



FINAL NOTICE

To: **Akira KAMIYA, IRN AXK02199**

Date: **7 November 2018**

1. IMPOSITION OF PENALTY

- 1.1. For the reasons set out in this Final Notice, the PRA imposes a financial penalty of £22,700 on Mr Akira KAMIYA pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act").
- 1.2. Mr Kamiya agreed to settle at an early stage of the PRA's investigation and therefore qualified for a 30% (Stage 1) discount under The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure April 2013 (as updated in August 2018) at Appendix 4 Statement of the PRA's settlement decision-making procedure and policy for the determination of the amount of penalties and the period of suspensions or restrictions in settled cases ("PRA Settlement Policy"). Were it not for this discount, the PRA would have imposed a financial penalty of £32,400 on Mr Kamiya.

2. SUMMARY OF GROUNDS FOR THE ACTION

- 2.1. The PRA has taken this action as a result of Mr Kamiya's conduct while Chair of Mitsubishi UFJ Securities International plc¹ ("MUS (EMEA)"). MUS (EMEA) is a UK-incorporated subsidiary of Mitsubishi UFJ Securities Holdings Co. Ltd ("MUSHD"), one of Japan's largest securities firms, which is itself a subsidiary of Mitsubishi UFJ Financial Group, Inc ("MUFG"). MUFG is the parent company of a global banking network, headquartered in Tokyo.
- 2.2. MUS (EMEA) is regulated by the PRA for prudential purposes and by the FCA for conduct matters.
- 2.3. Mr Kamiya was approved by the PRA to act as CF2 (Non-Executive Director and

¹ Mitsubishi UFJ Securities International plc changed its name to MUFG Securities EMEA plc on 1 July 2016.

Chair) at MUS (EMEA) between 21 September 2012 and 20 November 2014. A Chair occupies a special position of trust and influence, which the PRA deems integral to firms' safety and soundness. In particular, the Chair must oversee the performance of the board, facilitate independent oversight and challenge of the executive by the board and lead the development of the firm's culture by the board.

- 2.4. As part of his role as Chair of MUS (EMEA) Mr Kamiya was required to comply with Statement of Principle 4 ("SoP4"), which provided that he must deal with the PRA in an open and cooperative way and must disclose appropriately any information of which the PRA would reasonably expect notice.
- 2.5. The PRA expects the Chair of a UK subsidiary to disclose appropriately to the PRA any overseas regulatory matter which might impact the Chair personally. Information about overseas regulatory issues affecting senior individuals is relevant to an assessment of fitness and propriety and is therefore information of which the PRA would reasonably expect notice.
- 2.6. As set out more fully in this Notice, the PRA considers that Mr Kamiya breached SoP4 by failing to disclose appropriately the potential implications for him personally of a 2014 action by the New York Department for Financial Services ("DFS") into The Bank of Tokyo-Mitsubishi UFJ, Ltd² ("BTMU"), one of MUFG's subsidiaries. BTMU is an international bank headquartered in Tokyo with branches worldwide, including London. The DFS action focused on matters which related to BTMU's conduct in New York, where Mr Kamiya previously held a senior BTMU role.
- 2.7. The PRA considers Mr Kamiya was in breach of SoP4 from 6 November 2014 to 18 November 2014 (the "Relevant Period"). Mr Kamiya was aware, from 6 November 2014, of the possibility that, as a result of the action against BTMU, he would be restricted by the DFS from conducting US banking activities. He nevertheless did not inform the PRA. The PRA first received notice of the DFS action and its implications for Mr Kamiya on 18 November 2014, following the DFS' public announcement on that day that the DFS was prohibiting Mr Kamiya from conducting business involving any New York banks (or other financial institutions) regulated by the DFS.

² The Bank of Tokyo-Mitsubishi UFJ, Ltd changed its name to MUFG Bank, Ltd on 1 April 2018.

- 2.8. The PRA considers that Mr Kamiya has breached SoP4 by failing to disclose appropriately any information of which the PRA would reasonably expect notice. In particular, Mr Kamiya failed to disclose appropriately to the PRA the possibility he would be restricted by the DFS from conducting US banking activities.
- 2.9. The result of Mr Kamiya's breach was that the PRA was hindered in its consideration of whether the DFS matter had, or could have had, an impact on Mr Kamiya's fitness and propriety. The PRA was therefore not able to consider the implications for Mr Kamiya and to make any necessary contingency plans ahead of the public announcement by the DFS. The PRA's ability to assess the fitness and propriety of senior individuals at PRA-authorized firms in full knowledge of the relevant facts is key to ensuring that those senior individuals have the requisite honesty, integrity and reputation, competence and capability and financial soundness to manage firms in a prudentially sound manner. If such individuals are not fit and proper, there is a risk that their influence will have a negative impact on the firm and, depending on the size of the firm in question, financial stability more generally.
- 2.10. Further details of Mr Kamiya's breach and the PRA's grounds for taking action are at Annexes A and B.

