

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY

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**In the Matter of:** )  
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 MUFG Bank, Ltd. )  
 Primary New York Branch )  
 New York, New York )  
 )  
 MUFG Bank, Ltd. )  
 Chicago Branch )  
 Chicago, Illinois )  
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 MUFG Bank, Ltd. )  
 Los Angeles Branch )  
 Los Angeles, California )  
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 Federal Branches of: )  
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 MUFG Bank, Ltd., Tokyo, Japan )  
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AA-EC-2019-7

**CONSENT ORDER**

**WHEREAS**, the Office of the Comptroller of the Currency (“OCC”) has supervisory authority over MUFG Bank, Ltd. (“MUBL”), Primary New York Branch, New York, New York (License #80138), MUBL, Chicago Branch, Chicago, Illinois (License #80140), and MUBL, Los Angeles Branch, Los Angeles, California (License #80141) (collectively “Branches”), which are Federal branches of MUFG Bank, Ltd., Tokyo Japan (“Home Office”);

**WHEREAS**, pursuant to the OCC’s November 7, 2017 Conditional Approval #1182a concerning the Branches’ conversion to federally supervised branches (“Conditional Approval”), the OCC required the Primary and Secondary New York Branches to enter into a consent order dated November 9, 2017 (“OCC OFAC Order”) to address Office of Foreign Assets Control (“OFAC”) deficiencies and U.S. economic sanctions concerns for which the New York

Department of Financial Services had previously issued consent orders to the branches in 2013 and 2014 (“NYDFS Orders”);

**WHEREAS**, the OCC OFAC Order required the Primary and Secondary New York Branches to adhere to remedial provisions that are substantively the same as the requirements in the previous NYDFS Orders, requirements for which the OCC continues to assess and monitor compliance;

**WHEREAS**, the Conditional Approval also required the Primary and Secondary New York Branches to consent to either informal or formal enforcement action, at the OCC’s discretion, following a planned assessment, evaluation, or full-scope examination by the OCC of the Branches’ Bank Secrecy Act/Anti-money Laundering (“BSA/AML”) and OFAC compliance programs (Conditional Approval, Condition No. 5);

**WHEREAS**, the OCC has conducted a full-scope examination of the Branches for BSA/AML and OFAC compliance and has identified BSA/AML deficiencies that were not addressed in the NYDFS Orders, which now require the corrective actions outlined in this Consent Order (“Order”);

**WHEREAS**, the OCC further found that the Branches failed to timely file suspicious activity reports (“SAR”) in violation of 12 CFR § 21.11 involving alerts dating back to June 2016 related to gaps in SAR monitoring for which the Bank self-identified, is remediating, and will complete lookbacks as outlined in this Order and file SARs where warranted;

**WHEREAS**, the OCC intends to initiate cease and desist proceedings against the Branches pursuant to 12 U.S.C. § 1818(b), through the issuance of a Notice of Charges, for identified deficiencies in the Branches’ BSA/AML compliance program that resulted in violations of law, rule, or regulation, including 12 C.F.R. §§ 21.21 (BSA/AML compliance

program) and 21.11 (suspicious activity report filings), and 31 C.F.R § 1010.610 (foreign correspondent banking customer due diligence), and has informed the Branches of the findings resulting from the examination;

**WHEREAS**, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Branches, by and through their duly authorized General Managers of MUBL’s Primary New York Branch, Chicago Branch, and Los Angeles Branch (“Managing Officials”), consent to the issuance of this Order by the OCC through the duly authorized representative of the Comptroller of the Currency (“Comptroller”); and

**WHEREAS**, the Branches have begun corrective actions and are committed to remedying the deficiencies identified by the OCC and enhancing the Branches’ BSA/AML compliance program;

**NOW, THEREFORE**, pursuant to the authority vested in the OCC by Section 8(b) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the OCC hereby orders that:

## **ARTICLE I**

### **JURISDICTION**

(1) The Branches are uninsured Federal branches licensed and examined by the OCC pursuant to the International Banking Act of 1978, as amended, 12 U.S.C. § 3101 *et seq.*

(2) The Branches are “insured depository institutions” for purposes of 12 U.S.C. § 1818. *See* 12 U.S.C. § 1813(c)(3).

