

米国連邦裁判所における期日の開催に関する通知

破産管財人は、米国連邦倒産法第 15 章に基づき、米国テキサス州北部地区連邦破産裁判所に
対し、(1)米国政府との和解契約、(2)米国連邦倒産法第 363 条及び第 1520 条(a)(2)に基づく、和
解契約の履行としての差押金の送金及び(3)米国連邦倒産法第 1521 条(b)に基づく、差押解除さ
れた金銭を日本の破産手続の配当に用いるための日本への送金に関する各承認を申し立ててい
るところ、2017年4月24日(米国中部時間)、当該裁判所にて、申立ての承認に関する期
日が開催されます。

申立ての内容及び期日の開催の通知については、次項以下をご参照ください。

以上

Notice of Hearing before United States Bankruptcy Judge

Please be advised that the bankruptcy trustee filed a motion for an order approving (i) the Settlement Agreement with the U.S. Government; (ii) Transfer of Seized Funds in Accordance with the Settlement Agreement Pursuant to 11 U.S.C. § 363 and 1520(a)(2); and (iii) Repatriation of Released Funds to Japan for distribution in the Japan Bankruptcy Proceedings Pursuant to 11 U.S.C. § 1520(b), and, in addition, that the hearing for the said motion has been scheduled for April 24, 2017 (Central Time, U.S.).

For the details of the motion and the notice of hearing, please see the following pages.

David J. Molton (*admitted pro hac vice*)
Daniel J. Saval (*admitted pro hac vice*)
Brown Rudnick LLP
Seven Times Square
New York, New York 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801
Email: dmolton@brownrudnick.com
Email: dsaval@brownrudnick.com

- and -

Marcus A. Helt (TX 24052187)
Thomas Scannell (TX 24070559)
Gardere Wynne Sewell LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
Email: mhelt@gardere.com
Email: tscannell@gardere.com

*Counsel for Nobuaki Kobayashi, in his capacity
as the Bankruptcy Trustee and Foreign Representative
of MtGox Co., Ltd., a/k/a MtGox KK*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

MtGox Co., Ltd. (a/k/a MtGox KK),

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 14-31229-sgj-15

**FOREIGN REPRESENTATIVE'S MOTION
FOR AN ORDER APPROVING (I) SETTLEMENT
AGREEMENT WITH U.S. GOVERNMENT; (II) TRANSFER OF
SEIZED FUNDS IN ACCORDANCE WITH THE SETTLEMENT
AGREEMENT, PURSUANT TO 11 U.S.C. §§ 363 AND 1520(a)(2); AND
(III) REPATRIATION OF RELEASED FUNDS TO JAPAN FOR DISTRIBUTION
IN THE JAPAN BANKRUPTCY PROCEEDING PURSUANT TO 11 U.S.C § 1521(b)**

Nobuaki Kobayashi, in his capacity as the bankruptcy trustee and foreign representative (the “Foreign Representative”) of MtGox Co., Ltd., a/k/a MtGox KK (the “Debtor” or “MtGox”), a debtor in a bankruptcy proceeding under Japanese law (the “Japan Bankruptcy”), currently pending before the Twentieth Civil Division of the Tokyo District Court, Japan (the “Tokyo Court”), by his undersigned U.S. counsel, hereby respectfully submits this motion (the “Motion”) seeking entry of an order substantially in the form attached hereto as **Exhibit H** (the “Order”): (i) approving the settlement agreement between the United States Attorney’s Office for the District of Maryland (the “Government”) and the Foreign Representative (the “Settlement Agreement”), attached hereto as **Exhibit A**¹, pursuant to sections 363 and 1520(a)(2) of title 11 of the United States Code (the “Bankruptcy Code”), insofar as the Settlement Agreement provides for a transfer of an interest of the Debtor in property in the United States; (ii) pursuant to Sections 363 and 1520(a)(2) of the Bankruptcy Code, approving the transfer of \$2,571,201.10 of the Seized Funds (the “Released Funds”) to the Foreign Representative and the forfeiture of \$2,571,201.10 of the Seized Funds (the “Forfeited Funds”) to the Government in accordance with the Settlement Agreement; and (iii) pursuant to Bankruptcy Code Section 1521(b), approving the repatriation of the Released Funds to Japan for distribution in the Japan Bankruptcy. In support of this Motion, the Foreign Representative also submits the Declaration of Nobuaki Kobayashi (the “Kobayashi Declaration”) attached hereto as **Exhibit B**, and respectfully states as follows:

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement.

