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## FINAL NOTICE

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**The Bank of Tokyo Mitsubishi UFJ Limited (FRN 139189)  
MUFG Securities EMEA plc (FRN 124512)**

Date: **9 February 2017**

### **1. ACTION TAKEN**

1.1. For the reasons set out in this Final Notice, the PRA hereby imposes a financial penalty on:

1.1.1. the Bank of Tokyo Mitsubishi UFJ Limited ("BTMU") of £17,850,000 for breaches of Fundamental Rule 6 and Fundamental Rule 7 of the PRA's Rulebook; and

1.1.2. MUFG Securities EMEA plc ("MUS(EMEA)") of £8,925,000 for a breach of Fundamental Rule 7 of the PRA's Rulebook.

1.2. BTMU and MUS(EMEA) (together the "Firms") agreed to settle at an early stage of the PRA's investigation. The Firms therefore qualified for a 30% (stage 1) discount pursuant to the PRA Settlement Policy.<sup>1</sup> Were it not for this discount, the PRA would have imposed a financial penalty of £25.5 million on BTMU and of £12.75 million on MUS(EMEA).

### **2. SUMMARY OF THE GROUNDS FOR THE ACTION TAKEN**

#### **The relevant entities**

2.1. BTMU is an international bank headquartered in Tokyo. It operates over 750 domestic Japanese branches and 117 overseas branches, including a branch in London which functions as its base for business in Europe, the Middle East and Africa. BTMU is a subsidiary of Mitsubishi UFJ Financial Group, Inc ("MUFG" or the "Group"), which is the parent company of a global banking network, also headquartered in Tokyo. The services of both BTMU and MUFG include

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<sup>1</sup>The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure  
<http://www.bankofengland.co.uk/pru/Documents/publications/sop/2016/approachenforcementupdate.pdf>

commercial banking, trust banking, securities, credit cards, consumer finances, assets management, leasing and other services.

2.2. 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 MUFG. MUS(EMEA) is headquartered in London and offers services in relation to capital markets, credit, rates, equities and structured products.

2.3. Both BTMU and MUS(EMEA) are regulated by the PRA for prudential purposes and by the FCA for conduct matters.

#### **BTMU**

2.4. The PRA considers that BTMU has breached Fundamental Rules 6 and 7 of the PRA's Rulebook. As a consequence, the PRA imposes a financial penalty on BTMU under section 206 of the Act.

2.5. The PRA considers that BTMU breached Fundamental Rule 6 by failing to organise and control its affairs responsibly and effectively in respect of its handling of information relating to its settlement with the New York Department of Financial Services (the "DFS"), which was publicly announced on 18 November 2014 and resulted in a USD 315,000,000 penalty (the "Second DFS Matter"). In particular, BTMU failed to put in place appropriate procedures, policies, systems and controls for the communication of relevant information relating to the Second DFS Matter within BTMU and the Group, including with MUS(EMEA). This meant that:

2.5.1. UK regulatory implications were not adequately considered by those managing BTMU's negotiations with the DFS relating to the Second DFS Matter; and

2.5.2. those with regulatory reporting responsibilities within BTMU and MUS(EMEA) could not give appropriate consideration as to whether notifications needed to be made to the PRA.

2.6. BTMU's failure to organise and control its affairs responsibly and effectively meant that proper consideration was not given to BTMU's regulatory obligations to the PRA and relevant information was not shared within the Group, including with MUS(EMEA).

2.7. The PRA considers that BTMU breached Fundamental Rule 7 by failing to be open

and cooperative with the PRA. In particular, BTMU failed to be open and cooperative with the PRA in respect of information relating to the Second DFS Matter. This was information of which the PRA would reasonably have expected notice. While the Second DFS Matter was focused on matters which related to BTMU's conduct in New York, it was apparent to BTMU that there was a sufficiently serious risk of further DFS action. Further, it should have been considered that the possible range of outcomes of an action by the DFS, including a further substantial fine and a potentially significant adverse impact on BTMU's reputation, may have had prudential implications for the global business.

2.8. BTMU is a systemically significant financial institution with branch operations in the United Kingdom and globally – its safety and soundness can impact the financial stability of the UK financial system as a whole. The result of BTMU's breaches was that the PRA was not informed in a timely fashion of the Second DFS Matter, and therefore was not able to consider the implications for the safety and soundness of BTMU. The breaches therefore impacted on the PRA's ability to advance its statutory objectives.

#### **MUS(EMEA)**

2.9. The PRA considers that MUS(EMEA) has breached Fundamental Rule 7 of the PRA's Rulebook. As a consequence, the PRA imposes a financial penalty on MUS(EMEA) under section 206 of the Act.

2.10. The PRA considers that MUS(EMEA) breached Fundamental Rule 7 by failing to be open and cooperative with the PRA. In particular, MUS(EMEA) failed to be open and cooperative with the PRA in respect of the potential implications of the Second DFS Matter for a senior MUS(EMEA) individual, Mr B, who was at the time both Chair and a controlled function holder (CF2) for MUS(EMEA).

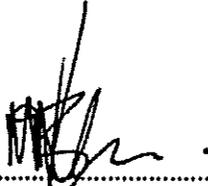
2.11. The result of the MUS(EMEA) breach was that the PRA was not informed in a timely fashion of the potential implications of the Second DFS Matter for Mr B, and was therefore deprived of the opportunity to consider whether these circumstances had, or could have had, an impact on Mr B's fitness and propriety.

### **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's proactive and forward-looking supervisory approach, assessing safety and soundness not just against current risks, but also against those that could plausibly arise further ahead, requires an open dialogue with firms. The PRA expects that firms will, of their own initiative, take steps to ensure the PRA has all relevant information at an early stage, including regarding the potential for material sanctions to be imposed by an overseas regulator, matters which may have a significant adverse impact on a firm's reputation, and matters which may be relevant to an assessment of the fitness and propriety of regulated individuals.
- 3.2. The PRA expects a firm operating across multiple jurisdictions to ensure that it is organised such that, when issues arise concerning its operations in one jurisdiction which may impact other jurisdictions, the regulatory responsibilities of the firm as a whole are appropriately considered. Where individuals have multiple roles across entities within a group they must ensure that they consider the regulatory responsibilities of each firm, as well as their own responsibilities to the UK regulators. BTMU failed to organise and control its affairs so as to ensure that proper consideration was given to BTMU's regulatory responsibilities to the PRA.
- 3.3. While the Second DFS Matter was focused on matters which related to BTMU's conduct in New York, it was apparent to BTMU that there was a sufficiently serious risk of further DFS action. It also should have been considered that the possible range of outcomes of an action by the DFS included a further substantial fine and reputational damage, may have had prudential implications for the global business. This was information that was relevant to the PRA's assessment of BTMU's safety and soundness and information of which the PRA would reasonably have expected notice.
- 3.4. This is all the more apparent as BTMU provided this information to its Japanese and US regulators. By contrast, the PRA was not informed about the Second DFS Matter or its potential consequences for BTMU until after a settlement notice was published by the DFS.

