

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE BANK OF TOKYO-MITSUBISHI UFJ,
LTD.,

Plaintiff,

v.

MARIA VULLO, in her official capacity as
Superintendent Financial Services of the New
York State Department of Financial Services,

Defendant.

17 Civ. _____

**COMPLAINT FOR DECLARATORY RELIEF, TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION**

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Plaintiff The Bank of Tokyo-Mitsubishi UFJ, Ltd. (“BTMU”) brings this Complaint for declaratory, injunctive, and all other appropriate relief against Defendant Maria Vullo, in her official capacity as Superintendent Financial Services (the “Superintendent”) of the New York State Department of Financial Services (“DFS”). In support of the requested relief, Plaintiff alleges as follows:

INTRODUCTION

1. This action seeks to prevent the Superintendent of DFS from enforcing an order that clearly violates federal law and that would require BTMU to violate the terms of its recently issued federal licenses. Without the requested relief, BTMU will be placed in the untenable position of being subject to an order that requires it to violate federal law and of being subject of competing demands from different banking regulators.

2. On October 30, 2017, BTMU submitted applications to the federal Office of the Comptroller of the Currency (“OCC”) to convert its then-state-licensed branch and agency offices into federally-licensed branch and agency offices. BTMU sought this conversion as part of a larger effort to consolidate its U.S. banking operations and streamline its supervisory and regulatory requirements. Before the conversion, four different state regulators—in California, Illinois, New York, and Texas—supervised BTMU’s state-licensed branches and agencies, and the OCC supervised its national bank subsidiary in California. Now that the conversion has occurred, the OCC supervises each of BTMU’s banking operations in the United States.

3. On November 7, 2017, the OCC approved BTMU’s application and issued federal licenses to BTMU’s branch and agency offices. As of that date, all of BTMU’s branches and agencies, in addition to its national bank subsidiary in the U.S., became subject to supervision and regulation by the same federal banking agency—the OCC. Accordingly, BTMU’s U.S. banking operations are now governed by a consistent set of federal standards and supervisory

expectations, which in turn will allow BTMU to share resources, operate more efficiently, and serve customers more effectively. A copy of the OCC Decision Letter is attached as Exhibit A to this Complaint, and copies of the federal licenses issued by the OCC are attached as Exhibit B to this Complaint.

4. Even though federal law duly authorizes the OCC to approve conversions and exercise exclusive supervisory authority over federal branches and agencies of foreign banks, *see* 12 U.S.C. § 3102(f), the Superintendent of DFS has taken action that seeks to upend the OCC's authority, in clear contravention of federal law. Shortly after BTMU received its federal licenses from the OCC and BTMU informed the DFS's examiners of that fact, the Superintendent took the extraordinary step of issuing an order requiring BTMU, among other things, to continue to submit to the supervisory activity of the DFS. A copy of the Superintendent's Order Pursuant to New York Banking Law and Financial Services Law is attached as Exhibit C to this Complaint.

5. Well-established federal law bars the Superintendent's extraordinary action. The Superintendent's order is preempted by federal law because it is an attempted exercise of supervisory powers over federally-licensed branch and agency offices that are now within the exclusive province of the OCC.

6. Under the International Banking Act and the National Bank Act, the OCC exercises exclusive "visitorial powers" over the activities of federally-licensed branches and agencies of foreign banks, subject only to very limited exceptions not applicable here. *See* 12 U.S.C. §§ 484(a), 3102(b); 12 C.F.R. § 28.13(a); OCC Decision Letter at 6 ("[T]he Federal licenses for the Federally-licensed [BTMU] Branches and Agencies supersede and replace the state licenses of the [BTMU] Branches and Agencies previously operated at such locations, and the Federally-licensed BTMU/MUTB Branches and Agencies shall not be subject to the

visitorial powers of the state authority by which each of their predecessors was licensed prior to the conversions.”). Visitorial powers include (i) “[e]xamination of a bank,” (ii) “[r]egulation and supervision of activities authorized or permitted pursuant to federal banking law,” and (iii) “[e]nforcing compliance with any applicable Federal or state laws concerning those activities.” 12 C.F.R. § 7.4000. Once a branch is federally-licensed, as BTMU is now, a state regulatory agency such as DFS may not “prevent or . . . significantly impair the exercise of authority” by the OCC over that branch’s activities. *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 12 (2007).

7. The Superintendent’s order is facially invalid and puts BTMU in an impossible position. The order would require BTMU to violate the terms of its recently issued federal licenses. Without judicial relief, BTMU will be placed in the untenable position of being subject to a DFS order that requires it to violate both federal law and the directives of the OCC and of being subject of competing demands from state and federal banking regulators.

THE PARTIES

8. Plaintiff BTMU is Japan’s largest bank and one of the world’s largest, with offices throughout Japan and in 40 other countries. BTMU is one of the two primary banking institutions owned by Mitsubishi UFJ Financial Group, Inc. (“MUFG”), a diversified bank holding company incorporated as a joint stock company under the Companies Act of Japan. In the United States, BTMU has two branches in New York, additional branches in California and Illinois, and agency offices in Texas. As a result of the recent conversions and the OCC’s issuance of federal licenses, BTMU’s branches and agencies in the United States, including its branches in New York, are now federal branches and agencies established in accordance with the International Banking Act, 12 U.S.C. § 3101 *et seq.*

9. BTMU has provided banking services in New York since 1880. BTMU's New York branch provides a full range of commercial- and investment-banking services in the Americas to its corporate-banking clients in the United States, Canada, Latin America, and Asia. Today, BTMU's New York branch is the second-largest branch of a foreign bank in the United States by assets.

10. Defendant Maria Vullo is the Superintendent Financial Services of the New York State Department of Financial Services. As such, she is the state official charged by state law with enforcing compliance with the New York Banking Law, including over foreign-bank branches and agencies licensed by the Superintendent to conduct banking business in New York. *See* N.Y. Banking Law §§ 10–45, 94–140-a, 200–209, 221-a–221-k.

JURISDICTION AND VENUE

11. BTMU seeks declaratory and injunctive relief from this Court to declare that the Superintendent has no authority to issue the order she issued on November 8, 2017 and enjoining her and her agents from taking any action under the order. This order, and any actions under it, are barred by federal law and the U.S. Constitution and threaten immediate and irreparable harm to BTMU.

12. This action arises under the International Banking Act, the National Bank Act, and the Supremacy Clause of the United States Constitution.

13. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. This Court is authorized to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201–2202.

14. Venue in this District is proper under 28 U.S.C. § 1391(b)(1) because the Superintendent resides in this District and under § 1391(b)(2) because the events and omissions giving rise to this case occurred in this District.

