

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

In the Matter of

NONGHYUP BANK and  
NONGHYUP BANK, NEW YORK BRANCH

**CONSENT ORDER UNDER  
NEW YORK BANKING LAW §§ 39 and 44**

The New York State Department of Financial Services (the "Department"), NongHyup Bank and NongHyup Bank, New York Branch (the "New York Branch" or the "Branch") (together, "NongHyup" or the "Bank") are willing to resolve the matters described herein without further proceedings:

**WHEREAS**, NongHyup is an international banking institution and is licensed by the Department to operate a foreign bank branch in New York State;

**WHEREAS**, the Department and another supervisor conducted examinations of the New York Branch in 2014, 2015 and 2016;

**WHEREAS**, in connection with each examination, the Department and the other supervisor provided Reports of Examination to NongHyup, and NongHyup provided a written response to each Report of Examination. The Department hereby finds as follows:

### The Department's Findings After Examination and Investigation

1. NongHyup is among the largest commercial lenders in South Korea. It is wholly owned by the NongHyup Financial Group, which in turn is a subsidiary of the National Agricultural Cooperative Federation. As of June 2017, NongHyup held \$255 billion in assets globally, and the New York Branch held approximately \$460 million in assets.

2. NongHyup has either an office or branch located in China, Vietnam, India and Myanmar, and is licensed by the Department to operate a foreign bank branch in New York.

3. The New York Branch of NongHyup began operations in August 2013. The Branch engages in commercial lending, money market deposits and trade finance. The Branch's primary business line is U.S. dollar clearing for affiliate branches and bank customers.

4. The New York Branch's dollar-clearing activity is substantial. Since commencing operations, the Branch processes approximately 45,000 transactions annually, amounting to approximately \$2 billion in U.S. dollar transactions each year. It is well-established that U.S. dollar clearing presents substantial risks for any financial institution, as it may be utilized by bad actors to launder funds or otherwise facilitate criminal activity.

5. Examinations conducted by the Department revealed that NongHyup Bank and the New York Branch violated New York laws and regulations, when NongHyup failed to implement and maintain an adequate anti-money laundering ("AML") program.

6. Among other deficiencies, NongHyup failed to maintain an adequate transaction monitoring system. "Transaction monitoring" is the essential process by which an institution monitors financial transactions after their execution for potential Bank Secrecy Act ("BSA") and/or AML violations, and determines whether there should be any Suspicious Activity Reports

("SARs") filed with law enforcement authorities. While this process may be carried out manually, mid-size and larger institutions typically employ electronic systems using advanced software to monitor transactions.

7. The Department conducted three examinations of the New York Branch since the Branch commenced operations in 2013, the results of which are concerning. Ideally, a bank's examination ratings should improve over time as the institution receives the benefit of the guidance provided by the examiners and works to implement solutions to issues uncovered during the examinations. As described more fully below, the opposite occurred at NongHyup – each successive examination uncovered an increasing number of deficiencies in connection with the New York Branch, including its transaction monitoring processes and procedures.

**The Branch's Substandard Internal Controls: Findings from the 2014 Examination**

8. The Department conducted its inaugural examination of the New York Branch in 2014, based on financial information available as of December 31, 2013 (the "2014 Examination").<sup>1</sup> This examination determined that overall compliance qualified only as "fair" – below the Department's expectations and requirements.

9. The 2014 Examination determined that the New York Branch maintained substandard internal controls across a number of compliance functions. As relevant here, the examination found that the Branch had violated New York law due to its inadequate system of internal controls governing BSA/AML programs.

10. One noted deficiency arose from the Branch's failure to establish "transaction monitoring" rules necessary to ensure the identification of potentially suspicious activity. Attention to detail in the operation of these monitoring and filtering systems is essential. A

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<sup>1</sup> The examination was conducted jointly with the Federal Reserve Bank of New York ("FRBNY").

transaction monitoring system must be designed to address the specific risks encountered by the institution in conducting its various business lines. Effective transaction monitoring necessitates a system that can be adjusted to changes in risk profiles, and which can be audited routinely. Skilled, adequately-trained staff is also necessary to operate and oversee these systems competently.

11. In addition to deficiencies in its transaction monitoring protocol, the New York Branch failed to review all of the suspicious activity alerts that were identified. Moreover, the review that was undertaken by compliance staff often went unresolved within the time frame mandated by the BSA. Branch compliance staff also failed to maintain records necessary to adequately document the rationales for final decisions made regarding the disposition of suspicious activity alerts.

