



FINAL NOTICE

To: **Takami Onodera, IRN TXO01200**

Date: **7 November 2018**

1. IMPOSITION OF PENALTY

- 1.1. For the reasons given in this Final Notice, the PRA imposes a financial penalty of of £14,945 on Mr Takami Onodera ("Mr Onodera"), pursuant to section 66 of the Act, for breach of Statement of Principle 4.
- 1.2. Mr Onodera agreed to settle at an early stage of the PRA's investigation and has therefore qualified for a 30% (stage 1) discount under the PRA's Settlement Policy. Were it not for this discount, the PRA would have imposed a financial penalty of £21,350 on Mr Onodera.

2. SUMMARY OF THE GROUNDS FOR ACTION

Background

- 2.1. MUFG Securities EMEA plc ("MUS (EMEA)") is a UK-incorporated subsidiary of Mitsubishi UFJ Securities Holdings Co. Ltd ("MUSHD"), one of Japan's largest securities firms, which itself is a subsidiary of Mitsubishi UFJ Financial Group ("MUFG"). MUFG is the parent company of a global banking network, headquartered in Tokyo.
- 2.2. The Bank of Tokyo Mitsubishi UFJ Limited ("BTMU") is an international bank headquartered in Tokyo, and is also a subsidiary of MUFG. BTMU has a branch in London. BTMU also has a branch in New York whose operations are regulated by, among others, the New York Department of Financial Services ("DFS").
- 2.3. BTMU and MUS (EMEA) are regulated by the PRA for prudential purposes.
- 2.4. Mr Onodera was a group non-executive director ("NED") at MUS (EMEA) during the Relevant Period and was approved to perform controlled function 2 (non-executive director) during the period up to 6 March 2016 (when the role ceased to be a controlled function). Mr Onodera was based in Japan and held other senior roles within MUFG.

- 2.5. Mr Akira Kamiya ("Mr Kamiya") was approved by the PRA to act as CF2 (non-executive director and Chair) at MUS (EMEA) between 21 September 2012 and 20 November 2014. Between 2008 and 2010, Mr Kamiya had been the Managing Executive Officer and Deputy CEO of BTMU's Global Business Unit.
- 2.6. In 2014 the DFS began negotiations with BTMU about a potential settlement in relation to its conduct in its dealings with an accountancy firm in relation to an earlier DFS investigation (the "Second DFS Matter").
- 2.7. The Second DFS Matter arose out of an earlier DFS action (the "First DFS Matter"), which the DFS and BTMU settled in June 2013. On 20 June 2013, BTMU and the DFS entered into a consent order in relation to BTMU's improper processing of US dollar clearing activity through BTMU New York Branch in breach of US sanctions between 2002 and March 2007. The settlement required BTMU to pay to the DFS a USD 250,000,000 penalty, and was based on a historical transaction review ("the HTR") in respect of the period from 1 April 2006 to 31 March 2007 carried out by PricewaterhouseCoopers LLP ("PwC") at BTMU's request.
- 2.8. The DFS later investigated PwC in relation to PwC's report on the HTR (the "HTR Report"), which had been submitted to the DFS' predecessor agency, ("the PwC Investigation"). In particular, the DFS investigated PwC's removal of evidence from the HTR Report and concluded that PwC changed the HTR Report as a result of improper pressure exerted by BTMU. PwC and the DFS entered into a settlement agreement on 18 August 2014 ("the PwC Settlement Agreement"), which required PwC to pay to the DFS a USD 25,000,000 penalty and agree to certain restrictions on its consulting activities for two years.
- 2.9. In the second half of August 2014, as a result of the PwC Settlement Agreement, BTMU initiated an internal investigation into what had happened and identified a list of 12 current and former employees that it proposed to interview to understand the factual position.
- 2.10. The DFS subsequently contacted BTMU's lawyers on 2 September 2014 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 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. Settlement negotiations between the DFS and BTMU continued until 18 November 2014.
- 2.11. On 18 November 2014 the DFS published a consent order which fined BTMU USD 315,000,000 and in which BTMU agreed to take disciplinary action against

certain BTMU executives and to prevent two former executives from engaging in any future US banking business through BTMU or BTMU's affiliates (the "2014 Consent Order"). In the 2014 Consent Order BTMU accepted that it had exerted improper pressure on an external consultant to remove evidence from an independent report which had been submitted to the DFS' predecessor. Mr Kamiya was one of the former BTMU executives who, under the terms of the 2014 Consent Order, BTMU agreed would not be permitted to conduct US banking activities at BTMU or BTMU affiliated companies. Mr Kamiya was at this time also the Chair of MUS (EMEA) and a CF2.

- 2.12. The PRA first received notice of the DFS investigation into BTMU and implications for Mr Kamiya as the Chair of MUS (EMEA) leading to the 2014 Consent Order when it was notified by BTMU and MUS (EMEA) jointly on 18 November 2014, shortly after the DFS made public the 2014 Consent Order.

Mr Onodera's awareness of BTMU / DFS discussions

- 2.13. On 6 October 2014, Mr Onodera learned from a senior MUFG executive that:
- (1) The DFS had made two requests of BTMU:
 - (a) That BTMU reach an early settlement on the basis that a settlement payment would be made; and
 - (b) that BTMU "*dispense appropriate internal disciplinary actions*", in relation to which the DFS had disclosed names of 10 individuals (which included Mr Kamiya).
 - (2) BTMU's US Counsel had previously interviewed 13 individuals (10 of which were on the list of individuals disclosed by the DFS);
 - (3) there was a high likelihood that a settlement with the DFS could be reached by the end of the year;
 - (4) there had been two meetings between the DFS and BTMU's US Counsel, and a third meeting was expected in the near future, with the possibility of the DFS tabling settlement conditions;
 - (5) BTMU was yet to compile internal and external evidence in connection with the internal disciplinary action, and the timeline for the completion of this work was yet to be decided;
 - (6) preliminary personnel action would be considered after that evidence had been compiled and put forward to BTMU's Audit Committee for consultation with the Board; and

- (7) it remained completely unclear whether disciplinary action would be imposed by BTMU on any individual, or (if disciplinary action would be imposed) the type of disciplinary action to be taken.
- 2.14. Mr Onodera was not one of the executives at MUS (EMEA) with responsibility for making notifications to the PRA. However the PRA considers that Mr Onodera breached Statement of Principle 4 by failing to disclose appropriately to those at MUS (EMEA) responsible for PRA reporting the information known to him on 6 October 2014 in respect of the Second DFS Matter and potential implications for Mr Kamiya. Although the likelihood and the nature of any implications for Mr Kamiya was wholly unclear at that time, this was information which ought reasonably to have been identified as being of material significance to the PRA and therefore which ought to have been notified in accordance with MUS (EMEA)'s internal reporting procedures.
- 2.15. Mr Onodera failed to meet the requirements of Statement of Principle 4 as the information known to him in respect of the Second DFS Matter and potential implications for Mr Kamiya was relevant to Mr Kamiya's fitness and propriety and to the MUS (EMEA) governance discussions with the PRA in 2014, particularly those in October 2014 at which the plans and timing of Mr Kamiya's retirement and succession were presented. The PRA was not, in fact, informed about this emerging and developing risk until after it had crystallised.
- 2.16. In late October 2014, Mr Onodera was provided with further information concerning the implications for Mr Kamiya arising from the settlement negotiations with the DFS. Mr Onodera was also instructed to research what procedures would be required as regards overseas regulators should Mr Kamiya resign suddenly. At the same time Mr Onodera was made aware of the fact that the information concerning the negotiations with the DFS and the implications for Mr Kamiya were subject to severe or strict controls and confidentiality restrictions imposed by the DFS. Mr Onodera believed that these restrictions applied to disclosure of information within MUS (EMEA) and to external parties, including the PRA. Mr Onodera was provided with additional information concerning the potential implications for Mr Kamiya on 4 November 2014 and subsequently.
- 2.17. On 9 November 2014, Mr Onodera was present when another MUS (EMEA) director was informed of the fact that Mr Kamiya may need to retire earlier than planned as a result of a US regulatory matter. On 11 November 2014, Mr Onodera informed a MUS (EMEA) director (one of the appropriate individuals for the purpose of making notifications to the PRA) of that same information. By 11

