

United States Senate

WASHINGTON, DC 20510

November 20, 2017

Mr. Keith Noreika
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th St. SW
Washington, DC 20219

Mr. Joseph Otting
Comptroller of the Currency-Designate
Office of the Comptroller of the Currency
400 7th St. SW
Washington, DC 20219

Dear Mr. Noreika and Mr. Otting:

We are writing to seek information on the decision by the Office of the Comptroller of the Currency (OCC) to allow the Bank of Tokyo-Mitsubishi to “sidestep[] a New York investigation” into whether the bank was allowing its clients to evade sanctions on countries like Iran and North Korea by converting its license from a New York State license to a federal license under the supervision of your office.¹

We are disturbed by this decision, which appears to (1) allow the bank – which has a long record of compliance problems with the New York Department of Financial Services (DFS) – to evade an ongoing state-level investigation; and (2) run counter to standard OCC policies and procedures for licensing decisions. And because Mr. Noreika represented Mitsubishi UFJ Financial Group, the parent company of the Bank of Tokyo-Mitsubishi, prior to entering government service, the decision raises additional questions about conflicts of interest that may have affected the OCC process and decision.²

We are deeply troubled that the OCC would not fully consider the implications of allowing a bank to change its charter in the midst of an investigation into potential sanctions violations given the recent tension related to North Korea’s nuclear program. Just last week the Senate Banking Committee unanimously passed bipartisan legislation to strengthen and expand U.S.

¹ Wall Street Journal, Switching U.S. Regulators Upends Probe Into Japan’s Biggest Bank (Nov. 15, 2017) (<https://www.wsj.com/amp/articles/japanese-bank-switches-u-s-regulators-in-middle-of-investigation-1510741802>); Letter from Shirin Emami, Executive Deputy Superintendent – Banking, New York State Department of Financial Services, to Marva V. Cummings, Director for District Licensing, Office of the Comptroller of the Currency (Nov. 13, 2017).

² Wall Street Journal, Switching U.S. Regulators Upends Probe Into Japan’s Biggest Bank (Nov. 15, 2017) (<https://www.wsj.com/amp/articles/japanese-bank-switches-u-s-regulators-in-middle-of-investigation-1510741802>).

sanctions on foreign financial institutions that facilitate illicit transactions that support the North Korean regime.³

Bank of Tokyo has a long record of compliance problems, revealed in numerous DFS investigations and actions. In 2013, Bank of Tokyo entered into a consent agreement with DFS after the regulator determined that the bank “had processed approximately 28,000 ... payments ... worth close to \$100 billion involving Iranian, Sudanese and Burmese parties,” including U.S. sanctioned entities.⁴ In 2014, the bank entered another consent agreement with DFS as a result of actively misleading regulators with regard to these unlawful transactions.⁵ And an independent regulatory compliance consultant placed at Bank of Tokyo in response to the ongoing problems recently concluded that that the bank “has not adequately addressed several root causes of its compliance failures,” and identified a number of additional serious compliance problems at the bank.⁶

Bank of Tokyo was the subject of an ongoing DFS examination when the OCC allowed the license conversion – and after this conversion, the bank immediately ordered the DFS examiners to “suspend all such work and exit the building.”⁷

The decision by the OCC to allow Bank of Tokyo to evade this ongoing state regulatory oversight is deeply troubling. The OCC decided to allow this conversion only six days after providing notice to DFS, and appeared to “not have intended to even consider DFS’s comments prior to” reaching its determination that the bank could transfer its license.⁸ The OCC has offered no rationale for this “precipitous” decision, which appears to deviate from the policies in the Comptroller’s Licensing Manual. The manual requires “consultation with a state regulator and consideration of information provided by a state regulator” prior to approving a license conversion, and indicates that the OCC should not consider a license conversion while a state enforcement action is pending.⁹

³ Senate Banking Committee, Otto Warmbier Banking Restrictions Involving North Korea Act of 2017 (Nov. 7, 2017).

⁴ Letter from Shirin Emami, Executive Deputy Superintendent – Banking, New York State Department of Financial Services, to Marva V. Cummings, Director for District Licensing, Office of the Comptroller of the Currency (Nov. 13, 2017).

⁵ Letter from Shirin Emami, Executive Deputy Superintendent – Banking, New York State Department of Financial Services, to Marva V. Cummings, Director for District Licensing, Office of the Comptroller of the Currency (Nov. 13, 2017).

⁶ Letter from Shirin Emami, Executive Deputy Superintendent – Banking, New York State Department of Financial Services, to Marva V. Cummings, Director for District Licensing, Office of the Comptroller of the Currency (Nov. 13, 2017).

⁷ Letter from Shirin Emami, Executive Deputy Superintendent – Banking, New York State Department of Financial Services, to Marva V. Cummings, Director for District Licensing, Office of the Comptroller of the Currency (Nov. 13, 2017).

⁸ Letter from Shirin Emami, Executive Deputy Superintendent – Banking, New York State Department of Financial Services, to Marva V. Cummings, Director for District Licensing, Office of the Comptroller of the Currency (Nov. 13, 2017).