12. The New York Branch also failed to adequately prepare reports intended to track key risk metrics. These measures are necessary to allow management of the Branch and Head Office to undertake adequate oversight of the BSA/AML program. Such reports lacked transparency and failed to identify issues necessary to analyze existing and potential risks.

13. The Department's examination identified a number of other deficiencies. In the critical area of "Know Your Customer" due diligence, for example, which requires banks to collect and review a certain quantity of information concerning bank customers and update this information periodically, the New York Branch failed to conduct the necessary level of due diligence on the NongHyup Head Office account, specifically with regard to the documented purpose of the account and anticipated activity.

14. New York Branch procedures also failed to screen the NongHyup Head Office account against lists of prohibited persons and entities, such as the Specially Designated

Nationals (“SDN”) list issued by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”). The SDN list identifies, among other things, known and suspected terrorist actors, financiers and organizations.

15. Nor was there any screening to determine whether members of NongHyup executive management might be a Politically Exposed Person (“PEP”), or had otherwise been cited negatively in publicly available information. A “politically-exposed person” is defined as an individual entrusted with a prominent public function. It is recognized that many such persons, due to their position and influence, are in a position that may be abused for the purpose of committing money laundering, bribery, or facilitating terrorist financing.<sup>2</sup>

16. The 2014 Examination also identified a significant deficiency in the structure of the compliance function. The Deputy General Manager and Compliance Officer also served in the additional role of Audit Liaison, which includes facilitating the audit process as well as mediating differences between the New York Branch and the outside auditor retained by the Bank. This created a conflict of interest which could have materially impaired the audit process, as the employee had managerial responsibility over some business lines at the same time he was required to ensure that this area of business operations maintained compliance with laws and regulations and was properly audited.

17. New York Branch management also failed to formalize and document policies and procedures regarding the audit function. This deficiency could cause a failure in overseeing the audit function, which was outsourced to a private firm.

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<sup>2</sup> See, e.g., Financial Action Task Force, *Politically Exposed Persons*, at 3 (June 2013).

### **The 2015 Examination: A Number of Deficiencies Remain Uncorrected**

18. The Department's second examination of the New York Branch occurred in December 2015, based on financial information available as of September 30, 2015 (the "2015 Examination").<sup>3</sup> Despite a number of requirements that had been imposed on the New York Branch and the Bank by the Department to improve compliance in 2014, compliance for the 2015 Examination was downgraded to "marginal" from "fair." The Department identified numerous deficiencies, including new issues that had surfaced as well as prior deficiencies that went uncorrected.

19. One critical deficiency identified related again to the New York Branch's transaction monitoring program. A report by the Branch's outside auditor, issued in April 2014, noted that the Compliance Officer who was in the position at the time, admitted he had manipulated transaction monitoring rule thresholds simply to reduce the total amount of alerts generated by the system. This alteration was not intended to fine tune the system, for example, by limiting false positive alerts or to adjust the system to reflect updated risks. It was carried out solely to reduce the workload of the compliance staff, which did not have sufficient resources.

20. The audit report containing this finding was circulated to management at both the New York Branch and the Head Office. No one in either location took any action regarding the manipulation of the rule thresholds.

21. The 2015 Examination also determined that the New York Branch's compliance function lacked sufficient resources to execute its assigned tasks. It also found that existing staff

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<sup>3</sup> This examination also was conducted jointly with the FRBNY. As a result of this examination, on January 17, 2017 NongHyup and the New York Branch entered into a Written Agreement that obligated the Bank to achieve certain improvements in its BSA/AML compliance. *See* <https://www.federalreserve.gov/newsevents/pressreleases/files/enf20170126a1.pdf>.

was insufficiently trained. Despite the substantial volume of U.S. dollar clearing conducted by the Branch, it employed only one transaction monitoring analyst, who was promoted to full-time staff only a few months before the 2015 Examination was conducted. Examiners found that this full-time analyst lacked the required understanding of the criteria by which to review and address transaction monitoring alerts. Moreover, Branch staff responsible for compliance in the trade finance line of business also lacked significant or even relevant compliance experience in the applicable BSA/AML field.

22. When the Bank terminated the New York Branch's Chief Compliance Officer in 2015 due to performance issues, the Bank replaced him with another Compliance Officer who similarly lacked subject-matter expertise necessary to adequately perform the role. The 2015 Examination determined that the replacement Compliance Officer demonstrated only a "basic understanding of general BSA/AML control processes and concepts" and lacked a specific understanding of the controls, processes and risks related to the Branch's specific risk profile.