November 2014 Mr Onodera was one of five MUS (EMEA) directors who were aware of this information;

- 2.18. This did not take proper account of Mr Onodera's own UK regulatory obligations as an approved person and CF2, the obligations of MUS (EMEA) and the PRA and MUFG's own principle of legal entity integrity. Whilst clearly motivated by concern for maintaining compliance with DFS confidentiality restrictions including their potential impact on BTMU, Mr Onodera's conduct was below the standard the PRA expects of an approved person and the effect of these actions was to limit the proper transmission of information within MUS (EMEA).
- 2.19. Mr Onodera was told by MUFG executives that the wider MUFG group would handle regulatory notifications, including to the PRA. Mr Onodera was also specifically instructed not to make a notification to the PRA. Despite this, and the strict confidentiality restrictions imposed by the DFS, Mr Onodera himself took some steps from 8 November 2014 to obtain independent UK advice on the duties of notification from a regulatory specialist from a leading accountancy firm, although he did not ultimately obtain that advice until 15 November 2014. On 14 November 2014 a MUS (EMEA) senior executive (with responsibility for PRA notifications) obtained advice from the same adviser suggesting that notification be made to the PRA as soon as possible before any public announcement but that there was not enough information for an effective communication. Mr Onodera arranged for the adviser to be briefed by BTMU's US legal advisers as Mr Onodera himself did not have full information about the matter. Having received this briefing, the regulatory specialist advised on 15 November 2014 that the PRA should be informed of the Second DFS Matter and its implications for Mr Kamiya, but that the notification should be made following publication of the DFS Consent Order.
- 2.20. The PRA was only informed of the Second DFS Matter and implications for the Chair of MUS (EMEA) by BTMU and MUS (EMEA) following publication by the DFS of the 2014 Consent Order. The PRA was therefore deprived of the opportunity to consider whether these circumstances had, or could have had, an impact on Mr Kamiya's fitness and propriety. Further, the breach meant that the PRA was not updated of the potential acceleration of the MUS (EMEA) Chair succession plan. The PRA was therefore deprived of an opportunity to consider what contingency plans may have been necessary for the firm to put in place.
- 2.21. The PRA considers Mr Onodera was in breach of Statement of Principle 4 from 6 October 2014 to 18 November 2014.
- 2.22. In making the above findings against Mr Onodera, the PRA takes into account

the full circumstances of the case. In particular:

- (1) The PRA has not found that Mr Onodera acted dishonestly or without integrity and no findings are made in respect of his fitness and propriety; and
- (2) The PRA accepts that:
 - (a) Mr Onodera believed that he was placed in a difficult position, given the direct conflict that he believed existed between his strict duties of confidentiality to the DFS, as against the duty to make an appropriate report under Principle 4:
 - (i) from 28 October 2014, he believed that there was a direct conflict that existed between his strict duties of confidentiality to the DFS, as against the duty to make an appropriate report under Principle 4;
 - (ii) Mr Onodera felt constrained in the steps that he was permitted to take to notify relevant matters by the strict confidentiality restrictions imposed by the DFS;
 - (iii) Mr Onodera was informed by BTMU compliance that a notification to the PRA was being considered at MUFG level (and Mr Onodera subsequently followed up with a BTMU/MUFG executive to check on the progress with this). Mr Onodera was also instructed by MUFG that he must refrain from taking any action in relation to reporting to the PRA;
 - (b) on 11 November 2014 Mr Onodera made a director of MUS (EMEA) with responsibility for notifications to the PRA aware that Mr Kamiya might have to retire early as Chair of MUS (EMEA) in connection with a regulatory matter in the US (and was himself aware that he was one of five directors of MUS (EMEA) who were aware of this information);
 - (c) Mr Onodera arranged for an independent professional adviser to be briefed and provide written advice on the notification duties of MUS (EMEA), and then followed the advice provided (namely to notify the PRA following the publication of the Consent Order by the DFS).

2.23. Further details of the grounds for the PRA taking action against Mr Onodera can be found in Annex B.

3. REASONS WHY THE PRA HAS TAKEN ACTION

- 3.1. The PRA is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms, including the UK subsidiaries of overseas banks. The PRA's role is to promote the safety and soundness of those firms. The PRA's supervisory approach is forward looking, assessing safety and soundness not just against current risks but also against those that could plausibly arise further ahead. This approach requires firms and individuals to be open and straightforward with the PRA, and to raise issues of possible concern, and flag up emerging risks, at an early stage. The PRA will, in turn, act proportionately to issues and emerging risks that it is alerted to.
- 3.2. The PRA expects senior individuals at firms to take prompt and appropriate steps to ensure the PRA has all relevant information at an early stage so that it can make fully informed judgments about their firms' safety and soundness. This is particularly important for senior management and the Board. The PRA expects boards and senior management of regulated firms to run their business prudently, which necessarily includes meeting regulatory obligations and being open with regulators. This requires executives to be open and straightforward in their dealings with each other and with the PRA.
- 3.3. Potential actions against PRA regulated individuals arising from actions by an overseas regulator are matters which are likely to be highly relevant to the PRA's assessment of the fitness and propriety of those individuals, and to the PRA's assessment of the safety and soundness of their firms. The PRA therefore reasonably expects to be notified of such matters at an early stage, and to be kept informed as they develop. This is the case regardless of the likelihood or nature of any potential outcome. This is particularly the case where a firm is undertaking governance improvements and has communicated specific plans to the PRA for the retirement of an individual which may be accelerated by those potential actions. The obligation to be open and to disclose appropriate information is a continuing obligation, and extends to correcting information provided to the PRA that an individual later learns is no longer, or may no longer, be correct. The PRA has to be in a position to make effective and timely judgements as to the ongoing suitability of senior individuals at PRA-authorized firms.
- 3.4. Where individuals have, or think they may have, competing or conflicting multi-jurisdictional legal or regulatory responsibilities, they must ensure that they promptly and properly consider their own responsibilities to UK regulators,

including the PRA. This includes taking appropriate advice at a sufficiently early stage. Further, in international groups where individuals hold multiple roles across the group, they must ensure that, whatever their competing priorities, they promptly and properly consider and discharge their UK regulatory responsibilities. Individuals remain responsible for the discharge of their UK regulatory duties.

- 3.5. The PRA expects all members of a Board to demonstrate leadership and conduct themselves with a commensurate level of candour, independence and challenge. In international groups, this may require executives to be prepared to challenge and, if necessary, to take action that may be contrary to directions or decisions from the group, but are otherwise appropriate or necessary to discharge their UK regulatory duties and so support the continuing authorisation of the firm. Such action will enable the PRA to act in a timely and proportionate manner.
- 3.6. The PRA considers that the imposition of a financial penalty on Mr Onodera supports the PRA's general objective of promoting the safety and soundness of the firms it regulates. The action the PRA is taking emphasises the importance the PRA places on senior individuals in firms to deal openly with the PRA and to disclose appropriately information, including on emerging issues, which the PRA would reasonably expect notice of.
- 3.7. The facts and matters relied on by the PRA in its decision-making process regarding Mr Onodera can be found in Annex A. Mr Onodera's failings and breaches are detailed in Annex B. The basis for the sanction the PRA imposes is set out in Annex C. Procedural matters are set out in Annex D. The definitions used in this Final notice are set out in Annex E. The relevant statutory, regulatory and policy provisions are set out in Annex F.

