

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

In the Matter of

UNICREDIT BANK AG;
UNICREDIT BANK AG, NEW YORK BRANCH;
UNICREDIT S.p.A.;
UNICREDIT S.p.A., NEW YORK BRANCH; and
UNICREDIT BANK AUSTRIA AG

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

The New York State Department of Financial Services (the “Department”), UniCredit Bank AG (“UniCredit AG”) and its New York branch (“AG NY Branch”), UniCredit S.p.A. and its New York branch (“S.p.A. NY Branch”), and UniCredit Bank Austria AG (“UniCredit BA”), (together, the “UniCredit Group”) are willing to resolve the matters described herein without further proceedings.

WHEREAS, UniCredit S.p.A. is a global banking and financial services institution headquartered in Milan, Italy;

WHEREAS, since 2005, UniCredit S.p.A. has been the parent company of UniCredit AG and UniCredit BA, among other entities;

WHEREAS, both UniCredit S.p.A. and UniCredit AG are licensed by the Department to operate a foreign bank branch in New York State;

NOW THEREFORE, to resolve this matter without further proceedings pursuant to the Superintendent’s authority under Sections 39 and 44 of the Banking Law, the Department finds as follows:

THE DEPARTMENT'S FINDINGS FOLLOWING INVESTIGATION

1. **Introduction:** Global financial institutions serve as the first line of defense against illegal financial transactions in today's interconnected financial network. Federal law and the law of New York require these institutions to design, implement and execute policies, procedures and systems to prevent and detect illegal financial transactions, including those transactions that violate federal economic sanctions laws.

2. As detailed below, UniCredit AG, UniCredit S.p.A. and UniCredit BA each (to varying degrees) prioritized profit over compliance when dealing with parties subject to U.S. sanctions, as regulated by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). By providing U.S. dollar ("USD") clearing and other services to certain customers that violated U.S. sanctions laws, or by carrying out these financial services in a non-transparent fashion, each institution violated applicable New York and federal laws and regulations. For the reasons elaborated more fully below, an enforcement action is warranted against each of these banks.

3. **Background on the UniCredit Group:** UniCredit S.p.A., formerly known as Credito Italiano S.p.A., was formed through a series of mergers of Italian banks between 1998 and 2000. Headquartered in Milan, Italy, Credito Italiano S.p.A. became known as UniCredit S.p.A. in 2008. A predecessor entity, known as Credito Italiano, received a license to operate a branch office in the State of New York in 1978, and the S.p.A. NY Branch currently operates pursuant to this license.

4. UniCredit AG, headquartered in Munich, was formed in 1998 through a merger of German banks.¹ Prior to joining the UniCredit Group in 2005, UniCredit AG was the parent

¹ The German banks are Bayerische Vereinsbank AG and Bayerische Hypotheken-und Wechsel-Bank AG.

company of Bank Austria, a Vienna-based bank it acquired in 2000. Upon joining the UniCredit companies in 2005, UniCredit AG and Bank Austria (then renamed UniCredit Bank Austria) became separate subsidiaries of UniCredit S.p.A.

5. A predecessor entity of UniCredit AG received a license to operate a branch office in the State of New York in 1973, and the AG NY Branch currently operates in New York pursuant to this license. The S.p.A. NY Branch and the AG NY Branch share an office in New York.

6. The UniCredit Group maintains a substantial presence throughout Europe, with affiliates in 14 countries on the continent. It accesses U.S. markets, not only through the AG and S.p.A. NY Branches, but through correspondent banking relationships with other financial institutions located in New York, a number of which are regulated by the Department.

7. For the year 2018, the UniCredit Group reported operating income of approximately €19.7 billion and the total assets of €831.4 billion (or approximately \$22.6 billion and \$954.6 billion, respectively).²

Unlawful Conduct Committed By UniCredit AG

“Project Embargo” and the “Embargo Tool”

8. UniCredit AG flouted its obligation to comply with New York and federal laws and regulations that required both observance of applicable federal economic sanctions, and a robust program to ensure compliance. Its efforts to build a modern compliance infrastructure originated in 2002 when it began a program known as “Project Embargo.” Project Embargo focused in substantial part on creating an automated transaction filtering system designed to

² Based on an average Euro/U.S. dollar conversion rate on December 31, 2018.

ensure compliance with applicable sanctions laws and regulations, focusing principally on the laws of Germany and the European Union, and secondarily on those of the United States.

9. UniCredit AG engaged a German consulting firm (the “Consulting Firm”) to work with a group within the bank’s compliance division (the “Core Compliance Team”) and, with UniCredit AG’s Steering Committee (collectively, the “Project Embargo Team”). The Steering Committee, appointed by and reporting to the bank’s Management Board, was comprised of senior representatives including from the Management Board, the General Secretariat, the Operating Divisions, and the Legal Department.