23. Further, the 2015 Examination noted that the New York Branch's independent testing program also was deficient. For example, the examination determined that much of the language employed in the Branch's 2015 Internal Audit report to support conclusions made relating to BSA/AML compliance was simply copied and pasted from the Branch's written policies and procedures. Additionally, the purported independent audit lacked a targeted scope commensurate with the Branch's risk profile, and lacked information regarding the samples tested.

24. The 2015 Examination determined there were a number of repeat or partial-repeat violations that had previously been identified in the 2014 Examination, including:

- Customer due diligence remained deficient in foreign correspondent account due diligence, and new due diligence problems arose in the areas of customer risk rating and trade finance;
- BSA/AML and OFAC risk assessments remained inadequate despite having been specifically identified as deficiencies in the prior exam;
- Suspicious activity reporting remained deficient, as no true system validation testing had been performed on the transaction monitoring system. Purported “testing” ultimately amounted to nothing more than a data reconciliation exercise, and the investigative process, including the required documentation, was plainly deficient; and
- Failure to implement corrective actions concerning the proper conduct of internal audits.

**The Trend Continues Downward: The Department’s 2016 Examination**

25. Unfortunately, the Head Office and Branch Management were unable to effectuate the necessary course correction by the next examination cycle. In February 2017, the Department conducted another examination of the New York Branch, evaluating financial data as of September 30, 2016 (the “2016 Examination”).<sup>4</sup> Despite the Bank’s awareness of numerous and ongoing compliance issues uncovered in the prior examinations, compliance continued to be rated as “marginal” due to a still-seriously deficient BSA/AML program.

26. Among other findings, the 2016 Examination determined that additional compliance staff hired, once again, lacked proper background and experience in BSA/AML. For example, two employees who lacked sufficient expertise simply had been transferred from the Branch’s trade finance division. A third addition to the compliance team, an external hire, apparently had no experience in the banking industry, let alone relevant BSA/AML experience.

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<sup>4</sup> This examination also was conducted jointly with the FRBNY.



27. The New York Branch continued to struggle when performing suspicious activity monitoring. For example, certain dollar-clearing transactions executed through MT 202 bank-to-bank payment messages, involving medium and low-risk countries, were excluded from review by the transaction monitoring system; the transaction monitoring rule at issue triggered alerts only for transactions involving high-risk countries. Nor was there any documented explanation as to why the rule was configured in this manner.

28. Further, the Department's examination found that Branch compliance staff failed to timely review and resolve a substantial number of suspicious activity alerts.

29. The 2016 Examination also found that BSA/AML and OFAC risk assessments continued to be lacking, despite having been scored as deficient in both prior examinations. The conclusions reached in these assessments lacked necessary support, and methodologies used to develop the assessments were inconsistent, both in definition and application.

30. These, along with other deficiencies identified by the examination, resulted in the Branch again receiving the low compliance rating of "marginal." This rating is unacceptable to assure the safety and soundness of an institution, along with protection of the public against illicit financial transactions.

#### Cooperation

31. The Department recognizes and credits the manner in which NongHyup has cooperated with the Department in its investigation of this matter. In setting forth the agreed-upon remedies and relief set forth below, the Department has given positive consideration (among other factors) to the conduct of NongHyup in cooperating in this investigation.

**NOW THEREFORE**, to resolve this matter without further proceedings pursuant to the Superintendent's authority under Sections 39 and 44 of the Banking Law, the Department and NongHyup stipulate and agree to the terms and conditions below:

**Violations of Law and Regulations**

32. NongHyup failed to maintain an effective and compliant anti-money laundering program, in violation of 3 N.Y.C.R.R. § 116.2.

33. NongHyup failed to maintain and make available at its New York Branch true and accurate books, accounts and records reflecting all transactions and actions, in violation of New York Banking Law § 200-c.