**THE INTERNATIONAL BANKING ACT, THE NATIONAL BANK ACT,
AND OCC REGULATIONS**

15. The International Banking Act grants BTMU a federal right to seek conversion of BTMU's state-licensed foreign branches and agency offices to federally-licensed foreign branches and agency offices. *See* 12 U.S.C. § 3102(f). Now that BTMU has exercised that right and obtained federal licenses, regulation of BTMU's U.S. business is consolidated in a single regulatory body, the OCC, and unified federal standards apply across all of BTMU's U.S. branches and offices, including unified regulation regarding examinations, inspection and production of books and records, and prosecution of enforcement actions.

16. Under the International Banking Act, foreign banks' federally-licensed branches and agencies are entitled to "the same rights and privileges as a national bank" and are "subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank." 12 U.S.C. § 3102(b); *see also* 12 C.F.R. § 28.13(a) (federal branches of foreign banks are afforded "the same rights and privileges" as a "national bank"); OCC Decision Letter at 6 (same); OCC Interp. Letter No. 280 (Dec. 1, 1983) (federal branches of foreign banks "are treated as national banks" under National Bank Act and subject to OCC's exclusive regulatory authority); *cf.* 12 U.S.C. § 25b(a)(1) (defining "national bank" to include "any Federal branch established in accordance with the International Banking Act" for purposes of state-law preemption standards for national banks).

17. The National Bank Act affords the OCC exclusive regulatory, supervisory, examination, and enforcement authority over national banks—and thus over federally-licensed branches and agencies of foreign banks—subject only to very limited exceptions not applicable here. *See* 12 U.S.C. § 484(a); 12 C.F.R. § 7.4000. Section 484 of the National Bank Act provides that "[n]o national bank shall be subject to any visitorial powers except as authorized by

Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.” Section 484(b) provides only a limited exemption to this exclusive federal visitorial power over national banks “solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.” 12 U.S.C. § 484(b).

18. Interpreting Section 484, OCC regulations likewise provide that “[o]nly the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks.” 12 C.F.R. § 7.4000(a)(1). “State officials may not exercise visitorial powers with respect to national banks” *Id.* Visitorial powers are defined broadly to include “[e]xamination of a bank,” “[i]nspection of a bank’s books and records,” “[r]egulation and supervision of activities authorized or permitted pursuant to federal banking law,” and “[e]nforcing compliance with any applicable Federal or state laws concerning those activities.” *Id.* §§ 7.4000(a)(1)-(a)(2). State regulators may not exercise such powers over national banks or federal branches or agencies of foreign banks. 12 U.S.C. § 3102(b); *see also* 12 C.F.R. § 28.13(a). Accordingly, BTMU’s conversion of its state licenses has resulted in uniform, exclusive oversight by the OCC of all of BTMU’s branches, agencies, and offices in the United States.

19. Consistent with these statutory and regulatory provisions, the Supreme Court has affirmed that the OCC exercises generally exclusive “visitorial power” over the “content and conduct” of national banks’ activities. In *Watters*, the Supreme Court reiterated its century-old precedent that “[d]iverse and duplicative superintendence of national banks’ engagement in the business of banking . . . is precisely what the NBA was designed to prevent.” 550 U.S. at 13–14.

As the Supreme Court explained, visitation “‘is the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and enforce[s] an observance of its laws and regulations.’” *Id.* at 14 (quoting *Guthrie v. Harkness*, 199 U.S. 148, 158 (1905)). “Recognizing the burdens and undue duplication state controls could produce,” the Supreme Court emphasized that “Congress included in the NBA an express command: ‘No national bank shall be subject to any visitorial powers except as authorized by Federal law’” *Id.* (quoting 12 U.S.C. § 484(a)). The Supreme Court thus concluded that a state “cannot confer on its commissioner examination and enforcement authority over mortgage lending, or any other banking business done by national banks.” *Id.* at 14–15.

20. Indeed, the Supreme Court in *Watters* found it “[b]eyond genuine dispute” that “state law . . . may not curtail or hinder a national bank’s efficient exercise of any . . . power, incidental or enumerated under the NBA.” *Id.* at 13. The Court further reiterated that it has “‘interpret[ed] grants of both enumerated and incidental ‘powers’ to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law.’” *Id.* at 12 (quoting *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 32 (1996)).

FACTS COMMON TO ALL COUNTS

A. BTMU’s U.S. Operations

21. Plaintiff BTMU is a major commercial-banking organization and one of two primary banking institutions owned by MUFG, a diversified bank-holding company incorporated as a joint-stock company under the Companies Act of Japan. In the United States, BTMU operates branches in New York, California, and Illinois, as well as agency offices in Texas.

22. In New York, BTMU technically has two branches because it has personnel working in two separate office buildings, but these branches operate as a single branch. BTMU’s key business lines in New York are (i) U.S. Corporate Banking, which provides

commercial- and investment-banking products and services, as well as capital-market services, to large investment-grade, U.S.-based corporations that issue short-term debt in the public capital markets; (ii) Asian Corporate Banking (East), which provides similar products and services to Japanese and Asian corporate clients in the U.S.; and (iii) the Global Markets Division for the Americas, which engages in sales and trading of financial instruments and funds the assets and liabilities of BTMU's businesses in the Americas. As of March 31, 2017, BTMU's New York branch had total assets of \$135.3 billion.

23. BTMU operates branches and agency offices in three other states: BTMU has branches in Los Angeles, California and Chicago, Illinois, as well as agency offices in Dallas, Texas and Houston, Texas. In its Los Angeles and Chicago branches, BTMU offers corporate and commercial-lending services, as well as marketing of financial products and services to be provided by other BTMU U.S. offices and MUFG entities. In its Dallas and Houston agency offices, BTMU actively solicits business to be provided by BTMU's New York branch and other MUFG entities.

24. BTMU also operates in the United States through a subsidiary, MUFG Union Bank N.A. ("Union Bank"), formerly known as Union Bank, N.A. Union Bank is a leading regional bank in California, ranked by the Federal Deposit Insurance Corporation ("FDIC") as the 22nd largest bank in the United States measured by total deposits as of December 2016. Union Bank provides a wide range of financial services to consumers, small businesses, middle-market companies, and major corporations, primarily in California, Oregon, Washington, and Texas.

25. In recent years, MUFG has moved to integrate the management, strategy, and controls of its U.S. operations, including Union Bank and BTMU's various branches and agencies.

26. Before November 2017, BTMU's U.S. operations were subject to multiple supervisory and regulatory schemes. Four different state regulators (in California, Illinois, New York, and Texas) and the Federal Reserve System supervised the state-licensed branches and agency offices of BTMU, and the OCC supervised Union Bank—MUFG's largest U.S. banking operation. This patchwork of supervisory and regulatory schemes created great inefficiencies and imposed additional costs on BTMU's operations in the United States.