3. REASONS WHY THE PRA IS TAKING ACTION

- 3.1. The PRA is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms. The PRA's role is to promote the safety and soundness of those firms. The PRA supervisory approach is forward looking, assessing safety and soundness not just against current risks but also against those that could plausibly arise further ahead. This approach requires firms and individuals to be straightforward with the PRA and to raise issues of possible concern at an early stage.
- 3.2. The PRA expects firms and the individuals within them to deal with the PRA (and other regulators as appropriate) in an open and co-operative manner, as set out in the PRA's Fundamental Rules and the PRA's conduct rules and standards. Boards and senior management are expected to ensure that all staff comply with this requirement.
- 3.3. The PRA expects a person will normally report information to the regulators through the firm's mechanisms for reporting information to the regulators.

- 3.4. The PRA's SoP4 imposed a duty to disclose to the PRA any information of which the regulator would reasonably expect notice. This included a duty to make proactive disclosures in the absence of any request or enquiry from the PRA. This duty to make proactive disclosures has now been reflected in Senior Manager Conduct Rule 4, which applies to those performing senior manager functions, as well as to Notified Non-Executive Directors. The PRA considers that, by virtue of their position, these persons are likely to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the PRA would reasonably expect notice.
- 3.5. The PRA expects all members of a board to demonstrate leadership and conduct themselves with a commensurate level of candour, independence and challenge. The PRA considers the responsibility of board members to be individual, as well as collective. The PRA expects senior individuals at firms to take prompt and appropriate steps to ensure the PRA has all relevant information at an early stage. This is particularly true in the case of the Chair of a PRA-authorized firm, given the importance the PRA places on the role of the Chair in leading the development by the board of the firm's culture, including how the firm and its senior management engage with its regulators. A Chair's leadership can have a significant impact on the development of a firm's culture and on its safety and soundness.
- 3.6. Where individuals have, or think they may have, competing or conflicting multi-jurisdictional regulatory responsibilities, they must ensure that they promptly and properly consider their responsibilities to UK regulators, including the PRA. Further, in international groups where individuals hold multiple roles across the group, they must ensure that, whatever their competing priorities, they promptly and properly consider and discharge their UK regulatory responsibilities. Individuals remain responsible for the discharge of their UK regulatory duties.
- 3.7. The PRA considers that the imposition of a financial penalty on Mr Kamiya supports the PRA's general objective of promoting the safety and soundness of the firms it regulates.
- 3.8. The action the PRA is taking emphasises the importance the PRA places on the personal responsibility of senior individuals in PRA-authorized firms to deal with

the PRA in an open and cooperative way and to disclose appropriately information of which the PRA would reasonably expect notice.

- 3.9. The full particulars relevant to this matter are set out in Annex A. Mr Kamiya's failings and breaches are detailed in Annex B and the basis for the sanction the PRA is imposing is set out in Annex C. The procedural matters set out in Annex D are important. The definitions used in this Notice are set out in Appendix 1 and the relevant statutory, regulatory and policy provisions are set out in Appendix 2.

4. SANCTION

- 4.1. Taking into account the facts and matters in Annex A and the relevant factors set out in the PRA's Penalty Policy, the PRA considers that Mr Kamiya's breach of SoP4 warrants the imposition of a financial penalty of £32,400. That penalty was reduced by 30% to £22,700 as Mr Kamiya settled with the PRA at Stage 1.

Miles Bake

Head of Legal, Enforcement and Litigation Division,
for and on behalf of the PRA

Annex A

1. FACTS AND MATTERS RELIED UPON

Relevant entities

- 1.1. MUS (EMEA) is headquartered in London and offers services in relation to capital markets, credit, rates, equities and structured markets. MUS (EMEA) is a UK-incorporated subsidiary of Mitsubishi UFJ Securities Holdings Co. Ltd ("MUSHD"), one of Japan's largest securities firms, which is itself a subsidiary of Mitsubishi UFJ Financial Group, Inc ("MUFG"). MUFG is the parent company of a global banking network, headquartered in Tokyo. One of MUFG's subsidiaries is BTMU, an international bank headquartered in Tokyo but with branches worldwide.
- 1.2. Both BTMU and MUS (EMEA) are regulated by the PRA for prudential purposes and by the FCA for conduct matters.

Mr Kamiya's role and responsibilities

- 1.3. Between 21 September 2012 and 20 November 2014 Mr Kamiya was approved by the PRA to act as CF2 (Non-Executive Director and Chair) at MUS (EMEA).
- 1.4. As Chair, Mr Kamiya's responsibilities included leading the board in ensuring MUS (EMEA) was well-governed and managed, approving MUS (EMEA)'s strategy and overseeing MUS (EMEA)'s compliance and risk management. More particularly, during his time as Chair, Mr Kamiya was closely involved in a project to improve the governance of MUS (EMEA). The PRA had informed MUS (EMEA) in early 2014 that significant changes were required to MUS (EMEA)'s governance structures. Mr Kamiya was overseeing the project to implement these changes. This project required close interaction with the PRA.
- 1.5. As an approved person and Chair of a PRA-authorized firm, Mr Kamiya was required to meet the requisite standard of fitness and propriety and to comply with the PRA's Statements of Principle and Code of Practice for Approved Persons. Mr Kamiya was aware of and understood these regulatory requirements.
- 1.6. MUS (EMEA) also expected Mr Kamiya to be aware of the provisions of the MUS (EMEA) Compliance Manual which records that the board and executive of MUS (EMEA) had delegated responsibility for general oversight of the firm's non-

financial compliance and reporting requirements to the regulators to Compliance. As at November 2014 the relevant section of MUS (EMEA)'s Compliance Manual provided:

