New York’s Department of Financial Services Announces Additional $315 Million Penalty Against Bank of Tokyo-Mitsubishi UFJ, Ltd. for Allegedly Misleading Regulators, Continuing Its Focus on U.S. Sanctions and International Anti-Money Laundering Enforcement

On November 18, 2014, New York’s Department of Financial Services ("DFS") announced another major settlement with the Bank of Tokyo-Mitsubishi UFJ, Ltd. ("BTMU") arising from BTMU’s U.S. dollar clearing activity involving Iran, Sudan, and other regimes and entities subject to U.S. economic sanctions. This latest $315 million penalty comes in the wake of much-publicized settlements from 2013 in which BTMU previously resolved investigations by DFS and federal authorities for purportedly facilitating financial transactions with U.S. sanctions targets in Iran, Sudan, and Burma. It also follows multiple New York-based regulatory and criminal investigations involving other institutions and entities arising from alleged violations of U.S. sanctions programs.

BTMU previously paid a $250 million monetary penalty to DFS in 2013, as well as over $8.5 million in civil penalties to resolve a parallel inquiry by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). DFS’s latest settlement is the result of that agency’s specific focus on a historical transaction review report prepared by BTMU’s retained accounting professionals, which New York regulators purportedly relied upon when negotiating the terms and scope of the 2013 settlement. According to DFS’s public statements and the public Consent Order signed by BTMU, a copy of which may be found here, that transaction report materially underreported the full extent of BTMU’s U.S. dollar clearing services on behalf of sanctioned persons (including those in Iran, Sudan, and Burma), thereby misleading DFS regarding the true nature of BTMU’s prior misconduct. The most recent settlement resolves one key aspect of that renewed investigation, although parallel investigations by other authorities also have been reported in the news media.

In addition to signaling generally that DFS remains aggressive in its oversight of financial institutions having any contacts with New York, even for conduct principally occurring abroad, this most recent development further confirms that DFS and New York State Superintendent of Financial Services Benjamin Lawsky will continue to chart their own course when it comes to investigating blocked financial transactions or revisiting previously settled matters. This development also is consistent with the particular interest that New York regulators and law enforcement officials have taken in investigating and
pursuing alleged violators of U.S. sanctions regulations – an interest that has already generated a string
of well-publicized enforcement settlements, criminal investigations, and forfeiture proceedings by DFS,
Manhattan’s District Attorney, and federal prosecutors in New York.

DFS’s Settlements with BTMU

In June 2013, DFS agreed to an omnibus settlement with BTMU relating to U.S. dollar clearing services
involving sanctioned parties and entities listed on OFAC’s Specially Designated Nationals list. In
particular, the settlement agreement stated that between 2002 and 2007, “BTMU engaged in a practice
under which BTMU’s employees in Tokyo routed U.S. dollar payments through New York after first
removing information from wire transfer messages that could be used to identify the involvement of
sanctioned parties.” This alleged conduct covered approximately 28,000 U.S. dollar payments, valued at
an estimated $100 billion, involving Iran, Sudan, Burma, and other persons subject to U.S. sanctions.
BTMU consented to a $250 million penalty and the appointment of an independent consultant to monitor
BTMU’s money laundering and sanctions compliance going forward.

According to the most recent settlement, following an interim investigation, DFS determined that BTMU
employees had “pressured” BTMU’s retained consultants into “watering down” their report on BTMU’s
prior transactions with sanctioned nations, thereby underreporting the overall number and dollar value of
noncompliant transactions. The terms of the 2014 BTMU settlement state that BTMU violated the terms
of the 2013 settlement, misled the regulators appointed to oversee BTMU, and violated both New York
Banking Law § 200-c (requiring BTMU to keep accurate books and records at its New
York branch) and
DFS regulation 3 NYCRR § 300.1 (requiring BTMU to immediately report the discovery of fraud or other
misconduct to DFS). Under this latest settlement, BTMU consented to a $315 million penalty, the
disciplining of multiple BTMU employees, and an extension of the term of the bank’s independent
sanctions compliance consultant.

Key Takeaways

BTMU’s recent settlement is merely the latest link in an increasingly long chain of New York-based
investigations by federal, state, and local regulators and law enforcement officials regarding prohibited
transactions under U.S. sanctions regulations. In addition to the BTMU settlements, DFS and federal
authorities previously extracted significant settlements from Standard Chartered, Royal Bank of Scotland,
and BNP Paribas in connection with alleged sanctions noncompliance. In 2013, federal authorities
secured the forfeiture of a Manhattan skyscraper purportedly owned by Iranian owners in violation of the
existing U.S. sanctions regime. Manhattan’s District Attorney likewise has made no secret of his office’s
eagerness to investigate and pursue alleged sanctions violators.

BTMU’s recent settlement also further demonstrates that DFS will not be satisfied with the penalties the
federal government imposes in settlements with alleged sanctions violators, and may seek to revisit
earlier settlements if it later believes that those resolutions were premised on incomplete or inaccurate
information. Recently, DFS and other authorities were reported to be similarly reexamining their prior
resolution of a sanctions-related investigation involving Standard Chartered, and DFS’s recent pursuit of
BTMU thus underscores the significant risks that financial institutions and other settling parties face when
seeking to secure final resolutions from DFS and other regulators. Indeed, DFS continues to pursue
penalties going well beyond monetary fines, creating further complications and risks for settling
institutions. For example, similar to its earlier settlements with BNP Paribas and the Royal Bank of
Scotland, DFS conditioned its 2014 BTMU settlement upon the continued oversight of BTMU by an
independent consultant. Given the inherent complexities associated with maintaining a vigorous anti-
money laundering and sanctions compliance regime, this creates significant downstream risks for any financial institution – as well as the assurance of continued scrutiny from New York regulators.

If you have any questions regarding this latest settlement involving DFS and BTMU, or any other matter relating to the governmental investigations and sanctions-related regulations referenced herein, please feel free to reach out to the contacts listed below.

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Authors:
Hon. Mario Mancuso
Stephen M. Juris
Steven M. Witzel
Michael T. Gershberg
Michael P. Sternheim

This alert is not intended to provide legal advice, and no legal or business decision should be based on its content. If you have any questions about the contents of this alert, please call your regular Fried Frank contact or the attorneys listed below:

Contacts:
Washington, D.C.
Hon. Mario Mancuso +1.202.639.7055 mario.mancuso@friedfrank.com

New York
Stephen M. Juris +1.212.859.8935 stephen.juris@friedfrank.com
Steven M. Witzel +1.212.859.8592 steven.witzel@friedfrank.com

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