⁹ Letter from Shirin Emami, Executive Deputy Superintendent – Banking, New York State Department of Financial Services, to Marva V. Cummings, Director for District Licensing, Office of the Comptroller of the

That the OCC took these unusual actions under Mr. Noreika's leadership is especially troubling. According to a statement by the OCC, Mr. Noreika had represented the Mitsubishi UFJ Financial Group, the parent company of Bank of Tokyo, while a lawyer in private practice on a matter that was "similar" to the licensing issues addressed by the OCC.¹⁰ Typically, the head of the OCC would be subject to President Trump's ethics pledge, which would have required him to remove himself from consideration of matters involving former clients for two years after entering government service.¹¹ As a special government employee, Mr. Noreika was not required to sign the pledge even though he represented Mitsubishi UFJ as late as June 10, 2016.¹²

We ask that you answer the following questions and provide the requested materials to address our concerns about this matter:

- (1) The Branch manual for OCC decisions with regard to license conversion indicate that OCC may deny the application if the "applicant is trying to escape supervisory action by its current regulator."
 - a. Did OCC evaluate if this was why Bank of Tokyo applied for the conversion?
 - b. If so, how did OCC conduct this evaluation, and what conclusion did the agency reach?
- (2) The Branch Manual also indicates that OCC considers a bank's "history of compliance with applicable U.S. laws" prior to approving a license conversion.
 - a. Did OCC conduct an evaluation of Bank of Tokyo's compliance history prior to approving its federal license?
 - b. If so, what did OCC conclude, and why?
 - c. How did OCC reach this conclusion prior to receiving the complete submission from DFS, Bank of Tokyo's long-time regulator?
 - d. Please provide all documents relating to this OCC conclusion.
- (3) The Branch Manual indicates that in evaluating conversion proposals, "the OCC draws heavily on information received from the office's current U.S. supervisor." But according to the DFS, OCC approved the Bank of Tokyo license conversion prior to receiving the DFS submission containing key information on the bank's safety, soundness, and compliance.
 - a. Is it customary for licenses to be granted to banks in one week's time?

Currency (Nov. 13, 2017); Office of the Comptroller of the Currency, Comptroller's Licensing Manual: Federal Branches and Agencies (Nov. 2014) (<https://www.occ.gov/publications/publications-by-type/licensing-manuals/fba.pdf>).

¹⁰ The Wall Street Journal, *Switching U.S. Regulators Upends Probe Into Japan's Biggest Bank*, (Nov. 15, 2017) (<https://www.wsj.com/amp/articles/japanese-bank-switches-u-s-regulators-in-middle-of-investigation-1510741802>).

¹¹ The White House, *Executive Order: Ethics Commitments by Executive Branch Appointees*, (Jan. 28, 2017) (<https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>)

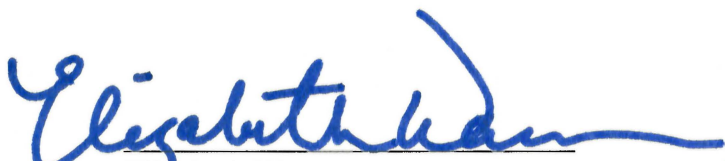
¹² The Wall Street Journal, *Ethics Recusal List for Keith A. Noreika, Acting Comptroller of the Currency* (<http://online.wsj.com/public/resources/documents/occhead.pdf>)

- b. Why was this conversion application approved so quickly? Was there any legal requirement that required OCC to act in advance of receiving the DFS submission? Was there any business reason for the OCC to act this quickly?
 - c. Why did OCC ignore the procedures in its own compliance manual and fail to fully consult with DFS?
 - d. What documents and interviews were conducted for the OCC to satisfy itself as to the merits of the application, particularly since the OCC did not consult with the bank's primary regulator
- (4) The Bank of Tokyo told DFS inspectors to leave the premises and suspend an ongoing DFS investigation on November 7, 2017, immediately after the bank received its federal license.
- a. Were these November 8, 2017, actions by Bank of Tokyo legal?
 - b. Did the Bank of Tokyo consult with OCC officials about this matter prior to taking this action on November 8, 2017?
 - c. Did OCC or any OCC official – at any time during discussions with Bank of Tokyo – provide any legal or other advice regarding how the bank should or could handle ongoing DFS investigations and investigators upon conversion of its license?
 - i. If so, who provided this advice?
 - ii. What was the nature of the advice?
 - iii. Please provide copies of all emails and other documents discussing this matter, including OCC communications with the Bank of Tokyo or with DFS officials.
 - iv. What actions will OCC be taking to continue the DFS investigation that was interrupted by the Bank of Tokyo on November 8, 2017?
- (5) Mr. Noreika reportedly recused himself from this licensing decision because he had previously represented Bank of Tokyo's parent company "on a similar matter" in his work as a banking lawyer.
- a. Are these reports accurate? Did Mr. Noreika recuse himself from this licensing decision?
 - b. If so, when did he decide to do so, and based on whose recommendation did he recuse himself?
 - c. Which individuals at OCC had authority to act in his role after he recused yourself?
 - d. Did Mr. Noreika ever have any communications with individuals at the OCC regarding the Bank of Tokyo, either before or after receiving the Bank's application for a license conversion?
 - e. What was the nature of the work Mr. Noreika conducted for the Bank of Tokyo parent company prior to joining the OCC?
 - f. What were the dates of this work, and how much was he paid for this work?
 - g. What was the "similar matter" that Mr. Noreika worked on?
 - h. During his prior work, did he ever advise the Bank to seek a license conversion to the OCC, or on other licensing matters?

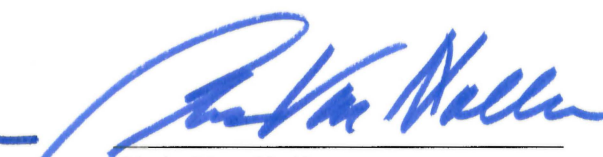
- i. Mr. Noreika will be leaving his role as Acting Comptroller imminently since the Senate has approved Mr. Otting to be permanent Comptroller. When he leaves the role, will Mr. Noreika be barred from working with Bank of Tokyo for any period of time after he leaves government service?

Thank you for your attention to this matter. We ask that you provide us with answers to these questions and all requested documents no later than December 1, 2017.

Sincerely,



Elizabeth Warren
United States Senator



Chris Van Hollen
United States Senator