The prime responsibility for compliance [with] the FCA and PRA's rules and regulations...rests with the Board of [MUS (EMEA)] and in particular with [a designated member of the executive]. ...Within [MUS (EMEA)] this responsibility (but not the prime responsibility for compliance) has been delegated to:...[a designated member of the Compliance Department] with regard to all other regulatory matters within the Company. ... The Compliance Department provides advice to management and staff in all business areas on regulatory matters and is responsible for the general oversight of the firm's non-financial compliance and reporting requirements to management and the regulators.

- 1.7. Mr Kamiya told the PRA at interview that he was familiar with the above section of the MUS (EMEA) Compliance Manual.

Background to the PRA's investigation

- 1.8. In 2014 the DFS began investigating whether BTMU had misled the DFS (the "Second DFS Matter").
- 1.9. On 18 November 2014 the DFS announced that it had reached a settlement with BTMU in respect of the Second DFS Matter. BTMU was fined USD 315,000,000. The DFS press release accompanying the announcement also named three current and former employees of the wider MUFG group, including Mr Kamiya, as having been involved in the misconduct. He was previously employed by BTMU and, between 2008 and 2010 he was Managing Executive Officer and Deputy CEO of BTMU's Global Business Unit. The DFS announced he was prohibited from conducting business involving any New York banks (or other financial institutions) regulated by the DFS.
- 1.10. The PRA first received notice of the Second DFS Matter and its implications for Mr Kamiya on 18 November 2014, following the DFS' public announcement.
- 1.11. As a result of the late notification to the PRA, the PRA opened investigations into BTMU and MUS (EMEA) for potential breaches of the PRA's rules. On 9 February 2017, the PRA fined BTMU £17,850,000 for breaches of Fundamental Rule 6 and Fundamental Rule 7 of the PRA's Rulebook and fined MUS (EMEA) £8,925,000 for a breach of Fundamental Rule 7 of the PRA's Rulebook.³ As a result of

³ <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/enforcement-notice/en090217.pdf>

information received by the PRA during its investigations into BTMU and MUS (EMEA), the PRA decided to open an investigation into whether Mr Kamiya had breached the PRA's Statements of Principle and Code of Practice for Approved Persons.

The DFS settlements with BTMU

- 1.12. The Second DFS Matter arose out of an earlier DFS action (the "First DFS Matter"), which the DFS and BTMU settled in June 2013. On 20 June 2013, BTMU and the DFS entered into a consent order in relation to BTMU's improper processing of US dollar clearing activity through BTMU New York Branch in breach of US sanctions between 2002 and March 2007. The settlement required BTMU to pay to the DFS a USD 250,000,000 penalty, and was based on a historical transaction review ("the HTR") in respect of the period from 1 April 2006 to 31 March 2007 carried out by PricewaterhouseCoopers LLP ("PwC") at BTMU's request.⁴
- 1.13. The DFS later investigated PwC in relation to PwC's report on the HTR (the "HTR Report"), which had been submitted to the DFS' predecessor agency, ("the PwC Investigation"). In particular, the DFS investigated PwC's removal of evidence from the HTR Report and concluded that PwC changed the HTR Report as a result of improper pressure exerted by BTMU. PwC and the DFS entered into a settlement agreement on 18 August 2014 ("the PwC Settlement Agreement"), which required PwC to pay to the DFS a USD 25,000,000 penalty and agree to certain restrictions on its consulting activities for two years.
- 1.14. The DFS notified BTMU on 2 September 2014 that it was concerned with BTMU's conduct in respect of the First DFS Matter and in particular in respect of the HTR Report. BTMU and the DFS engaged in a settlement process, and the Second DFS Matter concluded on 18 November 2014 with the publication by the DFS of a consent order (the "2014 Consent Order") which recorded the restrictions placed on Mr Kamiya.

The MUS (EMEA) Chair succession plan

- 1.15. Throughout September–November 2014, the period in which the Second DFS Matter was underway, MUFG, MUSHD and MUS (EMEA) were progressing an existing plan for Mr Kamiya to retire as Chair of MUS (EMEA) and for Takami Onodera to replace him. Mr Kamiya was notified in August 2014 that a

⁴ <https://www.dfs.ny.gov/about/ea/ea141118.pdf> para 4.

retirement position had been found for him and that he was expected to retire from MUS (EMEA) in February or March 2015. At that time he was aware that the PRA would need to be informed of the proposed change to the MUS EMEA Chair.