B. BTMU's Application for Conversion to Federally-Licensed Branches

27. On October 30, 2017, BTMU submitted to the OCC applications to convert its state-licensed branches in New York, Illinois, and California to federally-licensed branches, as well as to convert its state-licensed agencies in Texas to federally-licensed agencies.

28. BTMU sought conversion to enhance the efficiency of the supervisory and regulatory framework applicable to its U.S. operations. As a result of the conversion, federal regulators now are able to oversee the entirety of BTMU's operations in a more effective, orderly, and expeditious manner than if coordination were required with four different states' banking regulators. All of the BTMU's U.S. operations are now subject to primary supervision and regulation by a single federal banking agency—the OCC—and to a consistent and well-defined body of federal standards and requirements.

29. Federal banking agencies increasingly have favored policies that call for the centralization of foreign banks' U.S. operations—for example, by requiring the formation of intermediate holding companies to hold the U.S. subsidiaries and non-branch assets of large foreign banks, by imposing certain centralized risk-management standards on the combined U.S.

operations of foreign banks, and by issuing other informal guidance and supervisory expectations to foreign banks. Consolidating the supervision and regulation of BTMU's national bank, branches, and agencies in the United States within a single primary banking agency—the OCC—is consistent with these policies.

30. In addition, since the applications have been granted, BTMU is now able to operate its U.S. offices and Union Bank more efficiently. Many of the personnel operating BTMU's U.S. branches and agencies are already technically employees of Union Bank and have “dual-hatted” roles with respect to both BTMU and Union Bank, meaning that they support both entities and, depending on seniority, have authority to act on behalf of both entities. These employees are now able to manage the operations of BTMU's U.S. branches and agencies and the operations of Union Bank in a more coordinated manner. As a result of a multi-year process for streamlining the organization, BTMU's governance structure also now includes dedicated senior executive officers responsible for managing all of its U.S. operations, including its branches, agencies, and Union Bank. The conversion of BTMU's state branches and agencies into federal branches and agencies has facilitated further coordination of BTMU's U.S. operations. For instance, Compliance and Legal personnel of Union Bank have substantial experience complying with the legal and regulatory regime that applies to BTMU following conversion because the federal legal and regulatory regime is very similar to the regime that applied to Union Bank even before BTMU filed its application. Moreover, business managers across BTMU's U.S. operations are now subject to a consistent set of standards and supervisory expectations with respect to risk management, third-party vendor oversight, and cybersecurity. This allows legal entities and offices to share resources, operate more efficiently, and serve customers more effectively.

31. Section 4 of the International Banking Act (12 U.S.C. § 3102(f)) and Section 28.12 of OCC regulations (12 C.F.R. § 28.12) expressly authorize the conversions of state-licensed branches or agencies of foreign banks to federally-licensed branches or agencies. Federal law also provides that “[i]n establishing and operating a Federal branch or agency, a foreign bank shall be subject to such rules, regulations, and orders as the Comptroller considers appropriate” 12 U.S.C. § 3102(b). In determining whether to approve a conversion application, the OCC generally considers the following six factors:

(1) The financial and managerial resources and future prospects of the applicant foreign bank and the Federal branch or agency; (2) Whether the foreign bank has furnished to the OCC the information the OCC requires to assess the application adequately, and provided the OCC with adequate assurances that information will be made available to the OCC on the operations or activities of the foreign bank or any of its affiliates that the OCC deems necessary to determine and enforce compliance with the IBA and other applicable Federal banking statutes; (3) Whether the foreign bank and its United States affiliates are in compliance with applicable United States law; (4) The convenience and needs of the community to be served and the effects of the proposal on competition in the domestic and foreign commerce of the United States; (5) With respect to an application to establish a Federal branch or agency outside of the foreign bank’s home state, whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor . . . ; and (6) Whether the home country supervisor has consented to the proposed establishment of the Federal branch or agency.

12 C.F.R. § 28.12(b).

32. In addition, the OCC has issued guidance stating that it typically considers whether the applicant’s financial condition poses any supervisory concerns, whether there are any safety or soundness concerns, whether conversion is inconsistent with applicable laws or regulations, and whether the applicant is trying to escape supervisory action by its current regulator. *See OCC, Comptroller’s Licensing Manual: Federal Branches and Agencies* 47 (Oct.

2017), available at <https://www.occ.treas.gov/publications/publications-by-type/licensing-manuals/lm-fba2.pdf>.

C. The OCC's Approval of BTMU's Application

33. On November 7, 2017, the OCC determined that BTMU satisfied the foregoing standards for conversion and issued federal licenses to BTMU's branches and agencies. As of that date, BTMU's branches in New York, California, and Illinois became federally-licensed branches, and its agencies in Texas became federally-licensed agencies—all supervised by the OCC and Federal Reserve System.

34. Before the conversions, BTMU had entered into consent decrees in 2013 and 2014 with the DFS arising out of BTMU's provision of U.S. dollar clearing services to certain entities in Iran, Sudan, and Myanmar. In approving the conversion applications, the OCC imposed certain express conditions on BTMU to "ensure the converted branch continues to be subject to the substantive requirements that were in the" prior DFS orders. OCC Decision Letter at 3. Specifically, the OCC required BTMU's primary New York branch, five business days after converting, to enter a consent order with the OCC containing substantive requirements based on the DFS orders. *Id.*

35. Now that conversion has occurred, the OCC is vested with full and exclusive supervisory authority over BTMU's branches and agencies. The OCC's letter approving the applications states: "[T]he Federal licenses for the Federally-licensed [BTMU] Branches and Agencies supersede and replace the state licenses of the [BTMU] Branches and Agencies previously operated at such locations, and the Federally-licensed [BTMU] Branches and Agencies shall not be subject to the visitorial powers of the state authority by which each of their predecessors was licensed prior to the conversions." OCC Decision Letter at 6. The OCC is

amply qualified to supervise BTMU's branches and agencies with respect to the subject matter of the 2013 and 2014 consent orders.

D. The Superintendent Seeks to Undo BTMU's Conversion

36. Although federal law expressly and exclusively authorizes the OCC to approve conversion applications and supervise federally-licensed branches and agencies of foreign banks, *see* 12 U.S.C. § 3102(f), the Superintendent has taken action that threatens to upend the OCC's authority.

37. On October 31, 2017, representatives of BTMU notified the DFS of BTMU's conversion application. The DFS informed BTMU that it planned to consider the matter internally and then would contact BTMU to discuss the conversion applications further. On November 7, 2017, the OCC approved BTMU's application and issued federal licenses to BTMU's branch and agency offices. BTMU then informed the DFS of the OCC's issuance of these federal licenses.