(3) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this cease and desist action against the Branches pursuant to 12 U.S.C. § 1818(b).

## **ARTICLE II**

### **COMPTROLLER’S FINDINGS**

The Comptroller finds, and the Branches neither admit nor deny, the following:

(1) The Branches violated 12 C.F.R. §§ 21.21, 21.11 and 31 C.F.R. § 1010.610.

Specifically, the Branches failed to adopt and implement a compliance program that adequately covered the required BSA/AML program elements, the Branches failed to timely file SARs related to suspicious customer activity, and the Branches failed to implement appropriate BSA/AML due diligence programs for correspondent accounts of foreign financial institutions.

(2) Some of the deficiencies in the elements of the Branches’ BSA/AML compliance program that resulted in a violation of 12 C.F.R. § 21.21, included the following:

- (a) the Branches had an inadequate system of internal controls, ineffective independent testing, and a weak BSA Officer/staffing function;
- (b) the Branches had systemic deficiencies in their transaction monitoring systems, which resulted in monitoring gaps in several high risk areas, including international wires flowing through high risk geographies. These deficiencies resulted in a failure to file SARs in a timely manner;
- (c) the Branches had deficiencies in their due diligence program for correspondent accounts for foreign financial institutions, including inadequate analyses of the high risk ancillary products and international wire transactions flowing through the correspondent accounts to support

detection of unusual or potentially suspicious activities;

- (d) the Branches had significant gaps in their processes and procedures for trade finance monitoring; and
- (e) the Branches had an insufficient audit function and there were significant audit deficiencies identified in the audits covering some of the highest risk customers and products.

(3) The Branches failed to file the necessary SARs concerning suspicious customer activity in a timely manner, in violation of 12 C.F.R. § 21.11.

(4) The Branches failed to develop a satisfactory customer due diligence (“CDD”) process to effectively manage the risk in its foreign correspondent banking customers, in violation of 31 C.F.R. § 1010.610.

### **ARTICLE III**

#### **COMPREHENSIVE BSA/AML ACTION PLAN**

(1) Within ninety (90) days of the date of this Order, the Managing Officials shall develop one written action plan detailing the remedial actions necessary for all three Branches to achieve compliance with Articles III through IX of this Order (“Action Plan”), and submit the Action Plan to the Examiner-in-Charge (“EIC”) for review and prior written determination of no supervisory objection. The Action Plan, at a minimum, shall specify:

- (a) a description of the corrective actions needed to achieve compliance with each Article of this Order;
- (b) reasonable and well-supported timelines for completion of the corrective actions required by this Order;

- (c) the person(s) responsible for completion of the corrective actions required by this Order; and
- (d) completion dates for self-initiated remediation and lookback projects addressing the twenty-three (23) BSA/AML monitoring systems coverage gaps.

(2) The timelines contained in the Action Plan shall be consistent with any deadlines set forth in this Order, including any modifications to the Order made pursuant to Article XIII, paragraph 4.

(3) In the event the EIC requires changes to the Action Plan, the Managing Officials shall incorporate the required changes into the Action Plan and submit the revised Action Plan within thirty (30) days of notification of required changes to the EIC for review and prior written determination of no supervisory objection.

(4) Upon receipt of a written determination of no supervisory objection from the EIC, the Managing Officials shall ensure the Branches timely adopt and implement all corrective actions required by this Order, and shall verify the Branches adhere to the Action Plan, including the timelines set forth within the Action Plan.

(5) The Branches shall not take any action that will cause a significant deviation from, or material change to, the Action Plan. Where the Branches consider modifications to the Action Plan to be appropriate, the Managing Officials shall submit a revised Action Plan containing the proposed modifications to the EIC for prior written determination of no supervisory objection. Upon receipt of a written determination of no supervisory objection from the EIC, the Managing Officials shall ensure the Branches timely adopt and implement all

corrective actions required by this Order, and shall verify the Branches adhere to the revised Action Plan.

