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Commerzbank AG Admits to Sanctions and Bank Secrecy Violations, Agrees to Forfeit \$563 Million and Pay \$79 Million Fine

Combined with Payments to Regulators, Commerzbank to Pay \$1.45 Billion

Commerzbank AG, a global financial institution headquartered in Frankfurt, Germany, and its U.S. branch, Commerzbank AG New York Branch (Commerz New York), have agreed to forfeit \$563 million, pay a \$79 million fine and enter into a deferred prosecution agreement with the Justice Department for violations of the International Emergency Economic Powers Act (IEEPA) and the Bank Secrecy Act (BSA). The bank has also entered into settlement agreements with the Treasury Department's Office of Foreign Assets Control (OFAC) and the Board of Governors of the Federal Reserve System.

Assistant Attorney General Leslie R. Caldwell of the Justice Department's Criminal Division, U.S. Attorney Ronald C. Machen Jr. of the District of Columbia, U.S. Attorney Preet Bharara of the Southern District of New York, Assistant Director in Charge Diego Rodriguez of the FBI's New York Field Office, Chief Richard Weber of the Internal Revenue Service Criminal Investigation (IRS-CI) and District Attorney Cyrus R. Vance Jr. of New York County made the announcement.

In entering the deferred prosecution agreement, Commerzbank admitted and accepted responsibility for its criminal conduct in violation of IEEPA, and Commerz New York admitted its criminal conduct in violation of the BSA. Commerzbank further agreed to pay \$263 million in forfeiture and a fine of \$79 million for the IEEPA violations, and to pay \$300 million in forfeiture in connection with the BSA violations, which will be remitted to the victims of a multi-billion dollar securities fraud scheme that was permitted to operate through Commerzbank. Commerzbank also agreed to implement rigorous internal controls and to cooperate fully with the Justice Department, including by reporting any criminal conduct by an employee.

A four-count felony criminal information was filed today in the District of Columbia charging Commerzbank with knowingly and willfully conspiring to commit violations of IEEPA and Commerz New York with three violations of the BSA for willfully failing to have an effective anti-money laundering (AML) program, willfully failing to conduct due diligence on its foreign correspondent accounts, and willfully failing to file suspicious activity reports. Assuming the bank's continued compliance with the deferred prosecution agreement, the government has agreed to defer prosecution for a period of three years, after which time, the government would seek to dismiss the charges.

The New York County District Attorney's Office is also announcing today that Commerzbank has entered into a deferred prosecution agreement, and in the corresponding factual statement, Commerzbank admitted that it violated New York State law by falsifying the records of New York financial institutions. In addition, the Board of Governors of the Federal Reserve System is announcing that Commerzbank has agreed to a cease and desist order, to take certain remedial steps to ensure its compliance with U.S. law in its ongoing operations and to pay a civil monetary penalty of \$200 million. The New York State Department of Financial Services (DFS) is

announcing Commerzbank has agreed to, among other things, pay a monetary penalty to DFS of \$610 million. The OFAC has also levied a fine of \$258.6 million, which will be satisfied by payments made to the Justice Department. In total, Commerzbank will pay \$1.45 billion in penalties.

“Commerzbank concealed hundreds of millions of dollars in transactions prohibited by U.S. sanctions laws on behalf of Iranian and Sudanese businesses,” said Assistant Attorney General Caldwell. “Commerzbank committed these crimes even though managers inside the bank raised red flags about its sanctions-violating practices. Financial institutions must heed this message: banks that operate in the United States must comply with our laws, and banks that ignore the warnings of those charged with compliance will pay a very steep price.”

“Sanctions laws are designed to protect the national security of the United States and promote our foreign policy interests,” said U.S. Attorney Machen. “Commerzbank undermined the integrity of our financial system and threatened our national security by hiding the business they were doing with entities in Iran and Sudan. The bank tried to skirt our laws by hiding its illegal business with Iranian banks from its own employees in the United States. Today’s resolution demonstrates that there will be consequences when global banks try to profit from the benefits of the U.S. financial system without respecting our laws.”

