

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

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In the Matter of

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

The Bank of Tokyo-Mitsubishi UFJ, Ltd.  
New York Branch

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The New York State Department of Financial Services (the “Department” or “DFS”) and The Bank of Tokyo-Mitsubishi UFJ, Ltd. (“BTMU” or the “Bank”) (collectively, the “Parties”) stipulate that:

**WHEREAS**, BTMU is a foreign bank with complex operations and multiple business lines and legal entities in many countries worldwide; and

**WHEREAS**, BTMU conducts operations in the United States through various subsidiaries and entities including its branch in New York, New York (the “New York Branch”); and

**WHEREAS**, the Department is the licensing agency of the New York Branch, pursuant to Article II of the New York Banking Law (“NYBL”) and is responsible for its supervision and regulation; and

**WHEREAS**, BTMU wrongfully misled the Department in connection with its understanding of BTMU’s U.S. dollar clearing services on behalf of sanctioned Sudanese, Iranian, and Burmese parties (“Sanctioned Parties”), the transactions of which were settled through the New York Branch and other New York-based financial institutions.

**WHEREAS**, the Department finds that BTMU's conduct raised serious safety and soundness concerns and constituted violations of law and regulation.

**NOW, THEREFORE**, to resolve this matter, the Parties agree to the following:

### **Introduction**

1. From approximately 2007 through 2008, the Bank engaged a team from the advisory practice of PricewaterhouseCoopers LLP (the "PwC Engagement Team") to undertake a historical transaction review (the "HTR") for BTMU to analyze the Bank's U.S. dollar clearing activity between April 1, 2006 and March 31, 2007. The stated purpose of the HTR was to: (a) identify any U.S. dollar transactions that potentially should have been frozen, blocked or reported under applicable OFAC requirements, and (b) investigate the relevant transaction set for compliance with OFAC requirements.

2. In June 2008, BTMU submitted the PwC Engagement Team's HTR report (the "HTR Report") to the Department's predecessor agency (the New York State Banking Department), as well as to other U.S. regulators (collectively, the "Regulators"). The HTR Report purported to be the product of an "objective" and "methodologically sound" process.

3. In 2012, during the investigation into BTMU's past U.S. dollar clearing activities, BTMU notified the Department that many of the payment messages for the time period of 2002-2007 were not available.<sup>1</sup> As an alternative solution, BTMU suggested that the Parties use the HTR's findings, as set forth in the HTR Report, as a basis to extrapolate the approximate number of improper transactions processed by BTMU through the New York Branch and other New York-based financial institutions between 2002 and 2007. DFS required that information in

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<sup>1</sup> 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.

order to accurately assess the scope of the Bank's misconduct and thereby fix an appropriate penalty.

4. In reliance on the HTR Report, as well as the Bank's representations to the Department, BTMU and the DFS executed a consent order on June 20, 2013 (the "2013 Consent Order"), pursuant to New York Banking Law § 44.

5. As set out in the 2013 Consent Order, the Parties agreed that from at least 2002 through 2007, BTMU unlawfully cleared through the New York Branch and other New York-based financial institutions an estimated 28,000 U.S. dollar payments, valued at approximately \$100 billion, on behalf of certain Sanctioned Parties and for entities on the Specially Designated Nationals ("SDNs") list issued by the U.S. Treasury Department's Office of Foreign Asset Control ("OFAC").<sup>2</sup> The 2013 Consent Order required BTMU to make a civil monetary payment of \$250 million and to hire an independent consultant to conduct a comprehensive review of the BSA/AML and sanctions related compliance programs, policies, and procedures currently in place at the New York Branch.

6. After entering into the 2013 Consent Order, the Department investigated PwC's involvement in this matter. To that end, DFS reviewed voluminous documents, including correspondence between PwC and the Bank, and took sworn testimony from eight current and former PwC professionals who had been members of the PwC Engagement Team.

7. The aforementioned investigation revealed that BTMU successfully convinced the PwC Engagement Team, including two principals from PwC's advisory group, to remove excerpts from drafts of the HTR Report that would have cast doubt upon the thoroughness,

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<sup>2</sup> SDNs are individuals and companies specifically designated as having their assets blocked from the U.S. financial system by virtue of being owned or controlled by, or acting for or on behalf of, targeted countries, as well as individuals, groups, and entities, such as terrorists and narcotics traffickers, designated under sanctions programs that are not country-specific.

objectivity and reliability of the findings contained in the HTR Report submitted to Regulators on behalf of the Bank.

#### **Statement of Facts**

8. In March 2007, BTMU hired PwC for the purpose of (a) conducting a year-long historical transaction review of BTMU's international remittance and trade finance activity for compliance with OFAC regulations and (b) presenting PwC's "key findings and results" to the Regulators.

9. On May 1, 2008, after more than a year of review, and prior to completion of the HTR Report, the Bank and the PwC Engagement Team made an interim presentation to the Regulators. At this presentation, according to PwC's notes of the meeting, Regulators asked, in connection with Iranian transactions, whether as a common approach "BTMU removed information such as originating bank, originating party or beneficiary party from [ ] wire messages." The notes reflect that, in response to this direct question from the Regulators, a very senior BTMU official "emphatically" denied that the Bank did so. The Department accepted this denial as an assurance that there existed at BTMU no special written procedures to strip U.S. dollar denominated SWIFT wire messages of information that, if detected, would have triggered screening alerts for potential OFAC violations.