- 1.16. MUS (EMEA)'s professional UK advisors ("UK Advisors") were approached for advice about managing the transition, including the timing of PRA notifications. The UK Advisors advised that it was best to notify the PRA as soon as possible. Between September and November 2014, Mr Kamiya was in regular dialogue with both wider MUFG group personnel and with the UK Advisors about his replacement as MUS (EMEA) Chair. There was a great deal of importance placed in these discussions on the question of how the PRA viewed the role of Chair and the consequent need to ensure that communication with the PRA over the Chair's replacement was managed carefully.
- 1.17. The PRA was informed on a call on 17 October 2014 and again at a meeting on 21 October 2014, attended by Mr Kamiya, among others, that Mr Kamiya would be stepping down and that Mr Onodera would replace him. No mention was made at this meeting of the Second DFS Matter and the possible implications for Mr Kamiya personally, including the potential impact of the Second DFS Matter on the timing of succession.
- 1.18. Mr Onodera was approved as Deputy Chair of MUS (EMEA) at a MUS (EMEA) Board meeting on 11 November 2014. He was also given authority to act as Chair on an interim basis if the Chair was not available.

Mr Kamiya's awareness in 2014 of the Second DFS Matter

- 1.19. By the time the DFS began communicating with BTMU in relation to the Second DFS Matter, Mr Kamiya was at MUS (EMEA) and no longer held a BTMU role. He was not involved in the negotiations with the DFS, which were handled by BTMU and its US legal advisors ("BTMU's US Counsel").
- 1.20. Mr Kamiya first became aware of the Second DFS Matter in September 2014 in a telephone call from a senior BTMU executive. The senior BTMU executive asked Mr Kamiya to attend a voluntary interview with BTMU's US Counsel in relation to a DFS investigation into BTMU.
- 1.21. Mr Kamiya attended that interview on 19 September 2014. BTMU's US Counsel informed Mr Kamiya that they were speaking to him as part of a fact-gathering

exercise into the events of 2007/2008 and that Mr Kamiya was one of a number of people who held roles at BTMU during that time who were being interviewed. Mr Kamiya was asked to keep the contents of his interview confidential and not discuss them with anyone else. Mr Kamiya understood following this interview that any disclosure of information relating to the Second DFS Matter would be a violation of US banking laws.

- 1.22. Specifically, BTMU was subject to a general restriction under New York State Banking Law § 36.10, which requires the consent of the DFS in order to disclose any "Confidential Supervisory Information" ("CSI") to any third party. In order to disclose information that is considered CSI to third parties, including other regulators, it is necessary to obtain a waiver from the DFS. Breaching these confidentiality restrictions may result in the DFS imposing material monetary sanctions.
- 1.23. Following the 19 September 2014 interview, Mr Kamiya did not receive any further communication or information in relation to the Second DFS Matter until 6 November 2014. He was not aware of the potential implications of the Second DFS Matter for him personally when he discussed the MUS (EMEA) Chair succession plan with the PRA on 17 and 21 October 2014.
- 1.24. On 6 November 2014, a senior MUSHD executive informed Mr Kamiya that it was possible that Mr Kamiya would be identified by job-title in the DFS settlement notice and that his banking activities in the US would be restricted, although the position was still under negotiation with the DFS. He was told that a settlement with the DFS was imminent. Mr Kamiya understood on 6 November 2014 that what was being proposed by the DFS could have a serious impact on him personally but he was told that BTMU were attempting to avoid this outcome. The senior MUSHD executive emphasised to Mr Kamiya that the matter was confidential. Mr Kamiya was not invited to engage in the DFS process, nor did he have an opportunity to hear or address the DFS' concerns.
- 1.25. Following this conversation, Mr Kamiya on 6 November 2014 informed Mr Onodera that Mr Kamiya might need to resign as MUS (EMEA) Chair. The two considered the need to inform MUS (EMEA)'s Board and the regulators in the United Kingdom, the potential timing for doing so, and how to deal with the confidentiality restrictions imposed by the DFS. Mr Onodera and Mr Kamiya agreed to obtain legal advice from BTMU's US counsel as to whether they could disclose information to the UK Advisors (already instructed in relation to the

ongoing governance project) in order to seek advice on these points.

