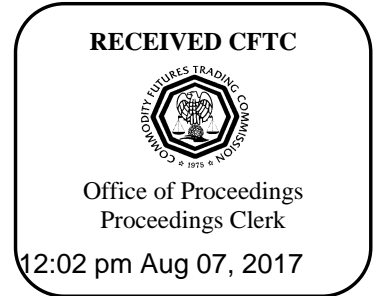


**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

\_\_\_\_\_) )  
In the Matter of: ) )  
 ) )  
The Bank of Tokyo-Mitsubishi UFJ, ) CFTC Docket No. 17 – 21  
Ltd. ) )  
 ) )  
Respondent. ) )  
\_\_\_\_\_)



**ORDER INSTITUTING PROCEEDINGS PURSUANT TO  
SECTION 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT,  
MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

**I.**

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that The Bank of Tokyo-Mitsubishi UFJ, Ltd. (“BTMU” or “Respondent”) has violated Section 4c(a)(5)(C) of the Commodity Exchange Act (the “Act” or the “CEA”), 7 U.S.C. § 6c(a)(5)(C) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether the Respondent engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of administrative proceedings, the Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings or conclusions herein, the Respondent herein consents to the entry and acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”).<sup>1</sup>

<sup>1</sup> The Respondent consents to the entry of this Order and to the use of these findings and conclusions in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that the Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does the Respondent consent to the use of the Offer or this Order, or the findings and conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. Summary

From at least July 2009 through December 2014 (the “Relevant Period”), BTMU – by and through one of its traders (“Trader A”) – engaged in the disruptive trading practice of “spoofing” in markets for a variety of futures products traded on designated contract markets in the United States. These products included futures contracts based on United States treasury notes, and Eurodollars. BTMU’s disruptive trading violated Section 4c(a)(5)(C) of the Act.

In accepting the Respondent’s Offer, the Commission recognizes the Respondent’s cooperation with the Division of Enforcement’s (“Division”) investigation of this matter. The Commission notes that the Respondent promptly self-reported the misconduct and proactively implemented large-scale remedial measures and process improvements to deter and detect similar misconduct.

#### B. Respondent

**The Bank of Tokyo-Mitsubishi, UFJ Ltd.** (“BTMU”) is a Japanese banking corporation headquartered in Tokyo, Japan. As part of its business activities, BTMU engaged during the Relevant Period in proprietary trading of futures contracts in the United States. BTMU employed Trader A in one of its Tokyo offices. BTMU has been provisionally registered with the Commission as a swap dealer since December 31, 2012.

#### C. Facts

##### 1. BTMU’s Disruptive Trading

During the Relevant Period, BTMU employed a number of traders, including Trader A, in its Tokyo offices. As part of his duties, Trader A traded a variety of futures contracts on the Chicago Mercantile Exchange (“CME”) and the Chicago Board of Trade (“CBOT”), including futures contracts based on United States treasury notes (“Treasuries”) and Eurodollars (“Eurodollars”). Trader A accessed these markets through a trading platform from one of BTMU’s Tokyo offices.

During the Relevant Period, although largely in 2010 and 2011, Trader A placed multiple orders for futures contracts with an intent to cancel the orders before their execution (“spoofing”). Trader A spoofed a variety of futures contracts traded on the CME and CBOT, including Treasuries and Eurodollars. Trader A’s spoofing strategies included submitting orders on opposite sides of the same market at nearly the same time. In this pattern, Trader A first placed one or more relatively small bids or offers (“Order 1”). Soon thereafter, in the same market, Trader A entered one or more larger bids or offers (“Order 2”) while Order 1 rested live in the market. Order 2 was placed on the opposite side of the market from Order 1. Hence, if Order 1 was a bid, Order 2 was an offer, and vice versa. In many instances, Trader A then received a partial or complete fill on Order 1, and then cancelled Order 2 before it was filled.

Trader A engaged in this spoofing activity in order to move the market in a direction favorable to Order 1.