10. On May 23, 2008, just one month prior to completion of the HTR Report, the Bank disclosed to the PwC Engagement Team for the first time a written BTMU procedure to strip and/or falsely populate SWIFT data fields with the Bank's identifying information instead of that of the Bank's clients (and its clients' clients) from OFAC sanctioned "enemy countries." These instructions were included in the Bank's *GSC (Global Service Center) Administrative Procedures Manual for Foreign Transfers* and read:

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).

11. With an understanding of the value that this translation would have to the Department in evaluating the HTR, the PwC Engagement Team inserted it into drafts of the HTR Report upon receipt of it.

12. In the same week of May 2008, the Bank informed the PwC Engagement Team that BTMU employed its sanctions screening filter in Tokyo to stop U.S. dollar denominated SWIFT wire messages that contained language capable of triggering screening alerts in New York so that Bank employees were able to and did strip language identifying Sanctioned Entities before those messages were transmitted to New York and resubmitted the messages without the identifying language. In this way, payment messages that would have required further review – and potentially blocking or freezing – in New York, instead bypassed OFAC filters in New York.

13. PwC’s Engagement Team understood that improper data manipulation could significantly compromise the HTR’s integrity. Accordingly, the PwC Engagement Team inserted an express acknowledgement into a draft of the HTR Report informing the 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's Engagement Team would have recommended at the beginning of the HTR that BTMU undertake a forensic review of the Bank's wire transfers.

14. At a meeting on June 13, 2008, some of the Bank's most senior Anti-money Laundering, Compliance & Legal Division managers objected to this statement appearing in the HTR Report and requested its removal. Accordingly, the PwC Engagement Team removed it and inserted in its place "[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."

15. Upon its discovery of the special written procedures and the improper use of the sanctions screening filter in Tokyo, the PwC Engagement Team recommended to BTMU that PwC conduct a forensic investigation into the Bank's U.S. dollar denominated payment processes and wire transfer messages. The Bank rejected this advice and instead insisted that the BTMU investigation into wire-stripping would be conducted internally by BTMU's Internal Audit Office (the "IAO").

16. Due to BTMU's request that PwC remove its recommendation for a forensic review, the Department never learned of the PwC Engagement Team's opinion in that regard.

17. Approximately one week before the HTR Report was finalized and submitted to the Department, a manager of the Bank's Anti-money Laundering Office, Compliance & Legal Division (the "BTMU Compliance Manager") reviewing drafts of the Report wrote to the PwC Engagement Team with reference to a draft paragraph describing "the problem" of PwC's inability to review un-linked MT 202 wire payment messages. Linking such payments was at the core of PwC's review methodology. The BTMU Compliance Manager, however, asked that PwC "consider deleting the above mentioned sentence because we do not want to give the

impression to the reader of the report that there are some important MTs that were not successfully reviewed.” The PwC Engagement Team removed the paragraph from the HTR Report, and accordingly, from scrutiny by the Department.

18. The PwC Engagement Team suggested in its draft HTR Report that the Bank’s IAO investigate the genesis of the special written procedures, the possible existence of other “similar instructions,” and the Bank’s “intentional omission of search terms” from payment messages. The PwC Engagement Team cautioned that “[t]he potential impact from the findings from [any such] investigation will need to be considered when evaluating this [HTR] Report.” (emphasis supplied). In response, the BTMU Compliance Manager forwarded the following request on behalf of the Bank: “[C]an you possibly delete this sentence?” PwC’s Engagement Team complied, removing the recommendation on how an internal BTMU audit should proceed. PwC further removed questions that PwC had raised to be addressed by such an investigation.

19. At the request of the Bank, the PwC Engagement Team removed other information from drafts of the HTR Report. The 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.;<sup>3</sup>
- 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”);

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<sup>3</sup>The BTMU Compliance Manager requested that the PwC Engagement Team delete the English translation of the written procedures for wire stripping, writing, “it is the opinion of our NY people, also [our Bank’s counsel] is also basically agreeing on this as well, that mentioning the exact wordings of the Instructions, especially the words ‘to avoid the funds being frozen by,’ might cause unnecessary concern to the regulators. From what we understand now is the real purpose of these instructions was not to have the funds [avoid] being frozen but not to have delayed by a few days because the wire contained simple words such as ‘Iran.’” The PwC Engagement Team complied, and removed the English translation.

- 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 had prevented PwC's filtering system from detecting certain transactions involving Sudan and Myanmar.

20. The Bank's IAO investigated the special written procedures and stripping of information from wire messages. BTMU's "Report on the Additional Investigation related to the Historical Transaction Review" was prepared by the IAO and issued to the Regulators in October 2008. This Report was misleading to the Department in that it was, in the face of the undisclosed PwC findings, inadequate, too limited in scope, and did not employ the type of forensic review originally recommended by PwC.