- 1.26. On 9 November 2014 Mr Kamiya (together with Mr Onodera) informed a second MUS (EMEA) Non-Executive Director that Mr Kamiya might need to retire earlier than planned because of a potential US regulatory issue.
- 1.27. On 10 November 2014 Mr Onodera received the US advice on whether information could be disclosed to the UK Advisors. The US advice confirmed that MUS(EMEA) could seek advice on its UK regulatory obligations but noted:
- [w]e do need to warn you that it is possible that [the] DFS would not be pleased to learn of such discussions because of the confidential nature of our communications with them. However, given the role [the UK Advisor] has in advising [MUS(EMEA)] on an issue of import to the DFS settlement, we think it can be explained to [the] DFS should the need arise. That said, as we discussed on the phone, the information provided to [the UK Advisor] should be as limited as possible.*
- In addition, the communication with [the UK advisor] would not likely be privileged under US law and could therefore be discovered in an investigation or other action. For this reason we also advise keeping the information provided to, and discussion with, [the UK Advisor] as narrow as possible.*
- 1.28. Mr Kamiya's understanding of the US advice was that it was a strong warning against consulting the UK Advisors. Mr Onodera and Mr Kamiya discussed the advice and decided to not consult the UK Advisors.
- 1.29. On 11 November Mr Kamiya did tell the UK Advisors, in the context of a meeting to discuss the ongoing Chair succession plan, that he may have to retire earlier than planned because of a potential regulatory matter in the US. On the same day, at the last MUS (EMEA) board meeting of the year, Mr Onodera was appointed as Deputy Chair effective immediately, with authority to act as Chair on an interim basis.
- 1.30. On 12 November 2014, Mr Kamiya also mentioned the matter in the same terms to a senior MUS (EMEA) executive at a business as usual meeting.
- 1.31. On 16 November 2014 BTMU's US Counsel told Mr Kamiya that it was probable that his role would be referenced in the 2014 Consent Order and that BTMU would likely be required to curtail Mr Kamiya's banking activities in the US. He was told his name would not appear in the 2014 Consent Order. The 2014 Consent Order did not in fact name Mr Kamiya, however, he was named in the DFS press release accompanying its publication of the 2014 Consent Order.

- 1.32. There are indications throughout November 2014 that those within the wider MUFG group who were involved in the negotiations with the DFS were deliberately withholding the detail of those negotiations from Mr Kamiya.
- 1.33. At no point did Mr Kamiya inform the PRA, nor did he report the matter internally within MUS (EMEA) in accordance with the provisions of MUS (EMEA)'s Compliance Manual. The PRA was informed of the Second DFS Matter and the consequences for Mr Kamiya personally on 18 November 2014, following publication of the 2014 Consent Order. Mr Kamiya did not attend the call.
- 1.34. The PRA raised immediate concerns on the call about Mr Kamiya's fitness and propriety to continue to act as an approved person and requested MUS (EMEA) to respond to this on an urgent basis.
- 1.35. On 20 November 2014 Mr Kamiya resigned as a Director and Chair of MUS (EMEA).

Annex B

2. BREACHES AND FAILINGS

- 2.1. As a result of the facts and matters set out in Annex A, the PRA considers that Mr Kamiya has breached Statement of Principle 4 ("SoP4") by failing to be open and cooperative with the PRA. In particular, Mr Kamiya failed to disclose appropriately to the PRA the possibility he would be restricted by the DFS from conducting US banking activities.
- 2.2. As at November 2014, SoP4 provided:
An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.
- 2.3. During the Relevant Period Mr Kamiya was an approved person performing the CF2 (Non-Executive Director) function at MUS (EMEA).
- 2.4. The PRA expects the Chair of a UK subsidiary, one of the most senior figures within a firm, to disclose appropriately an overseas regulatory matter which relates to the Chair personally. Information about overseas regulatory issues affecting a senior individual is relevant to an assessment of fitness and propriety and is therefore information of which the PRA would reasonably expect notice.
- 2.5. From 6 November 2014 onwards Mr Kamiya was aware of the possibility he would be restricted by the DFS from conducting US banking activities and was actively considering what this meant for his UK role. Mr Kamiya was aware, through previous engagement with the PRA on a project to improve the governance of MUS (EMEA), of the PRA's focus on robust governance. In particular, he knew the PRA considered it important that the right people were in place on the Board of MUS (EMEA), particularly in the role of Chair.
- 2.6. Mr Kamiya did not notify the PRA of the possibility he would be subject to DFS restrictions until after the 2014 Consent Order was published.
- 2.7. Guidance applicable during the Relevant Period provided that Mr Kamiya would be in breach of SoP 4 if:
- (1) Mr Kamiya was personally culpable. That is, that his actions were deliberate or his standard of conduct was below that which would be reasonable in all the circumstances.

(2) It would have been reasonable for Mr Kamiya to assume that the information that he failed to report would be of material significance to the PRA.

(3) Mr Kamiya failed to report promptly, in accordance with his firm's internal procedures, the implications for him of the Second DFS Matter.

2.8. Factors relevant to the assessment of whether Mr Kamiya's conduct complied with SoP4 include:

(1) the likely significance to the PRA of the information, which it was reasonable for Mr Kamiya to assume;

(2) whether the information related to Mr Kamiya himself or to his firm;

(3) whether any decision not to report the matter internally was taken after reasonable enquiry and analysis of the situation;

(4) Mr Kamiya's seniority within the firm.

Personal culpability

2.9. Mr Kamiya was aware from 6 November 2014 of the possibility he may have to resign because of a US regulatory issue. He decided not to disclose this to the PRA.

2.10. Mr Kamiya confirmed at interview that he was aware of his continuing obligation to disclose information to the PRA while an approved person.

