c.

45. Commerzbank employees knowingly made and caused to be made false entries in the Bank's books, reports, and statements and omitted and caused to be omitted therefrom true

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<sup>5</sup> MT210 messages advised the New York Branch of an incoming payment.

entries of material particular pertaining to the U.S. dollar clearing business of Commerzbank at its New York Branch, with the intent to deceive the Superintendent and examiners of the Department and representatives of other U.S. regulatory agencies who were lawfully appointed to examine the Bank's condition and affairs at its New York Branch, in violation of 3 NYCRR § 3.1.

46. Commerzbank failed to submit a report to the Superintendent immediately upon discovering fraud, dishonesty, making of false entries and omission of true entries, and other misconduct, whether or not a criminal offense, in violation of 3 NYCRR §300.1.

## **SETTLEMENT PROVISIONS**

### **Monetary Payment**

47. Commerzbank shall pay a civil monetary penalty pursuant to Banking Law § 44 to the Department in the amount of \$610,000,000. Commerzbank shall pay the entire amount within ten days of executing this Consent Order. Commerzbank agrees that it 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 civil monetary penalty paid pursuant to this Consent Order.

### **Independent Monitor**

48. Commerzbank will engage an independent monitor, selected by the Department in the exercise of its sole discretion, to conduct, consistent with applicable law, a comprehensive review of the BSA/AML and OFAC compliance programs, policies, and procedures now in place at the bank that pertain to or affect activities conducted by or through Commerzbank's New York Branch. The monitor will report directly to the Department.

49. Among other things, the monitor will review and report on:

- a. The elements of the Bank's corporate governance that contributed to or facilitated the improper conduct discussed in this Consent Order and that permitted it to go on, relevant changes or reforms to its corporate governance that the Bank has made since the time of the conduct discussed in this Consent Order, and whether those changes or reforms are likely to significantly enhance the Bank's BSA/AML and OFAC compliance going forward;
- b. The thoroughness and comprehensiveness of the Bank's current global BSA/AML and OFAC compliance program;
- c. The organizational structure, management oversight, and reporting lines that are relevant to BSA/AML and OFAC compliance, and an assessment of the staffing of the BSA/AML and OFAC compliance teams, including the duties, responsibilities, authority, and competence of officers or employees responsible for the Bank's compliance with laws and regulations pertaining to BSA/AML or OFAC compliance;
- d. The propriety, reasonableness, and adequacy of any proposed, planned, or recently-instituted changes to the Bank's BSA/AML and OFAC compliance programs;
- e. Any corrective measures necessary to address identified weaknesses or deficiencies in the Bank's corporate governance or its global BSA/AML and OFAC compliance program.

50. Commerzbank agrees that it will fully cooperate with the monitor and support its work by, among other things, providing the monitor with access to all relevant personnel,

consultants and third-party service providers, files, reports, or records, whether located in New York, Germany, or elsewhere, consistent with applicable law.

51. Within 90 days of the date of formal engagement, the monitor will submit to the Department and Commerzbank's Board of Directors a preliminary written report of findings, including proposed corrective measures.

52. Within 30 days of receiving the monitor's preliminary written report of findings, Commerzbank will submit to the Department a written plan designed to improve and enhance current global BSA/AML and OFAC compliance programs that pertain to or affect activities conducted by or through Commerzbank's New York Branch, incorporating any relevant corrective measures identified in the monitor's report (the "Action Plan"). The Action Plan will provide for enhanced internal controls and updates or revisions to current policies, procedures, and processes in order to ensure full compliance with all applicable provisions of the BSA and related rules and regulations, OFAC requirements and rules, and the provisions of this Consent Order. Upon receipt of written approval from the Department, Commerzbank will begin to implement the changes.

53. Within 30 days of receiving the monitor's preliminary written report of findings, Commerzbank will submit to the Department a written plan to improve and enhance management oversight of BSA/AML and OFAC compliance programs, policies, and procedures now in place at the Bank that pertain to or affect activities conducted by or through Commerzbank's New York Branch (the "Management Oversight Plan"). The Management Oversight Plan will address relevant matters identified in the monitor's written report of findings and provide a sustainable management oversight framework. Upon receipt of written approval from the Department, Commerzbank will begin to implement the changes.

54. The monitor will thereafter oversee the implementation of corrective measures set out in the Bank's Action Plan and Management Oversight Plan. Finally, the monitor will assess the Bank's compliance with those measures. The monitor will submit subsequent progress reports and a final report to the Department and to Commerzbank's Board of Directors at intervals to be determined by the Department. The Department may, in its sole discretion, extend any reporting deadline set out in this section.