#### **Violations of Law and Regulation**

21. Due to the aforementioned conduct, BTMU misled the Department in reaching the settlement terms of the 2013 Consent Order. BTMU also:

- 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 Banking Law § 200-c; and
- knowingly violated the Department's regulation 3 NYCRR § 300.1, which requires BTMU to submit a report to the Superintendent immediately upon the

discovery of fraud, dishonesty, making of false entries and omissions of true entries, and other misconduct, whether or not a criminal offense, in which any BTMU employee was involved; and

- knowingly made or caused to be made false entries in its books, reports and statements and omitted to make true entries of material particularly pertaining to the U.S. dollar clearing business of BTMU through its New York Branch or other New York-based financial institutions, misleading the Superintendent and examiners of the Department who were lawfully appointed to examine BTMU's conditions and affairs.

### **Settlement Provisions**

#### Monetary Penalty:

22. Within ten (10) business days of executing this Consent Order, BTMU shall make full payment of a civil monetary penalty in the amount of three hundred and fifteen million U.S. dollars (\$315,000,000). BTMU 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.

#### Employee Discipline and a Permanent Ban on Involvement with Licensees:

23. The Department's investigation has resulted in the resignation from BTMU of the BTMU Compliance Manager, who played a central role in the improper conduct discussed in this Consent Order.

24. BTMU shall not in the future directly or indirectly retain the individual referenced in the paragraph above, as either an officer, employee, agent, consultant or contractor of BTMU, or any affiliate of BTMU, or in any other capacity.

25. As promptly and expeditiously as possible but no later than sixty (60) days from the date of this Consent Order, the Bank shall take all steps necessary to ensure that its then-General Manager of BTMU's Anti-money Laundering Office, Compliance & Legal Division and its then-Executive Officer & General Manager of BTMU's Global Planning Division, who each played central roles in the improper conduct discussed in this Consent Order but who are still employed by the Bank's affiliated companies, shall engage in no duties, responsibilities or activities while employed at the Bank's affiliated companies that involve in any way the business of any licensee of this Department, including, but not limited to, the New York Branch.

26. BTMU shall not in the future permit the individuals referenced in the above paragraph to engage, directly or indirectly, in any duties, responsibilities or activities at or on behalf of BTMU or the Bank's affiliated companies that involve their banking business in the United States, including the business of any licensee of this Department.

Extension of Independent Consultant:

27. The Bank, the New York Branch and the Department entered into the 2013 Consent Order to, *inter alia*, install an independent consultant ("IC") to conduct a review of the Bank's existing BSA/AML related sanctions compliance programs, policies and procedures in place at the Branch. The parties now agree that, at the conclusion of the IC's engagement in March 2015, the Department shall in its sole discretion, determine if an extension of the engagement is required. If the Department determines that an extension of the IC is necessary, the extension shall be for a period of up to eighteen (18) months. The Bank further agrees to relocate its U.S. BSA/AML and OFAC sanctions compliance programs to New York, and agrees that these programs will have U.S. compliance oversight over all transactions affecting the New York Branch, including those transactions performed outside the U.S. that affect the New York

Branch. The IC will oversee, evaluate, and test the implementation of those programs, as well as the BSA/AML and OFAC sanctions compliance programs that operate outside the U.S. and relate to transactions affecting the New York Branch. For the avoidance of doubt, it shall not be the responsibility of the IC to oversee, evaluate and test compliance with the laws of any jurisdiction other than those of the United States and any jurisdiction within the United States.

Breach of the Consent Order:

28. In the event that the Department believes BTMU to be materially in breach of this Consent Order (“Breach”), the Department will provide written notice to BTMU of the Breach and BTMU must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department to demonstrate that no Breach has occurred or, to the extent pertinent, that the Breach is not material or has been cured.

29. The Parties understand and agree that BTMU’s failure to make the required demonstration within the specified period is presumptive evidence of BTMU’s Breach. Upon a finding of Breach, the Department has all the remedies available to it under New York Banking and Financial Services Law 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 New York Banking and Financial Services Laws.

Waiver of Rights:

30. The Parties further 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:

31. It is further understood that this Consent Order is binding on the Department and BTMU, as well as their successors and assigns that are within the supervision of the Department, but it specifically does not bind any federal or other state agencies or any law enforcement authority.

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

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

Notices:

34. All communications regarding this Order shall be sent to:

Elizabeth Nochlin  
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The Bank of Tokyo-Mitsubishi UFJ, Ltd.  
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Tokyo, 100-8330, Japan

Miscellaneous:

35. Each provision of this Consent Order will remain effective and enforceable until stayed, modified, terminated or suspended in writing by the Department.

36. BTMU shall continue to be subject to the terms and conditions set forth in the 2013 Consent Order by and among the Parties.

37. 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 this Consent Order.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent Order to be executed as of this 18<sup>th</sup> day of November 2014.

The Bank of Tokyo-Mitsubishi UFJ, Ltd.

By:   
Nobuyuki Hirano  
President

New York State Department of  
Financial Services

By:   
Benjamin M. Lawskey  
Superintendent