(6) By July 31, 2019, and thereafter within thirty (30) days after the end of each calendar quarter, the Managing Officials shall prepare and submit to the EIC, a written Action Plan progress report setting forth in detail:

- (a) the specific corrective actions undertaken to comply with each Article of this Order;
- (b) the results and status of the corrective actions, including those related to the self-initiated remediation and lookback projects for BSA/AML monitoring systems coverage gaps; due diligence programs for correspondent accounts for foreign financial institutions, and trade finance AML red flag manual monitoring; and
- (c) a description of the outstanding corrective actions needed to achieve compliance with each Article of this Order and the party or parties responsible for the completion of outstanding corrective actions.

#### **ARTICLE IV**

##### **MANAGEMENT AND ACCOUNTABILITY**

(1) The Managing Officials shall ensure there are clear lines of authority and responsibility for BSA/AML compliance management and that a competent and independent BSA Officer(s) is in place on a full-time basis.

(2) The Managing Officials shall ensure that staff responsible for compliance in the first and second lines of defense have the appropriate skills, expertise, and level of authority to implement the BSA/AML compliance program and, as needed, question account relationships

and business plans.

(3) The Managing Officials shall strengthen performance management processes, as necessary, to ensure they have appropriate means to measure the effectiveness of the BSA Officer(s), Deputy BSA Officers, and staff responsible for compliance in the first and second lines of defense.

(4) The Managing Officials shall ensure management and staff in the first line of defense are accountable for effectively implementing policies and procedures, and fulfilling BSA/AML obligations.

## **ARTICLE V**

### **BSA OFFICERS AND STAFFING**

(1) The Managing Officials shall ensure the Branches maintain a permanent, qualified, and experienced BSA Officer(s) who shall be vested with sufficient stature, time, and resources to fulfill the duties and responsibilities of the position and to ensure compliance with the requirements of the Bank Secrecy Act and whose retention will satisfactorily address any open BSA Officer(s) function deficiencies and the requirements of this Article.

(2) The Managing Officials shall ensure the BSA Officer(s), Deputy BSA Officers(s), and other staff responsible for BSA/AML compliance have sufficient authority, training, and skills to perform their assigned responsibilities.

(3) If any of the BSA Officer or Deputy BSA Officer positions (“BSA Senior Staff”) are vacated or modified, the Managing Officials shall provide written notice to the EIC within thirty (30) days of the vacancy or modifications, and shall obtain a written determination of no supervisory objection for new hires or replacements.

(4) Within ninety (90) days of this Order, the Managing Officials shall conduct a

formal written assessment of the adequacy of the Branches' BSA Senior Staff functions and BSA/AML staffing to ensure compliance with the requirements of the BSA. This assessment shall include, at a minimum:

- (a) the BSA Senior Staff's stature, authority, scope of responsibilities, time, and resources;
- (b) the BSA Senior Staff's knowledge, skills, and capabilities to understand the BSA/AML risks of complex, high-risk products and services offered by the Branches, perform their assigned responsibilities, and ensure the Branches' compliance with the requirements of the Bank Secrecy Act; and
- (c) the number, qualifications, and experience of staff needed to support the BSA Senior Staff and the Branches' BSA/AML compliance functions.

(5) Within sixty (60) days after completing the formal written assessment under paragraph 4 of this Article; the Managing Officials shall ensure the Branches implement any changes that are needed regarding the BSA Senior Staff and supporting staff including their responsibilities, authority, structure, independence, competencies, or capabilities. In particular, the Managing Officials shall ensure the BSA Senior Staff and supporting staff have sufficient authority, training, and skills to perform their assigned responsibilities.

(6) The Managing Officials shall periodically, and no less than annually, review the adequacy of the Branches' BSA Senior Staff and supporting staff and shall document their determinations in writing. The periodic review shall consider the factors described in paragraph 4 of this Article.

## **ARTICLE VI**

### **BSA/AML RISK ASSESSMENT**

(1) Pursuant to the BSA/AML Action Plan submitted under Article III, the Managing Officials shall ensure the Branches review, update, and implement an effective BSA/AML Risk Assessment process, including supporting policies and procedures for gathering accurate and relevant data, to provide for a comprehensive written assessment of the Branches' BSA/AML risk profile that enables management to apply appropriate risk management processes to mitigate risk ("BSA/AML Risk Assessment").