“Today, Commerz New York stands charged with Bank Secrecy Act criminal offenses for its acute, institutional anti-money laundering deficiencies that made it a conduit for over a billion dollars of the Olympus fraud,” said U.S. Attorney Bharara. “These criminal charges follow a multi-year investigation and a guilty plea by a former Commerzbank Singapore employee who helped set up the structure that allowed for the Olympus fraud. Institutions, not just individuals, have an obligation to follow the law, and anti-money laundering laws in particular are critical for financial institutions to follow. With today’s resolution, the bank, as part of a deferred prosecution agreement, has accepted responsibility in a detailed statement of facts, agreed to continue reforming its anti-money laundering practices, and will pay \$300 million that will go to victims of the Olympus fraud.”

“Today’s deferred prosecution agreement is a significant milestone – on an international stage – that reaffirms our clear message to other global financial institutions,” said Chief Weber. “IRS-CI’s work in this investigation – as well as the prior sanction cases – has resulted in fundamental changes in the way banks operate worldwide. IRS-CI and our partners will continue to hold financial institutions accountable for international criminal violations.”

“Today, we announce more charges against yet another bank,” said Assistant Director in Charge Rodriguez. “Commerzbank violated the Bank Secrecy Act designed to prevent the movement of money, often with nefarious intent. Commerzbank enabled Olympus to evade detection for years. And worse yet, failed to create a process to prevent this criminal behavior. Management at banks and financial institutions should heed this warning: This behavior will be investigated, vigorously.”

“We have sanctions in place to prevent rogue nations and terrorists from accessing the U.S. financial system,” said District Attorney Vance. “In order to have teeth, sanctions need to be enforced and Manhattan financial institutions need to be protected from being unwittingly used by bad actors. Over the course of eight settlements, my office and our partners have sent a strong message of enforcement that has led to the transformation of compliance in this area.”

IEEPA Violations

According to admissions contained in the deferred prosecution agreement, from 2002 to 2008, Commerzbank knowingly and willfully moved \$263 million through the U.S. financial system on behalf of Iranian and Sudanese entities subject to U.S. economic sanctions. Commerzbank engaged in this criminal conduct using numerous schemes designed to conceal the true nature of the illicit transactions from U.S. regulators.

For example, in the deferred prosecution agreement, Commerzbank acknowledged that it used non-transparent payment messages, known as cover payments, to conceal the involvement of sanctioned entities, and also removed information identifying sanctioned entities from payment messages, in transactions processed through Commerz New York and other financial institutions in the United States. Specifically, in 2003, Commerzbank designated a group of employees in the Frankfurt back office to review and amend Iranian payments so that the payments would not be stopped by U.S. sanctions filters. In doing so, Commerzbank ensured that Iranian payment messages did not mention the Iranian entity, as transactions may have otherwise been stopped pursuant to the U.S. sanctions.

Commerzbank admitted that it hid these practices from Commerz New York. For example, in 2003, when two state-owned Iranian banks wanted to begin routing their U.S. dollar clearing business through Commerzbank, a Commerzbank back office employee emailed other Commerzbank employees directing: “If for whatever reason CB New York inquires why our turnover has increase[d] so dramatically, under no circumstances may anyone mention that there is a connection to the clearing of Iranian banks!!!!!!!!!!!!!!”

Commerzbank admitted that this conduct continued even though its senior management was warned that the bank’s practices for Iranian clients “raised concerns.” For example, in October 2003, the head of Commerzbank’s internal audit division stated in an email to a member of Commerzbank’s senior management that Iranian bank names in payment messages going to the United States were being “neutralized” and warned: “it raises concerns if we consciously reference the suppression of the ordering party in our work procedures in order to avoid difficulties in the processing of payments with the U.S.A.”

In another scheme designed to avoid U.S. sanctions, Commerzbank admitted that, in 2004, it agreed with an Iranian bank client that, rather than sending direct wire payments to the United States, the Iranian bank would pay U.S. beneficiaries with Commerzbank-issued checks listing only the Iranian bank’s account number and address in London with no mention of the Iranian bank’s name.