38. On November 8, 2017, the DFS issued an order (signed Shirin Emami, Executive Deputy Superintendent – Banking) asserting uninterrupted and unimpeded supervisory authority over BTMU. The order states that, effective immediately:

- “All supervision of the [DFS] shall continue uninterrupted and unimpeded, including, but not limited to, the ongoing examination of the New York Branch currently being conducted by the [DFS]”
- “The Bank and the New York Branch shall comply with all New York laws, regulations, orders and agreements”
- “The Bank and the New York Branch remain subject to all supervisory and enforcement activity”
- “The Bank and the New York Branch shall preserve all documents and information in their possession, custody or control”

39. On information and belief, the Superintendent issued its order solely in an effort to obstruct BTMU's conversion of its state licenses to federal licenses, and not for any other reason. There is no apparent reason for the Superintendent's order at this point other than to punish BTMU for its application to the OCC and to challenge the OCC's supervisory authority and licenses under federal law.

40. The Superintendent's order constitutes the purported exercise of visitorial powers over BTMU. Federal law preempts this action because BTMU's New York branches are now federally-licensed and thus no longer subject to the visitorial powers of the Superintendent.

The Need for Immediate Judicial Relief

41. BTMU will suffer immediate and irreparable harm absent judicial intervention. Unless the Court declares that the order is preempted by federal law, BTMU is subject to an order from a state banking regulator that requires it to violate the terms of both its license from the OCC and federal law.

42. The Superintendent's order causes BTMU to suffer injury-in-fact sufficient to establish standing. An injury-in-fact is "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Here, the issuance of the order alone causes irreparable harm to BTMU because it orders BTMU to violate the terms of its recently issued license from the OCC and to violate federal banking law.

43. The balance of hardships clearly favors issuance of a temporary restraining order and a preliminary injunction that will permit BTMU to continue to operate under its recently issued federal license. If the Superintendent is not enjoined from attempting to exercise continued supervisory authority over BTMU, BTMU will suffer immediate and irreparable harm.

In contrast, BTMU's New York customers, whom DFS is charged with protecting, will not be harmed at all by such judicial relief because BTMU's New York branches now are fully regulated by the OCC, which has a comprehensive, effective regulatory program. In addition, the OCC has imposed conditions on BTMU ensuring that the substantive requirements of the prior DFS consent orders continue to apply with full force to BTMU's New York branches. Finally, a state does not have a hardship to weigh when it is seeking to enforce a preempted state order. *See Bank One v. Guttau*, 190 F.3d 844, 848 (8th Cir. 1999); *Trans World Airlines, Inc. v. Mattox*, 897 F.2d 773, 784 (5th Cir. 1990).

44. The public interest also favors a temporary restraining order and a preliminary injunction. Under the recently issued federal licenses, the OCC exercises, and will continue to exercise, regulatory authority over all of BTMU's operations in the United States, including in New York. There is a strong public interest in avoiding "[d]iverse and duplicative superintendence of national banks' engagement in the business of banking." *Watters*, 550 U.S. at 13–14. And the public interest is not served when a state agency flouts federal law and violates the Supremacy Clause. *See, e.g., Gattau*, 190 F.3d at 848 (holding that "the public interest will perforce be served by enjoining the enforcement of the invalid provisions of state law").

COUNT I – DECLARATORY AND INJUNCTIVE RELIEF
(Federal Preemption of the Superintendent's Visitorial Authority By 12 U.S.C. §§
24(Seventh), 484, 3102(b), and 12 C.F.R. § 7.4000)

45. Plaintiff incorporates and realleges each and every allegation contained in paragraphs 1 – 44 of this Complaint as though fully set forth herein.

46. The International Banking Act, the National Bank Act, and OCC regulations preempt the Superintendent's order because BTMU's New York branches are now federally-licensed branches.

47. The National Bank Act and related regulations vest in the OCC exclusive visitorial authority over national banks, subject only to very limited exceptions not applicable here. *See* 12 U.S.C. §§ 24(Seventh), 484(a), 1818(b); 12 C.F.R. § 7.4000. Under the International Banking Act, this exclusive visitorial authority applies equally to federally-licensed branches of foreign banks. *See* 12 U.S.C. § 3102(b); 12 C.F.R. § 28.13(a).

48. Through her actions, the Superintendent seeks to continue to regulate and supervise the banking activities of the federally-licensed branches of BTMU. Because the OCC now has exclusive visitorial authority over those branches, the Superintendent's actions are preempted under Article VI of the United States Constitution; by the International Banking Act, 12 U.S.C. § 3102; the National Bank Act, 12 U.S.C. §§ 24(Seventh) and 484; as well as by 12 C.F.R. § 7.4000.

49. In addition, the Superintendent's actions are preempted because they prevent or significantly interfere with BTMU's exercise of federally-protected banking powers under the International Banking Act, 12 U.S.C. § 3102, and the National Bank Act, 12 U.S.C. §§ 24(Seventh) and 484. *See Barnett Bank of Marion Cty., N.A. v. Nelson*, 517 U.S. 25, 33 (1996) (state laws are preempted if they "prevent or significantly interfere with" the exercise of federal banking powers).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff The Bank of Tokyo-Mitsubishi UFJ, Ltd. demands judgment against Defendant Maria Vullo, in her official capacity as Superintendent Financial Services of the New York State Department of Financial Services for the following relief:

A. A judgment declaring that Defendant has no authority to issue the order issued on November 8, 2017, or exercise any other authority over Plaintiff's banking operations, purportedly under the New York Banking Law because such action is preempted under Article

VI of the United States Constitution, the International Banking Act, the National Bank Act, and implementing OCC regulations; and because that order violates the International Banking Act, the National Bank Act, and implementing OCC regulations;

B. A temporary restraining order, pending a hearing on a motion for a preliminary injunction in this action, that enjoins Defendant and her agents from taking any action under the order or otherwise taking any action to prevent or interfere with, either directly and indirectly, Plaintiff's banking operations in New York, and from otherwise exercising visitatorial powers over Plaintiff and/or its officers, employees, or agents because Plaintiff has no adequate remedy at law and will suffer irreparable injury as a result of Defendant's above-described threatened enforcement of the New York Banking Law against Plaintiff and/or its officers, employees, or agents;

C. A preliminary injunction, pending final resolution of this action, that enjoins Defendant and her agents from taking any action under the order or otherwise taking any action to prevent or interfere with, either directly and indirectly, Plaintiff's banking operations in New York, and from otherwise exercising visitatorial powers over Plaintiff and/or its officers, employees, or agents because Plaintiff has no adequate remedy at law and will suffer irreparable injury as a result of Defendant's above-described threatened enforcement of the New York Banking Law against Plaintiff and/or its officers, employees, or agents;