10. The Project Embargo Team designed UniCredit AG’s first automated transaction filtering tool, known as the “Embargo Tool,” to identify transactions that contained “OFAC-relevant information” – *i.e.*, payment terms indicating a connection to a person or entity prohibited by U.S. sanctions or OFAC’s Specially Designated National (“SDN”) list. In the absence of a “hit” on the Embargo Tool, USD payment orders would be executed without delay.³

11. Payment orders that hit on the Embargo Tool, however, were subject to further review by the Core Compliance Team, potentially resulting in the cancellation of illicit transactions or delays in executing transactions later deemed to be lawful. The Embargo Tool was implemented in or around June 2004 and rollout continued into the following year.⁴

³ At all times relevant to this matter, UniCredit AG relied primarily (though not exclusively) on a financial institution in New York (“U.S. Bank 1”), to provide USD clearing services for the benefit of its own customers. USD clearing is the process by which USD-denominated transactions are executed between counterparties through a U.S. bank. USD clearing presents significant risks for banks since the business line is vulnerable to exploitation by bad actors, including but not limited to those who finance terrorism. In recognition of the risks to U.S. Bank 1, the clearing agreement required UniCredit AG, *inter alia*, to “use reasonable commercial efforts to ensure that no payment order will be for a purpose prohibited by the laws or regulations of the United States . . . or in violation of United States trade, currency control, foreign asset control”

⁴ The Embargo Tool was not implemented at the AG Branch NY Branch, as that branch already had its own transaction filtering tool.

UniCredit AG Develops Procedures to Circumvent the Embargo Tool

12. At the same time as it was implementing the Embargo Tool, the Core Compliance Team also established guidelines to circumvent the tool to execute transactions prohibited by OFAC. These guidelines were memorialized in a document called "Transactions Affected by OFAC" (the "OFAC Guide"). The OFAC Guide provided detailed instructions regarding how to process potentially illegal USD transactions, so as to avoid inconveniencing bank customers by having payments become frozen or stopped.

13. The OFAC Guide instructed bank employees that certain payment orders should be submitted in what was euphemistically known as an "OFAC-neutral" manner. "OFAC-neutral" was defined by the OFAC Guide to mean: "1) Without the involvement of U.S. banks, or 2) *Ensuring that the OFAC background is not revealed in the correspondence/payments with U.S. Banks.*" The OFAC Guide instructed that "*if the involvement of a U.S. bank cannot be avoided . . . care must be taken to ensure that the OFAC background of the transaction does not become apparent.*"

14. If a payment message included terms showing a connection to a sanctioned party or country, the OFAC Guide instructed that the payment should be cancelled, and a new "unobjectionable" or "OFAC-neutral" order submitted in its place. The OFAC Guide was posted on UniCredit AG's intranet site, with one employee explaining that the "*basic idea is that [bank employees] describe the existing practice: OFAC relevant transactions are carried out, but only in an OFAC neutral manner*" -- in other words, deceptively. UniCredit AG thus expressly instructed employees to violate New York and federal law by concealing essential elements of payment transactions.

15. A key method by which UniCredit AG masked the identities of potentially sanctioned parties is known as the “cover payment” method using “SWIFT” payment messages.⁵ The first SWIFT message, known as an MT103, included all details about the transaction, and UniCredit AG would send it directly to the prohibited beneficiary’s bank. UniCredit AG would then send a second message, known as an MT202 or “cover payment” message, to the U.S. financial institution in New York that was clearing the USD payment. The “cover payment” message, now split from the MT103 message, did not include details about the underlying parties to the transaction and was sent in order to accomplish a transaction to be settled in U.S. dollars.

16. This process was designed to omit details included in the payment message sent to the New York-based financial institution that might have been flagged by human or electronic scrutiny for possible OFAC violations, and which might have led the U.S. bank to delay or block the transaction. Nor, under this process, would the Department be able to learn of the true nature of these transactions when carrying out its supervisory responsibilities. The OFAC Guide encouraged the use of message splitting via both MT103 and MT202 payment messages, stating, *“[t]here are procedures/instructions on how transactions that are desired for business reasons can be executed in an OFAC-neutral manner.”*

17. Another deceptive practice employed by UniCredit AG once in a while, known as “wire stripping,” involved bank employees deliberately removing (or instructing the customer to remove) information identifying potentially sanctioned entities from payment messages and instructions, to ensure customer payments were not impeded by sanctions prohibitions.

⁵ The Society of Worldwide Interbank Financial Telecommunications (“SWIFT”) is an entity owned by a consortium of banks that provides an international network through which banks exchange electronic wire transfer messages. The SWIFT network offers various message types that can be used to transfer funds between banks; each type of message includes various informational fields. In 2009, SWIFT changed its payment message format in an effort to make the cover payment methodology more transparent.