- 3.5. The press release issued by the DFS on 18 November 2014 states: "*...former Bank compliance employees who now work at BTMU affiliates – [Mr B] and ... – will be banned from conducting business involving any New York banks (or other financial institutions) regulated by the Department, including BTMU's New York branch.*"
- 3.6. MUS(EMEA) became aware in early October 2014 that BTMU was considering the potential implications for the Chair of MUS(EMEA), Mr B, arising from the Second DFS Matter. MUS(EMEA) was aware in early November 2014 that Mr B was facing potential restrictions on his banking activities in the US. Information about overseas regulatory issues affecting an individual may be relevant to an assessment of fitness and propriety and therefore is information of which the PRA would reasonably have expected notice.
- 3.7. As a result of BTMU's Fundamental Rule 6 breach, MUS(EMEA) had limited information on which to assess its obligations to notify the PRA of the potential implications of the Second DFS Matter for Mr B. MUS(EMEA) did not inform the PRA of the potential implications for Mr B, including not raising this issue with the PRA at a meeting on 21 October 2014, although the purpose of that meeting was for MUS(EMEA) to update the PRA on existing plans for the succession of the Chair of MUS(EMEA). The agenda for this meeting was discussed with the PRA on a call on 17 October 2014.
- 3.8. MUS(EMEA) did not notify the PRA of the implications for the Chair of MUS(EMEA)'s of the Second DFS Matter until after a settlement notice was published by the DFS.
- 3.9. The imposition of a financial penalty on the Firms supports the PRA's general objective of promoting the safety and soundness of the firms which it regulates. The action the PRA is taking emphasises the importance of open and cooperative disclosure of information by firms, including information related to risks that may plausibly arise, and of systems and controls which support that, both of which are crucial to the PRA's ability to supervise effectively, and hence to the effectiveness of the regulatory system.
- 3.10. The full particulars relevant to this matter are set out in Annex A. The Firms' failings and breaches are detailed in Annex B and the basis for the financial penalties the PRA is imposing is set out in Annex C. The definitions used in this Final Notice are set out in Appendix 1 and the relevant statutory, regulatory and

policy provisions are set out in Appendix 2. The procedural matters set out in Annex D are important.



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**Miles Bake**

Head of Legal, Regulatory Action Division  
for and on behalf of the PRA

# Annex A

## FACTS AND MATTERS RELIED UPON

### 1. INTRODUCTION

1.1. Annex A sets out the events that led to the Second DFS Matter. It then outlines the dealings BTMU and MUS(EMEA) had with regulators other than the PRA, before covering the consideration the Firms gave to notifying the PRA and the eventual notification on 18 November 2014. Finally, we will consider BTMU's systems and controls, as relevant to PRA notification.

### 2. BACKGROUND

#### The relevant entities

2.1. BTMU is an international bank headquartered in Tokyo. It operates over 750 domestic branches and 117 overseas branches. BTMU is a subsidiary of MUFG, the parent company of a global banking network, also headquartered in Tokyo. The services of both BTMU and MUFG include commercial banking, trust banking, securities, credit cards, consumer finances, assets management, leasing and other services.

2.2. BTMU's home state regulators are the Japanese Financial Services Agency ("the JFSA"), the Japanese Ministry of Finance and the Bank of Japan (together, the "Japanese Regulators"). BTMU has a branch in New York ("BTMU New York Branch") whose operations are regulated by, among others, the DFS. BTMU has a UK branch ("BTMU London Branch") which functions as its base for BTMU's business in Europe, the Middle East and Africa. BTMU, via BTMU London Branch, is dual-regulated by the FCA and the PRA.

2.3. MUS(EMEA) is a UK subsidiary of MUSHD, one of Japan's largest securities firms, which is itself a subsidiary of MUFG. MUS(EMEA) is headquartered in London and offers services in relation to capital markets, credit, rates, equities and structured products.

#### The First DFS Matter

2.4. 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 First

DFS Matter"). 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.

#### **The PwC Investigation and Settlement**

2.5. 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 from the HTR Report of evidence suggesting that BTMU had established written procedures requiring staff to strip the origin of transactions that would breach US sanctions. The DFS concluded that PwC changed the HTR Report as a result of improper pressure exerted by BTMU and its executives. 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.

#### **The Second DFS Matter**

2.6. On 2 September 2014, the DFS contacted BTMU's lawyers and indicated that, as a result of the findings from the PwC Investigation, there were grounds for further resolution with BTMU. On 8 September 2014 (New York time), the DFS met with BTMU's lawyers to explain their concerns and indicated that BTMU could avoid a further investigation by reaching a quick settlement. Following a period of settlement negotiations, BTMU and the DFS entered into a second consent order on 18 November 2014. BTMU accepted a USD 315,000,000 penalty and agreed to impose certain employment restrictions in respect of three current or former BTMU employees ("the Second Settlement").

2.7. One of the three individuals, Mr B, was at that time both Chair and a controlled function holder (CF2) for MUS(EMEA). 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. He resigned from his position with BTMU in April 2010 and was then appointed to the Board of MUSHD. He was appointed to the Board of MUS(EMEA) as Chair on 21 September 2012.

2.8. The Second Settlement was published by the DFS on 18 November 2014 at or around 4:12pm (London time). The PRA was notified by senior individuals of MUS(EMEA) and BTMU at 5pm (London time) that day.

### 3. THE SECOND DFS MATTER

#### The risk of further DFS action arising from the PwC Settlement

3.1. On 2 July 2014, BTMU became aware that the DFS was engaged in settlement negotiations with PwC over matters arising from the HTR Report. BTMU instructed an external law firm (one which already had been engaged in relation to remedial matters arising out of the First DFS Matter) to liaise with PwC's external counsel.

3.2. The PwC Investigation was settled on 18 August 2014 (the "PwC Settlement"). On the same date, the DFS published the PwC Settlement Agreement, together with a press release:

3.2.1. The press release<sup>2</sup> included statements that: *"Under pressure from BTMU Executives, PwC Removed Warning in Report to Regulators Regarding the Bank's Scheme to Falsify Wire Transfer Data for Sanctioned Clients"; and "When bank executives pressure a consultant to whitewash a supposedly 'objective' report to regulators – and the consultant goes along with it – that can strike at the very heart of our system of prudential oversight."*

3.2.2. The PwC Settlement Agreement<sup>3</sup> stated that: PwC *"did not demonstrate the necessary objectivity, integrity and autonomy that is now required";* that information had been removed from the HTR Report *"at BTMU's request";* and that *"PwC repeatedly acceded to [BTMU's] demands and redrafted the HTR Report in ways that omitted or downplayed issues of material regulatory concern".*

3.3. At this stage, BTMU was actively assessing the risks of further DFS action, including the potential financial and reputational implications, and provided certain information to its Japanese and US regulators.

3.4. For example, the PwC Settlement and accompanying DFS press release were considered at a senior management meeting held on 19 August 2014. This meeting consisted of a group of senior individuals from both BTMU and MUFG and had been established in response to the First DFS Matter ("the Liberty Senior Management Meeting"). The Liberty Senior Management Meeting was classified

<sup>2</sup> <http://www.dfs.ny.gov/about/press/pr1408181.htm>

<sup>3</sup> <http://www.dfs.ny.gov/about/ea/ea140818.pdf>

such that its members understood it was dealing with a matter which could have a significant impact on BTMU's business. The Liberty Senior Management Meeting continued to meet regularly after the First DFS Matter in respect of remediation work from that settlement.