PRELIMINARY STATEMENT

1. In 2013, prior to the commencement of MtGox's Japanese bankruptcy proceedings and this Chapter 15 case, the United States government, acting through the United States Secret Service and the United States Homeland Security Investigations arm of the Department of Homeland Security, seized a total amount of \$5,142,402.20 (the "Seized Funds") from bank accounts of a MtGox affiliate located in the United States. The seizures were prompted by the United States government's assertion that MtGox, through an affiliate, operated an unlicensed money transmitting business in the United States in violation of 18 U.S.C. § 1960. The United States government's assertion was supported by multiple affidavits that led a U.S. Magistrate Judge to find that probable cause existed to believe that the MtGox affiliate, which processed funds relating to MtGox's U.S. customers to and from the bitcoin exchange through an online payment processor in the U.S., violated the statute during the course of MtGox's U.S. bitcoin operations.

2. As previously stated at status conferences before this Court, the Foreign Representative has been involved in extensive negotiations with the Government to resolve the issues related to the Seized Funds. As a result of these negotiations, the Government and Foreign Representative, on behalf of the Debtor, have agreed to transfer the Released Funds, representing 50% of the Seized Funds, to the Foreign Representative pursuant to the Settlement Agreement.

3. For the following reasons, the Foreign Representative respectfully submits this Court should approve the Settlement Agreement and authorize the Released Funds to be transferred to the Foreign Representative and repatriated to Japan for distribution in the Japan Bankruptcy, which has been recognized as a foreign main proceeding by this Court.

4. First, the transfer of the Released Funds to the Foreign Representative is a sound business decision because the Settlement Agreement was the result of an extensive, arm's-length settlement process, the Settlement Agreement avoids the significant risks and expenses of litigation with the U.S. government, and the Released Funds will subsequently be used for distribution in MtGox's recognized Japan Bankruptcy in accordance with the Bankruptcy Act of Japan.

5. Second, the repatriation of the Released Funds to Japan is warranted because the interests of United States creditors are sufficiently protected in Japan, where the Japan Bankruptcy (*i.e.*, the foreign main proceeding) is being administered and where all creditor claims are already being adjudicated.

6. Third, repatriation of the Released Funds is justified as a matter of public policy. The public policy objectives of Chapter 15 of the Bankruptcy Code are advanced by the repatriation of the Released Funds here because repatriation will materially aid the Foreign Representative's efforts to maximize recoveries for, and provide for an equitable distribution of value among, all creditors. Furthermore, repatriation will assist the Foreign Representative in providing creditor distributions in an economically efficient manner.

JURISDICTION AND VENUE

7. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

8. Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1409 and 1410.

9. The statutory and legal predicates for the relief requested herein are Bankruptcy Code Sections 363, 1520(a), and 1521(b), and this Court's *Order Recognizing Foreign Main Proceeding and Granting Related Relief* [Docket No. 151] (the "Recognition Order").

BACKGROUND

10. In May and June of 2013, the U.S. Government, acting through either the U.S. Secret Service or the U.S. Homeland Security Investigations arm of the Department of Homeland Security, executed two (2) seizures against a MtGox affiliate's U.S. bank accounts based on seizure warrants signed by a United States Magistrate Judge in the United States District Court for the District Of Maryland (the "Maryland Court").² The total amount of U.S. Currency seized pursuant to the three seizure warrants described above is \$5,142,402.20, which constitutes the Seized Funds. The Government currently holds the Seized Funds in the District of Maryland.

11. The seizures were precipitated and supported by affidavits from Special Agents with the United States Secret Service and Homeland Security Investigations.³ According to the affiants, there was probable cause to believe that the contents of bank accounts in the name of Mutum Sigillum LLC ("Mutum"), an affiliate of MtGox, were involved in transactions and attempted transactions in violation of 18 U.S.C. § 1960 and that Mutum was engaged in the "unlicensed money transmitting business" in violation of 18 U.S.C. § 1960 since December of 2011. As a result, the contents of the bank accounts were subject to seizure under 18 U.S.C. §

² Additionally, under a third seizure warrant, the U.S. Secret Service seized a check in the amount of \$109,479.84 drawn from a Wells Fargo Bank N.A. account in the name of MtGox North America, Inc., a MtGox subsidiary. Those funds are included in the total amount of Seized Funds that are addressed in the Settlement Agreement.