Sanctioned parties at issue included those located in Iran, Myanmar and Sudan. For example, UniCredit AG internal documents show:

- The Core Compliance Team instructed other employees to strip words such as “Sudan,” “Myanmar” and “Tehran,” noting, in one instance, that such terms *“should be deleted because of the US embargo against Iran.”*
- In another instance UniCredit AG employees requested permission *“to delete [the name of a sanctioned sea vessel] from the intended purpose field [of the payment message] . . . [because] the vessel is owned by [the Islamic Republic of Iran Shipping Line, known as “IRISL”] that is sanctioned by the USA.”*
- UniCredit AG employees resubmitted payments rejected by correspondent banks, after stripping the information that had caused the initial rejection. As late as April 2010, UniCredit AG sent an MT202 message to U.S. Bank 1 with a shorthand reference to an Iranian sanctioned entity. U.S. Bank 1 stopped the message and requested additional information. UniCredit AG responded that the MT202 was sent in error and requested cancellation, only to then send an MT202 message for the same amount and party to another bank in New York, but without the Iranian reference.⁶

18. UniCredit AG maintained accounts and processed USD payments on behalf of customers affiliated with IRISL despite sanctions prohibiting such activity. UniCredit AG thus assisted IRISL and IRISL-affiliated customers in accessing the U.S. financial system, sending approximately 1,319 OFAC-prohibited USD payments, totaling nearly \$75 million, through the U.S. financial system between 2006 and 2011.

19. The Consulting Firm, which helped draft the OFAC Guide and construct the evasive process by which UniCredit AG carried out this illegal conduct, apparently conducted a compliance analysis at the AG NY Branch in or about 2006. In connection with the preparation of that compliance analysis, a document was stored in the electronic files of the AG NY Branch

⁶ It should be noted that while UniCredit AG relied primarily on U.S. Bank 1 for USD clearing services, in 2009 and 2010 it used the S.p.A. NY Branch to process 51 impermissible USD payments under letters of credit it had issued on behalf of European subsidiaries of a large European energy company, for financing the export of crude oil that was then re-exported to Iran without an OFAC license, in apparent violation of the Iranian Transactions and Sanctions Regulations.

which clearly reflected the illegal processes used by UniCredit AG outside the United States to evade U.S. economic sanctions. That document, entitled “Financial Sanctions [P]rocedures [T]raining,” specifically noted ***“procedures/operating guidelines specifying how desired transactions can be executed without OFAC involvement.”***

Certain Senior Managers Were Instrumental in the Wrongdoing

20. Senior managers at UniCredit AG were directly involved in the bank’s efforts to skirt U.S. sanctions laws and improperly mask USD transactions flowing through financial institutions located in New York, including institutions regulated by the Department. For example, the team leader of both Project Embargo and the Core Compliance Team (the “Team Leader”) assisted both in drafting the OFAC Guide and implementing its improper procedures. According to minutes kept of one meeting, the Team Leader observed that, ***“[i]f OFAC/FED should ever focus on [UniCredit AG] here, unpleasant consequences could be expected.”***

21. In April 2004, according to meeting minutes, the Team Leader noted, ***“The elimination of OFAC customers must now be put into effect. The account managers are to select their business relationships. It is to be documented which profitable business they wish to continue with what customers. The remaining OFAC business relationships are to be terminated. . . . The desired OFAC transaction should be professionally and discretely carried out. There should be no publicity.”***

22. In July 2005, the Team Leader sent an e-mail to the General Secretarial of UniCredit AG discussing the notes of an Audit Committee meeting that had recently taken place. The Audit Committee included some of the senior-most members of the organization. With regard to “OFAC-neutral” transactions, as reflected in the e-mail, customer interests remained paramount:

Whether [there is] a solid legal basis for this is only of secondary importance to the customer concerned. He is the one who has the hassle and is on the US black list Here we do not freeze the money or transfer back [the payment] to the customers, but have the route changed individually, by-passing US banks in order not to be suspected of anything. That was the core of my statement that was criticized. The Americans do not become aware of anything if [UniCredit AG] conducts its business with Iran quietly and professionally. [Another global European bank] does the same, like any other bank that wishes to conduct business with Iran.

23. In May 2006, UniCredit AG's Legal Department sent out communications that sought to restrict certain illegal payment practices, purportedly putting into effect a "zero-tolerance policy" regarding disguised payments or other "creative" solutions intended to evade limits on sanctioned entities. Certain senior employees of UniCredit AG, however, dismissed a Legal department proposal to obtain from clients a written compliance declaration and indemnity for each transaction as "simply unrealistic," and merely continued with impermissible and improper non-transparent practices.

24. UniCredit AG's Head of Anti-Money Laundering (the "Head AML Officer") – a senior manager who reported directly to the Management Board – also was involved in the bank's illegal practices. The Head AML Officer repeatedly appeared on internal e-mail correspondence discussing "OFAC-neutral" transactions, including correspondence advising personnel "*not to state any Iranian names*" on USD payment messages. Further, the Head AML Officer authored a 2007 Annual AML Report to the Management Board, which noted that, with respect to a branch in Luxembourg, transactions through "*five accounts in the name of banks listed on the OFAC list or the 'bad bank list' of the Group*" were checked by compliance personnel and carried out in an "*OFAC neutral' manner*["]."