4. SANCTION

- 4.1. Taking into account the facts and matters in Annex A and the relevant factors set out in the PRA's penalty policy, the PRA considers that Mr Onodera's breach of Statement of Principle 4 warrants the imposition of a financial penalty of **£21,350**. That penalty was reduced by 30% discount to **£14,945** because Mr Onodera settled with the PRA at Stage 1.

5. PROCEDURAL MATTERS

5.1. The procedural matters set out in Annex D are important.

Miles Bake

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

Annex A

1. FACTS AND MATTERS RELIED UPON

Mr Onodera's roles and responsibilities

- 1.1. Mr Onodera was appointed as a Group NED at MUS (EMEA) and approved to perform CF2 (non-executive director) on 6 June 2014. He continued to be approved to perform CF2 until 6 March 2016, when the role of non-executive director ceased to be a controlled function. Mr Onodera continued as a Group NED at MUS (EMEA) until he stepped down from the role in August 2017.
- 1.2. Mr Onodera's April 2014 CF2 application stated that one of his primary responsibilities as a NED was to be responsible for MUS (EMEA)'s compliance with legal, regulatory and other obligations.
- 1.3. During the Relevant Period, Mr Onodera also performed the roles of Deputy President of MUSHD and a Managing Officer of MUFG.

Compliance Manual and the Global Governance Framework

- 1.4. The Compliance Manual stipulated that the MUS (EMEA) Board and certain senior executive(s) had prime responsibility for compliance with the PRA's rules and regulations and all other regulatory requirements applicable to the business. MUS (EMEA) compliance was delegated responsibility for all regulatory matters (other than the Money Laundering Reporting Controlled Function and for compliance with financial regulations and financial reporting requirements).
- 1.5. Mr Onodera was not one of the approved persons with responsibility for reporting matters to the PRA, which was the responsibility of two other MUS (EMEA) executives.
- 1.6. The Compliance Manual set out the PRA Statements of Principle (including Statement of Principle 4) as the behavioural standards applicable to approved persons such as a CF2 and NED. It noted the importance of consulting Compliance or Legal in the event someone was unsure of the various regulatory requirements applicable to the business. The Compliance Manual also stated that staff should comply with both the specific guidance set out in it and the general principles of the regulators by following the spirit as well as the letter of the rules, regulations and policies. The Compliance Manual also set out the PRA's Fundamental Rules.
- 1.7. The Global Governance Framework ("GGF") document set out the high level

structure and disciplines of the global matrix governance of MUSHD and its subsidiaries. One such subsidiary was MUS (EMEA). The document set out how each subsidiary's legal entity integrity was to be maintained. In sum, the subsidiaries were to follow and comply with the MUS (EMEA) global business basic business strategy, risk appetite, standards and policies for global governance, and give due consideration to and appropriately reflect MUSHD's requests to the extent that such requests would not result in potential breaches of local laws or regulations.

Chronology of 2014 events

2014 MUS (EMEA) governance project

- 1.8. In Spring 2014, the PRA had requested MUS (EMEA) to improve its governance arrangements and Board functioning. MUS (EMEA) engaged an international accounting firm (the "UK Advisor") to advise it on this work, resulting in a series of 33 governance and Board improvement recommendations. One of the recommendations was for MUS (EMEA) to put in place succession plans for the Board, including the Chair. Mr Kamiya was leading the governance improvement project for MUS (EMEA).
- 1.9. In around Summer 2014, MUS (EMEA) began to work on plans to replace Mr Kamiya as its Chair. The reason for Mr Kamiya stepping down as Chair was that Mr Kamiya was approaching the mandatory retirement age of 62 which applied within MUSHD.
- 1.10. An experienced financial services regulatory partner at the UK Advisor was retained to advise on the governance project and the Chair succession plan.

July - September 2014 Board induction and Mr Kamiya retirement plans

- 1.11. On 26 July 2014, Mr Onodera was first provided with the schedule for Mr Kamiya's retirement. Under the schedule, Mr Kamiya would retire from his position at MUSHD and other positions (including MUS (EMEA)) in January 2015 and would leave MUSHD by March 2015. Mr Onodera was expecting to replace Mr Kamiya as Chair of MUS (EMEA) on Mr Kamiya's retirement.
- 1.12. In July and August 2014, Mr Onodera was provided with various MUS (EMEA) Board induction materials, which included, among other documents, the Compliance Manual and the GGF. Mr Onodera also received further induction materials from MUS (EMEA) compliance and a document setting out recent policy developments in the PRA's approach and expectations. Mr Onodera also met with MUS (EMEA) compliance at which the main points of the UK regulatory

system were explained to him.

- 1.13. In early September 2014 Mr Kamiya began making arrangements, in which Mr Onodera was involved, for a meeting between the President of MUSHD, MUS (EMEA) and the PRA (which was subsequently scheduled for 21 October 2014). The principal purpose of the meeting was to inform the PRA that Mr Kamiya would be stepping down as Chair of MUS (EMEA) in March 2015 due to reaching the MUSHD mandatory retirement age and that it was proposed that Mr Onodera would be appointed to the role.
- 1.14. In or around September 2014, Mr Onodera first learned that Mr Kamiya would be moving to a position outside of the MUFG group following his departure from MUSHD.
- 1.15. Mr Onodera received further training (alongside other MUS (EMEA) executives) on the MUS (EMEA) GGF on 9 September 2014. This covered a range of points in relation to the UK regulatory regime and the interaction between MUS (EMEA) and its parent companies. The training materials emphasised the principle of legal entity integrity of MUSHD subsidiaries and made clear that where there was a divergence of interest between MUS (EMEA) and its parent (for example where MUS (EMEA) needed to act on its responsibilities to its broader stakeholders in the UK) then the legal entity integrity of MUS (EMEA) was to prevail.

September 2014 – Mr Kamiya’s fact finding interview and planning for PRA meeting

- 1.16. In mid-September 2014 Mr Kamiya first became aware that the DFS had contacted BTMU in relation to BTMU’s role in the events leading to the August 2014 DFS PwC Settlement Agreement. In September 2014, Mr Kamiya received a telephone call from a senior BTMU executive asking Mr Kamiya to attend a voluntary interview with BTMU’s US Counsel, to provide background information to help them respond to enquiries from the DFS. Mr Onodera was not made aware of this at this time.
- 1.17. Mr Kamiya attended the voluntary interview with BTMU’s external counsel on 19 September 2014. He was informed by BTMU’s US Counsel that there were a number of people that they would be interviewing and that they were speaking to him as part of a fact-gathering exercise so that the US Counsel could better advise the bank. Mr Onodera was not made aware of this at this time.
- 1.18. At some point after 19 September 2014, Mr Onodera learned that Mr Kamiya had been interviewed by BTMU’s US Counsel in relation to an investigation

between BTMU and the DFS.