(2) The Managing Officials shall ensure the staff responsible for the BSA/AML Risk Assessment have sufficient authority, training, and skills to perform their assigned responsibilities.

(3) The BSA/AML Risk Assessment shall consider all pertinent information and include, at a minimum:

- (a) the risk and mitigating controls associated with each line of business and with higher risk products, customers, services, and geographies, including, but not limited to, foreign correspondent banking customers, foreign correspondent banking transactions, pouch services, U.S. dollar drafts, trade finance, bearer shares, remote deposit capture, and monetary instruments;
- (b) the identification of specific lines of business, geographies, products, or processes where controls are not commensurate with the level of BSA/AML risk exposure;
- (c) BSA/AML risk both individually within business lines and on a

consolidated basis across all activities and product lines; and

- (d) aggregation of the Branches' BSA/AML risk that is reasonable and clearly supported in the work papers. The work papers and supporting documentation shall be readily accessible for a third party review.

(4) The BSA/AML Risk Assessment shall also include assessments of the organizational structure, effectiveness, competency of management, accountability, staffing requirements, internal controls, customer due diligence processes, enhanced due diligence processes, risk assessment processes, suspicious activity monitoring and reporting systems and processes, audit/independent testing results, and training.

(5) The BSA/AML Risk Assessment shall be re-evaluated and/or refreshed by the Managing Officials periodically, the timeframe for which shall not exceed twelve months, or whenever there is a significant change in BSA/AML risk within the Branches or the lines of businesses within the Branches.

(6) The BSA/AML Risk Assessment shall also be independently reviewed by the Branches' internal audit function for the adequacy of methodology and accuracy of findings.

(7) If the EIC requires changes to the evaluation or the assessments, the Branches shall incorporate those changes or suggest alternatives that are acceptable to the EIC. The Branches shall adopt, implement, and adhere to the BSA/AML Risk Assessment.

## **ARTICLE VII**

### **FOREIGN CORRESPONDENT BANKING CUSTOMER DUE DILIGENCE**

(1) Pursuant to the BSA/AML Action Plan submitted under Article III, the Managing Officials shall ensure that the Branches review, update, and implement effective foreign correspondent banking CDD policies and procedures and management information systems

(“MIS”) to enable the Branches to reliably detect and report, on an ongoing basis, any known or suspected money laundering activity.

(2) The Managing Officials shall ensure the staff responsible for gathering CDD information and for the development and maintenance of the MIS have sufficient authority, training, and skills to perform their assigned responsibilities.

(3) The CDD policies and procedures must be documented and address any identified CDD deficiencies. At a minimum, the policies and procedures shall include:

- (a) a methodology for assigning customer risk ratings that considers appropriate factors such as type of customer, geographic activity, the expected account activity by type of service used, including the volume and frequency by dollar amount and number, and the specification of the CDD information that must be obtained, commensurate with these risk levels;
- (b) policies and procedures to establish a risk profile for each customer that encompasses a customer’s entire relationship and includes the nature and purpose of the account, actual and/or anticipated activity in the account (*e.g.*, type, volume, and value (number and dollar) of transaction activity engaged in), nature of the customer’s business or occupation, customer location (*e.g.*, customer’s geographic location, where they transact business, and where they have significant operations), types of products and services used by the customer, material changes in the customer’s relationship, as well as other factors outlined within the Federal Financial Institutions Examination Counsel’s BSA/AML Examination Manual;

- (c) policies and procedures to obtain customer information regarding the customer's relationship with the Branches. This includes accounts within all lines of business, regions, and countries (as permitted by the laws of each jurisdiction) whose transactions are processed by one or more of the Branches;
  - (d) policies and procedures that comply with 31 C.F.R. § 1010.610 for foreign correspondent accounts that ensure the required due diligence information is recorded in an automated system of record and ensure:
    - (i) timely, sustained, and documented periodic reviews of foreign correspondent account relationships;
    - (ii) nested account activity risk is effectively identified and managed through risk-based processes; and
    - (iii) identification, monitoring, and review of pouch and U.S. Dollar products and accounts;
  - (e) policies and procedures to ensure CDD includes ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information as defined in 31 C.F.R. § 1020.210(b)(5); and
  - (f) a due diligence database that is readily accessible to the relationship manager and other parties responsible for the customer relationship, BSA/AML compliance personnel, suspicious activity monitoring alert analysts and investigators, and quality control personnel.
- (4) CDD MIS shall be commensurate with the Branches' BSA/AML risk as identified