Total Volume of UniCredit AG's Non-Transparent and Impermissible Payments

25. UniCredit AG's non-transparent USD payment activity involved parties in countries subject to U.S. sanctions including Cuba, Iran, Libya, Myanmar and Sudan. The

Department's Investigation identified approximately 2,570 non-transparent USD payment transactions, totaling approximately \$5.4 billion, sent by UniCredit AG through the U.S banking system between 2002 and 2011 using methods that included "cover payments" and "wire stripping," including some transmitted through financial institutions regulated by the Department.

26. The Department's Investigation also revealed that between 2002 and 2011, UniCredit AG sent approximately 300 USD payments (totaling approximately \$61.5 million) through the U.S. banking system that were both OFAC-prohibited and involved the use of non-transparent payment message, including some transmitted through financial institutions regulated by the Department.

27. The Department's Investigation also identified an additional 667 USD payment transactions that were illegal under federal law, totaling approximately \$660 million and sent by UniCredit AG through the U.S. banking system between 2002 and 2011, including some transmitted through financial institutions regulated by the Department. These payments violated federal sanctions law applicable to countries such as Iran, Libya and Cuba.

Unlawful Conduct Committed by UniCredit S.p.A.

28. Like UniCredit AG, UniCredit S.p.A. deliberately disregarded its obligation to implement an adequate program to comply with U.S. sanctions laws, resulting in repeated violations of New York laws and regulations as well. As noted above, UniCredit S.p.A. was formed through the merger of several Italian banks over a period of years beginning in approximately 1998. Despite these mergers, the compliance function at UniCredit S.p.A. remained fragmented, with each of the former independent entities retaining primary compliance responsibilities.

29. Not until 2008 did UniCredit S.p.A. begin to assemble a global compliance function. Even then, although UniCredit S.p.A.'s existing sanctions policies acknowledged application of U.S. law to its U.S. branches and that transactions with sanctioned entities, conducted in U.S. dollars, should not be sent through U.S. banks, it focused almost exclusively on United Nations and European Union sanctions compliance, functionally ignoring the bank's duties pursuant to U.S. law.

30. UniCredit S.p.A. personnel understood the general prohibition against conducting USD transactions involving parties or nations subject to U.S. sanctions as early as October 2003. At that time, a S.p.A. employee provided instructions by e-mail about using manual procedures that involved "*[not] mentioning Bank Sepah*" (an Iranian bank) in the payment message.

31. As late as 2007, senior managers of UniCredit S.p.A. recognized the risk of doing business with Iran due to evolving U.S. and European priorities, with one executive stating in an internal communication to senior colleagues that included the bank's Chief Executive Officer: "*[f]rom a reputational risk perspective, we are facing serious pressure from the US to reduce/stop business We are walking a 'fine line' especially on the Iran issue*"

32. Nevertheless, UniCredit S.p.A. continued to conduct transactions prohibited by U.S. law for several years afterward. In a 2006 e-mail, for example, a Senior Manager from the bank's International Correspondent Banking Group cautioned that non-transparent methods needed to be observed, as "*specifying any of the 'sensitive' countries, such as Sudan, Syria, Iran, Cuba, Myanmar or Burma, Belarus, North Korea (. . . or just any nationality adjective that might refer to them) in field 72 [of the SWIFT message to a U.S. bank] is to be absolutely avoided.*"

33. In January 2007, OFAC designated Bank Sepah as an SDN, which made it a prohibited entity, due to Bank Sepah's role in developing Iran's nuclear program. At about the same time, Bank Sepah was designated as an entity subject to U.N. and E.U. sanctions laws as well. In October 2007, UniCredit S.p.A. opened an account at the request of and under the control of the Italian government, for the purpose of holding and disbursing frozen funds belonging to Bank Sepah.

34. Although payments made out of this account at UniCredit S.p.A. may have been in line with U.N. and E.U. sanctions provisions, UniCredit S.p.A. continued to send USD payments on behalf of Bank Sepah in a non-transparent manner via at least one Department-regulated bank located in New York. This, too, violated New York laws and regulations.

35. And in April 2009, UniCredit S.p.A. executed 11 USD payments on behalf of a company partially owned by both an Iranian engineering company and Iranian industrial contractor. All transactions on behalf of this company cleared through U.S. banks, including at least one bank regulated by the Department. During the same month, UniCredit S.p.A. made multiple payments on behalf of a client of an Iranian company. These payments cleared through a New York bank regulated by the Department via the non-transparent "cover payment" method, which omitted any reference to the Iranian beneficiary.

36. In addition to illegal payments involving Iran, UniCredit S.p.A. purposefully conducted illegal payments involving Cuban entities as well. Nearly 60 percent of UniCredit S.p.A.'s impermissible transactions violated long-standing U.S. sanctions against Cuba. Many of these transactions involved payments made pursuant to letters of credit related to the shipment of goods to Cuba from various locations worldwide. These transactions spanned from at least 2003 through 2012, and the value for outbound payments during this time exceeded \$50 million.