2.11. Mr Kamiya's conduct was below that which would be reasonable in all the circumstances, for the following reasons:

(1) Mr Kamiya was actively considering what the potential DFS restrictions meant for his UK role;

(2) Mr Kamiya did not undertake a reasonable enquiry and analysis of the situation. While Mr Kamiya's initial instinct was to get advice from the UK Advisors about his obligations to report the Second DFS Matter to the PRA, he did not in fact take any UK advice on his regulatory obligations;

(3) as Chair of MUS EMEA Mr Kamiya was one of the most senior figures within the firm;

(4) the information Mr Kamiya failed to report related to him personally.

2.12. Accordingly, in deciding not to disclose to the PRA, Mr Kamiya was personally

culpable.

Information of which PRA would reasonably expect notice

- 2.13. The PRA Rulebook and past FSA actions make clear that information that may be relevant to an assessment of the fitness and propriety of an approved person is information of which the PRA would reasonably expect notice.
- 2.14. SUP 10B.12.18R, as in force in November 2014, required a firm that becomes aware of information which would reasonably be material to the assessment of the fitness and propriety of a person performing a controlled function to inform the PRA as soon as practicable. While the rule does not refer to the obligations of an individual, it informs what it was reasonable for Mr Kamiya to assume about information in which the PRA would be interested.
- 2.15. SUP 10B.12.21 confirms the duty to notify “extends to any circumstances that would normally be declared when giving the information required for ... matters considered in FIT 2”. FIT 2 covers the main assessment criteria for the Fit and Proper test for Approved Persons.
- 2.16. In addition to the position set out in the PRA Rulebook and in FSA final notices, Mr Kamiya’s history of interacting with the PRA also informs what it was reasonable for Mr Kamiya to assume about the likely significance to the PRA of the information. Throughout 2014 Mr Kamiya was closely involved in a project to improve the governance of MUS (EMEA), including through the recruitment of Independent Non-Executive Directors. He was aware of the PRA’s focus on robust governance and the importance the PRA placed on having the right people on the board of MUS (EMEA), particularly in the role of Chair. Finally, Mr Kamiya confirmed at interview that he was aware that he needed to remain fit and proper and needed to comply with the PRA’s Statements of Principle as part of his obligations as an approved person.
- 2.17. Information about the implications of the Second DFS Matter for Mr Kamiya was relevant to his fitness and propriety and it was reasonable for Mr Kamiya to assume that, for the reasons above, this information would be of material significance to the PRA.

Failed to report promptly, in accordance with his firm’s internal procedures

- 2.18. In accordance with MUS (EMEA)’s Compliance Manual, Mr Kamiya should have disclosed the potential implications for him of the Second DFS Matter to the

individuals who were designated as responsible for reporting such matters to the PRA. Failing that, he should have reported the matter to the PRA himself.

- 2.19. Mr Kamiya did not report the potential implications for him of the Second DFS Matter directly to the PRA. Nor did he report the matter internally within MUS (EMEA) in accordance with the provisions of MUS (EMEA)'s Compliance Manual.

Conclusion

- 2.20. Mr Kamiya breached SoP4 because he failed to inform the PRA (or the person within MUS (EMEA) responsible for reporting to the PRA) of information it would have been reasonable for him to assume would be of material significance to the PRA. The breach lasted from 6 November 2014, when Mr Kamiya became aware of the information, until 18 November 2014, when Mr Kamiya became aware that the PRA had been informed.

Effect of Mr Kamiya's breach

- 2.21. The effect of Mr Kamiya's breach was that the PRA was hindered in its consideration of whether these circumstances had, or could have had, an impact on Mr Kamiya's fitness and propriety. The PRA was not able to consider the implications for Mr Kamiya and to make any necessary contingency plans ahead of the public announcement by the DFS.
- 2.22. The PRA expects senior individuals at firms to take prompt and appropriate steps to ensure the PRA has all relevant information at an early stage. This is particularly important in the case of the Chair of a PRA-authorized firm, whose role is integral to a firm's safety and soundness.
- 2.23. The PRA's ability to assess the fitness and propriety of senior individuals at PRA-authorized firms in full knowledge of the relevant facts is key to ensuring that those individuals have the requisite honesty, integrity and reputation, competence and capability, and financial soundness to manage firms in a prudentially sound manner. If such individuals are not fit and proper, there is a risk that their influence will have a negative impact on the firm and, depending on the size of the firm in question, financial stability more generally.
- 2.24. Without full access to all relevant information, the PRA's ability to make an effective judgement as to the ongoing suitability of Mr Kamiya to remain as Chair of a PRA-authorized firm was compromised.

Annex C: SANCTION

3. FINANCIAL PENALTY

- 3.1. Pursuant to section 66(3)(a) of the Act, as Mr Kamiya has breached the PRA's regulatory requirements, the PRA may, among other options, impose a penalty on Mr Kamiya.
- 3.2. The PRA's policy in relation to financial penalties is set out in 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure' April 2013 (as updated in August 2018) at Appendix 2 'Statement of the PRA's policy on the imposition and amount of financial penalties under the Act' (the "PRA's Penalty Policy").
- 3.3. The five steps for calculating penalties to be imposed on individuals by the PRA are set out in the PRA's Penalty Policy.