D. A permanent injunction that enjoins Defendant and her agents from taking any action under the order or otherwise taking any action to prevent or interfere with, either directly and indirectly, Plaintiff's banking operations in New York, and from otherwise exercising visitatorial powers over Plaintiff and/or its officers, employees, or agents because Plaintiff has no adequate remedy at law and will suffer irreparable injury as a result of Defendant's above-

described threatened enforcement of the New York Banking Law against Plaintiff and/or its officers, employees, or agents; and

E. The grant to Plaintiff of such other and further relief, including costs, as the Court may deem just and proper.

DATED: New York, New York
November 8, 2017

Respectfully submitted,

By: 
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Exhibit A



Office of the Comptroller of the Currency

Washington, DC 20219

November 7, 2017

Mr. Michael Coyne
General Counsel, MUFG Americas Legal Department
MUFG Union Bank, N.A.
1251 Avenue of the Americas
New York, New York 10020

Re: Applications by The Bank of Tokyo-Mitsubishi UFJ, Ltd. to Convert

- Two State-Licensed Branches in New York to Federal Branches,
- One State-Licensed Branch in Illinois to a Federal Branch,
- One State-Licensed Branch in California to a Federal Branch, and
- Two State-Licensed Agencies in Texas to Federal Agencies.

Applications by Mitsubishi UFJ Trust and Banking Corporation to Convert

- One State-Licensed Branch in New York with Fiduciary Powers to a Federal Branch with Fiduciary Powers

OCC Control Nos. 2017-NE-FBA-ConversionsStateToFed-300364
2017-NE-FBA-ConversionsStateToFed-300373
2017-NE-FBA-ConversionsStateToFed-300374
2017-NE-FBA-ConversionsStateToFed-300380
2017-NE-FBA-ConversionsStateToFed-300381
2017-NE-FBA-ConversionsStateToFed-300382
2017-NE-FBA-ConversionsStateToFed-300384
2017-NE-FBA-Fiduciary-300385

Dear Mr. Coyne:

The Office of the Comptroller of the Currency (OCC) grants conditional approval to the applications listed above. These approvals are based on the OCC's review of all information available and reliance upon representations and commitments made in the applications, by the foreign banks, and/or by their representatives. These approvals are also subject to the conditions set out below.

The Applications

The Bank of Tokyo-Mitsubishi UFJ, Ltd. (BTMU) applied to the OCC for approval to convert its state-licensed branches located at 1251 Avenue of the Americas, New York, New York, (Primary NY Branch) and 1221 Avenue of the Americas, New York, New York, (Secondary NY

Mr. Michael Coyne
November 7, 2017
Page 2 of 8

Branch) to Federal branches. BTMU also applied to convert its state-licensed branch in Chicago (Chicago Branch) and its state-licensed branch in Los Angeles (Los Angeles Branch) to Federal branches. It also applied to convert its state-licensed agencies in Dallas and Houston (Texas Agencies) to Federal agencies. None of BTMU's branches or agencies is insured by the Federal Deposit Insurance Corporation (FDIC).

BTMU is a major commercial banking organization that has its main office in Tokyo, Japan, and provides a broad range of domestic and international banking services through its offices and subsidiaries. BTMU is one of the two primary banking institutions owned by Mitsubishi UFJ Financial Group, Inc. (MUFG), a diversified bank holding company incorporated under the laws of Japan. MUFG, BTMU, and their affiliated companies engage in a wide range of financial businesses around the world.

In the United States, BTMU conducts its banking operations primarily through (1) its subsidiary MUFG Americas Holdings Corporation (MUAH), a bank holding company and the top-tier U.S. intermediate holding company for MUFG's U.S. non-branch assets; (2) MUFG Union Bank, N.A. (MUB), a national bank subsidiary of MUAH with its main office in California; (3) the state-licensed branches and agencies that are the subject of these applications; and (4) representative offices located in California, Georgia, Kentucky, Minnesota, New Jersey, Washington State, and Washington, D.C.

Mitsubishi UFJ Trust and Banking Corporation (MUTB), that also has its main office in Tokyo, Japan, is the other primary banking organization owned by MUFG. In addition to its retail, corporate, and international banking businesses, MUTB engages in a range of custody, trust, and other fiduciary businesses. In the United States, MUTB primarily conducts its operations through a state-licensed branch located at 1221 Avenue of the Americas, New York, New York, (MUTB NY Branch, and together with BTMU's Primary NY Branch, Secondary NY Branch, Chicago Branch, Los Angeles Branch, and Texas Agencies, the BTMU/MUTB Branches and Agencies, and after the conversions, the Federally-licensed BTMU/MUTB Branches and Agencies).

The MUTB NY Branch conducts commercial banking services and custody services as part of MUTB's global custody business. Custody services include engaging in securities settlement and safekeeping, collecting dividends and income, processing corporate actions, and reporting transactions. MUTB applied to the OCC to convert the MUTB NY Branch to a Federal branch. It also requested the OCC approve fiduciary powers for the Federally-licensed MUTB NY Branch. The MUTB NY Branch is not insured by the FDIC.

BTMU and MUTB (the Applicants) have applied to the OCC to convert the BTMU/MUTB Branches and Agencies to Federally-licensed branches and agencies for business reasons. MUFG, BTMU, and MUTB desire to simplify and enhance the effectiveness of the supervisory and regulatory framework of their banking operations in the United States. Those banking operations are currently conducted in five state-licensed branches, two state-licensed agencies, and a large national bank. By converting the branches and agencies to Federal branches and

Mr. Michael Coyne
November 7, 2017
Page 3 of 8

agencies, MUFG, BTMU, and MUTB would simplify the U.S. structure, improve resolvability, and consolidate supervision of U.S. banking operations under one primary Federal supervisor, the OCC. The conversion proposal is consistent with U.S. regulatory objectives, which call for the centralization of U.S. operations of foreign banks, such as requiring foreign banks to form intermediate holding companies to hold non-branch U.S. subsidiaries and imposing centralized risk management standards. Additionally, BTMU and MUTB stated in the applications that the conversions will enable them to operate more efficiently and effectively, allow for sharing of resources, and further streamline operations.