by the Branches' risk assessments required by Article VI, and shall provide appropriate business, BSA/AML compliance, and investigations staff with the appropriate access to sufficient CDD information to enable timely and sound analysis and monitoring of customers' activity.

(5) If the EIC requires changes to the CDD policies and procedures, or the CDD MIS, the Branches shall incorporate those changes or suggest alternatives that are acceptable to the EIC. The Branches shall adopt, implement, and adhere to the CDD policies and procedures, and to the CDD MIS.

## **ARTICLE VIII**

### **SUSPICIOUS ACTIVITY MONITORING, INVESTIGATION AND REPORTING**

(1) Pursuant to the BSA/AML Action Plan submitted under Article III, the Managing Officials shall ensure the Branches review, update, and implement effective policies and procedures that comply with the requirements of this Article and address any identified suspicious activity monitoring, investigation process, and reporting deficiencies ("Suspicious Activity Monitoring and Reporting Program"). Such policies and procedures shall ensure the timely, appropriate, and documented investigation and disposition of potentially suspicious activity, and the timely filing of SARs.

(2) The Managing Officials shall ensure the staff responsible for the Suspicious Activity Monitoring and Reporting Program have sufficient authority, training, and skills to perform their assigned responsibilities.

(3) The Suspicious Activity Monitoring and Reporting Program shall be sufficiently robust and tailored to the Branches' risk profile, operations, and all lines of business, including foreign correspondent banking accounts, intermediary wires, and trade finance, and shall provide for:

- (a) timely identification of potentially suspicious activity;
- (b) appropriately designed and implemented business logic units, parameters, rules, or other factors used in automated transaction monitoring systems to identify customer activity that is unreasonable or abnormal, including full remediation of the twenty-three (23) BSA/AML monitoring system coverage gaps;
- (c) timely and accurate data feeds into the transaction monitoring systems;
- (d) sufficient MIS to manage and adjust the transaction monitoring system(s) and processes to validate automated monitoring system settings; and
- (e) a comprehensive trade finance AML red flag monitoring process that includes appropriate counterparty and pricing analyses.

(4) With respect to the investigation process, the Suspicious Activity Monitoring and Reporting Program must provide for:

- (a) qualified staffing to perform alert reviews and case investigations;
- (b) development, implementation, and adherence to appropriate risk-based policies and procedures for the disposition of alerts and case investigations, including timing, documentation, and quality standards;
- (c) development, implementation, and adherence to policies and procedures for ensuring timely submission by the Branches' lines of business of all necessary information needed for analysts to complete comprehensive alert reviews and case investigations;
- (d) effective and sustainable quality control processes designed to ensure compliance with the policies and procedures established in (b) and (c); and

- (e) timely escalation of any backlogs in alert reviews, case investigations, or SAR filings to the BSA Officer(s) and Managing Officials.

(5) If the EIC requires changes to the Suspicious Activity Monitoring and Reporting Program, the Branches shall incorporate those changes or suggest alternatives that are acceptable to the EIC. The Branches shall adopt, implement, and adhere to the Suspicious Activity Monitoring and Reporting Program.

## **ARTICLE IX**

### **BSA/AML INTERNAL AUDIT**

(1) Pursuant to the BSA/AML Action Plan submitted under Article III, the Managing Officials shall ensure the Branches review, update, and implement an effective BSA/AML audit program (“BSA/AML Internal Audit Program”) so that scope, testing, documentation, and follow-up are sufficient to cover high risk products, services, and customers and address any identified deficiencies. The BSA/AML Internal Audit Program shall:

- (a) detect irregularities in the Branches’ operations;
- (b) perform a sufficient audit quality assurance review to ensure adequate internal controls, including ensuring the disposition of alerts and investigations are accurate and properly supported;
- (c) determine the Branches’ level of compliance with all applicable BSA/AML laws, rules, and regulations;
- (d) determine the root cause for BSA/AML compliance program deficiencies;
- (e) evaluate the Branches’ adherence to established policies and procedures;
- (f) perform an appropriate level of testing to support the audit findings; and
- (g) ensure adequate audit coverage and audit frequency in all areas.