October 2014 – PRA meetings

- 1.19. On 4 October 2014, a senior MUSHD representative asked Mr Onodera to speak to MUFG Compliance to find out whether Mr Kamiya's involvement with the Second DFS Matter would impact on the timing of Mr Kamiya's retirement and planned move to a company outside of the MUFG Group. It was identified that the procedural schedule of the company that Mr Kamiya would be joining required MUSHD to complete its internal process for Mr Kamiya's retirement by mid-December 2014.
- 1.20. On 6 October 2014, Mr Onodera learned from a senior MUFG executive that:
 - (1) The DFS had made two requests of BTMU:
 - (a) That BTMU reach an early settlement on the basis that a settlement payment would be made; and
 - (b) that BTMU "*dispense appropriate internal disciplinary actions*", in relation to which the DFS had disclosed names of 10 individuals (which included Mr Kamiya).
 - (2) BTMU's US Counsel had previously interviewed 13 individuals (10 of which were on the list of individuals disclosed by the DFS);
 - (3) there was a high likelihood that a settlement with the DFS could be reached by the end of the year;
 - (4) there had been two meetings between the DFS and BTMU's US Counsel, and a third meeting was expected in the near future, with the possibility of the DFS tabling settlement conditions;
 - (5) BTMU was yet to compile internal and external evidence in connection with the internal disciplinary action, and the timeline for the completion of this work was yet to be decided;
 - (6) preliminary personnel action would be considered after that evidence had been compiled and put forward to BTMU's Audit Committee for consultation with the Board; and
 - (7) it remained completely unclear whether disciplinary action would be imposed by BTMU on any individual, or (if disciplinary action would be imposed) the type of disciplinary action to be taken.
- 1.21. Between 6 October 2014 and 28 October 2014 Mr Onodera did not receive any

further updates on the Second DFS Matter or any potential implications for Mr Kamiya.

- 1.22. Between 6 October 2014 and 21 October 2014, Mr Onodera had some further involvement in the planning for the upcoming meeting with the PRA. A meeting with the PRA was scheduled for 21 October 2014 and a pre-meeting conference call briefing with the PRA was held on 17 October 2014. Mr Onodera did not attend the 17 October 2014 call but did receive drafts of a prepared script ahead of the call. The PRA was told by Mr Kamiya on the 17 October 2014 call that he would step down as Chair of MUS (EMEA) owing to MUFG mandatory age-related retirement policies and that the timing for this was February/March 2015.
- 1.23. On 21 October 2014, Mr Onodera, Mr Kamiya, a senior MUSHD representative and two other MUS (EMEA) senior executives met the PRA. At the meeting, the senior MUSHD representative told the PRA that Mr Kamiya would step down as Chair of MUS (EMEA) owing to MUFG mandatory age-related retirement policies and that the timing for this was February/March 2015. Mr Onodera did not inform the PRA of what he had been told concerning BTMU's settlement negotiations with the DFS on 6 October 2014.
- 1.24. On 28 October 2014, Mr Onodera learned from a senior MUSHD representative that:
 - (1) BTMU's negotiations with the DFS were in the final stage;
 - (2) there were ten relevant persons to the DFS settlement, including Mr Kamiya; and
 - (3) the BTMU internal investigation had not yet been finalised.
- 1.25. Mr Onodera was instructed by the senior MUSHD representative to research what procedures would be required as regards overseas regulators should Mr Kamiya need to resign suddenly.
- 1.26. At the same meeting, the senior MUSHD representative told Mr Onodera not to mention the matter to anyone else as this was information from the DFS that was under severe or strict controls and confidentiality restrictions, and a breach of the restrictions could have an impact on BTMU. This was the first point in time when Mr Onodera was made aware of DFS confidentiality restrictions, and the potential consequences on BTMU for breach of these.
- 1.27. Mr Onodera was required to travel to New York on business on 29 October 2014, and returned to Japan on Sunday 2 November 2014. The following day, 3 November 2014, was a national holiday in Japan.

4-8 November 2014 - increasing detail regarding the potential implications for Mr Kamiya

- 1.28. On 4 November 2014, Mr Onodera learned from two MUSHD executives that:
- (1) BTMU had requested confirmation of what roles Mr Kamiya held in MUSHD and MUS (EMEA) as there was a possibility Mr Kamiya might be subject to action;
 - (2) The specifics and timing of any action that might be imposed on Mr Kamiya were not fixed;
 - (3) They had the impression from BTMU that Mr Kamiya had not done anything bad himself, but might have to take responsibility due to the position he had held at BTMU at the relevant time;
 - (4) one of the possible actions was a restriction on Mr Kamiya's business activities in the US; and
 - (5) MUFG were checking whether Mr Kamiya could remain as a director within the group if his business activities in the US were restricted.
- 1.29. At this meeting, the two MUSHD executives again emphasised to Mr Onodera the strict confidentiality restrictions in relation to information regarding the Second DFS Matter. Mr Kamiya was not a party to, or aware of, these discussions.
- 1.30. On 4 November 2014, following receipt of this information from the two MUSHD executives, Mr Onodera first considered the need to inform the PRA of the Second DFS Matter and its potential implications for Mr Kamiya.
- 1.31. On 5 November 2014, Mr Onodera requested further information from BTMU compliance and learned:
- (1) the DFS had identified three potential breaches in relation to Mr Kamiya;
 - (2) that BTMU were negotiating with the DFS to avoid the most serious of these breaches; and
 - (3) a settlement agreement was expected in the next two weeks, but the date remained unfixed.
- 1.32. Mr Onodera told BTMU compliance that if Mr Kamiya was going to be subject to action then the PRA should be notified.
- 1.33. BTMU compliance told Mr Onodera that very serious confidentiality restrictions were imposed on BTMU by the DFS and therefore that MUFG would handle

notification of the Second DFS Matter and potential implications for Mr Kamiya to the PRA. Mr Onodera's understanding of the DFS confidentiality restrictions around this time were that they were very strict, including that there would be implications for BTMU if there was a breach of the confidentiality restrictions.

- 1.34. Mr Onodera was not told of the detail or timing of the proposed MUFNG notification but proceeded on the basis of his understanding that the PRA would be informed of the nature of the actions that had given rise to the potential action.
- 1.35. On 6 November 2014, Mr Onodera learned from Mr Kamiya that:
- (1) settlement with the DFS should be reached next week;
 - (2) three persons, one of which was Mr Kamiya, would be identified by job titles for breaches; and
 - (3) a likely settlement condition was that Mr Kamiya would not be able to engage in financial business in the US.
- 1.36. Mr Onodera and Mr Kamiya discussed the fact that the potential implications for Mr Kamiya, including the likelihood that he would be restricted from engaging in financial business in the US and may have to retire early from MUS (EMEA), should be notified to the PRA. Mr Onodera and Mr Kamiya agreed to get advice from the UK Advisor on how to notify the MUS (EMEA) Board and the PRA. Given the strict DFS confidentiality restrictions, they agreed that before approaching the UK Advisor they would get advice from BTMU's US Counsel on whether they could speak to the UK Advisor for this purpose.

8-10 November 2014 DFS settlement specifics and BTMU's US Counsel advice

- 1.37. On Saturday 8 November 2014 Mr Onodera learned from a MUFNG/MUSHD executive that Mr Kamiya would not face the most serious breaches that were being negotiated but that the DFS settlement agreement would identify Mr Kamiya by job-title, and that Mr Kamiya would face restrictions on his US banking activities. Mr Onodera also learned that the US banking activity restrictions were expected to be in effect 20-30 days after the DFS settlement agreement.
- 1.38. Also on Saturday 8 November 2014, Mr Onodera asked a MUSHD executive to approach BTMU's US Counsel for advice on whether Mr Onodera and Mr Kamiya could discuss the Second DFS Matter and potential implications for Mr Kamiya with the UK Advisor at an upcoming meeting in London which was planned for 11 November 2014, with a view to obtaining advice on a notification to the PRA. The

MUSHD executive in turn contacted BTMU's US Counsel and arranged for a call to discuss the matter for Monday 10 November 2014.