³ The affidavits of Special Agents Shaun Bridges and Michael T. McFarland and the resultant seizure warrants are attached hereto as **Exhibit C** and **D**, respectively.

981.⁴ On the basis of the affidavits, a United States Magistrate Judge for the District of Maryland found probable cause that the bank accounts were subject to seizure under 18 U.S.C. § 981 and signed warrants to effectuate the seizures.⁵

12. Mutum was used for the processing of funds relating to MtGox's U.S. customers to and from the bitcoin exchange through an online payment processor, Dwolla, which was located in Iowa. In order to facilitate trades on the MtGox exchange, Mutum funded its Dwolla account from its Wells Fargo account. Additionally, MtGox would transfer, by international wire transfer, funds from Sumitomo Mitsui Bank in Japan in the name of Mt. Gox Company Ltd. for the benefit of the Mutum Wells Fargo account. After the funds were credited to the Mutum Wells Fargo account, they were frequently disbursed to the Dwolla account to purchase bitcoins which would then be registered on MtGox's bitcoin registry.⁶

⁴ Money transmitting businesses are required by 31 U.S.C. § 5330 to register as such with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCen"). A violation of 18 U.S.C. § 1960 occurs when a person or entity "conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business" 18 U.S.C. § 1960(a), with the term "'unlicensed money transmitting business' mean[ing] a money transmitting business which . . . (B) fails to comply with the money transmitting business registration requirements under section 5330 of United States Code, or regulations prescribed under such section . . ." 18 U.S.C. § 1960(b)(1)(B). On March 18, 2013 FinCen issued guidance on the application of FinCen's regulations to bitcoin operations, stating that an administrator or exchanger of virtual currencies is a money transmitter under FinCen's regulations and must register. See FIN-2013-G001, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," March 18, 2013. 18 U.S.C. § 981 provides that any personal property involved in a transaction or attempted transaction in violation of 18 U.S.C. § 1960 is subject to forfeiture to the U.S. See 18 U.S.C. § 981.

⁵ In the interests of disclosure, the Foreign Representative notes that in March 2015, Special Agent Shaun W. Bridges of the U.S. Secret Service and one of the affiants with respect to the seizures, was charged with wire fraud, money laundering and related offenses committed during the U.S. Secret Service's investigation of Silk Road. The Silk Road marketplace was an underground black market that allowed vendors and buyers to conduct illegal transactions over the internet. However, during negotiations with the Foreign Representative over the Settlement Agreement, the Government strongly took the position that Mr. Bridges' arrest did not affect liability on the criminal acts alleged or the Government's ability to prosecute the actions, including by establishing predicate facts through other witnesses and evidence if necessary.

⁶ Although Mutum was used for the processing of funds in connection with the operation of the MtGox exchange, Mutum is a company wholly owned by Robert Marie Mark Karpeles. As the Court is aware, Mr. Karpeles is the founder of MtGox and its former sole director, but no longer has any control over MtGox.

13. On February 28, 2014, the Debtor filed a petition (“Japan Petition”) for the commencement of a civil rehabilitation proceeding (the “Japan Civil Rehabilitation”) in the Tokyo Court pursuant to Article 21(1) of the Japanese Corporate Reorganization Act.

14. On March 9, 2014, the Debtor filed the *Verified Petition for Recognition and Chapter 15 Relief* [Docket No. 2] in this Court seeking, *inter alia*, recognition of the Japan Civil Rehabilitation as a foreign main proceeding under Chapter 15 of the Bankruptcy Code.

15. By orders entered on April 16, 2014, the Tokyo Court placed the Debtor in a provisional administration by dismissing the Japan Petition and appointing Mr. Kobayashi as the Debtor’s provisional administrator pending the commencement of a bankruptcy proceeding under the Bankruptcy Act of Japan (the “Bankruptcy Act”). On April 24, 2014, the Tokyo Court entered an order (the “Bankruptcy Order”) formally commencing the Debtor’s Japan Bankruptcy and appointing Mr. Kobayashi as the Debtor’s bankruptcy trustee.

16. On May 23, 2014, the Foreign Representative filed his *Amended Verified Petition for Recognition and Chapter 15 Relief* (the “Amended Recognition Petition”) [Docket No. 126] requesting, *inter alia*, that the Japan Bankruptcy be recognized as a foreign main proceeding.