55. The term of the monitor's engagement will extend for two years from the date of formal engagement. Any dispute as to the scope of the monitor's authority or mandate will be resolved by the Department in the exercise of its sole discretion, after appropriate consultation with Commerzbank and the monitor.

#### **Termination of Commerzbank Employees**

56. While several of the Bank employees who were centrally involved in the improper conduct discussed in this Consent Order no longer work at the Bank, several such employees do remain employed by the Bank.

57. The Department orders the Bank to take all steps necessary to terminate the following four employees, who played central roles in the improper conduct discussed in this Consent Order but who remain employed by the Bank: a relationship manager in the Financial Institutions Department who was assigned the code number 6; a front office staff member in the Interest, Currency & Liquidity Management Department who was assigned the code 402; and two back office staff members in the Cash Management & International Business Department, who were assigned the codes 131 and 430. If, after taking whatever action is necessary to terminate these employees, a judicial or regulatory determination or order is issued finding that such action is not permissible under German law, then these employees shall not be allowed to

hold or assume any duties, responsibilities, or activities involving compliance, U.S. dollar payments, or any matter relating to U.S. operations.

58. The Department's investigation has also resulted in the resignation from Commerzbank of the former Head of AML, Fraud, and Sanctions Compliance for Commerzbank's New York Branch, who played a central role in the improper conduct described in this Consent Order.

#### **Breach of Consent Order**

59. In the event that the Department believes Commerzbank to be in material breach of the Consent Order, the Department will provide written notice to Commerzbank and Commerzbank must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

60. The parties understand and agree that Commerzbank's failure to make the required showing within the designated time period shall be presumptive evidence of Commerzbank's breach. Upon a finding that Commerzbank has breached this Consent Order, the Department has all the remedies available to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

#### **Waiver of Rights**

61. The parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

### **Parties Bound by the Consent Order**

62. This Consent Order is binding on the Department and Commerzbank, as well as any successors and assigns that are under the Department's supervisory authority. But this Consent Order does not bind any federal or other state agency or any law enforcement authority.

63. No further action will be taken by the Department against Commerzbank for the conduct set forth in the Consent Order, provided that Commerzbank complies with the terms of the Consent Order.

64. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against Commerzbank for transactions or conduct that Commerzbank did not disclose to the Department in the written materials Commerzbank submitted to the Department in connection with this matter.

### **Notices**

65. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

James Caputo  
Senior Counsel  
One State Street  
New York, NY 10004

For Commerzbank:

Volker Barth  
Divisional Board Member, Compliance  
Hafenstrasse 51  
60261 Frankfurt am Main, Germany

Günter Hugger  
General Counsel  
Kaiserstrasse 16  
60261 Frankfurt am Main, Germany

Armin Barthel  
Managing Director – Head of Legal North America  
225 Liberty Street  
New York, NY 10281

**Miscellaneous**

66. Each provision of this Consent Order shall remain effective and enforceable until stayed, modified, suspended, or terminated by the Department.

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

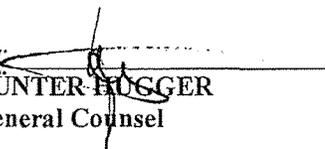
IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 11th day of March, 2015.

COMMERZBANK AG

NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES

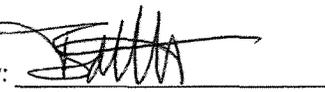
By:   
VOLKER BARTH  
Divisional Board Member, Compliance

By: \_\_\_\_\_  
BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:   
GÜNTER BUGGER  
General Counsel

COMMERZBANK AG NEW YORK BRANCH

By:   
ANTHONY BARRONS  
General Manager & COO – North America

By:   
ARMIN BARTHEL  
Managing Director – Head of Legal North America

**IN WITNESS WHEREOF**, the parties have caused this Consent Order to be signed this 12th day of March, 2015.

COMMERZBANK AG

NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES

By: \_\_\_\_\_

**VOLKER BARTH**

**Divisional Board Member, Compliance**

By:  \_\_\_\_\_

**BENJAMIN M. LAWSKY**

**Superintendent of Financial Services**

By: \_\_\_\_\_

**GÜNTER HUGGER**

**General Counsel**

COMMERZBANK AG NEW YORK BRANCH

By: \_\_\_\_\_

**ANTHONY BARRONS**

**General Manager & COO – North America**

By: \_\_\_\_\_

**ARMIN BARTHEL**

**Managing Director – Head of Legal North America**