The Primary NY Branch is subject to two consent orders entered into with the New York State Department of Financial Services (NYSDFS). The two NYSDFS orders (the NYSDFS Orders) address deficiencies in the Primary NY Branch's practices regarding Bank Secrecy Act/Anti-Money Laundering-related (BSA/AML) sanctions, compliance programs, policies, and procedures, and related areas, including Office of Foreign Assets Control (OFAC) compliance. One was entered in June 2013; the other in November 2014. The Primary NY Branch has undertaken a program to address and remediate the deficiencies identified in the NYSDFS Orders. In its application to convert the Primary NY Branch, BTMU indicates it is aware of the OCC's recent decision¹ with respect to a conversion of a state-licensed branch subject to an order by a state banking regulator to a Federal branch in which the OCC imposed conditions on approval in order to ensure the converted branch continues to be subject to the substantive requirements that were in the state order and continues its remediation efforts. BTMU represents it would fully comply with such an OCC condition. In this approval, the OCC is including a condition that, within five (5) business days after converting, BTMU, the Federally-licensed Primary NY Branch, and the Federally-licensed Secondary NY Branch enter a consent order with the OCC which would contain substantive requirements based on the NYSDFS Orders and would remain in effect until the branch has fully complied with the terms of the OCC order to the satisfaction of the OCC.

The OCC is continuing its review of the Applicants' compliance with BSA/AML and OFAC requirements and may conduct an assessment, evaluation, or examination of these areas after the conversions. Following the conversions and an assessment, evaluation, or examination of these areas, the OCC may determine that an additional enforcement action to address BSA/AML or OFAC compliance issues at the Federally-licensed Primary NY Branch and the Federally-licensed Secondary NY Branch is warranted. In its applications to convert its branches and agencies, BTMU commits to abide by any conditions set forth in the OCC's decision approving the conversions. In this approval, the OCC is including a condition that, following the conversions, if the OCC determines, in its discretion, to issue an informal or formal enforcement action to address BSA/AML or OFAC compliance issues following an assessment, evaluation, or examination by the OCC of these areas, BTMU, the Federally-licensed Primary NY Branch, and the Federally-licensed Secondary NY Branch will accept or consent to the issuance of such an action.

¹ See OCC Conditional Approval No. 1172 (March 30, 2017).

Mr. Michael Coyne
November 7, 2017
Page 4 of 8

Federal branches and agencies are required to maintain a “capital equivalency deposit” (CED), assets held in a safekeeping account at a member bank, in effect pledged to the OCC. 12 USC 3102(g). In order to be certain the CED account could be established in a timely manner, BTMU and MUTB proposed to establish the CED account initially at MUB, the affiliated national bank, and represented they would move the CED to an unaffiliated member bank acceptable to the OCC. The OCC is permitting the account to be at MUB on a temporary basis, and is imposing a condition that the CED be moved within ninety (90) days after the conversions occur.

The Applicants have committed that, after the conversions, they would provide any additional information related to the applications and the conversions that the OCC requests. The Applicants also committed to abide by any requirements or conditions the OCC later imposes based on information obtained after this approval or other developments after this approval if such information or developments materially differ from the record the OCC relied upon in approving these applications. In this approval, the OCC is including conditions addressing these matters.²

Legal Authority

Conversions of state-licensed branches or agencies of foreign banks to Federal branches or agencies are authorized under section 4(f) of the International Banking Act of 1978, as amended (IBA):

Any branch or agency operated by a foreign bank in a State pursuant to State law and any commercial lending company controlled by a foreign bank may be converted into a Federal branch or agency with the approval of the Comptroller. In the event of any conversion pursuant to this subsection, all of the liabilities of such foreign bank previously payable at the State branch or agency, or all of the liabilities of the commercial lending company, shall thereafter be payable by such foreign bank at the branch or agency established under this subsection.

12 USC 3102(f). The OCC’s regulations implementing the IBA set out the process for applying to convert a state-licensed branch or agency to a Federally-licensed branch or agency and the standards for approval. *See* 12 CFR 28.12.³ The OCC reviewed the conversion applications,

² *See* 12 CFR 28.12(d) (“The OCC may impose conditions on its approval including a condition permitting future termination of activities based on the inability of the foreign bank to provide information on its activities, or those of its affiliate, that the OCC deems necessary to determine and enforce compliance with United States banking laws.”). Moreover, the condition the OCC is imposing in this approval is similar to requirements in the regulations addressing a context in which a foreign bank establishes a Federal branch or agency prior to complete OCC review, namely when a foreign bank establishes a Federal branch or agency by acquiring another foreign bank that has a Federal branch or agency. *See* 12 CFR 28.12(g)(3).

³ The standards of approval in 12 CFR 28.12(b) include factors set out in the IBA with respect to OCC consideration of an application to establish a Federal branch or agency, 12 USC 3102(c), as well as several other factors. For further discussion of OCC policies, procedures, and standards for conversions of state branches or

Mr. Michael Coyne
November 7, 2017
Page 5 of 8

considered the factors in section 28.12(b), and determined they were consistent with approval. The conversions of the BTMU/MUTB Branches and Agencies to Federal branches and agencies are legally authorized.

The MUTB NY Branch also applied to exercise fiduciary powers after its conversion. A Federal branch may exercise fiduciary powers. 12 USC 3102(b) and (d). The OCC's regulations require the branch to apply to the OCC for prior approval. *See* 12 CFR 28.12(a)(1)(ii) and 12 CFR 5.70(d)(2)(ii). The OCC reviews an application by a Federal branch for fiduciary powers under the standards of the statute and regulations governing fiduciary powers by national banks, which are applicable to Federal branches by 12 USC 3102(b).⁴ The fiduciary and custody activities of the MUTB NY branch are permissible under 12 USC 24(Seventh), 12 USC 92a, and 12 CFR Part 9.

Visitorial Authority and Applicability of State Law

Except as otherwise provided by the IBA or other Federal laws or regulations or as otherwise determined by the OCC, upon the effective date of the conversions, the operations of the Federally-licensed BTMU/MUTB Branches and Agencies shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if such Federal branches and agencies were national banks operating at the same location, including but not limited to being subject to visitorial powers pursuant to 12 USC 484 and 12 CFR 7.4000 and to state law to the same extent and in the same manner as state law would apply if such Federal branches and agencies were national banks operating at the same location. Upon the effective date of the conversions, the Federal licenses for the Federally-licensed BTMU/MUTB Branches and Agencies supersede and replace the state licenses of the BTMU/MUTB Branches and Agencies previously operated at such locations, and the Federally-licensed BTMU/MUTB Branches and Agencies shall not be subject to the visitorial powers of the state authority by which each of their predecessors was licensed prior to the conversions.

Conditions

These approvals are subject to the following conditions:

1. In addition to compliance with other applicable requirements under United States law, BTMU, MUTB, and the Federally-licensed BTMU/MUTB Branches and Agencies shall make available to the OCC such information on the operations and activities of BTMU, MUTB, the Federally-licensed BTMU/MUTB Branches and Agencies, and any of

agencies to Federal branches or agencies, *see Comptroller's Licensing Manual, Federal Branches and Agencies*, at pages 45 - 54.