- 1.39. On Sunday 9 November 2014 Mr Onodera travelled from Tokyo to London to attend a MUS (EMEA) Board meeting. Mr Onodera and Mr Kamiya had dinner with another MUS (EMEA) Board director. At the dinner Mr Kamiya told the other MUS (EMEA) Board director that in connection with some US regulators there was a possibility Mr Kamiya might have to retire early. Only high level information was provided by Mr Kamiya to the MUS (EMEA) Board director. At this time Mr Kamiya had not yet heard back from BTMU's US Counsel on the issue of whether it was permissible to disclose details in relation to the Second DFS Matter.
- 1.40. On 10 November 2014, BTMU's US Counsel confirmed that MUS (EMEA) could seek advice on its UK regulatory obligations but noted:
- "[w]e do need to warn you that it is possible that [the] DFS would not be pleased to learn of such discussions because of the confidential nature of our communications with them. However, given the role [the UK Advisor] has in advising [MUS (EMEA)] on an issue of import to the DFS settlement, we think it can be explained to [the] DFS should the need arise. That said, as we discussed on the phone, the information provided to [the UK Advisor] should be as limited as possible. In addition, the communication with [the UK advisor] would not likely be privileged under US law and could therefore be discovered in an investigation or other action. For this reason we also advise keeping the information provided to, and discussion with, [the UK Advisor] as narrow as possible."*
- 1.41. Mr Onodera understood the US Counsel's advice as a strong warning against consulting the UK Advisor to the extent that this would require disclosure of information relating to the Second DFS Matter. Despite this, Mr Onodera and Mr Kamiya decided to discuss the matter with the UK Advisor by giving him limited information only, namely that Mr Kamiya might have to retire early as Chair of MUS (EMEA) in connection with a US regulatory matter.
- 1.42. Mr Onodera and Mr Kamiya also discussed whether they could share any information with other individuals at MUS (EMEA). Mr Onodera and Mr Kamiya agreed that before making any notification to the MUS (EMEA) Board, they should give the MUS (EMEA) director with responsibility for making notifications to the PRA what information they could.
- 1.43. On 10 November 2014 Mr Onodera arranged for a meeting with a MUFG

executive to take place on 14 November 2014 (following Mr Onodera's return to Tokyo from London), to discuss how to make a notification to the PRA if there was no agreement on the 10 November 2014 advice from the US Counsel.

- 1.44. Also on 10 November 2014, Mr Onodera called a BTMU/MUFG executive who was a fellow MUS (EMEA) Board director to enquire what the MUFG plans were for notifying the PRA. They agreed to meet to discuss the next morning in person as they were both in London.

11 November 2014 – informing the UK Advisor and MUS (EMEA) senior executive(s) with notification responsibilities

- 1.45. At 7:30 am on 11 November 2014, Mr Onodera met with the BTMU/MUFG executive, who was also a director on the MUS (EMEA) Board, as arranged the previous day. Mr Onodera noted from the meeting that BTMU and MUFG did not yet seem to have a clear plan for the PRA notification.
- 1.46. Mr Onodera and Mr Kamiya agreed to notify the MUS (EMEA) senior executive(s) with notification responsibilities about the Second DFS Matter and likely implications for Mr Kamiya. They also agreed to provide this information to the UK Advisor at a meeting scheduled for that morning. Mr Onodera and Mr Kamiya determined that only limited information could be provided to these individuals on account of the BTMU US Counsel advice of the previous day regarding the DFS confidentiality restrictions.
- 1.47. Accordingly, around 9:00 am on 11 November 2014, Mr Onodera informed the MUS (EMEA) senior executive(s) with notification responsibilities that Mr Kamiya might have to retire earlier than expected as Chair of MUS (EMEA) in connection with a US regulatory matter. Mr Onodera informed the MUS (EMEA) senior executive(s) with notification responsibilities that the information was subject to strict confidentiality restrictions.
- 1.48. Around 9:15 am on 11 November 2014, Mr Onodera and Mr Kamiya had a scheduled meeting with the UK Advisor regarding the MUS (EMEA) Chair succession plan. At the meeting Mr Kamiya told the UK Advisor that the timescales for his retirement and Mr Onodera's succession may need to be accelerated owing to an ongoing issue in the US.
- 1.49. At 1:00 pm on 11 November, there was a regularly scheduled MUS (EMEA) Board meeting. At the meeting Mr Onodera was appointed Deputy Chair of MUS (EMEA) with authority to act as Chair on an interim basis in the event the Chair was not available. While five MUS (EMEA) Board directors were now aware that Mr Kamiya may have to retire as MUS (EMEA) Chair earlier than planned in

connection with a US regulatory matter, Mr Onodera himself had not provided each of them with all of the information that he had been given. The Second DFS Matter and potential implications for Mr Kamiya were not included as an agenda item for the Board meeting and were not discussed at this meeting.

12-13 November 2014 MUS (EMEA) senior executive(s) with notification responsibilities seek immediate specialist advice

- 1.50. On 12 November 2014 Mr Kamiya also informed the MUS (EMEA) senior executive(s) with notification responsibilities that there was a possibility he may have to retire earlier than planned due to a US regulatory matter. This repeated the information that Mr Onodera had provided to the same individual the previous day.
- 1.51. On 13 November 2014 the MUS (EMEA) senior executive(s) spoke to MUS (EMEA) compliance to seek advice about the Second DFS Matter and implications for Mr Kamiya.

14 November 2014 – UK Advisor first advice and Mr Onodera’s reaction

- 1.52. On 14 November 2014 the MUS (EMEA) senior executive(s) with notification responsibilities sought advice from the UK Advisor. The MUS (EMEA) senior executive(s) summarised in an email sent at 10:13 am to a MUSHD/MUS (EMEA) executive that the advice of MUS (EMEA) compliance and that of the UK Advisor was similar. The advice was for Mr Onodera and Mr Kamiya to personally communicate with the PRA and FCA as soon as possible and that it would be advantageous to communicate before any public announcement by the DFS. The advice was that this could occur by telephone. The UK Advisor advised that the communication should be precise as possible but that he didn’t feel at this stage that MUS (EMEA) had enough information for an effective communication. The UK Advisor then suggested what could be included in the communication. The email was forwarded to Mr Onodera at 10:21 am on the same day.
- 1.53. Mr Onodera then had three calls with a MUSHD/ MUS (EMEA) executive regarding the 10:13 am email. Mr Onodera was concerned about the amount of information being communicated about the Second DFS Matter and implications for Mr Kamiya, given the strict DFS confidentiality restrictions which had been emphasised to him several times. Mr Onodera expressed deep concern about the information being communicated in breach of the DFS confidentiality restrictions. He explained to the executive that he was concerned because this would “*spell a lot of trouble*” with the regulators for the firms and for individuals in terms of a potential breach of DFS confidentiality restrictions, and of a PRA notification

being made based on incomplete or inaccurate information.

- 1.54. As arranged on 10 November 2014 (while Mr Onodera had been in London), later on 14 November 2014 Mr Onodera met with a senior MUFG executive to discuss the notification to the PRA. The senior MUFG executive told Mr Onodera that MUFG would telephone the PRA to explain the Second DFS Matter and implications for Mr Kamiya after the publication of the DFS Consent Order, and that Mr Onodera "*should not move on his side*".
- 1.55. Mr Onodera responded by stating that he wanted the UK Advisor to speak with BTMU's US Counsel to confirm how the PRA should be notified, and the senior MUFG executive agreed to this. Mr Onodera then immediately arranged for the UK Advisor to speak with BTMU's US Counsel.