Step 1- disgorgement

- 3.4. At Step 1 the PRA seeks to deprive an individual of any economic benefits derived from or attributable to the breach of its requirements, where it is practicable to ascertain and quantify them.
- 3.5. Mr Kamiya derived no economic benefit from the breach and the Step 1 figure is therefore **£0**.

Step 2- seriousness of the breach

- 3.6. At Step 2 the PRA determines a starting point figure for a punitive penalty having regard to the seriousness of the breach by the relevant individual. In determining the starting point figure the PRA will have regard to any threat or potential threat the breach posed or continues to pose to the advancement of the PRA's statutory objectives, and to the income of the individual. The PRA will ordinarily determine a figure at Step 2 based on the individual's annual income during the tax year preceding the date when the breach ended.
- 3.7. During the 2013/2014 tax year Mr Kamiya was not paid by MUS (EMEA). He received £324,643.56 from MUSHD.
- 3.8. The PRA therefore considers that Mr Kamiya's relevant income for the purposes of calculating a penalty is **£324,643.56**.

Step 2 factors

- 3.9. The PRA's Penalty Policy requires the PRA to apply an appropriate percentage rate to the individual's income to produce a figure that properly reflects the nature, extent, scale and gravity of the breach. The PRA considers the appropriate percentage rate in this case is 10% for the following reasons:
- (1) as Chair of MUS (EMEA) Mr Kamiya was one of the most senior figures within the firm;
 - (2) the information Mr Kamiya failed to report was of material significance to the PRA as it called into question the fitness and propriety of the MUS (EMEA) Chair;
 - (3) Mr Kamiya's initial instinct was to get advice from professional UK advisors about his obligations to report the Second DFS Matter to the PRA, although he did not in fact take any UK advice on his regulatory obligations;
 - (4) information about the Second DFS Matter appears to have been deliberately kept from Mr Kamiya by his superiors in Tokyo;
 - (5) Mr Kamiya's breach of Statement of Principle 4 lasted from 6 November 2014 to 18 November 2014 (a period of 12 days);
 - (6) The breach had the potential to impact the PRA's statutory objectives as the failure to disclose the information impaired the PRA's ability to make effective judgements as to the ongoing suitability of Mr Kamiya for the role of Chair of a PRA-authorized firms;
 - (7) Mr Kamiya did not profit from the breach;
 - (8) Mr Kamiya has cooperated fully with the PRA's investigation as we would expect.
- 3.10. Therefore the Step 2 starting point figure is 10% of **£324,643.56** = **£32,464.36**.

Step 3: adjustment for any aggravating, mitigating or other relevant factors

- 3.11. The PRA may increase or decrease the starting point figure to take account of any aggravating or mitigating factors or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it.
- 3.12. The PRA considered in particular the following factors as possibly aggravating or mitigating the breach:
- (1) Mr Kamiya has cooperated fully with the PRA's investigation as we would

expect;

- (2) information about the Second DFS Matter appears to have been deliberately kept from Mr Kamiya by his superiors in Tokyo.
- (3) Mr Kamiya's decision not to speak to the UK Advisors was influenced by a mis-reading of the advice from BTMU's US Counsel and a concern he risked breaching DFS CSI restrictions were he to disclose his position to the UK Advisors.

3.13. The PRA nevertheless does not consider that an adjustment to the starting point figure for aggravating or mitigating circumstances is appropriate.

3.14. The Step 3 figure is **£32,464.36**.

Step 4: adjustment for deterrence

3.15. If the PRA considers the penalty determined following Steps 2 and 3 is insufficient effectively to deter the person who committed the breach and/or others who are subject to the PRA's regulatory requirements from committing similar or other breaches, it may increase the penalty at Step 4 by making an appropriate adjustment to it.

3.16. The PRA does not consider an adjustment for deterrence is appropriate in this instance.

3.17. The Step 4 figure is **£32,464.36**.

Step 5: application of any applicable reductions for early settlement or serious financial hardship

3.18. The PRA and the individual on whom the PRA is imposing a penalty may seek to agree the amount of the penalty and any other appropriate settlement terms. The PRA's Settlement Policy provides that the amount of the penalty which would otherwise have been payable may, subject to the stage at which a binding settlement agreement is reached, be reduced. Settlement at Stage 1 entitles Mr Kamiya to a 30% discount on the amount of the penalty.

3.19. The Step 5 figure is $£32,464.36 - 30\% = \mathbf{£22,725.05}$ (rounded to £22,700).

Conclusion

3.20. The PRA considers that a financial penalty of £32,400 (reduced to £22,700 for Stage 1 settlement) is appropriate and proportionate in this case. The PRA

considers that by imposing this penalty both Mr Kamiya and others will be effectively deterred from engaging in similar behaviour in the future.

- 3.21. For these reasons, the PRA imposes a financial penalty of £22,700 (reduced from £32,400) on Mr Kamiya for breaching the PRA's Statement of Principle 4.

Annex D PROCEDURAL MATTERS

4. PROCEDURAL MATTERS

Decision maker

- 4.1. The settlement decision makers made the decision which gave rise to the obligation to give this Final Notice.
- 4.2. This Final Notice is given under section 390 of the Act. The following statutory rights are important.