Additionally, Commerzbank admitted that in 2005, it created a “safe payment solution” for an Iranian shipping company client, which allowed the client to conduct transactions using the U.S. financial system. The safe payment solution involved routing payments through special purpose entities controlled by the Iranian company, which were incorporated outside of Iran and bore no obvious connection to the Iranian client. Commerzbank and its client switched use of such special purpose entities when Commerz New York’s sanctions compliance filters were updated to detect the use of a particular special purpose entity. Commerzbank continued to process payments on behalf the Iranian client even after the client had been designated by OFAC as an entity subject to U.S. sanctions for its involvement in weapons of mass destruction proliferation.

In addition, Commerzbank admitted that, from 2002 to 2007, it provided Sudanese sanctioned entities with access to the U.S. financial system by engaging in similar schemes to remove reference to Sudanese companies from the transaction records.

Olympus Accounting Fraud

Since 2008, and continuing until at least 2013, Commerz New York violated the BSA and its implementing regulations. Specifically, Commerz New York failed to maintain adequate policies, procedures and practices to ensure its compliance with U.S. law, including its obligation to detect and report suspicious activity. As a result of the wilful failure of Commerz New York to comply with U.S. law, a multibillion-dollar securities fraud was operated through Commerzbank and Commerz New York.

Olympus was a Japanese-based manufacturer of medical devices and cameras. Its common stock is listed on the Tokyo Stock Exchange, and its American Depository Receipts trade in the United States. From at least the late 1990s through 2011, Olympus perpetrated a massive accounting fraud designed to conceal from its auditors and investors hundreds of millions of dollars in losses. In September 2012, Olympus and three of its senior executives pleaded guilty in Japan to inflating the company’s net worth by approximately \$1.7 billion.

Olympus used Commerzbank and Commerz New York to perpetrate its fraud. Commerzbank, through its branch and affiliates in Singapore, both loaned money to off-balance-sheet entities created by or for Olympus to perpetrate its fraud, and transacted more than \$1.6 billion through Commerz New York in furtherance of the fraud.

Commerzbank and Commerz New York were used in furtherance of the Olympus fraud during two different time periods. From approximately 1999 through 2000, Olympus perpetrated its fraud primarily through Commerzbank and its Singapore branch and affiliates. Among other things, Olympus used special purpose vehicles to facilitate the fraud, some of which were created by Commerzbank – including several executives based in Singapore – at Olympus’s direction, using funding from Commerzbank. One of those Singapore-based executives, Chan Ming Fon, was involved in creating the Olympus structure in 1999 while at Commerzbank (Southeast Asia) Ltd., and later managed an Olympus-related entity in 2005-2010 on behalf of which he submitted false confirmations to Olympus’s auditors. In September 2013, Chan pleaded guilty in Manhattan federal court to conspiracy to commit wire fraud.

From 1999 through 2000, Olympus executives asked Commerzbank executives to provide certain false documents to Olympus's auditors, which would have failed to disclose that certain Olympus assets were pledged as collateral for loans from a Commerzbank affiliate. Commerzbank obtained a legal opinion, which, in the words of one Commerzbank executive written to an Olympus executive, "ma[de] clear that our bank could be subject to both civil and criminal penalties if we are seen to be assisting or facilitating you in the non-disclosure." Although Commerzbank ultimately declined to provide the false documents, its executives suggested a variety of ways Olympus could nonetheless fail to disclose the pledge.

In 2000, Olympus took its business away from Commerzbank and transferred it to another bank. In 2005, however, Olympus – and its fraud – returned to Commerzbank. From that point until at least 2010, Commerzbank executives expressed strong suspicions about the Olympus transactions and structure. One senior executive worried that Olympus would have to "write off [the] full amount" of the relevant transactions, and wondered about the effects on Commerzbank if "any negative news is splash[ed] on the front page." A senior legal and compliance officer responsible for Commerzbank's Singapore branch and affiliates wrote at the time that he was "concerned" about fraud, asset stripping, market manipulation and tax offenses, and that "[i]f the [Olympus] structure and transactions can not [be] explained we must file Suspicious Transaction report as a matter of law and [Commerzbank] policy."

In March 2010, two wire transfers in the amounts of approximately \$455 million and \$67 million, respectively, related to the Olympus scheme were processed by Commerz New York through the correspondent account for the Singapore branch of Commerzbank. Those wires caused Commerz New York's automated AML monitoring software to "alert."