37. UniCredit S.p.A. also conducted payments that violated U.S. sanctions laws pertaining to Myanmar. In July 2003, President George W. Bush signed Executive Order 13310, sanctioning the government of Myanmar (then known as Burma) and severely restricting trading activities with parties in that country. In the ensuing days, financial institutions located in the United States (including the S.p.A. NY Branch) began to block payment orders implicating the sanctions. Nevertheless, on August 1, 2003, UniCredit S.p.A.'s Foreign Trade office instructed a bank employee to name a Singaporean bank as the beneficiary in a payment message to a U.S. bank, when the true beneficiary was a bank in Myanmar, so as to conceal the impermissible nature of this transaction. Intentionally deceptive methods like this enabled UniCredit S.p.A. to make in excess of \$4 million in payments in violation of Myanmar sanctions between 2003 and 2012.

38. Similarly, UniCredit S.p.A. failed to implement a consistent, compliant policy with respect to sanctioned parties in Syria. For example, in 2005, the Commercial Bank of Syria ("CBS") contacted UniCredit S.p.A. about opening a USD account at the bank. UniCredit S.p.A. employees discussed how to operate the account in light of U.S. sanctions against Syria, and suggested (among other things) using non-transparent practices to effect impermissible transactions, including through wire stripping. Ultimately, although the account for CBS was opened, no transactions were carried out using that account.

39. In May 2006, CBS sent a SWIFT message to UniCredit S.p.A. seeking to make a USD payment pursuant to a letter of credit. UniCredit S.p.A. executed the payment via the non-transparent "cover payment" method through a New York bank.

40. Additionally, UniCredit S.p.A. used its own New York branch to process certain illegal USD payments made pursuant to letters of credit issued by its Home Office. Between

2003 and 2012, the S.p.A. NY Branch processed at least \$20 million in impermissible transactions on behalf of UniCredit S.p.A. and approximately \$50 million on behalf of UniCredit AG.

41. UniCredit S.p.A. repeatedly stumbled in its efforts to construct a global sanctions compliance function. Its early sanctions policies from 2003 lacked consistency, in some cases were self-contradictory, and even indicative of the same type of evasive conduct engaged in by UniCredit AG. For example, some of UniCredit S.p.A.'s policies acknowledged that the bank should not execute transactions on behalf of parties subject to U.S. sanctions; however, the identical documents instructed bank personnel to execute OFAC-prohibited transactions in a non-transparent manner so as to avoid detection by U.S. correspondent banks, including at least one bank regulated by the Department. UniCredit S.p.A. did not formalize a group-wide policy concerning countries sanctioned by the U.S., such as Iran, until 2009.

42. UniCredit S.p.A. employees were aware of UniCredit AG's blatant disregard of U.S. sanctions rules and regulations, but did nothing to discourage this egregious conduct. For example, in 2006, senior members of UniCredit S.p.A.'s correspondent banking group received an e-mail that described UniCredit AG's intentionally non-transparent practice of using the cover payment method for USD payments involving Iranian parties. UniCredit S.p.A.'s compliance department failed to respond in any meaningful way to this illegal conduct.

Total Volume of UniCredit S.p.A.'s Non-Transparent and Impermissible Payments

43. The Department's Investigation determined that UniCredit S.p.A. conducted approximately 957 USD transactions, valued at \$79.5 million, in violation of U.S. sanctions laws and regulations.

Unlawful Conduct Committed by UniCredit BA

44. Like its affiliates, UniCredit BA used altered or non-transparent payment messages to process millions of dollars of transactions through U.S. financial institutions involving countries or persons subject to U.S. sanctions. In 1999, prior to its acquisition by HVB (a predecessor to UniCredit AG), UniCredit BA created its own written policy (the “Written Policy”) which instructed UniCredit BA employees in the foreign commercial payments department (the “Foreign Payments Department”) how to handle payment processing involving countries affected by U.S. sanctions.

45. The Written Policy’s distribution list included UniCredit BA’s department heads as well as regional and foreign branches. The language of the Written Policy instructed UniCredit BA’s employees to comply with U.S. sanction requirements as U.S. institutions would “FREEZE, WITHOUT EXCEPTION, PAYMENT ORDERS and COVER PAYMENT ORDERS which have any connection to [U.S. sanctioned] countries.”

46. However, the Written Policy also directed employees to use non-transparent methods when making foreign commercial payments in USD that implicated U.S. sanctions, so as to hide the true nature of those payments. When transmitting payment messages to banks in the U.S. that implicated U.S. sanctions, the Written Policy directed the Foreign Payments Department:

- “there must be no connection to embargo countries, or to the Ordering Party, or to the Beneficiary, or to the bank account or to the reason for payment”;
- “replace the Ordering Party’s information (to the extent that [the Ordering Party] is a resident of an embargo country [with] ‘BY ORDER OF OUR CLIENT’; and
- mention “ON NO ACCOUNT WHATSOEVER” the “[r]easons for payment which show a connection to an embargo country.”