Manner of and time for payment

- 4.3. The financial penalty of £22,700.00 must be paid by Akira KAMIYA to the PRA no later than 21 November 2018, 14 days from the date of this Notice.

If the financial penalty is not paid

- 4.4. If any, or any part of, a payment is outstanding on the day after it is due to be paid to the PRA (in accordance with paragraph 4.3 above), the PRA may recover the full outstanding amount of the financial penalty as a debt owed by Akira KAMIYA and due to the PRA.

Publicity

- 4.5. Sections 391(4), 391(6A) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the PRA must publish such information about the matter to which this notice relates as the PRA considers appropriate. The information may be published in such manner as the PRA considers appropriate. However, the PRA may not publish information if such publication would, in the opinion of the PRA, be unfair to the person with respect to whom the action was taken, prejudicial to the safety and soundness of PRA-authorized persons or prejudicial to securing an appropriate degree of protection for policyholders.

PRA contacts

- 4.6. For more information concerning this matter generally, contact John Cheesman Enforcement & Litigation Division, Legal Directorate of the Bank of England (direct line: +44 (0)203 461 7866, john.cheesman@bankofengland.co.uk).

APPENDIX 1

DEFINITIONS

1. THE DEFINITIONS BELOW ARE USED IN THIS DECISION

NOTICE:

- 1.1. "2014 Consent Order" means the consent order between BTMU and the DFS published on 18 November 2014;
- 1.2. "the Act" means the Financial Services and Markets Act 2000 (as amended);
- 1.3. "BTMU" means The Bank of Tokyo-Mitsubishi UFJ, Ltd;
- 1.4. "CSI" means information disclosure of which was subject to a general restriction under New York State Banking Law § 36.10;
- 1.5. "DFS" means the New York Department of Financial Services;
- 1.6. "FCA" means the Financial Conduct Authority;
- 1.7. "First DFS Matter" means the action the DFS took against BTMU which was settled in June 2013;
- 1.8. "MUFG" means Mitsubishi UFJ Financial Group, Inc;
- 1.9. "MUS (EMEA)" means Mitsubishi UFJ Securities International plc;
- 1.10. "MUSHD" means Mitsubishi UFJ Securities Holdings Co. Ltd;
- 1.11. "Notice" means the PRA's final notice;
- 1.12. "PRA" means the Prudential Regulation Authority;
- 1.13. "PRA's Penalty Policy" means *'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure April 2013 (as updated August 2018) – Appendix 2 – Statement of the PRA's policy on the imposition and amount of financial penalties under the Act'*;
- 1.14. "PRA's Settlement Policy" means *'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure April 2013 (as updated August 2018) – Appendix 4 – Statement of the PRA's settlement decision-making procedure and policy for the determination and amount of penalties and the period of suspensions or restrictions in settled cases'*;
- 1.15. "Relevant Period" means 6 November 2014 to 18 November 2014.
- 1.16. "Second DFS Matter" means the issues between the DFS and BTMU arising from the PwC Investigation, which were settled by consent order on 18 November 2014;
- 1.17. "SoP4" means Statement of Principle 4;
- 1.18. "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);
- 1.19. "UK Advisors" means the UK professional advisors instructed by MUS (EMEA) in respect of MUS (EMEA)'s governance project.

APPENDIX 2

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The PRA has a general objective, set out in section 2B of the Act, to promote the safety and soundness of PRA-authorised persons. The PRA seeks to advance this objective by seeking to ensure that the business of PRA-authorised firms is carried on in a way which avoids any adverse effect on the stability of the UK financial system.
- 1.2. Section 66 of the Act provides that the PRA may take action against a person, including imposing a penalty on them of such amount as the PRA considers appropriate if it appears to the PRA that they are guilty of misconduct and the PRA is satisfied that it is appropriate in all the circumstances to take action against them. The conditions under which a person is guilty of misconduct for the purposes of PRA action are set out in section 66B of the Act.

2. RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

- 2.1. The PRA's Statements of Principle and Code of Practice for Approved Persons were issued under section 64 of the Act.
- 2.2. PRA's Statement of Principle 4 (in force from 1 April 2013 to 6 March 2016) states:
An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.
- 2.3. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the PRA, do not comply with a Statement of Principle. It also sets out factors which, in the PRA's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

3. RELEVANT STATUTORY POLICY

Approach to enforcement

3.1. The Prudential Regulatory Authority's approach to enforcement: statutory statements of policy and procedure, April 2013 (as updated in August 2018) sets out the PRA's approach to exercising its main enforcement powers under the Act. In particular:

- (1) The PRA's approach to the imposition of penalties is outlined at *Annex 2 Statement of the PRA's policy on the imposition and amount of financial penalties under the Act*; and
- (2) The PRA's approach to settlement is outlined at *Annex 4 - Statement of the PRA's settlement decision-making procedure and policy for the determination of the amount of penalties and the period of suspensions or restrictions in settled cases*.