(2) The Managing Officials shall ensure appropriate oversight of the audit function for BSA/AML compliance, with particular emphasis on an adequately staffed BSA/AML audit department or outside firm that has the necessary expertise and knowledge regarding BSA/AML and an adequate number of individuals employed.

(3) The Managing Officials shall ensure that the Branches conduct a formal written assessment of the Branches' internal audit staffing. This assessment shall include, at a minimum, the number, qualifications, and experience of staff needed to maintain sufficient qualified staff in the internal audit department, including quality assurance and standards teams, to provide for timely execution of independent audit and quality assurance reviews of completed audits, and provide sufficient training on internal controls relative to their respective roles and responsibilities.

(4) All audit reports prepared by internal audit staff or an independent third party shall be in writing and supported by adequate work papers, which must be provided to the Branches. The Managing Officials shall ensure the Branches take immediate actions to remedy deficiencies cited in audit reports, and the auditors maintain a written record describing those actions.

(5) If the EIC requires changes to the BSA/AML Internal Audit Program, the Branches shall incorporate those changes or suggest alternatives that are acceptable to the EIC. The Branches shall adopt, implement, and adhere to the BSA/AML Internal Audit Program.

## **ARTICLE X**

### **GENERAL MANAGING OFFICIALS RESPONSIBILITIES**

(1) The Managing Officials shall ensure the Branches timely adopt and implement all corrective actions required by this Order, and shall verify the Branches adhere to the corrective actions and they are effective in addressing the Branches' deficiencies that resulted in this Order.

(2) In each instance in which this Order imposes responsibilities upon the Managing Officials, it is intended to mean the Managing Officials shall:

- (a) authorize, direct, and adopt corrective actions on behalf of the Branches as may be necessary to perform the obligations and undertakings imposed on the Branches by this Order;
- (b) ensure the Branches have sufficient processes, management, personnel, control systems, and corporate and risk governance to implement and adhere to all provisions of this Order;
- (c) require the Branches' management and personnel have sufficient training and authority to execute their duties and responsibilities pertaining to or resulting from this Order;
- (d) hold the Branches' management and personnel accountable for executing their duties and responsibilities pertaining to or resulting from this Order;
- (e) require appropriate, adequate, and timely reporting to the Managing Officials by the Branches' management of corrective actions directed by the Managing Officials to be taken under the terms of this Order; and
- (f) address any noncompliance with corrective actions in a timely and appropriate manner.

## **ARTICLE XI**

### **WAIVERS**

- (1) The Branches, by executing and consenting to this Order, waive:
  - (a) any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818;
  - (b) any and all procedural rights available in connection with the issuance of this Order;
  - (c) any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 and 12 C.F.R. Part 19;
  - (d) any and all rights to seek any type of administrative or judicial review of this Order;
  - (e) any and all claims for fees, costs, or expenses against the OCC, or any of its officers, employees, or agents related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412;
  - (f) any and all rights to assert this proceeding, the consent to and/or the issuance of this Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by any other representative of the United States, or any agency thereof, including, without limitation the United States Department of Justice; and
  - (g) any and all rights to challenge or contest the validity of this Order.

## **ARTICLE XII**

### **OTHER PROVISIONS**

(1) Regarding the effect of this Order, and unless the OCC informs the Branches otherwise in writing with respect to any or all of the subparts below:

- (a) the Home Office is treated as an “eligible foreign bank” pursuant to 12 C.F.R. § 28.12(f)(2) for the purposes of 12 C.F.R. Part 28, Subpart B regarding licensing, supervision, and operations of Federal branches and agencies; and
- (b) the Branches are not subject to the restrictions in 12 C.F.R. § 5.51 requiring prior notice to the OCC of changes in directors and senior executive officers.