47. UniCredit BA continued to employ non-transparent payment messages involving Iranian parties, even as other financial institutions ceased doing business with Iranian customers altogether. In November 2006, for example, UniCredit BA received payment instructions from an Iranian entity requesting that the bank process a USD payment through a bank regulated by the Department, but with “[n]o mention of our name in New York[.]” A senior manager for the region involved forwarded the request to a senior manager in the trade finance division, explaining that the Iranian entity’s instructions were “only temporary *until they find [a] better solution acceptable for us and the Iranians.*” The senior manager in the trade finance division then approved the request, and at no time in the course of this correspondence was the Compliance division consulted.

48. UniCredit BA employees carried out non-transparent practices knowingly. For example, minutes from a 2007 meeting involving members of both the Foreign Payments Department and Financial Institution Group reaffirmed UniCredit BA’s policy “*to still maintain payment processing with crisis countries (Syria, Iran, etc.) . . . [as long as] no obvious references in the payment request are included [to] suggest an infringement of international regulations*”

49. Between May 2008 and 2012, UniCredit BA executed USD payments involving goods transmitted through ports in Iran. The majority of such payments were executed after November 2008, when the U.S. Department of the Treasury revoked what was known as the “U-Turn” license for Iran.⁷ The Department found that, during the three years after revocation of the

⁷ As relevant here, in early 1995 President Clinton, acting pursuant to International Emergency Economic Powers Act (“IEEPA”), issued Executive Order 12957, which severely restricted trade and investment activities between the United States and Iran. While subsequent executive orders strengthened these restrictions, for a period of time federal law excepted from these limitations certain transactions. One exception, effective until November 2008, authorized U.S. financial institutions to process certain funds transfers for the direct or indirect benefit of Iranian

U-Turn exemption, UniCredit BA executed 153 such payments, totaling approximately \$102 million, in direct violation of the laws and regulations of the U.S. and State of New York.

Total Volume of Impermissible Transactions

50. Between 2004 and 2012, UniCredit BA carried out approximately 330 impermissible USD transactions valued at approximately \$118 million. During the same time period, UniCredit BA transacted more than 2,500 non-transparent USD payments, totaling approximately \$3.9 billion.

Cooperation and Remediation

51. The Department recognizes the substantial cooperation of UniCredit AG, UniCredit S.p.A., and UniCredit BA with the Department's Investigation, including their own internal investigations, appropriate responses to the Department's requests for information, the production of a voluminous quantity of documents, presentation of the results of their investigations, and responses to additional inquiries from the Department. For purposes of assessing cooperation, the Department notes that it was not appropriately informed by the banks with respect to the initial criminal investigation involving these banks until July 2013, more than two years after its initiation, in violation of New York banking regulations.

52. The Department further recognizes that the UniCredit Group has made significant progress in implementing a UniCredit Group Remediation and Enhancement Plan. This plan includes enhanced policies and procedures across the Group; a breach process to address policy violations; identification of compliance gaps and implementation of specific action items to close identified gaps; new governance rules, policies, and organizational set-up between Group

banks, other persons in Iran, and the Government of Iran, provided that such payments were initiated offshore by a non-Iranian, non-U.S. financial institution and only passed through the U.S. financial system en route to another offshore, non-Iranian, non-U.S. financial institution ("U-Turn" transactions). See <https://www.treasury.gov/press-center/press-releases/Pages/hp1257.aspx>.

Compliance and the compliance functions at individual legal entities; and independent testing of compliance controls and establishment of a reporting and help line.

53. The Department has given appropriate weight to the cooperation and remediation set forth in Paragraphs 51-52 above in agreeing to the terms and remedies of this Consent Order, including the civil monetary penalty imposed.

NOW THEREFORE, to resolve this matter without further proceedings pursuant to the Superintendent's authority under Sections 39 and 44 of the Banking Law, the Department, UniCredit Bank AG and its New York branch, UniCredit S.p.A. and its New York branch, and UniCredit Bank Austria AG stipulate and agree to the terms and conditions below:

Violations of Laws and Regulations

UniCredit AG

54. UniCredit AG conducted business in an unsafe and unsound manner, in violation of New York Banking Law § 44.

55. UniCredit AG failed to maintain an effective and compliant OFAC compliance program, in violation of 3 N.Y.C.R.R. § 116.2.

56. UniCredit AG failed to submit a report to the Superintendent immediately upon discovering fraud, dishonesty, making of false entries or omission of true entries, or other misconduct, whether or not a criminal offense, in violation of 3 N.Y.C.R.R. § 300.1.

57. UniCredit AG failed to submit a report to the Superintendent of one or more incidents that appear to relate to a plan or scheme that would be of interest to similar organizations located in the same area or throughout the state, in violation of 3 N.Y.C.R.R. § 300.4.

UniCredit S.p.A.

58. UniCredit S.p.A. conducted business in an unsafe and unsound manner, in violation of New York Banking Law § 44.

59. UniCredit S.p.A. failed to maintain an effective and compliant OFAC compliance program, in violation of 3 N.Y.C.R.R. § 116.2.

60. UniCredit S.p.A. failed to submit a report to the Superintendent immediately upon discovering fraud, dishonesty, making of false entries or omission of true entries, or other misconduct, whether or not a criminal offense, in violation of 3 N.Y.C.R.R. § 300.1.