⁴ The applicable fiduciary powers statutes and regulations are 12 USC 92a; 12 CFR Part 9; and 12 CFR 5.26. For further discussion of OCC policies, procedures, and standards for an application by a Federal branch to exercise fiduciary powers, *see Comptroller's Licensing Manual, Federal Branches and Agencies*, at pages 68 - 73.

Mr. Michael Coyne
November 7, 2017
Page 6 of 8

- BTMU's or MUTB's affiliates that the OCC deems necessary to determine and enforce compliance by the Federally-licensed BTMU/MUTB Branches and Agencies with the IBA and other applicable Federal laws. If the disclosure of any required information is prohibited by law or otherwise, BTMU, MUTB, and the Federally-licensed BTMU/MUTB Branches and Agencies shall cooperate with the OCC including seeking timely waivers of or exemptions from any applicable confidentiality or secrecy restrictions or requirements in order to enable BTMU, MUTB, the Federally-licensed BTMU/MUTB Branches and Agencies, and BTMU's or MUTB's affiliates to make any such information available to the OCC.
2. BTMU, MUTB, and the Federally-licensed BTMU/MUTB Branches and Agencies consent to the jurisdiction of the Federal courts of the United States and of all United States government agencies, departments, and divisions for purposes of any and all claims made by, proceedings initiated by, or obligations to, the United States, the OCC, and any other United States government agency, department, or division, in any matter arising under the National Bank Act, the IBA, and other applicable Federal banking laws.
 3. During their first three years of operations after the conversions, the Federally-licensed BTMU/MUTB Branches and Agencies (i) shall give the OCC's International Banking Supervision Office at least sixty (60) days prior written notice of its intent to significantly deviate or change from its business plan or operations and (ii) shall obtain the OCC's written determination of no objection for any such significant deviation or change. The OCC may impose additional conditions it deems appropriate in a written determination of no objection to such notices.
 4. Within five (5) business days after consummation of the conversions, BTMU, the Federally-licensed Primary NY Branch, and the Federally-licensed Secondary NY Branch shall execute a Stipulation and Consent to the Issuance of a Cease and Desist Order agreeing to the OCC's issuance of a Cease and Desist Order issued by Consent imposing substantive requirements on the Federally-licensed Primary NY Branch and the Federally-licensed Secondary NY Branch based on the requirements imposed on the state branch by the NYSDFS Orders.
 5. Following the conversions, if the OCC determines, in its discretion, to issue an informal or formal enforcement action to address BSA/AML or OFAC compliance issues at the Federally-licensed Primary NY Branch and the Federally-licensed Secondary NY Branch following an assessment, evaluation, or examination by the OCC of these areas, BTMU, the Federally-licensed Primary NY Branch, and the Federally-licensed Secondary NY Branch shall accept or consent to the issuance of such an action.
 6. Within ninety (90) days after consummation of the conversions, the Federally-licensed BTMU/MUTB Branches and Agencies shall establish a CED (or CEDs) at an unaffiliated member bank acceptable to the OCC consistent with 12 USC 3102(g) and 12 CFR 28.15, and pursuant to an agreement in such form and containing such limitations and conditions

Mr. Michael Coyne
November 7, 2017
Page 7 of 8

as prescribed by 12 CFR 28.15, to replace the CED established at MUB at the time of the conversions.

7. After the conversions, BTMU, MUTB, and the Federally-licensed BTMU/MUTB Branches and Agencies shall continue to provide the OCC with information related to the applications and the conversions upon the request of the OCC.
8. For one hundred eighty (180) days after the conversions unless the OCC extends the time period, if the OCC in its discretion deems it necessary to impose additional conditions based on information obtained after this approval or other developments after this approval if such information or developments materially differ from the record the OCC relied upon in approving these applications, BTMU, MUTB, and the Federally-licensed BTMU/MUTB Branches and Agencies shall adhere to such conditions.

These conditions of approval are conditions “imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request” within the meaning of 12 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

Conclusion

The Applicants have notified the OCC they have completed the steps and requirements set out in the Federal Branches and Agencies booklet of the *Comptroller's Licensing Manual* to be completed prior to converting. Accordingly, the conversions may be effected immediately. You are also reminded that:

- The Federally-licensed BTMU/MUTB Branches and Agencies must maintain adequate fidelity bond coverage.
- It is the responsibility of the board of directors, appropriate committee, or senior management to continue, review, and modify as appropriate, those policies, practices, and procedures necessary to ensure the safe and sound operation of the Federally-licensed BTMU/MUTB Branches and Agencies and ensure compliance with them.
- The Federally-licensed BTMU/MUTB Branches and Agencies must maintain their accounts, books, and records as prescribed by 12 CFR 28 and in such a manner as to facilitate the complete and accurate presentation of financial statements and other reports in form and content as required by the OCC.

The *Comptroller's Licensing Manual* is available in electronic form on our Web site <http://www.occ.gov/publications/publications-by-type/licensing-manuals/index-licensing-manuals.html>, as are a number of other relevant booklets.

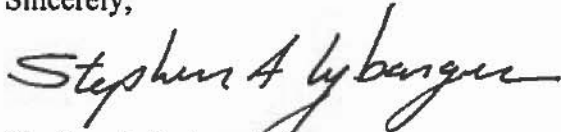
These approvals and the activities and communications by OCC employees in connection with the filings, do not constitute a contract, express or implied, or any other obligation binding upon

Mr. Michael Coyne
November 7, 2017
Page 8 of 8

the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. Our decision is based on the Applicants' representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend, or rescind this decision, if a material change in information on which the OCC relied occurs prior to the date of the transactions to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions, contact Kerry Rice, Licensing Analyst at (212) 790-4023 or by email at kerry.rice@occ.treas.gov.

Sincerely,

A handwritten signature in black ink, reading "Stephen A. Lybarger". The signature is written in a cursive style with a large, sweeping "S" at the beginning.