## **2. BTMU's Self-Reporting, Cooperation, and Remediation**

Once aware of Trader A's misconduct, BTMU promptly suspended Trader A and reported the conduct to the Division. BTMU commenced an expansive internal review and assisted the Division's investigation of the conduct. BTMU's assistance expedited the Division's investigation. At the same time, BTMU launched an overhaul of its systems and controls and implemented a variety of enhancements to detect and prevent similar misconduct. As part of this process, BTMU revised its policies, updated its training, and implemented electronic systems to identify spoofing. BTMU's automated anti-spoofing measures include reviewing trading data and communications for suspicious activity.

## **IV.**

### **LEGAL DISCUSSION**

#### **A. Section 4c(a)(5)(C) of the Act – Spoofing Violations**

Section 4c(a)(5)(C) of the Act makes it unlawful for “[a]ny person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).” As described above, Trader A entered into multiple bids or offers on a registered entity with the intent to cancel the bids or offers before execution in violation of Section 4c(a)(5)(C) of the Act. *See, e.g., CFTC v. Oystacher*, No. 15-CV-09196 (N.D. Ill. Dec. 20, 2016); *CFTC v. Nav Sarao Futures Ltd.*, 15-CV-3398 (N.D. Ill. Nov. 14, 2016); *CFTC v. Khara*, No. 15 cv 03497 (S.D.N.Y. Mar 31, 2016).

#### **B. Respondent BTMU Is Liable for the Acts of Its Agents**

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2016), provide that the act, omission or failure of any official, agent or other person acting for any individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission or failure of such individual, association, partnership, corporation or trust. Under Section 2(a)(1)(B) and Commission Regulation 1.2, principals are strictly liable for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988).

Trader A engaged in the conduct described herein within the course and scope of his employment at BTMU. Therefore, BTMU is liable for the acts, omissions and failures of Trader A, as described above, that constituted violations of Section 4c(a)(5)(C) of the Act.

V.

**FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that, during the Relevant Period, the Respondent violated Section 4c(a)(5)(C) of the Act.

VI.

**OFFER OF SETTLEMENT**

The Respondent, without admitting or denying the findings or conclusions herein, has submitted the Offer in which it:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
  - 1. the filing and service of a complaint and notice of hearing;
  - 2. a hearing;
  - 3. all post-hearing procedures;
  - 4. judicial review by any court;
  - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  - 6. any and all claims that the Respondent may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1-30 (2016), relating to, or arising from, this proceeding;
  - 7. any and all claims that the Respondent may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
  - 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which the Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
  - 1. makes findings by the Commission that the Respondent violated Section 4c(a)(5)(C) of the Act;
  - 2. orders the Respondent to cease and desist from violating Section 4c(a)(5)(C) of the Act;
  - 3. orders the Respondent to pay a civil monetary penalty in the amount of six hundred thousand dollars (\$600,000) plus post-judgment interest; and
  - 4. orders the Respondent and its successors and assigns to comply with the conditions, undertakings, and representations consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

## VII.

### ORDER

#### **Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondent shall cease and desist from violating Section 4c(a)(5)(C) of the Act.
- B. Respondent shall pay a civil monetary penalty of six hundred thousand U.S. dollars (\$600,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012). Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables  
DOT/FAA/MMAC/AMK-326  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.

Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors, assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
  2. Cooperation with the Commission:
    - i. Respondent shall cooperate fully and expeditiously with the Commission, including the Division, and any other governmental agency in this action, and in any investigation, civil litigation or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto. As part of such cooperation, Respondent agrees to the following for a period of five (5) years from the date of the entry of this Order, or until all related investigations and litigation are concluded, including through the appellate review process, whichever period is longer:
      - a. Preserve all records relating to the subject matter of this proceeding, including, but not limited to, audio files, electronic mail, other documented communications, and trading records;
      - b. Subject to applicable laws and regulations, comply fully, promptly, completely, and truthfully with all inquiries and requests for information or documents;

- c. Provide authentication of documents and other evidentiary material;
  - d. Subject to applicable laws and regulations, provide copies of documents within Respondent's possession, custody or control;
  - e. Subject to applicable laws and regulations, Respondent will make its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and
  - f. Subject to applicable laws and regulations, Respondent will make its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Respondent.
3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
  4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

**The provisions of this Order shall be effective as of this date.**

By the Commission.



Robert N. Sidman  
Deputy Secretary of the Commission  
Commodity Futures Trading Commission

Dated: August 7, 2017