3.5. The PwC Settlement was also considered by the BTMU Executive Committee on 22 August 2014 and by the BTMU Board on 27 August 2014.

3.6. After the announcement of the PwC Settlement, BTMU considered that there was a serious risk of further DFS action, including the potential for action against individuals. However, no information about the issue was provided to the PRA at this time.

#### **First DFS contact**

3.7. On 2 September 2014, the DFS contacted BTMU's lawyers and explained that it had concerns over BTMU's conduct in connection with the events that underpinned the PwC Settlement and that there were grounds for further resolution with BTMU.

3.8. On 8 September 2014, BTMU's lawyers met with the DFS in New York. At that meeting the DFS indicated that BTMU's conduct warranted additional action and, unless BTMU was willing to enter into expedited new settlement discussions, an investigation into BTMU was probable. BTMU's counsel relayed this information to BTMU Tokyo on 9 September 2014 (Tokyo time).

#### **Confidentiality restrictions imposed on BTMU**

3.9. Once the negotiations with the DFS began, and throughout the negotiations with the DFS, 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.

3.10. As a result of BTMU's experience with the DFS in relation to the First DFS Matter, BTMU appears to have viewed its confidentiality obligations under New York law as being particularly stringent.

### **BTMU and DFS settlement discussions**

3.11. From September to November 2014, BTMU's lawyers negotiated with the DFS over various issues, including: the penalty amount; the relocation of certain compliance programs from BTMU Tokyo to BTMU New York Branch; and issues relating to individual accountability. For the latter, the DFS sought a settlement that would reflect its view of the personal responsibility of those involved in the misconduct at issue. The Second DFS Matter was discussed at meetings of the BTMU Board, BTMU Executive Committee, and the Liberty Senior Management Meeting throughout this period, with the latter primarily responsible for managing the Second DFS Matter.

3.12. On or shortly after 9 September 2014, after BTMU entered into an agreement for limited waiver of CSI with the DFS, the DFS provided BTMU with copies of certain documents the DFS relied upon in entering the PwC Settlement.

3.13. On 23 September 2014, the DFS indicated that any settlement with the DFS would include a large monetary penalty and that BTMU would be expected to take measures towards disciplining individuals. The DFS provided BTMU's lawyers with a list of individuals in respect of whom the DFS required additional information ("the DFS List"). The most senior individual identified on the DFS List was Mr B.

3.14. Once employee discipline emerged as a tangible possibility, discussions and updates on this issue were severely restricted within BTMU.

### **Awareness in MUS(EMEA) of the Second DFS Matter**

3.15. In response to the PwC Investigation and the subsequent PwC Settlement Agreement, BTMU Tokyo decided to interview certain employees. By 27 August 2014, BTMU Tokyo had a tentative list of 12 former and current BTMU employees to interview. The list included Mr B.

3.16. BTMU Tokyo asked Mr B, via a telephone call in mid-September 2014, to attend a voluntary interview to assist BTMU's external advisors. He was told that this was to assist BTMU's external advisors in obtaining background information to help respond to enquiries from the DFS. Mr B was advised by BTMU's external advisors that the interview and the DFS enquiries were both extremely confidential.

3.17. In September 2014, a MUS(EMEA) director ("Mr A") became aware that Mr B had been interviewed in relation to matters arising from the PwC Settlement. In early October 2014, a senior employee of MUSHD asked Mr A to consider the Second DFS Matter and its potential implications for Mr B. Mr A spoke with a senior MUFG individual about the Second DFS Matter.

**Draft consent order**

3.18. Following negotiations with BTMU in September and October 2014, on 31 October 2014 the DFS sent a draft consent order to BTMU. The distribution of the draft consent order within BTMU was tightly controlled given BTMU's CSI concerns. The draft required BTMU to pay a substantial financial penalty and included restrictions on Mr B's banking activities in the US.

3.19. On 4 November 2014, MUS(EMEA) (via Mr A) was informed that the DFS was seeking to sanction Mr B, although it was still considering what the sanction would be or when it would take effect.

3.20. On 5 November 2014, Mr A met with one of BTMU's compliance officers and senior MUSHD executives. The purpose of the meeting was to update Mr A on the DFS's proposed settlement with BTMU and the probability and timing of any action by the DFS against Mr B.

3.21. On 6 November 2014, MUSHD and MUFG informed Mr B that the DFS might put restrictions on his banking activities in the US. He notified Mr A of this fact later that day.

3.22. The MUS(EMEA) Board met on 11 November 2014. As a result of discussions prior to that meeting, certain members of the MUS(EMEA) Board knew that Mr B might have to leave the Board sooner than anticipated due to an unspecified "US regulatory matter". The MUS(EMEA) Board did not discuss the possible departure of Mr B in connection with the Second DFS Matter, the Second DFS Matter itself or, as a result, any consideration of MUS(EMEA)'s regulatory responsibilities to the PRA. An individual who had been earmarked for some time to succeed Mr B was appointed to act as Chair on an interim basis in the event that the current Chair, Mr B, was not available to act.

## **The Second Settlement**

3.23. In the BTMU Executive Committee meeting on 5 November 2014, it was reported that BTMU expected that the Second Settlement would be concluded within one to two weeks.

3.24. By the weekend of 15 and 16 November 2014, the DFS had informed BTMU that: i) the DFS would likely make a public statement regarding the anticipated Second Settlement by 18 November 2014; and ii) the published consent order would refer to Mr B's job title and provide significant details about BTMU and the surrounding events. BTMU subsequently informed Mr B of this and that BTMU might be required to curtail Mr B's banking activities in the US.

3.25. On 18 November 2014, the DFS announced that it had concluded a settlement with BTMU and stated in its press release<sup>4</sup> that Mr B would be "*banned from conducting business involving any New York banks (or other financial institutions) regulated by the [DFS], including BTMU's New York branch*".

## **4. DEALINGS WITH REGULATORS**

4.1. BTMU had a number of interactions with regulators in respect of the Second DFS Matter. In general, between September and November 2014 throughout BTMU's negotiations with the DFS, BTMU provided notifications and, in many cases, regular updates to the Japanese Regulators and certain US regulators concerning the Second DFS Matter. BTMU requested, and the DFS granted, permission for BTMU to make these notifications.

4.2. In addition, BTMU sought a CSI waiver to disclose the documents received from the DFS on 9 September 2014 to the JFSA. The DFS permitted BTMU to make this disclosure after BTMU provided the DFS with countersigned letters from the JFSA and BTMU.

4.3. When BTMU received a draft consent order from the DFS on 31 October 2014, BTMU asked the DFS if the draft could be shared with the JFSA in order to comply with its obligations to its home regulator. The DFS did not permit BTMU to share drafts of the consent order, but BTMU was permitted to read portions of the draft order to the JFSA and later was allowed to share the final consent order with the JFSA a few days prior to the settlement announcement.

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<sup>4</sup> <http://www.dfs.ny.gov/about/press/pr1411181.htm>

4.4. The PRA was only notified of the Second DFS Matter after publication of the consent order. BTMU did not request permission from the DFS to notify the PRA about the Second DFS Matter.