UniCredit BA

61. UniCredit BA conducted business in an unsafe and unsound manner, in violation of New York Banking Law § 44.

SETTLEMENT PROVISIONS

Monetary Penalty

62. UniCredit S.p.A., UniCredit AG, and UniCredit BA shall together pay a total civil monetary penalty pursuant to Banking Law § 44 to the Department in the amount of \$405,000,000.00. The entire amount shall be paid to the Department within ten (10) days of executing this Consent Order. UniCredit S.p.A., UniCredit AG and UniCredit BA each agree 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.

Employee Discipline

63. UniCredit S.p.A., UniCredit AG and UniCredit BA each have undertaken a disciplinary review process, subject to existing employment law and bank policies, to determine

whether disciplinary action should be taken related to employees involved in the misconduct identified in the Department's Investigation (the "Disciplinary Review"). As a result of the Disciplinary Review, each bank has taken certain disciplinary actions against those employees identified as warranting such discipline pursuant to that process. Additionally, certain individuals involved in the misconduct identified in the Department's Investigation have resigned, or were otherwise terminated, due to unrelated reasons prior to the time any disciplinary action might have been taken against them by UniCredit S.p.A., UniCredit AG or UniCredit BA.

64. UniCredit S.p.A., UniCredit AG and UniCredit BA each agree that they shall not in the future, directly or indirectly, rehire or retain as an officer, employee, agent, consultant, or contractor of UniCredit S.p.A., UniCredit AG, or UniCredit BA, or any affiliate of UniCredit S.p.A., UniCredit AG or UniCredit BA, or in any other capacity, the following: (a) those current or former employees identified in the Disciplinary Review in anonymized fashion by the following numbers: BE-2, BE-12, BE-19, BE-53, BE-165, BE-179, and (b) any other current or former employee that either UniCredit S.p.A., UniCredit AG or UniCredit BA has determined should not be so rehired or retained as a result of Disciplinary Review, except as ordered by a court of competent jurisdiction. Additionally, UniCredit S.p.A., UniCredit AG and UniCredit BA each agree that they shall not employ BE-1 in any position that involves USD payment clearing or sanctions-related decision making, except as ordered by a court of competent jurisdiction.

Sanctions Compliance Program

65. Within 90 (ninety) days of this Order, UniCredit S.p.A. shall submit to the Department an acceptable program, including a timetable for implementation, to ensure

compliance with applicable OFAC regulations and New York laws and regulations by UniCredit Group's global business lines (the "OFAC Compliance Program"), that shall, at a minimum, provide for:

- (a) an annual assessment of OFAC compliance risks arising from the global business activities and customer base of UniCredit Group's subsidiaries, including risks arising from transaction processing and trade finance activities conducted by or through UniCredit Group's global operations;
- (b) policies and procedures to ensure compliance with applicable OFAC Regulations by UniCredit Group's global business lines, including screening with respect to transaction processing and trade financing activities for the direct and indirect customers of UniCredit Group subsidiaries;
- (c) the establishment of an OFAC compliance reporting system that is widely publicized within the global organization and integrated into UniCredit Group's other reporting systems in which employees report known or suspected violations of OFAC Regulations, and that includes a process designed to ensure that known or suspected OFAC violations are promptly escalated to appropriate compliance personnel for appropriate resolution and reporting;
- (d) procedures to ensure that the OFAC compliance elements are adequately staffed and funded;
- (e) training for UniCredit Group's employees in OFAC-related issues appropriate to the employee's job responsibilities that is provided on an ongoing, periodic basis; and
- (f) an audit program designed to test for compliance with OFAC Regulations.

66. Within 60 (sixty) days of the Department's approval of the OFAC Compliance Program required by Paragraph 65 above, UniCredit Group shall complete a global OFAC risk assessment with particular attention to transactions involving group affiliates, branches and subsidiaries. A copy of the risk assessment shall be submitted to the Department upon its completion.

67. UniCredit S.p.A. represents and warrants that it has agreed to engage an independent external party with appropriate expertise in OFAC compliance issues to conduct an annual OFAC compliance review (the "Board Independent External Party") pursuant to a Cease and Desist Order (the "C&D Order") to be entered into with the Board of Governors of the Federal Reserve (the "Board"). Following entry of the C&D Order, UniCredit S.p.A. shall seek authorization from the Board to cooperate with the Department's request that the Department be provided with any reports prepared by the Board Independent External Party simultaneously to the time such reports are submitted to the Board and/or Federal Reserve Bank of New York.

68. In the event that the Board does not authorize the disclosure of one or more of the Independent External Party's reports to the Department, then UniCredit S.p.A. shall, during the term of this Order, to ensure that the OFAC Compliance Program is functioning effectively to detect, correct, and report OFAC-sanctioned transactions when they occur, conduct on an annual basis: (i) a review of OFAC compliance policies and procedures and their implementation for UniCredit Group global business lines, including, but not limited to, the New York branches of UniCredit S.p.A. and UniCredit AG and (ii) an appropriate risk-focused sampling of U.S. dollar payments (the "DFS OFAC Compliance Review").