15 November 2014 – UK Advisor second advice

- 1.56. As a result a conversation took place by telephone between the UK Advisor and BTMU's US Counsel. On this call BTMU's US Counsel provided the UK Advisor with a briefing on the negotiations between BTMU and the DFS, and the implications for Mr Kamiya. Having received this briefing from BTMU's US Counsel, on 15 November 2014 the UK Advisor provided revised email advice to Mr Onodera on how and when to make the proposed notification to the PRA.
- 1.57. The UK Advisor's revised advice was for the PRA and FCA to be informed about the Second DFS matter on a timely basis but not before it was in the public domain as a result of publication by the DFS. Details of what should be included in the notification were also covered in the advice. Mr Onodera shared this advice with a senior BTMU executive in Tokyo.

17-18 November 2014 – MUFG group PRA notification deliberations

- 1.58. From 15 November 2014 to 17 November 2014 there were numerous communications among the UK Advisor, Mr Onodera, BTMU's US Counsel and MUFG representatives about who would make the PRA communication (MUS (EMEA) or external advisors), how the communication would be made (email/written letter or phone call), what would be communicated to the PRA, and the timing of the communication (contemporaneous to the publication of the DFS Consent Order or immediately following publication). Mr Onodera was involved in, and facilitated, these deliberations regarding PRA notification.

18 November 2014 - Publication of DFS Consent Order

- 1.59. On 18 November 2014 the DFS published the 2014 Consent Order. The DFS also issued a press release on this date which noted, in part: (i) that BTMU had

improperly pressured the external consultant into watering down a supposedly objective report on the Bank's dealings with sanctioned countries, thereby misleading the DFS; and (ii) that at the direction of the DFS, BTMU would take disciplinary action against two former BTMU compliance personnel. Mr Kamiya and one other former BTMU employee would be restricted while working at BTMU or its affiliates from conducting business involving any New York banks (or other financial institutions) regulated by the DFS, including BTMU's New York branch.

- 1.60. Following the publication by the DFS of the 2014 Consent Order, at 5pm London time, BTMU London and MUS (EMEA) held a joint conference call with the PRA and FCA to notify them of the Second DFS Matter and the implications for Mr Kamiya. MUFG representatives included BTMU's US Counsel, BTMU London compliance, and MUS (EMEA) compliance. Mr Onodera did not participate in the call. On the call the PRA asked MUS (EMEA) to conduct an urgent review of Mr Kamiya's fitness and propriety.

Annex B

1. BREACHES AND FAILINGS

- 1.1. As a result of the facts and matters set out in Annex A, the PRA considers that Mr Onodera has breached Statement of Principle 4.
- 1.2. Statement of Principle 4 requires *"An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice"*.
- 1.3. APER 4.4.3E provides that in the opinion of the PRA, conduct of the type described in APER 4.4.4E does not comply with Statement of Principle 4.
- 1.4. APER 4.4.3E and 4.4.4E provide that, in the opinion of the PRA, the following conduct does not comply with Statement of Principle 4: *"Failing to report promptly in accordance with his firm's internal procedures (or if none exist direct to the regulator concerned), information which it would be reasonable to assume would be of material significance to the [PRA], whether in response to questions or otherwise"*.
- 1.5. APER 4.4.5E provides that *"There is no duty on an approved person to report such information directly to the regulator concerned unless he is one of the approved persons responsible within the firm for reporting matters to the regulator concerned. However, if an approved person takes steps to influence the decision so as not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the appropriate regulator will, in respect of that information, view him as being one of those within the firm who has taken on responsibility for deciding whether to report that matter to the regulator concerned"*.
- 1.6. APER 3.1.4A provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.
- 1.7. APER 3.1.5 provides that in determining whether or not an approved person's conduct complies with Statement of Principle 4, the PRA will take into account the extent to which an approved person has acted in a way that is stated to be in breach of a Statement of Principle. APER 4.4.6E provides that in determining whether or not an approved person's conduct under APER 4.4.4E complies with

Statement of Principle 4, the following are factors which, in the opinion of the regulator, are to be taken into account:

- (1) the likely significance to the regulator concerned (as defined in APER 4.4.4E) of the information which it was reasonable for the individual to assume;
- (2) whether the information related to the individual himself or to his firm;
- (3) whether any decision not to report the matter internally was taken after reasonable enquiry and analysis of the situation.

1.8. To establish a breach of Statement of Principle 4, the PRA needs to show that:

- (1) Mr Onodera was personally culpable. That is, his actions were deliberate or his standard of conduct was below that which would be reasonable in all the circumstances;
- (2) It would have been reasonable for Mr Onodera to assume that the information that he failed to report would be of material significance to the PRA; and
- (3) Mr Onodera failed to report promptly, in accordance with his firm's internal procedures, the information known to him about the Second DFS Matter and potential implications for Mr Kamiya.

1.9. Factors relevant to the assessment of whether Mr Onodera's conduct complied with Statement of Principle 4 include:

- (1) The likely significance to the PRA of the information, which it was reasonable for Mr Onodera to assume;
- (2) Whether the information related to Mr Onodera himself or to his firm; and
- (3) Whether any decision not to report the matter internally was taken after reasonable enquiry and analysis of the situation.

Personal culpability

1.10. When assessing information against the obligation in Statement of Principle 4, the information must be judged 'in the round' – for example, taking into account the nature and potential importance of the information, and the context of the firm or individuals to which it relates. This is not a mechanical exercise in which an emerging risk must have evolved to a particular probability or likelihood, or to have crystallised, before it becomes notifiable to the PRA.

- 1.11. Information regarding the potential for breaches, including a request by an overseas regulator for appropriate internal disciplinary action to be taken (even where this may follow an internal investigation) is clearly a matter which may be relevant to the PRA's assessment of the fitness and propriety of regulated individuals, and the PRA's assessment of the safety and soundness of their firms, including what contingency planning the firms may need to undertake. This is the case even where it remains completely unclear whether any disciplinary action would be taken, or the nature of any such disciplinary action. It is therefore information of which the PRA would reasonably expect notice at an early stage.
- 1.12. Further, information that has the potential to impact on specific governance plans previously presented to the PRA is also information of which the PRA would reasonably expect notice. In the context of the PRA's concerns about MUS (EMEA) governance including Board succession, and the on-going governance improvement project at the time, this was information which it would be reasonable to assume would be of material significance to the PRA.
- 1.13. When assessing this information, Mr Onodera's conduct was below that which would be reasonable in all the circumstances. On 6 October 2014 and from 28 October to 8 November 2014, Mr Onodera received information concerning the progress of the Second DFS Matter and potential implications for Mr Kamiya, but Mr Onodera failed adequately to report the information internally in accordance with the MUS (EMEA)'s compliance framework. Mr Onodera was the only individual within MUS (EMEA) to receive this information on 6 October 2014 from the senior MUFG executive, and was not aware of any other MUS (EMEA) individual possessing information similar to this until 6 November 2014. Notably, Mr Onodera:
- (1) *Between 6 October 2014 and 4 November 2014 failed to appreciate that the information about the Second DFS Matter and potential implications for Mr Kamiya was information of which the PRA would reasonably expect notice.*
 - (2) *From 28 October 2014 to 18 November 2014, did not provide sufficiently detailed information to those at MUS (EMEA) who had specific responsibility for making notifications to the PRA.*
 - (3) *Did not make an adequate internal report following the meeting with the PRA on 21 October 2014 on the timing of Mr Kamiya's retirement. The duty represented by Statement of Principle 4 is both a proactive and a continuous one. Mr Onodera was aware that MUS (EMEA) had told the PRA*

on 17 October 2014 and on the 21 October 2014 that Mr Kamiya would retire as Chair of MUS (EMEA) in February/March 2015 owing to MUFG mandatory retirement age limits. However, Mr Onodera failed to make an adequate internal report to those responsible for making notifications to the PRA once he received more detailed information.