## **5. NOTIFYING THE PRA**

### **PRA meetings with MUS(EMEA) and MUFG: October 2014**

5.1. MUS(EMEA) became aware in early October 2014 that BTMU was considering the potential implications for the Chair of MUS(EMEA), Mr B, arising from the Second DFS Matter. However, as information about the Second DFS Matter was mainly held within BTMU and MUFG, the degree of knowledge within MUS(EMEA) at this time was limited.

5.2. MUS(EMEA) attended a scheduled meeting with the PRA on 21 October 2014 (the agenda for which was discussed with the PRA on a call on 17 October 2014). The purpose of the meeting was for MUS(EMEA) to update the PRA on existing plans for the succession of the Chair of MUS(EMEA).

5.3. MUS(EMEA) did not inform the PRA during these interactions of the potential implications of the Second DFS Matter for Mr B.

### **Discussions regarding notifications to the PRA**

5.4. On 28 October 2014, Mr A and senior individuals from entities within MUFG met to discuss general contingency plans in the event that the Second DFS Matter should result in the sudden resignation of an executive officer. Mr B was mentioned specifically. The plan provided that the PRA would be approached in the event of such a resignation.

5.5. On 30 October 2014, the BTMU Compliance Division for EMEA ("ECOD") notified the PRA about a New York Times article reporting that the DFS was reopening the First DFS Matter and negotiating a new settlement that could be larger than the USD 250,000,000 BTMU had paid for that settlement. At that time, ECOD had not been informed by BTMU Tokyo about the Second DFS Matter, and the notification simply concerned the New York Times article.

5.6. After BTMU received the draft consent order on 31 October 2014, several discussions took place within MUFG relating to potential consequences that the Second DFS Matter could have on Mr B's various positions.

5.7. At a meeting in Tokyo on 5 November 2014, Mr A informed an individual within the BTMU compliance function ("BTMU Compliance") that MUS(EMEA) would need to report the Second DFS Matter to the PRA once BTMU was aware of the final outcome of the settlement discussions. BTMU Compliance explained to Mr A that MUFG would be best placed to make decisions regarding notification to the PRA. BTMU Compliance stressed the confidentiality restrictions imposed by the DFS in connection with the settlement negotiations and asked Mr A to refrain from taking any action. An immediate notification to the PRA was not discussed and the PRA was not notified at that time.

5.8. On 6 November 2014, Mr A became aware that BTMU had broadly agreed the terms of the settlement and that it would include restrictions on Mr B's banking activities in the US. Executives including Mr A decided to take external advice about notifying the PRA, the FCA and the MUS(EMEA) Board. BTMU's US counsel were asked to advise on whether there would be a breach of confidentiality obligations owed to the DFS if Mr A sought UK regulatory advice in respect of notifying the UK regulators. This advice was received on 10 November 2014. It 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 external adviser] 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 external adviser] should be as limited as possible.*

*In addition, the communication with [the external adviser] 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 external adviser] as narrow as possible".*

5.9. This advice was interpreted as a strong warning against speaking to external advisers about notifying the UK Regulators. It was considered that providing high level information would be insufficient to obtain meaningful advice as to whether or not to notify the UK regulators. On that basis it was decided not to seek advice

at that time. The advice was not discussed with anyone else and it was decided to keep the number of people in London (both in BTMU London Branch and in MUS(EMEA)) who knew about the Second DFS Matter, and its potential implications for Mr B, to a minimum.

5.10. On 13 November 2014, a MUS(EMEA) senior executive informed MUS(EMEA) Compliance that MUS(EMEA) might have to change its Chair sooner than planned. Although the MUS(EMEA) executive had limited knowledge of the matter, he briefly explained that any potential early departure would be a reaction to the Second DFS Matter. Both the MUS(EMEA) senior executive and MUS(EMEA) Compliance agreed that the PRA would need to be informed of this change and the reasons for it. The MUS(EMEA) senior executive then sought advice from an external advisor on 14 November 2014 about communicating the fact of the potential accelerated retirement of the Chair to the PRA and FCA. Based on what the external advisor was told, the external advisor did not consider that MUS(EMEA) had enough information, at that stage, for an effective communication to the PRA and FCA.

5.11. When it came to the attention of a MUS(EMEA) director that, without that director's involvement, the MUS(EMEA) senior executive had discussed the Second DFS Matter with an external advisor, the director expressed his concerns to a fellow director that this might cause trouble with the PRA. Soon after, that MUS(EMEA) director contacted that external advisor to consider MUS(EMEA)'s regulatory obligations.

5.12. Separately, in the late evening of 5 November 2014, BTMU Compliance contacted ECOD, requesting an urgent conference call the next morning. On the call the next morning, BTMU Tokyo notified BTMU London Branch for the first time of the negotiations with the DFS, including the potential impact on Mr B. BTMU Tokyo also explained that the matter was confidential and should not be discussed with any individuals outside of those on the call. ECOD advised BTMU Tokyo that MUS(EMEA) should notify the PRA and suggested that UK regulatory advice should be sought.

5.13. This advice was received on 11 November 2014 and forwarded to BTMU Tokyo, with ECOD explaining that the advice confirmed that the DFS should be approached in order to notify the UK regulators. BTMU received separate external advice that BTMU should delay any approach to the PRA until the settlement agreement was closer to being finalised. Ultimately, BTMU did not

approach the DFS to seek a CSI waiver to inform the PRA about the Second DFS Matter.

#### **Notification to the PRA: 18 November 2014**

5.14. Between 14 November 2014 and 18 November 2014, multiple discussions occurred between MUS(EMEA), BTMU London Branch, BTMU Tokyo, MUSHD, MUFG and external advisors as to how and when to notify the PRA. It was eventually agreed that the PRA would be notified after the Second Settlement was announced by the DFS. The evidence does not point to any clear agreement as to who should notify the PRA.

5.15. Further, the discussions as to the notification of the PRA were focused on MUS(EMEA)'s obligations to notify the PRA, as both BTMU and MUS(EMEA) considered that the information might be relevant to the PRA's assessment of the fitness and propriety of Mr B. There was no proper consideration of BTMU's obligations to notify the PRA of the Second DFS Matter.

5.16. The PRA was notified about the Second DFS Matter on 18 November 2014 by conference call, after the Second Settlement was announced by the DFS. The call was attended by, amongst others, an individual from MUS(EMEA) Compliance and a senior individual from ECOD who also had a MUFG Compliance Division role at the time. No explanation was given for the delay in notifying the PRA.

#### **6. SYSTEMS AND CONTROLS**

6.1. Throughout the relevant events, BTMU operated a hub and spoke model for the dissemination of information. There were clear policies and procedures in place which ensured that an incident which occurred at a local level (such as BTMU London Branch) was escalated to the correct entity/forum/individual in BTMU as a global entity (the Hub). The model required the Hub to then share this information with other affected jurisdictions as appropriate. This model relies on the Hub being aware, or being made aware, of the regulatory responsibilities in the affected jurisdictions.

6.2. In this instance, BTMU Tokyo did not appear to have had the necessary awareness of the regulatory responsibilities of PRA-regulated entities. Relevant information concerning the Second DFS Matter was not appropriately shared with BTMU London Branch or with MUS(EMEA).