**Settlement Provisions**

**Monetary Payment**

34. NongHyup shall pay a civil monetary penalty pursuant to Banking Law §§ 39 and 44 to the Department in the amount of \$11,000,000 as a result of the conduct and violations set forth above. NongHyup shall pay the entire amount within ten (10) days of executing this Consent Order. NongHyup agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

**BSA/AML Compliance Program**

35. Within sixty (60) days of execution of this Order, NongHyup and the New York Branch shall jointly submit a written revised BSA/AML compliance program for the Branch, acceptable to the Department. At a minimum, the program shall provide for:

- a. a system of internal controls reasonably designed to ensure compliance with BSA/AML requirements and state laws and regulations;

- b. controls reasonably designed to ensure compliance with all requirements relating to correspondent accounts for foreign financial institutions;
- c. a comprehensive BSA/AML risk assessment that identifies and considers all products and services of the New York Branch, customer types, geographic locations, and transaction volumes, as appropriate, in determining inherent and residual risks;
- d. management of the New York Branch's BSA/AML compliance program by a qualified compliance officer, who is given full autonomy, independence, and responsibility for implementing and maintaining an effective BSA/AML compliance program that is commensurate with the New York Branch's size and risk profile, and is supported by adequate staffing levels and resources;
- e. identification of management information systems used to achieve compliance with BSA/AML requirements and state laws and regulations and a timeline to review key systems to ensure they are configured to mitigate BSA/AML risks;
- f. comprehensive and timely independent testing for the New York Branch's compliance with applicable BSA/AML requirements and state laws and regulations; and
- g. effective training for all appropriate Branch personnel and appropriate personnel of affiliates that perform BSA/AML compliance-related functions for the New York Branch in all aspects of BSA/AML requirements, state laws and regulations, and internal policies and procedures.

**Suspicious Activity Monitoring and Reporting**

36. Within sixty (60) days of execution of this Order, NongHyup and the New York Branch shall jointly submit a written program to reasonably ensure the identification and timely, accurate, and complete reporting by the New York Branch of all known or suspected violations of law or suspicious transactions to law enforcement and supervisory authorities, as required by applicable suspicious activity reporting laws and regulations, acceptable to the Department. At a minimum, the program shall include:

- a. a well-documented methodology for establishing monitoring rules and thresholds appropriate for the New York Branch's profile which considers factors such as type of customer, type of product or service, geographic

location, and foreign correspondent banking activities, including U.S. dollar-clearing activities;

- b. policies and procedures for analyzing, testing, and documenting changes to monitoring rules and thresholds;
- c. enhanced monitoring and investigation criteria and procedures to ensure the timely detection, investigation, and reporting of all known or suspected violations of law and suspicious transactions, including, but not limited to:
  - i. effective monitoring of customer accounts and transactions, including but not limited to, transactions conducted through foreign correspondent accounts;
  - ii. appropriate allocation of resources to manage alert and case inventory;
  - iii. adequate escalation of information about potentially suspicious activity through appropriate levels of management;
  - iv. maintenance of sufficient documentation with respect to the investigation and analysis of potentially suspicious activity, including the resolution and escalation of concerns; and
  - v. maintenance of accurate and comprehensive customer and transactional data and ensuring that it is utilized by the New York Branch's compliance program.

#### Customer Due Diligence

37. Within sixty (60) days of execution of this Consent Order, NongHyup and the New York Branch shall jointly submit a written enhanced customer due diligence program, acceptable to the Department. At a minimum, the program shall include:

- a. policies, procedures, and controls to ensure that the New York Branch collects, analyzes, and retains complete and accurate customer information for all account holders, including, but not limited to, affiliates;
- b. a plan to remediate deficient due diligence for existing customers accounts;
- c. a revised methodology for assigning risk ratings to account holders that considers factors such as type of customer, type of products and services, geographic locations, and transaction volume;
- d. for each customer whose transactions require enhanced due diligence, procedures to:

- i. determine the appropriate documentation necessary to verify the identity and business activities of the customer; and
- ii. understand the normal and expected transactions of the customer.
- e. policies, procedures, and controls to ensure that foreign correspondent accounts are accorded the appropriate due diligence and, where necessary, enhanced due diligence; and
- f. periodic reviews and evaluations of customer and account information for the entire customer base to ensure that information is current, complete, and that the risk rating reflects the current information, and if applicable, documenting rationales for any revisions made to the customer risk rating.

#### **Internal Audit**

38. Within sixty (60) days of execution of this Consent Order, NongHyup and the New York Branch shall jointly submit a written revised internal audit program for the Branch acceptable to the Department that shall, at a minimum, provide for:

- a. Completion, at least annually, of a written Board of Directors-approved, risk-based audit plan that encompasses all appropriate areas of audit coverage;
- b. Timely escalation and resolution of audit findings and follow-up reviews to ensure completion of corrective measures; and
- c. comprehensive tracking and reporting of the status and resolution of audit and examination findings to the Bank's Board of Directors.