- (4) *Group assurance and instructions regarding the PRA notification.* Mr Onodera was instructed that MUFG itself would take responsibility for making regulatory notifications to the PRA and that Mr Onodera should stand down from taking action. Although the PRA accepts that Mr Onodera did not simply accept this instruction and did in fact take some additional steps, the duty that Mr Onodera owed under Statement of Principle 4 nevertheless required him to make an appropriate notification within MUS (EMEA) regardless of assurances or instructions received from other companies within the Group.

1.14. In making its assessment as to whether Mr Onodera's conduct was below that which would be reasonable in all of the circumstances, the PRA accepts that the following matters are also relevant:

- (1) Mr Onodera believed that he was placed in a difficult position, given the conflict that he believed existed between his strict duties of confidentiality to the DFS, as against the duty to make an appropriate report under Statement of Principle 4;
- (2) Mr Onodera felt constrained in the steps that he was permitted to take to notify relevant matters by the strict confidentiality restrictions imposed by the DFS;
- (3) Mr Onodera himself had no involvement in the negotiations between BTMU and the DFS, or the potential implications for Mr Kamiya, and the information available to him was incomplete;
- (4) Mr Onodera was informed by BTMU compliance that a notification to the PRA was being considered at MUFG level (and Mr Onodera subsequently followed up with a BTMU/MUFG executive to check on the progress with this). Mr Onodera was also instructed by MUFG that he must refrain from taking any action in relation to reporting to the PRA;
- (5) Mr Onodera nevertheless took some steps from 8 November 2014 to seek to obtain advice from the UK Advisor on MUS (EMEA)'s notification

obligations to the PRA, although he did not ultimately obtain that advice until 15 November 2014. On 14 November 2014 a MUS (EMEA) senior executive (with responsibility for PRA notifications) obtained advice from the same advisor suggesting that notification be made to the PRA as soon as possible before any public announcement but that there was not enough information for an effective communication. Mr Onodera engaged with a MUFG executive to arrange for the UK Advisor to receive a briefing on the BTMU/DFS settlement discussions and the potential implications for Mr Kamiya from BTMU's US Counsel;

- (6) On 9 November 2014, Mr Onodera was present when another MUS (EMEA) director was informed of the fact that Mr Kamiya may need to retire earlier than planned as a result of a US regulatory matter. On 11 November 2014, Mr Onodera informed a MUS (EMEA) director (one of the appropriate individuals for the purpose of making notifications to the PRA) of that same information. By 11 November 2014 Mr Onodera was one of five MUS (EMEA) directors who were aware of this information;
- (7) The UK Advisor, having received a briefing on the BTMU/DFS settlement discussions and the potential implications for Mr Kamiya from BTMU's US Counsel on 14 November 2014, provided written advice to MUS (EMEA) on 15 November 2014 that the PRA and FCA should be informed about the Second DFS matter on a timely basis but not before it was in the public domain as a result of publication by the DFS. Details of what should be included in the notification were also covered in the advice; and
- (8) Mr Onodera relied on this advice concerning the timing of notification to the PRA.

1.15. Pursuant to the above, taking all of the circumstances into account, these behaviours are below the standard we expect of an approved person and these actions meant that MUS (EMEA) was unable to properly consider all relevant information and to take appropriate action.

Other factors

1.16. The PRA has taken into account the following factors in considering whether Mr Onodera's conduct complied with Statement of Principle 4:

- (1) *Whether the information relates to an individual themselves or to their firm.* The information that Mr Onodera failed to report did not relate to

himself, but to Mr Kamiya the Chair of MUS (EMEA), and therefore related to one of the most senior approved persons at MUS (EMEA).

- (2) *Whether any decision not to report the matter internally was taken after reasonable enquiry and analysis of the situation.* Mr Onodera did not make reasonable enquiries and analysis as regards:
 - (a) his determination on 6 October 2014 that Statement of Principle 4 only required him to report a potential emerging risk to the PRA once there was a degree of likelihood or detail about the outcome; and
 - (b) from 28 October 2014, the scope and impact of the DFS confidentiality restrictions on his UK regulatory obligations.
- (3) As such, Mr Onodera was late to recognise the need to consider his UK regulatory obligations, and those of MUS (EMEA). Mr Onodera did not consider how the PRA should be notified until 6 November 2014 and did not take any actual steps towards enquiry or analysis relating to PRA notification until 8 November 2014.
- (4) *Seniority.* Mr Onodera as a CF2 and NED was one of the most senior figures within MUS (EMEA) and was due to take over as Chair under the MUS (EMEA) Chair succession plan.

Annex C

1. FINANCIAL PENALTY

- 1.1. Pursuant to section 66(3)(a) of the Act, as Mr Onodera breached the PRA's regulatory requirements, the PRA may, among other options, impose a penalty.
- 1.2. The PRA's policy in relation to financial penalties is set out in 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure' April 2013 (as updated in August 2018) at Appendix 2 'Statement of the PRA's policy on the imposition and amount of financial penalties under the Act' (the "PRA's Penalty Policy").
- 1.3. The PRA's Penalty Policy sets out a non-exhaustive list of factors that may be taken into account when determining the appropriate sanction.

Step 1: Disgorgement

- 1.4. At Step 1 the PRA seeks to deprive an individual of any economic benefits derived from or attributable to the breach of its requirements, where it is practicable to ascertain and quantify them.
- 1.5. There is no evidence that Mr Onodera derived any economic benefit from the breach, including profit made or loss avoided and therefore the Step 1 figure is **£0**.

Step 2-starting point figure and seriousness of the breach

- 1.6. At Step 2 the PRA determines a starting point figure for a punitive penalty having regard to the seriousness of the breach by the relevant individual, including any threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives, and the income of the individual. The PRA will ordinarily determine a figure at Step 2 based on the individual's annual income. "Annual income" means the gross amount of all benefits, including any deferred benefits received by the individual from the employment in connection with which the breach of the PRA's requirements occurred.
- 1.7. Mr Onodera was not compensated directly by MUS (EMEA) for his position as a Group NED. Rather his position as a MUS (EMEA) NED formed part of his overall responsibilities within MUFG, and compensation from MUFG.
- 1.8. The PRA ordinarily calculates an individual's annual income during the tax year preceding the date when the breach ended ("relevant income"). On this basis,

as the breach occurred in October-November 2014, the PRA would normally calculate Mr Onodera's annual income with reference to the 2013/2014 (and not 2014/2015) UK tax year.

- 1.9. Mr Onodera's annual income during the 2013/2014 tax year was paid in Japanese Yen. The PRA considers it is appropriate to convert the received sums into GBP using the average Yen/£ exchange rate for the year to 31 March 2014 (as published by HM Revenue and Customs).
- 1.10. Therefore, the PRA considers that Mr Onodera's relevant income for the purposes of the Step 2 starting point figure is **£213,488.34**.