6.3. In accordance with BTMU London Branch's Third Party Contact Policy, which covers contact with, and the provision of information to, third parties including the PRA, primary responsibility for coordinating notifications to the PRA fell to ECOD. The effective operation of the Third Party Contact Policy in the context of the PRA relies on ECOD having access to information which may trigger a PRA notification obligation (either in respect of BTMU London Branch or of BTMU as a global entity).

6.4. A senior individual from BTMU London Branch has explained that the effect of the information exchange processes at the time was that BTMU's London compliance department frequently only became aware of regulatory investigations into BTMU elsewhere in the world through the media and were unaware of any policy or procedure which would result in information about regulatory investigations in other jurisdictions being shared with BTMU London Branch.

# Annex B

## BREACHES AND FAILINGS

As a result of the facts and matters set out in Annex A, the PRA considers that BTMU has breached Fundamental Rules 6 and 7, and MUS(EMEA) has breached Fundamental Rule 7.

### 1. Fundamental Rule 6 breaches

1.1. The PRA has eight Fundamental Rules which apply to all PRA authorised firms. These are high level rules which collectively act as an expression of the PRA's general objective of promoting the safety and soundness of regulated firms.

1.2. Fundamental Rule 6 states that:

*"A firm must organise and control its affairs responsibly and effectively."*

1.3. The PRA expects a firm operating across multiple jurisdictions to ensure that it is organised such that, when issues arise concerning its operations in one jurisdiction which may impact other jurisdictions, the regulatory responsibilities of the firm as a whole are appropriately considered.

1.4. Where individuals have roles across entities they should ensure that they consider the regulatory responsibilities of each firm and their own responsibilities to the PRA.

1.5. As a result of the facts and matters set out in Annex A, BTMU breached Fundamental Rule 6 as it failed to organise and control its affairs responsibly and effectively. In particular, BTMU failed to put in place appropriate procedures, policies, systems and controls for the communication of relevant information relating to the Second DFS Matter within BTMU and the Group, including MUS(EMEA). This meant that:

1.5.1. those managing BTMU's negotiations with the DFS relating to the Second DFS Matter did not adequately consider the UK regulatory implications of the Second DFS Matter for BTMU; and

1.5.2. those with regulatory reporting responsibilities within BTMU and MUS(EMEA) could not give appropriate consideration as to whether notifications needed to be made to the PRA.

1.6. BTMU's failure to organise and control its affairs responsibly and effectively meant that proper consideration was not given to BTMU's regulatory obligations to the PRA, and that relevant information was not shared within the Group, including with MUS(EMEA). As a result, BTMU was unable to ensure compliance with its obligations under Fundamental Rule 7 and provided MUS(EMEA) with very limited information with which to assess its own obligations to notify the PRA of the potential implications for the Chair of MUS(EMEA).

## **2. Fundamental Rule 7 breaches**

2.1. Fundamental Rule 7 states:

*"A firm must deal with its regulators in an open and co-operative way and must disclose to the PRA appropriately anything relating to the firm of which the PRA would reasonably expect notice."*

2.2. As a result of the facts and matters set out in Annex A, including BTMU's Fundamental Rule 6 breach described above, the PRA considers that, BTMU and MUS(EMEA), respectively, failed to deal with the PRA in an open and co-operative way and failed to disclose appropriately to the PRA information of which it would reasonably expect notice, in breach of Fundamental Rule 7.

### **BTMU**

2.3. BTMU breached Fundamental Rule 7 by failing to be open and cooperative with the PRA. In particular, following the publication of the PwC Settlement Agreement on 18 August 2014 referencing the conduct of BTMU, BTMU considered that there was a serious risk of further action against BTMU by the DFS. In its ongoing assessment of that risk and its potential implications, BTMU failed to adequately consider its potential obligations to notify the PRA.

2.4. BTMU's failure to adequately consider its UK regulatory obligations in light of the emerging risk that the negotiations would result in a material sanction or significant adverse impact on BTMU's reputation, was a breach of Fundamental Rule 7.

2.5. The PRA considers the breach to be particularly serious because:

2.5.1. BTMU requested CSI waivers for, and provided notification to, the Japanese Regulators and certain US regulators in relation to the Second DFS Matter yet did not do so for the PRA, and the PRA was not notified until after the

Second Settlement was published.

2.5.2. The first time notifying the PRA was considered was in early November 2014 – two months after the discussions with the DFS commenced.

2.5.3. The BTMU discussions as to notification to the PRA were focused on MUS(EMEA)'s obligation to notify the PRA. There was no proper consideration of BTMU's obligations to notify the PRA of the Second DFS Matter.

2.5.4. BTMU prioritised the settlement of the Second DFS Matter over the notification to the PRA.

2.6. This risk was information that was materially relevant to the PRA's supervision of BTMU and was information of which the PRA would reasonably expect notice. While the Second DFS Matter was focused on matters which related to BTMU's conduct in New York, it was apparent to BTMU that there was a sufficiently serious risk of further DFS action. Further, it should have been considered that the possible range of outcomes of an action by the DFS, including a further substantial fine and a potentially significant adverse impact on BTMU's reputation, may have had prudential implications for the global business.

2.7. BTMU's breach meant the PRA was hampered in its ability to supervise BTMU.

2.8. This disciplinary action by the PRA supports the PRA's objectives of promoting the safety and soundness of the firms it regulates by emphasising the importance of the requirements that:

2.8.1. regulated entities provide early notification to the PRA of emerging risks;  
and

2.8.2. deal with the PRA in an open and co-operative way.

2.9. Without this, the PRA cannot supervise effectively, including by taking any necessary steps to mitigate current or future risks.

#### **MUS(EMEA)**

2.10. The PRA considers that MUS(EMEA) breached Fundamental Rule 7 by failing to be open and cooperative with the PRA. In particular, MUS(EMEA) failed to be open and cooperative with the PRA in respect of the potential implications of the Second DFS Matter for Mr B.

2.11. MUS(EMEA) became aware in early October 2014 that BTMU was considering the potential implications for the Chair of MUS(EMEA), Mr B, arising from the Second DFS Matter. MUS(EMEA) was aware in early November 2014 that Mr B was facing potential restrictions on his banking activities in the US. Information about overseas regulatory issues affecting an individual may be relevant to an assessment of fitness and propriety and therefore is information of which the PRA would reasonably have expected notice.

2.12. As a result of BTMU's Fundamental Rule 6 breach, MUS(EMEA) had limited information on which to assess its obligations to notify the PRA of the potential implications of the Second DFS Matter for Mr B. MUS(EMEA) did not inform the PRA of the potential implications for Mr B, including not raising this issue with the PRA at a meeting on 21 October 2014, although the purpose of that meeting was for MUS(EMEA) to update the PRA on existing plans for the succession of the Chair of MUS(EMEA). The agenda for this meeting was discussed with the PRA on a call on 17 October 2014.

2.13. MUS(EMEA) did not notify the PRA of the implications for the Chair of MUS(EMEA)'s of the Second DFS Matter until after a settlement notice was published by the DFS.