(2) Notwithstanding paragraph 1 of this Article, the Branches’ status under 12 C.F.R. § 5.51(c)(7) and 28.12(f) is contingent upon the Branches’ satisfaction of the requirements of 12 C.F.R. §§ 5.51(c)(7)(i), (iii) and 28.12(f)(1).

## **ARTICLE XIII**

### **CLOSING**

(1) This Order is a settlement of the cease and desist proceeding against the Branches contemplated by the OCC, based on the violations of law and regulation described in the Comptroller’s Findings set forth in Article II of this Order. The OCC releases and discharges the Branches from all potential liability for a cease and desist order that has been or might have been asserted by the OCC based on the violations described in Article II of this Order, to the extent known to the OCC as of the effective date of this Order. Nothing in this Order, however, shall prevent the OCC from:

- (a) instituting enforcement actions other than a cease and desist order against the Branches based on the Comptroller's Findings set forth in Article II of this Order;
- (b) instituting enforcement actions against the Branches based on any other findings;
- (c) instituting enforcement actions against institution-affiliated parties (as defined by 12 U.S.C. § 1813(u)) based on the Comptroller's Findings set forth in Article II of this Order, or any other findings; or
- (d) utilizing the Comptroller's Findings set forth in Article II of this Order in future enforcement actions against the Branches or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

(2) Nothing in this Order is a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) This Order is:

- (a) a "cease-and-desist order issued upon consent" within the meaning of 12 U.S.C. § 1818(b);
- (b) a "cease-and-desist order which has become final" within the meaning of 12 U.S.C. § 1818(e);
- (c) an "order issued with the consent of the depository institution" within the meaning of 12 U.S.C. § 1818(h)(2);

(d) an “effective and outstanding . . . order” within the meaning of 12 U.S.C. § 1818(i)(1); and

(e) a “final order” within the meaning of 12 U.S.C. § 1818(i)(2) and (u).

(4) This Order is effective upon its issuance by the OCC, through the Comptroller’s duly authorized representative. Except as otherwise expressly provided herein, all references to “days” in this Order shall mean calendar days and the computation of any period of time imposed by this Order shall not include the date of the act or event that commences the period of time. The provisions of this Order shall remain effective except to the extent that, and until such time as, such provisions are amended, suspended, waived, or terminated in writing by the OCC, through the Comptroller’s duly authorized representative. If the Branches seek an extension, amendment, suspension, waiver, or termination of any provision of this Order, or within any plan or program submitted pursuant to this Order, the Managing Officials shall submit a written request to the EIC asking for relief. Any request submitted pursuant to this paragraph shall include a statement setting forth in detail the special circumstances that prevent the Branches from complying with the relevant provision(s) of the Order or plan or program submitted pursuant to this Order, and shall be accompanied by relevant supporting documentation. The OCC’s decision concerning a request submitted pursuant to this paragraph, which will be communicated to the Managing Officials in writing, is final and not subject to further review.

(5) The Branches will not be deemed to be in compliance with this Order until they have adopted, implemented, and adhered to all of the corrective actions set forth in each Article of this Order; the corrective actions are effective in addressing the Branches’ deficiencies; and the OCC has verified and validated the corrective actions. An assessment of the effectiveness of

the corrective actions requires sufficient passage of time for the Branches to demonstrate the sustained effectiveness of the corrective actions.

(6) This Order is not a contract binding on the United States, the United States Treasury Department, the OCC, or any officer, employee, or agent of the OCC and neither the Branches nor the OCC intends this Order to be a contract.

(7) Each citation, guidance, or issuance referenced in this Order includes any subsequent citation, guidance, or issuance that replaces, supersedes, amends, or revises the referenced cited citation, guidance, or issuance.

(8) No separate promise or inducement of any kind has been made by the OCC, or by its officers, employees, or agents, to cause or induce the Branches to consent to the issuance of this Order.

(9) All reports, plans, or programs submitted to the OCC pursuant to this Order shall be submitted, by overnight mail or via email, to the following:

Molly Scherf, Examiner-in-Charge  
350 California Street, Suite 1450  
San Francisco, CA 94104

(10) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.