Step 2 factors

- 1.11. In determining the seriousness of the breach, the PRA will apply an appropriate percentage rate to the individual's relevant income to produce a figure at Step 2 that properly reflects the nature, extent, scale and gravity of the breach. The PRA considers the percentage rate of Mr Onodera's relevant income should be **10%** for the following reasons.
- 1.12. The PRA considers the following factors to be particularly important:
 - (1) as Group NED, member of the Board, CF2 and nominated Chair under the succession plan Mr Onodera was one of the most senior figures within the firm. His CF2 application stated that one of his primary responsibilities as a NED was responsibility for MUS (EMEA)'s compliance with legal, regulatory and other obligations. However, Mr Onodera was not the individual within MUS (EMEA) responsible for notifying the PRA;
 - (2) Mr Onodera understood his role was to monitor and lead MUS (EMEA) to comply with UK regulations and law. However, he did not start to actively consider his own obligations until 4 November 2018. The advice MUS (EMEA) eventually received on 15 November 2018 was for the PRA and FCA to be informed about the Second DFS matter on a timely basis but not before it was in the public domain as a result of publication by the DFS. Details of what should be included in the notification were also covered in the advice;
 - (3) The information Mr Onodera failed to report was of material significance to the PRA (although Mr Onodera did not consider it would be) as it called into question the fitness and propriety of the MUS (EMEA) Chair;
 - (4) Mr Onodera was the only MUS (EMEA) representative to be aware of the

Second DFS Matter until 6 November 2014, and from 6 November 2014 he continued to know more about the Second DFS Matter than other MUS (EMEA) executives until 11-12 November 2014, including MUFG deliberations about PRA notification;

- (5) Mr Onodera himself had no involvement in the negotiations between BTMU and the DFS, or the potential implications for Mr Kamiya, and the information available to him was incomplete;
- (6) Mr Onodera was informed by BTMU compliance that a notification to the PRA was being considered at MUFG level (and Mr Onodera subsequently followed up with a BTMU/MUFG executive to check on the progress with this). Mr Onodera was also instructed that he must refrain from taking any action in relation to reporting to the PRA;
- (7) Mr Onodera took some steps from 8 November 2014 onwards to obtain advice from the UK Advisor on MUS (EMEA)'s notification obligations to the PRA although he did not ultimately obtain that advice until 15 November 2014. On 14 November 2014 a MUS (EMEA) senior executive (with responsibility for PRA notifications) obtained advice from the UK Advisor suggesting that notification be made to the PRA as soon as possible before any public announcement but that there was not enough information for an effective communication. Mr Onodera engaged with an MUFG executive to ensure that the UK Advisor received a briefing on the Second DFS Matter and the potential implications for Mr Kamiya from BTMU's US Counsel. Having received this briefing, the regulatory specialist advised on 15 November 2014 that the PRA should be informed of the Second DFS Matter and its implications for Mr Kamiya, but that the notification should be made following publication of the DFS Consent Order;
- (8) The breach had the potential to impact the PRA's statutory objectives as the failure to disclose the information impaired the PRA's ability to make effective judgements as to the ongoing suitability of Mr Kamiya for the role of Chair of a PRA-authorized firm; and
- (9) Mr Onodera believed that he was placed in a difficult position, given the direct conflict that he believed existed between his strict duties of confidentiality to the DFS, as against the duty to make an appropriate report under Principle 4.

1.13. Therefore the Step 2 starting figure is **10%** of **£213,488.34 = £21,348.83**

(rounded to £21,350).

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

- 1.14. The PRA may increase or decrease the starting point figure for a punitive penalty determined at Step 2 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. The factors that may aggravate or mitigate the breach include those set out at paragraphs 25 and 26 of the PRA's penalty policy.
- 1.15. The PRA considers that the following factors mitigate the breach:
- (1) Mr Onodera cooperated with the PRA during its investigation. This included travelling from Tokyo to London for a two day interview; and
 - (2) Mr Onodera has no previous disciplinary record in respect of the PRA's regulatory requirements and there is no evidence to suggest that he will commit a similar breach in the future.
- 1.16. The PRA does not consider that an adjustment to the starting point figure for mitigating circumstances is appropriate.
- 1.17. Therefore, Step 3 figure is **£21,350**.

Step 4: adjustment for deterrence

- 1.18. 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.
- 1.19. The PRA does not consider an adjustment for deterrence is appropriate in this instance. The PRA considers that this figure is appropriate in the circumstances and will send a clear message to the senior managers and executives of firms, to the regulated community more widely and the public as to the high standards of regulatory behaviour required and the importance that the PRA places on individuals to be open with the PRA, and to disclose appropriately information of which the PRA would reasonably expect notice of. This includes being straightforward with the PRA and to raise issues of possible concern and

emerging risks at an early stage.

1.20. The Step 4 figure is, therefore, **£21,350**.

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

1.21. The PRA and the individual 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's settlement policy' provides that the amount of the penalty which would otherwise have been payable may, subject to the stage at which a binding settlement agreement is reached, be reduced.

1.22. The PRA's settlement policy at Stage 1 entitles Mr Onodera to a **30%** discount on the amount of the penalty.

1.23. The Step 5 figure is **£21,350 - 30% = £14,945**.

Conclusion

1.24. The PRA considers that a financial penalty of **£21,350** (reduced to **£14,945** by a **30%** discount for settlement with Mr Onodera at Stage 1) is appropriate and proportionate by reference to Mr Onodera's misconduct. The PRA considers that by imposing this Mr Onodera and others will be effectively deterred from engaging in similar behaviour in the future.

1.25. For these reasons, the PRA imposes a financial penalty of **£21,350** (reduced to **£14,945**) on Mr Onodera for breaching Statement of Principle 4.

Annex D

1. PROCEDURAL MATTERS

Decision maker

- 1.1. The settlement decision makers made the decision which gave rise to the obligation to give this Final Notice.
- 1.2. This Final Notice is given in accordance with section 390 of the Act.

Manner of and time for Payment

- 1.3. The financial penalty of £14,945 must be paid by Mr Onodera to the PRA no later than 21 November 2018, 14 days from the date of this Notice.

If the financial penalty is not paid

- 1.4. If all or any part of the financial penalty is outstanding on the day after it is due to be paid to the PRA, the PRA may recover the full outstanding amount of the financial penalty as a debt owed by Mr Onodera and due to the PRA.

Publicity

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

PRA contacts

- 1.6. For more information, contact Jim Calveley, Enforcement and Litigation Division (direct line: +44 (0)20 7601 8534, jim.calveley@bankofengland.co.uk).

Annex E

1. THE DEFINITIONS BELOW ARE USED IN THIS NOTICE:

- 1.1. "the Act" means the Financial Services and Markets Act 2000 (as amended);
- 1.2. "APER" means the PRA's Statements of Principle and Code of Practice for Approved Persons;
- 1.3. "BTMU New York Branch" means the BTMU New York branch at 1251 Avenue of the Americas, New York, NY 10020-1104, U.S.A.;
- 1.4. "CF2" means the PRA designated controlled function 2 (Non-Executive Director function);
- 1.5. "Compliance Manual" means the MUS (EMEA) compliance manual dated July 2014
- 1.6. "FCA" means the Financial Conduct Authority;
- 1.7. "NED" means non- executive director;
- 1.8. "Notice" means this Final Notice, together with its Annexes;
- 1.9. "PRA" means the Prudential Regulation Authority;
- 1.10. "PRA Rulebook" means the Prudential Regulation Authority Rulebook;
- 1.11. "PRA's penalty policy" means *'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure August 2018 – Appendix 2 – Statement of the PRA's policy on the imposition and amount of financial penalties under the Act'*;
- 1.12. "PRA's settlement policy" means *'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure August 2018 – 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'*;
- 1.13. "the Relevant Period" means 6 October 2014 to 18 November 2014;
- 1.14. "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

Annex F

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The PRA's general objective is to promote the safety and soundness of PRA-authorized persons and is set out in section 2B of the Act. 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 66 of the Act provides that the PRA may take action against a person if it appears to the PRA that they are guilty of misconduct and the PRA is satisfied that it is appropriate in all the circumstances to take action against them. A person is guilty of misconduct if, while an approved person, they failed to comply with a statement of principle issued by the PRA under section 64 of the Act.

2. RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

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

3. RELEVANT PRA POLICY

PRA Approach to Enforcement

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

PRA Approach to Supervision of Banks

- 3.2. *The Prudential Regulatory Authority's Approach to Banking Supervision, June 2014*, which was in place during the relevant period, sets out how the PRA expects firms to be open and straightforward in their dealings with the PRA, taking the initiative to raise issues of possible concern also at an early stage.