2.14. The PRA considers MUS(EMEA)'s breach of Fundamental Rule 7 to be particularly serious because of the following:

2.14.1. MUS(EMEA) did not raise with the PRA the potential implications for Mr B at a meeting on 21 October 2014, although the purpose of that meeting was for MUS(EMEA) to update the PRA on existing plans for the succession of the Chair of MUS(EMEA);

2.14.2. no discussions took place with MUS(EMEA) compliance staff until 13 November 2014;

2.14.3. senior individuals within MUS(EMEA) had some knowledge of the potential implications of the Second DFS Matter for Mr B; and

2.14.4. when a MUS(EMEA) director learned that, without that director's involvement, a MUS(EMEA) senior executive had discussed the Second DFS Matter with an external advisor, the director expressed his concerns to a fellow director that this might cause trouble with the PRA.

2.15. The effect of MUS(EMEA)'s breach is that the PRA was deprived of the opportunity to consider whether these circumstances had, or could have had, an impact on Mr B's fitness and propriety.

2.16. The disciplinary action the PRA is taking supports the PRA's objectives of promoting the safety and soundness of the firms it regulates by emphasising the importance of the requirements that:

2.16.1. regulated entities provide accurate information to the PRA; and

2.16.2. deal with the PRA in an open and co-operative way.

2.17. This ensures that the PRA can continue to make effective judgements as to the ongoing suitability of senior individuals at PRA-authorized firms.

### **3. Conclusion**

For the reasons set out above, the PRA concludes that BTMU has breached Fundamental Rules 6 and 7 and that MUS(EMEA) has breached Fundamental Rule 7.

# Annex C: Penalty Analysis

## IMPOSITION OF A FINANCIAL PENALTY

1. The PRA's policy for imposing a financial penalty is set out in *'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure'* April 2013 (as updated in January 2016) 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"). The PRA applies a five-step framework to determine the appropriate level of financial penalty, as set out at paragraphs 12 to 36 of the PRA's Penalty Policy.

## FINANCIAL PENALTY ON BTMU

### Step 1: Disgorgement

2. Pursuant to paragraph 17 of the PRA's Penalty Policy, at Step 1 the PRA seeks to deprive a person of any economic benefits derived from or attributable to the breach of its requirements, where it is practicable to ascertain and quantify them.
3. The PRA has no evidence that BTMU derived any economic benefit from the breaches, including profit made or loss avoided.
4. The Step 1 figure is therefore £0.

### Step 2: The seriousness of the breach

5. Pursuant to paragraph 18 of the PRA's Penalty Policy, at Step 2 the PRA determines a starting point figure for a penalty having regard to the seriousness of the breach by the firm – including any threat it posed or continues to pose to the advancement of the PRA's statutory objectives – and the size and financial position of the firm.
6. Paragraph 19 of the PRA's Penalty Policy sets out that a suitable indicator of the size and financial position of the firm may include, but is not limited to, the firm's revenue.
7. BTMU's total revenue for the financial year ending 31 March 2014 was ¥3.6 trillion or approximately £26 billion. Taking into account the seriousness, scale and effect of BTMU's breaches, the PRA considers that a financial penalty based on revenue of £26 billion would be disproportionate.

8. To arrive at a penalty, pursuant to paragraph 21 of the PRA Penalty Policy, the PRA has instead taken the following factors into account to produce a figure at Step 2 that properly reflects the nature, extent, scale, gravity and overall seriousness of the breach:

8.1. accurate disclosure of information by firms is crucial to the PRA's ability to supervise effectively and hence to the success of the regulatory system;

8.2. the breaches revealed serious weaknesses in BTMU's procedures, policies, systems and controls in respect of the sharing of relevant information relating to the Second DFS Matter within BTMU and the Group, including with MUS(EMEA). This meant that:

8.2.1. UK regulatory implications were not adequately considered by those managing BTMU's negotiations with the DFS relating to the Second DFS Matter; and

8.2.2. those with regulatory reporting responsibilities within BTMU and MUS(EMEA) could not give appropriate consideration as to whether notifications needed to be made to the PRA.

8.3. It was apparent to BTMU that there was a sufficiently serious risk of further DFS action. Further, it should have been considered that the possible range of outcomes of an action by the DFS, including a further substantial fine and a potentially significant adverse impact on BTMU's reputation, may have had prudential implications for the global business. As such, this was information of which the PRA would reasonably have expected notice. Despite this, BTMU failed to properly consider its obligation to disclose to the PRA in a timely fashion the Second DFS Matter or its potential consequences for BTMU until after a settlement notice was published by the DFS;

8.4. BTMU sought permission from the DFS to make disclosures to its Japanese and US regulators and those regulators were kept informed about the Second DFS Matter. By contrast, the PRA was not informed about the Second DFS Matter or its potential consequences for BTMU until after a settlement notice was published by the DFS;

8.5. BTMU is a systemically significant financial institution with branch operations in the United Kingdom and globally - its safety and soundness can impact

the financial stability of the UK financial system as a whole. The result of BTMU's breaches was that the PRA was not informed in a timely fashion of the Second DFS Matter, and therefore was not able to consider the implications for the safety and soundness of BTMU. The breaches therefore impacted on the PRA's ability to advance its statutory objectives;

8.6. the breaches were of a relatively short duration.

9. Taking these factors into account, the PRA considers the failings in this case were significant. It considers that the Step 2 figure is £30 million.

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

10. Pursuant to paragraph 24 of the PRA Penalty Policy, at Step 3 the PRA may increase or decrease the Step 2 figure (excluding any amount to be disgorged pursuant to Step 1) to take account of any factors which may aggravate or mitigate the breach, or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it.

11. In deciding whether any adjustment for aggravating or mitigating factors was warranted, the PRA considered the following factors:

11.1. BTMU has not had any previous disciplinary or compliance issues with the PRA;

11.2. members of BTMU's senior management were closely involved in the breach;

11.3. the breaches were not deliberate or intentional but arose from a failure appropriately to consider BTMU's notification obligations in the UK and to satisfactorily resolve conflicts of advice received;

11.4. BTMU cooperated fully with the PRA investigation. It conducted a comprehensive internal investigation, involving a number of interviews with members of senior management from both BTMU London Branch and BTMU Tokyo, and provided the PRA with the benefit of that investigative work; and

11.5. BTMU has taken prompt remedial action in developing and implementing measures to enhance the sharing of information relating to regulatory investigations and other matters of regulatory interest.

12. Having taken into account these factors, the PRA has concluded that the Step 2 figure should be decreased by 15%.

13. The Step 3 figure is therefore £25.5 million.

#### **Step 4: Adjustment for deterrence**

14. Pursuant to paragraph 27 of the PRA's Penalty Policy, 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.

15. The PRA does not consider that a further adjustment for deterrence is appropriate in this particular matter.

16. The Step 4 figure is therefore £25.5 million.

#### **Step 5: Settlement discount**

17. Pursuant to paragraph 29 of the PRA Penalty Policy, the PRA and the firm on whom a penalty is to be imposed may seek to agree the amount of the penalty and any other appropriate settlement terms. The PRA Settlement Policy provides that the amount of the penalty which would otherwise have been payable will, subject to the stage at which a binding settlement agreement is reached, be reduced. Paragraph 26 of the PRA Settlement Policy provides that, where the PRA proposes to impose a financial penalty under the Act and a proposed settlement agreement is negotiated by the parties, approved by the PRA's settlement decision makers and concluded, the person concerned will be entitled to a reduction in the amount of the financial penalty (as set out at paragraph 28 of the PRA Settlement Policy).