17. On June 18, 2014, this Court entered the Recognition Order, recognizing the Japan Bankruptcy as a foreign main proceeding under Bankruptcy Code Sections 1517(a) and 1517(b)(1). By the Recognition Order, the Court also granted certain other relief, including: (i) recognizing the Foreign Representative as the foreign representative of the Debtor; and (ii) ordering that the Foreign Representative is entitled to the full protections and rights enumerated under section 1521(a)(4) and 1521(a)(5) of the Bankruptcy Code, including, *inter alia*, entrusting the Foreign Representative with the administration and realization of all of the Debtor’s assets within the territorial jurisdiction of the United States.

18. In 2014, subsequent to the seizures of the Seized Funds and the appointment of the Foreign Representative as the bankruptcy trustee for MtGox in the Japan Bankruptcy, counsel for the Foreign Representative, on behalf of the Debtor, contacted the Government to commence discussions and negotiations in an effort to obtain the return of the Seized Funds and their repatriation to Japan for use in distributions in the Japan Bankruptcy.

19. While the Debtor has a right to a trial if the Government filed a forfeiture case with respect to the Seized Funds, the Foreign Representative sought to avert a trial and its incumbent risks, delays and expenses by reaching a fair and expedited resolution to the matter. One unique and substantial hurdle the Debtor faces in litigating a forfeiture case against the Government is overcoming the burden placed on a private litigant in wresting property seized under the forfeiture statute from the U.S. government, which acquires title to the property as of the date of the alleged wrongdoing. See infra ¶ 28. The Debtor thus faces losing all of the Seized Funds to the U.S. government if it chooses to litigate.

20. The Foreign Representative, through his U.S. counsel, and the Government engaged in extensive, arms' length negotiations on the matter, and ultimately reached agreement on the terms set forth in the Settlement Agreement.⁷

THE SETTLEMENT AGREEMENT

21. Following lengthy negotiations between the parties, in February 2017, the Foreign Representative and the Government agreed to the terms of the Settlement Agreement, which releases one-half of the Seized Funds to the Foreign Representative and alleviates the risk and expense of engaging in civil litigation with the Government parties.

⁷ The Foreign Representative notes that the resolution embodied in the Settlement Agreement was agreed to in February 2016, approximately one year ago. However, the Settlement Agreement required formal approval by personnel with the Department of Justice in Washington, D.C. That approval was not given until the end of January 2017, which the DOJ's representatives informed Brown Rudnick is not atypical.

22. A summary of the key terms of the Settlement Agreement is as follows:⁸
- i. The Government agrees to release a total of \$2,571,201.10, of the Seized Funds, representing fifty percent (50%) of the Seized Funds (the “Released Funds”), to the Foreign Representative, on behalf of the Debtor.
 - ii. The Foreign Representative, on behalf of MtGox, agrees to withdraw its claims as to the remaining Seized Funds, and agrees to forfeit all rights, title, and interest in that portion of the Seized Funds to the Government.
 - iii. MtGox agrees to indemnify and hold the Government harmless from and against all claims, damages, losses, and actions resulting from or arising out of the release of the Released Funds to MtGox, provided, however, that MtGox’s obligation to the Government under the indemnity provision, if any, shall not exceed the amount of the Released Funds.
 - iv. The Settlement Agreement shall only be effective upon (i) the entry of an order by the Chapter 15 Court or any other court of competent jurisdiction (a) approving the Settlement Agreement; (b) approving the transfer of the Released Funds to the Foreign Representative pursuant to Sections 363 and 1520(a)(2) of the Bankruptcy Code; (c) approving the repatriation of the Released Funds to Japan for use in the Japan Bankruptcy pursuant to Section 1521(b) of the Bankruptcy Code; and/or (d) any other and further relief necessary to effectuate this Agreement; and (ii) the entry of an order by the Tokyo Court approving the Settlement Agreement and granting any other and further relief necessary to effectuate the Agreement.

23. On February 2, 2017, the Tokyo Court approved the Settlement Agreement. A copy of the Tokyo Court’s approval order is attached hereto as **Exhibit E**, and a copy of the Tokyo Court’s approval order translated into English is attached hereto as **Exhibit F**.