69. UniCredit S.p.A. shall engage an independent external party with appropriate expertise in OFAC compliance issues acceptable to the Department to conduct the DFS OFAC

Compliance Review if required by Paragraph 68 above, which may be the same entity as the Board Independent External Party (the “DFS Independent External Party”). No later than 30 (thirty) days before the scheduled commencement of the DFS OFAC Compliance Review, UniCredit S.p.A. shall submit an engagement letter, acceptable to the Department, that details the scope of work of the DFS Independent External Party.

70. The results of each DFS OFAC Compliance Review conducted by the DFS Independent External party shall be submitted to the Department within 90 (ninety) days of the anniversary date of this Order.

Full and Complete Cooperation of the UniCredit Group

71. UniCredit S.p.A., UniCredit AG, and UniCredit BA each commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

Waiver of Rights

72. 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

73. This Consent Order is binding on the Department and UniCredit S.p.A. and its New York Branch, UniCredit AG and its New York Branch, and UniCredit BA, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

74. No further action will be taken by the Department against UniCredit S.p.A., UniCredit AG, and UniCredit Bank BA for the conduct set forth in this Consent Order, provided that UniCredit S.p.A., UniCredit AG, and UniCredit BA each fully comply with the terms of the Consent Order.

75. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against UniCredit S.p.A., UniCredit AG, and/or UniCredit BA for transactions or conduct that was not disclosed in the written materials submitted to the Department in connection with this matter.

Breach of Consent Order

76. In the event that the Department believes any party to this Consent Order to be in material breach of the Consent Order, the Department will provide written notice to the party, and the party must, within ten (10) 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.

77. The parties understand and agree that any party's failure to make the required showing within the designated time period shall be presumptive evidence of that party's breach. Upon a finding that a breach of this Consent Order has occurred, 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.

Notices:

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

For the Department:

Debra C. Brookes
Senior Assistant Deputy Superintendent for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Terri-Anne S. Caplan
Senior Assistant Deputy Superintendent for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

For UniCredit AG:

Andreas Früh, Esq.
General Counsel
UniCredit Bank AG
Arabellastraße 14
81925 Munich
Germany

For UniCredit S.p.A.:

Gianpaolo Alessandro, Esq.
Group General Counsel and Secretary of the Board
UniCredit S.p.A.
Piazza Gae Aulenti, 3 - Torre A
20154 Milan
Italy

For UniCredit BA:

Alexander Schall, Esq.
General Counsel
UniCredit Bank Austria AG
Rothschildplatz 1
1020 Vienna
Austria

Miscellaneous

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

80. 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.

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IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this ____ day of April, 2019.

UNICREDIT BANK AG

By: _____
ANDREAS FRÜH
General Counsel

**NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES**

By: _____
LINDA A. LACEWELL
Acting Superintendent of Financial Services

UNICREDIT S.p.A.

By: _____
GIANPAOLO ALESSANDRO
Group General Counsel and
Secretary of the Board

By: _____
MATTHEW L. LEVINE
Executive Deputy Superintendent for
Enforcement

UNICREDIT BANK AUSTRIA AG

By: _____
ALEXANDER SCHALL
General Counsel

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 14th day of April, 2019.

UNICREDIT BANK AG

By: 

ANDREAS FRÜH
General Counsel

**NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES**

By: _____

LINDA A. LACEWELL
Acting Superintendent of Financial Services

UNICREDIT BANK S.p.A.

By: _____

GIANPAOLO ALESSANDRO
Group General Counsel and
Secretary of the Board

By: _____

MATTHEW L. LEVINE
Executive Deputy Superintendent for
Enforcement

UNICREDIT BANK AUSTRIA AG

By: _____

ALEXANDER SCHALL
General Counsel

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this ____ day of April, 2019.

UNICREDIT BANK AG

By: _____
ANDREAS FRÜH
General Counsel

**NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES**

By: _____
LINDA A. LACEWELL
Acting Superintendent of Financial Services

UNICREDIT BANK S.p.A.

By: _____
GIANPAOLO ALESSANDRO
Group General Counsel and
Secretary of the Board

By: _____
MATTHEW L. LEVINE
Executive Deputy Superintendent for
Enforcement

UNICREDIT BANK AUSTRIA AG

By: _____
ALEXANDER SCHALL
General Counsel

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 15th day of April, 2019.

UNICREDIT BANK AG

By: _____
ANDREAS FRÜH
General Counsel

**NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES**

By: 
LINDA A. LACEWELL
Acting Superintendent of Financial Services

UNICREDIT S.p.A.

By: _____
GIANPAOLO ALESSANDRO
Group General Counsel and
Secretary of the Board

By: 
MATTHEW L. LEVINE
Executive Deputy Superintendent for
Enforcement

UNICREDIT BANK AUSTRIA AG

By: _____
ALEXANDER SCHALL
General Counsel