18. The PRA and BTMU reached agreement at Stage 1, therefore a 30% discount applies to the Step 4 figure.

19. The Step 5 figure is therefore £17.85 million.

#### **Conclusion**

20. The PRA considers it appropriate to impose on BTMU a financial penalty of £25.5

million (reduced to £17.85 million as a Stage 1 settlement was achieved) in respect of BTMU's breaches of Fundamental Rules 6 and 7.

## **FINANCIAL PENALTY ON MUS(EMEA)**

### **Step 1: Disgorgement**

21. Pursuant to paragraph 17 of the PRA's Penalty Policy, at Step 1 the PRA seeks to deprive a person of any economic benefits derived from or attributable to the breach of its requirements, where it is practicable to ascertain and quantify them.
22. The PRA has no evidence to suggest that MUS(EMEA) derived any economic benefit from the breaches of Fundamental Rule 7, including profit made or loss avoided.
23. The Step 1 figure is therefore £0.

### **Step 2: The seriousness of the breach**

24. Pursuant to paragraph 18 of the PRA's Penalty Policy, at Step 2 the PRA determines a starting point figure for a penalty having regard to the seriousness of the breach by the firm – including any threat it posed or continues to pose to the advancement of the PRA's statutory objectives – and the size and financial position of the firm.
25. Paragraph 19 of the PRA's Penalty Policy sets out that a suitable indicator of the size and financial position of the firm may include, but is not limited to, the firm's revenue.
26. MUS(EMEA)'s total revenue for the financial year ending 31 December 2013 was £284.7 million. Taking into account the seriousness, scale and effect of MUS(EMEA)'s breaches, the PRA considers that a financial penalty based on revenue of £284.7 million would be disproportionate.
27. To arrive at a penalty, pursuant to paragraph 21 of the PRA Penalty Policy the PRA has instead taken the following factors into account to produce a figure at Step 2 that properly reflects the nature, extent, scale, gravity and overall seriousness of the breach:
  - 27.1. Accurate disclosure of Information by firms is crucial to the PRA's ability to supervise effectively and hence to the success of the regulatory system;
  - 27.2. The fitness and propriety of senior managers at PRA-authorized persons is integral to achieving the PRA's general objective of promoting the safety and soundness of PRA-authorized persons.

27.3. From early October 2014, MUS(EMEA) was aware that BTMU was considering the potential implications of the Second DFS Matter for its Chair, Mr B. MUS(EMEA) was aware in early November 2014 that Mr B was facing potential restrictions on his banking activities in the US. Such information may be relevant to an assessment of fitness and propriety and the fitness and propriety of the Chair of MUS(EMEA) is particularly important because of the adverse impact any lack of fitness and propriety could have on MUS(EMEA)'s ability to comply with its regulatory obligations;

27.4. MUS(EMEA) did not raise the issue with the PRA during a meeting on 21 October 2014, although the purpose of that meeting was for MUS(EMEA) to update the PRA on existing plans for the succession of the Chair of MUS(EMEA);

27.5. No discussions took place with MUS(EMEA) compliance staff until 13 November 2014; and

27.6. When a MUS(EMEA) director learned that, without that director's involvement, a MUS(EMEA) senior executive had discussed the Second DFS Matter with an external advisor, the director expressed his concerns to a fellow director that this might cause trouble with the PRA.

28. Taking these factors into account, the PRA considers the failings in this case were significant. It considers that the Step 2 figure is £15 million.

### **Step 3: Adjustment for any aggravating, mitigating or other relevant factors**

29. Pursuant to paragraph 24 of the PRA Penalty Policy, at Step 3 the PRA may increase or decrease the Step 2 figure (excluding any amount to be disgorged pursuant to Step 1) to take account of any factors which may aggravate or mitigate the breach, or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it.

30. In deciding whether an adjustment for aggravating or mitigating factors was warranted, the PRA considered the following factors:

30.1. MUS(EMEA) has not had any previous disciplinary or compliance issues with the PRA;

30.2. Members of MUS(EMEA)'s senior management were closely involved in the breach;

30.3. MUS(EMEA) cooperated fully with the PRA's investigation. It conducted a comprehensive internal investigation, involving a number of interviews with members of senior management, and provided the PRA with the benefit of that investigative work; and

30.4. MUS(EMEA) has taken prompt remedial action in developing and implementing measures to enhance the sharing of information relating to regulatory investigations and other matters of regulatory interest.

31. Having taken into account these factors, the PRA has concluded that the Step 2 figure should be decreased by 15%.

32. The Step 3 figure is therefore £12.75 million.

**Step 4: Adjustment for deterrence**

33. Pursuant to paragraph 27 of the PRA's Penalty Policy, 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.

34. The PRA does not consider that a further adjustment for deterrence is appropriate in this particular matter.

35. The Step 4 figure is therefore £12.75 million.

**Step 5: Settlement discount**

36. Pursuant to paragraph 29 of the PRA Penalty Policy, the PRA and the firm on whom a penalty is to be imposed may seek to agree the amount of the penalty and any other appropriate settlement terms. The PRA Settlement Policy provides that the amount of the penalty which would otherwise have been payable will, subject to the stage at which a binding settlement agreement is reached, be reduced. Paragraph 26 of the PRA Settlement Policy provides that, where the PRA proposes to impose a financial penalty under the Act and a proposed settlement agreement is negotiated by the

parties, approved by the PRA's settlement decision makers and concluded, the person concerned will be entitled to a reduction in the amount of the financial penalty (as set out at paragraph 28 of the PRA Settlement Policy).

37. The PRA and MUS(EMEA) reached agreement at Stage 1, therefore a 30% discount applies to the Step 4 figure.

38. The Step 5 figure is therefore £8.925 million.

#### **Conclusion**

39. The PRA considers it appropriate to impose on MUS(EMEA) a financial penalty of £12.75 million (reduced to £8.925 million as a Stage 1 settlement was achieved) in respect of MUS(EMEA)'s breaches of Fundamental Rule 7.

## **Annex D: Procedural Matters**

### **Decision maker**

1. The settlement decision makers made the decision which gave rise to the obligation to give this Final Notice.
2. This Final Notice is given under and in accordance with section 390 of the Act. The following statutory rights are important.

### **Manner of and time for payment**

3. The financial penalty imposed on BTMU must be paid in full by BTMU to the PRA by no later than 23 February 2017, 14 days from the date of the Final Notice.
4. The financial penalty imposed on MUS(EMEA) must be paid in full by MUS(EMEA) to the PRA by no later than 23 February 2017, 14 days from the date of the Final Notice.

### **If the financial penalties are not paid**

5. If all or any of the financial penalty imposed on BTMU is outstanding on 24 February 2017, the day after the due date for payment, the PRA may recover the outstanding amount as a debt owed by BTMU and due to the PRA.
6. If all or any of the financial penalty imposed on MUS(EMEA) is outstanding on 24 February 2017, the day after the due date for payment, the PRA may recover the outstanding amount as a debt owed by MUS(EMEA) and due to the PRA.