Stephen A. Lybarger
Deputy Comptroller for Licensing

cc: Director for International Banking Supervision

Exhibit B



Office of the Comptroller of the Currency

Washington, DC 20219

November 7, 2017

Mr. Stephen Cummings
CEO for the Americas
Bank of Tokyo-Mitsubishi UFJ, LTD
1251 Avenue of the Americas
New York, NY 10020

Re: Applications by The Bank of Tokyo-Mitsubishi UFJ, Ltd., Tokyo, Japan (BTMU) to convert the following state licensed branches and/or agencies to federal branches and/or agencies:

- BTMU's state-licensed branch located at 1251 Avenue of the Americas, New York, NY into a federal branch (OCC Control No. 2017-NE-FBA-Conversion StatetoFed-300364)
- BTMU's state-licensed branch located at 1221 Avenue of the Americas, New York, NY into a federal branch (OCC Control No. 2017-NE-FBA-Conversion StatetoFed-300373)
- BTMU's state-licensed branch located at 227 West Monroe Street, Chicago, IL into a federal branch (OCC Control No. 2017-NE-FBA-Conversion StatetoFed-300374)
- BTMU's state-licensed branch located at 445 South Figueroa Street, Los Angeles, CA into a federal branch (OCC Control No. 2017-NE-FBA-Conversion StatetoFed-300380)
- BTMU's state-licensed agency office located at 500 North Akard Street, Dallas, TX into a federal agency (OCC Control No. 2017-NE-FBA-Conversion StatetoFed-300381)
- BTMU's state-licensed agency office located at 1100 Louisiana Street, Houston, TX into a federal agency (OCC Control No. 2017-NE-FBA-Conversion StatetoFed-300382)

Dear Mr. Cummings:

You have performed all the necessary steps to convert to federal branches and/or agencies. This constitutes the final approval of the Office of the Comptroller of the Currency (OCC) for BTMU to convert the branches and/or agencies listed above to federal branches and/or agencies, effective November 7, 2017. Your License certificates will come under separate cover. Please retain the certificates as part of your official records as they must be surrendered to the OCC in the event of liquidation or conversion.

If we can be of assistance in the future, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Stephen A. Lybarger".

Stephen A. Lybarger
Deputy Comptroller for Licensing

Exhibit C

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

In the Matter of

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

**ORDER PURSUANT TO THE NEW YORK
BANKING LAW AND FINANCIAL SERVICES LAW**

Pursuant to the statutory powers vested in the New York State Department of Financial Services (the “Department”) by the People of the State of New York, the Department hereby issues the following Order with respect to The Bank of Tokyo-Mitsubishi UFJ, Ltd., and The Bank of Tokyo-Mitsubishi UFJ, Ltd., New York Branch (the “New York Branch”) (together, the “Bank”).

The Department is the licensing agency of the New York Branch, pursuant to Article II of the New York Banking Law and is responsible for its supervision and regulation.

On June 19, 2013, the Department and the Bank stipulated and agreed in a consent order to resolve and remediate the Department’s findings of certain deficiencies and apparent violations of laws and regulation, including BTMU’s clearing of approximately \$100 billion involving Iran, Sudan and Burma, and certain entities on the Specially Designated Nationals list issued by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) (the “2013 Consent Order”).

Pursuant to the 2013 Consent Order, the Bank agreed to engage an on-site independent consultant (the “BTMU Consultant”) to evaluate and identify necessary corrective measures related to compliance with Bank Secrecy Act and Anti-Money Laundering (“BSA/AML”)

operations, including the New York Branch's compliance with OFAC regulations, and to address identified flaws, weaknesses and other deficiencies at the New York Branch, and oversee implementation of such remediation.

Thereafter, the Department and the Bank stipulated and agreed that the Bank misled the Department concerning the nature and extent of BTMU's U.S. dollar clearing services on behalf of sanctioned Iranian, Sudanese and Myanmar parties, the transactions of which formed the basis for the 2013 Consent Order. Accordingly, to resolve the additional misconduct, and remediate continuing deficiencies, the Department and the Bank agreed to a second Consent Order, dated November 18, 2014 (the "2014 Consent Order").

Under the 2014 Consent Order, the Bank agreed to undertake certain additional remedial measures, including (but not limited to): (1) relocating its United States BSA/AML and OFAC sanctions compliance programs to the New York Branch, and agreeing that those programs would 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; and (2) extending the period of its engagement of the BTMU Consultant for a period of eighteen (18) additional months to permit the BTMU Consultant to oversee, evaluate, and test the proposed remediation, including the BSA/AML and OFAC sanctions compliance programs outside the U.S. related to transactions affecting the New York Branch.

The Department has been notified by the Bank that it has applied to the Office of the Comptroller of the Currency ("OCC") for an OCC license to operate the Bank as a Federal bank branch that would be supervised by the OCC.

According to the Bank's application to the OCC, the purpose of the conversion is for business reasons, in that the Bank is consolidating its multiple operations in the United States. According to the Bank's OCC application, the Bank's operations are currently conducted in five

state-licensed branches, two state-licensed agencies, and a large national bank. These entities are located in California, Illinois, New York and Texas.

The Department hereby issues the following Order, **effective immediately**:

1. All supervision activity of the Department shall continue uninterrupted and unimpeded, including, but not limited to, the ongoing examination of the New York Branch currently being conducted by the Department, unless and until any such conversion to an OCC license becomes legally effective (should that event occur).
2. The Bank and the New York Branch shall comply with all New York laws, regulations, orders and agreements, including, but not limited to, all reporting and record keeping requirements.
3. The Bank and the New York Branch remain subject to all supervisory and enforcement activities, including the investigation and prosecution of any violations of the Banking Law or the Financial Services Law, for any conduct occurring during the time period of its license from the Department.
4. The Bank and the New York Branch shall preserve all documents and information in their possession, custody or control that pertain, directly or indirectly, to:
 - (a) the affairs, operations or business of the New York Branch;
 - (b) compliance, or lack of compliance, with New York laws or regulations including, but not limited to, compliance (or lack of compliance) with laws and regulations pertaining to BSA/AML and OFAC matters;
 - (c) all documents relating to matters raised or discussed in any report (written or oral) prepared by the BTMU Consultant;
 - (d) information collected by or provided to the BTMU Consultant, including but not limited to, any information or documents relating to (ii) additional

concerns or issues identified by the BTMU Consultant that relate to the Bank's BSA/AML and OFAC sanctions compliance programs and (ii) compliance with the 2013 and 2014 Consent Orders;

(e) information self-reported by the Bank and the New York Branch to the BTMU Consultant or the Department about compliance with applicable laws and regulations, including the Bank's BSA/AML and OFAC sanctions compliance programs; and

(f) all communications with the Department relating to the 2013 Consent Order and the 2014 Consent Order.

5. Unless and until any conversion of the license issued by the Department to the Bank to a Federal branch shall become legally effective, and only in the event that such conversion becomes legally effective, the Bank and the New York Branch shall then carry out such conversion in a manner that is in full compliance with the Banking Law, including, but not limited to, Section 605 of the Banking Law, and all other applicable laws of the State of New York.

By Order, this 8th day of November, 2017.

New York, New York



SHIRIN EMAMI

Executive Deputy Superintendent -- Banking