At the time, Commerz New York had conducted no due diligence on the Singapore branch and affiliates of Commerz, consistent with Commerz's policy of not conducting due diligence on its own branches. In response to the alerts, however, Commerz New York sent a request for information to Commerz in Frankfurt and Commerz's Singapore branch, inquiring about the transactions. The Singapore branch responded in a brief e-mail, dated April 20, 2010, referring to the Olympus-related entities involved in the wires:

GPA Investments Ltd. ist [*sic*] a Caymen Islands SPV, Creative Dragons SPC-Sub Fund E is a CITS administered fund both of which are part of an SPC structure to manage securities investments for an FATF country based MNC.

According to the Relationship Manager the payment reflects the proceeds from such securities investments to be reinvested.

Commerzbank's Singapore branch did not relay any of the concerns about the Olympus-sponsored structures and transactions.

Based on its response, Commerz New York closed the alert without taking any further action other than to note that in March 2010 alone, GPA Investments had been involved in six transactions through Commerz New York totalling more than \$522 million. In fact, between 1999 and 2010, a total of more than \$1.6 billion in furtherance of the Olympus fraud was cleared through Commerz New York. Commerz New York failed to file a SAR in the United States concerning Olympus or any of the Olympus-related entities until November 2013 – more than two years after the Olympus accounting fraud was revealed.

Commerz New York had the same designated BSA Officer continuously from approximately 2003 until early 2014. Over those years, she raised concerns about AML compliance, both to her superiors at Commerz New York and with Commerz Frankfurt.

Under the BSA, a financial institution is required to detect and report suspicious activity. This is accomplished, in part, through conducting due diligence, and enhanced due diligence where appropriate, of the correspondent relationship – which Commerz New York failed to do – and by sending requests for further information to the correspondent bank when potentially suspicious transactions are detected. Commerz New York frequently had difficulties getting responses to requests for information generated in connection with automated transaction monitoring "alerts." Because requests for information went unanswered for as much as eight months without SARs being filed, alerts were often closed without any response to the pending request. As a result of these deficiencies, Commerz New York cleared numerous AML "alerts" based on its own perfunctory Internet

searches and searches of public source databases but without ever receiving responses to its requests for information.

On June 24, 2010, a Commerz New York-based compliance officer who had primary responsibility for automated transaction monitoring wrote in an e-mail to the BSA Officer and the Head of Compliance in New York (who had previously served as the Head of Compliance in Asia) that “we currently have 90 alerts a day,” with “808 alerts outstanding,” which “could lead to a possible back log.” He continued, “I also wanted to make you aware that we have currently over 130 Frankfurt RFIs [*i.e.*, requests for information] outstanding,” noting “a decrease in response to the RFIs” from Frankfurt. The following day, the Head of Compliance in New York forwarded the e-mail to Commerz’s Global Head of Compliance, adding that “things are not getting better with regards to th[ose] findings. (see below). I will forward you the DRAFT memo on potential revision of staffing needs.” Although the Global Head of Compliance thereafter instituted new procedures designed to increase the speed of responses to RFIs from New York, problems persisted with the timely flow of information from business units outside the United States to compliance officers in New York.

Commerzbank and Commerz New York also failed to conduct adequate due diligence or to obtain “know your customer” information with respect to correspondent bank accounts for Commerzbank’s own foreign branches and affiliates. These systemic deficiencies reflected a failure to maintain adequate policies, procedures and controls to ensure compliance with the BSA and regulations prescribed thereunder and to guard against money laundering.

This case was investigated by the IRS-Criminal Investigation’s Washington D.C. Field Division and FBI’s New York Field Office. This case is being prosecuted by Trial Attorney Sarah Devlin of the Criminal Division’s Asset Forfeiture and Money Laundering Section, Assistant U.S. Attorneys Matt Graves, Maia Miller, Crystal Boodoo and Zia Faruqi of the District of Columbia, and Assistant U.S. Attorney Bonnie Jonas of the Southern District of New York.

The New York County District Attorney’s Office also conducted its own investigation in conjunction with the Justice Department. The Federal Reserve Bank of New York, DFS and OFAC provided substantial assistance with this investigation.

[Commerzbank Deferred Prosecution Agreement](#)

[Commerzbank Information](#)