### **Publicity**

7. Sections 391(4), 391(6A) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under these provisions the PRA must publish such information about the matter to which this Final Notice relates as the PRA considers appropriate. However, the PRA may not publish information if such information would, in the opinion of the PRA, be unfair to the persons with respect to whom the action was taken or prejudicial to the safety and soundness of PRA-authorized persons.

### **PRA contacts**

8. For more information concerning this matter generally, contact John Cheesman (direct line: 020 3461 7866, [john.cheesman@bankofengland.co.uk](mailto:john.cheesman@bankofengland.co.uk)) of the Regulatory

Action Division of the PRA.

## **APPENDIX 1: DEFINITIONS**

### **THE DEFINITIONS BELOW ARE USED IN THIS FINAL NOTICE:**

1. "the Act" means the Financial Services and Markets Act 2000;
2. "BTMU" means the Bank of Tokyo Mitsubishi UFJ Limited;
3. "BTMU Americas" means BTMU's Americas region;
4. "the BTMU Board" means the BTMU Board of Directors;
5. "BTMU Executive Committee" means the committee responsible for discussing and determining general policies for business management in accordance with the fundamental policies determined by the Board of Directors and is also responsible for establishing (and revising) any regulations, procedures or internal guidance which are subject to those fundamental rules established by the Board of Directors;
6. "BTMU London Branch" means BTMU London branch with registered address Ropemaker Place, 25 Ropemaker Street, London EC2Y 9AN;
7. "BTMU New York Branch" means the BTMU New York branch at 1251 Avenue of the Americas, New York, NY 10020-1104, U.S.A.;
8. "BTMU Tokyo" means BTMU Head Office at 2-7-1, Marunouchi, Chiyoda-ku, Tokyo, Japan;
9. "CSI" means Confidential Supervisory Information;
10. the "DFS" means the New York Department of Financial Services;
11. "ECOD" means the BTMU Compliance Division for EMEA;
12. the "FCA" means the Financial Conduct Authority;
13. the "Firms" means BTMU and MUS(EMEA), together;
14. the "First DFS Matter" means the settlement between the DFS and BTMU which was settled by consent order on 20 June 2013;
15. the "HTR" means the historical transaction review carried out by PwC on BTMU in respect of the period from 1 April 2006 to 31 March 2007;
16. the "HTR Report" means the report submitted to the DFS by PwC arising out of the HTR;
17. the "Japanese Regulators" means the JFSA, the Japanese Ministry of Finance and the Bank of Japan together;
18. the "JFSA" means the Japanese Financial Services Agency;
19. "MUS(EMEA)" means MUFG Securities EMEA plc;
20. "MUS(EMEA) Board" means the MUS(EMEA) Board of Directors;
21. "MUFG" or the "Group" means Mitsubishi UFJ Financial Group, Inc;
22. "MUSHD" means Mitsubishi UFJ Securities Holding Co. Ltd;
23. the "PRA" means the Prudential Regulation Authority;
24. "PRA Rulebook" means the Prudential Regulation Authority Rulebook;

25. the "PRA Penalty Policy" means 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure January 2016 – Appendix 2 – Statement of the PRA's policy on the imposition and amount of financial penalties under the Act';
26. the "PRA Settlement Policy" means 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure January 2016 – 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';
27. "PwC" means PricewaterhouseCoopers LLP;
28. "the PwC Investigation" means the investigation by the DFS into PwC which was settled by consent order on 18 August 2014;
29. the "PwC Settlement" means the settlement of the PwC Investigation by consent order between the DFS and PwC on 18 August 2014;
30. the "PwC Settlement Agreement" means the settlement agreement entered into between the DFS and PwC on 18 August 2014;
31. the "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;
32. the "Second Settlement" means the settlement of the Second DFS Matter by consent order between the DFS and BTMU on 18 November 2014;
33. the "Third Party Contact Policy" means the BTMU Third Party Contact Policy dated January 2014;
34. the "Threshold Conditions" means the PRA's statutory threshold conditions, set out in Part 1E of Schedule 6 to the Act which set out the minimum requirements that firms must meet in order to be permitted to carry on the regulated activities in which they engage;
35. the "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);
36. the "UK Regulators" means the PRA and the FCA, together;
37. "Final Notice" means this notice, together with its Annexes and Appendices.

## **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-authorized persons. The PRA seeks to advance this objective by seeking to ensure that the business of PRA-authorized firms is carried on in a way which avoids any adverse effect on the stability of the UK financial system.

1.2. Section 206 of the Act provides:

If the appropriate regulator considers that an authorised person has contravened a relevant requirement imposed on the person, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

1.3. BTMU and MUS(EMEA) are authorised persons for the purposes of section 206 of the Act. Relevant requirements imposed on authorised persons include the Fundamental Rules in the PRA's Handbook, made under section 137G of the Act.

#### **2. RELEVANT REGULATORY PROVISIONS**

##### **Threshold Conditions**

2.1. The threshold conditions for PRA-authorized firms are set out in Parts 1C, 1D and 1E of Schedule 6 to the Act. The threshold conditions relevant to this Final Notice include the FCA threshold conditions for PRA-authorized firms (Part 1C) and the PRA threshold conditions for banks, building societies and PRA-authorized investment firms (Part 1E).

2.2. The suitability threshold condition set out in paragraph 5E of Part 1E of Schedule 6 to the Act captures, among other things, the requirement for firms to be generally co-operative in the provision of information to the regulators, both relating to requests from the regulator to provide specific information and in compliance with any general requirements imposed on firms to provide information to the regulator on a pro-active basis.

2.3. The PRA sets out high-level policies that elaborate on the PRA's threshold

conditions in its 'Approach to Banking Supervision' (see below).

### **PRA's Fundamental Rules**

2.4. In addition to its Threshold Conditions, the PRA has eight Fundamental Rules which apply to all PRA-authorized firms. These are high-level rules which collectively act as an expression of the PRA's general objective of promoting the safety and soundness of regulated firms.

2.5. Fundamental Rule 6 states:

*"A firm must organise and control its affairs responsibly and effectively."*

2.6. Fundamental Rule 7 states:

*"A firm must deal with its regulators in an open and co-operative way, and must disclose to the PRA appropriately anything relating to the firm of which the PRA would reasonably expect notice."*

## **3. RELEVANT STATUTORY POLICY**

### **Approach to the supervision of banks**

3.1. *The Prudential Regulatory Authority's Approach to Banking Supervision, June 2014* (as updated in March 2016) sets out how the PRA carries out its role in respect of deposit-takers and designated investment firms. One of the purposes of the document is to communicate to regulated firms what the PRA expects of them, and what they can expect from the PRA in the course of supervision.

3.2. *Supervisory Statement SS10/14* summarises the PRA's approach to international bank supervision and clarifies how the PRA will supervise branches.

## **4. Approach to enforcement**

4.1. *The Prudential Regulatory Authority's approach to enforcement: statutory statements of policy and procedure, April 2013* (as updated in January 2016) sets out the PRA's approach to exercising its main enforcement powers under the Act. In particular:

4.1.1. 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

4.1.2. 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.*