#### **Corporate Governance and Management Oversight**

39. Within sixty (60) days of execution of this Order, NongHyup and the New York Branch shall jointly submit to the Department a written plan to enhance oversight, by the management of the Bank and New York Branch, of the New York Branch's compliance with BSA/AML requirements, state laws and regulations, and the regulations issued by OFAC, acceptable to the Department. The plan shall provide for a sustainable governance framework that, at a minimum, addresses, considers, and includes:

- a. actions the board of directors will take to maintain effective control over, and oversight of, Branch management's compliance with BSA/AML requirements, state laws and regulations, and OFAC regulations;
- b. measures to improve the management information systems reporting of the Branch's compliance with BSA/AML requirements, state laws and regulations, and OFAC regulations to senior management of NongHyup and the New York Branch;
- c. clearly defined roles, responsibilities, and accountability regarding compliance with BSA/AML requirements, state laws and regulations, and OFAC regulations for NongHyup and the New York Branch's respective management, compliance personnel, and internal audit staff;
- d. measures to ensure BSA/AML issues are appropriately tracked, escalated, and reviewed by the New York Branch's senior management;
- e. measures to ensure that the person or groups at NongHyup and the New York Branch charged with the responsibility of overseeing the New York Branch's compliance with BSA/AML requirements, state laws and regulations, and OFAC regulations possess appropriate subject matter expertise and are actively involved in carrying out such responsibilities;
- f. adequate resources to ensure the New York Branch's compliance with this Order, BSA/AML requirements, the state laws and regulations, and OFAC regulations; and
- g. a direct reporting line between the New York Branch's BSA/AML compliance officer and the board of directors or committee thereof.

#### **Quarterly Reports**

40. For a period of two years following execution of this Consent Order, NongHyup and the New York Branch shall jointly submit quarterly reports to the Department that provide an update on the progress of NongHyup and the New York Branch in satisfying the requirements set forth in Paragraphs 35-39 above.

#### **Breach of Consent Order**

41. In the event that the Department believes NongHyup to be in material breach of this Consent Order, the Department will provide written notice to the Bank and the Bank must,

within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

42. The parties understand and agree that the Bank's failure to make the required showing within the designated time period shall be presumptive evidence of the Bank's breach. Upon a finding that the Bank has breached this Consent Order, the Department retains all remedies and relief available to it under the New York Banking and Financial Services Laws, and may use any evidence available to the Department in any ensuing orders, hearings or notices.

#### **Waiver of Rights**

43. The parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

44. The Department may, in its sole regulatory discretion, extend any deadline set forth in this Order.

#### **Parties Bound by the Consent Order**

45. This Consent Order is binding on the Department and NongHyup and the New York Branch, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or law enforcement authority.

46. No further action will be taken by the Department against NongHyup or the New York Branch for the specific conduct set forth in this Order, provided that the Bank fully complies with the terms of this Consent Order.

**Notices**

47. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Debra C. Brookes  
Senior Assistant Deputy Superintendent  
for Enforcement  
New York State Department of Financial Services  
One State Street  
New York, NY 10004

Terri-Anne Caplan  
Assistant Deputy Superintendent  
for Enforcement  
New York State Department of Financial Services  
One State Street  
New York, NY 10004

For NongHyup:

Minchul Joseph Song  
BSA & Compliance Officer  
NongHyup Bank - New York Branch  
650 Fifth Avenue, 25<sup>th</sup> Floor  
New York, NY 10019-6225

**Miscellaneous**

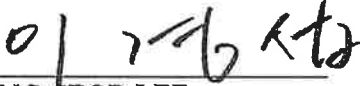
48. Each provision of this Consent Order shall remain effective and enforceable until stayed, modified, suspended, or terminated by the Department.

49. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of the Consent Order.

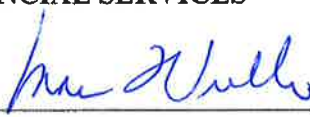



IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 21 day of December, 2017.

**NONGHYUP BANK**


By:   
KYUNG-SEOB LEE  
President & CEO

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES**

By:   
MARIA T. VULLO  
Superintendent of Financial Services

By:   
MATTHEW L. LEVINE  
Executive Deputy Superintendent for Enforcement

**NONGHYUP BANK, NEW YORK BRANCH**

By:   
SEUNG HOON LEE  
General Manager