RELIEF REQUESTED

24. By this Motion, the Foreign Representative seeks the entry of an Order, substantially in the form attached hereto as **Exhibit H**, (i) approving the Settlement Agreement pursuant to Bankruptcy Code Sections 363 and 1520(a)(2) insofar as it provides for the transfer of an interest of the Debtor in property in the United States; (ii) pursuant to Bankruptcy Code

⁸ The summary of the Settlement Agreement set forth herein is provided solely for the convenience of the Court, and is not intended to be a comprehensive recitation of the terms of the Settlement Agreement. To the extent that there is any inconsistency between the summary and the actual terms of the Settlement Agreement, the actual terms of the Settlement Agreement control.

Sections 363 and 1520(a)(2), approving the transfer of Released Funds to the Foreign Representative and the forfeiture of the Forfeited Funds to the Government in accordance with the Settlement Agreement; and (iii) pursuant to Bankruptcy Code Section 1521(b), approving the repatriation of the Released Funds to Japan for distribution in the Japan Bankruptcy.

BASIS FOR RELIEF REQUESTED

I. Transfer of the Released Funds to the Foreign Representative Should be Approved under Bankruptcy Code Section 1520(a) and 363(b).

25. Section 1520(a) of the Bankruptcy Code, provides that “[u]pon recognition of a foreign proceeding that is a foreign main proceeding—(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate” 11 U.S.C. § 1520(a)(2). The Foreign Representative respectfully submits that the transfer of the Released Funds to the Foreign Representative and agreement to forfeit the Forfeited Funds to the Government should be approved as an exercise of the Foreign Representative’s sound business judgment under Bankruptcy Code Sections 1520(a)(2) and 363(b).

26. While the Fifth Circuit has not directly addressed the issue, other Courts have held that Bankruptcy Code Section 1520(a)(2) requires bankruptcy courts to review transactions that are outside the ordinary course in Chapter 15 cases in the same manner as they would in a Chapter 11 case. See In re Fairfield Sentry Ltd., 768 F.3d 239, 246 (2d Cir. 2014) (“The language of section 1520(a)(2) is plain; the bankruptcy court is *required* to conduct a section 363 review when the debtor seeks a transfer of an interest in property within the territorial jurisdiction of the United States.”); In re Elpida Memory, Inc., 2012 WL 6090194 at *1 (Bankr. D. Del. Nov. 20, 2012) (stating that courts should review transfers pursuant to Bankruptcy Code Section 1520(a)(2) under the same legal standards that it would review a “transfer by a trustee

outside the ordinary course of business, *i.e.*, is the transaction a sound exercise of the trustee's business judgment").

27. In the Fifth Circuit, courts determine whether to authorize the use, sale, or lease of property of the estate under Bankruptcy Code Section 363(b) by requiring the debtor to show that a sound business purpose justifies such actions. See In re ASARCO, L.L.C., 650 F.3d 593, 601 (5th Cir. 2011) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (quoting In re Cont'l Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986)); In re Moore, 608 F.3d 253, 263 (5th Cir. 2010) (“A sale of assets under § 363 . . . is subject to court approval and must be supported by an articulated business justification, good business judgment, or sound business reasons.”). Furthermore, “[u]nless the manner in which an estate representative arrives at a decision is seriously flawed, the court will defer to the estate representative.” In re Broughton Ltd. P’ship, 474 B.R. 206, 218 (Bankr. N.D. Tex. 2012) (citing In re Pilgrim’s Pride Corp., 403 B.R. 413, 427 (Bankr. N.D. Tex. 2009) (“The court must ensure the decision-making process used by a debtor in possession in exercising its powers under the Code is a sensible one.”)).

28. The Foreign Representative has determined in his business judgment that the Settlement Agreement is justified and in the best interests of MtGox creditors. To be sure, the Foreign Representative would contest the alleged crimes in any litigation against the Government. However, the risks of litigating against the U.S. government for the full amount of the Seized Funds, for whom litigation costs and temporal delay are no issue, are great and present a serious chance of the Debtor recovering *none* of the Seized Funds. Those risks are especially pronounced here, where it would be the Debtor's burden to wrest title away from the

U.S. government in the litigation.⁹ Specifically, the federal forfeiture statute provides that “[a]ll right, title, and interest in property [subject to forfeiture] shall vest in the United States upon commission of the act giving rise to forfeiture under this section.” 18 U.S.C. § 981(f). The statute further provides that “[p]roperty taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General . . . , subject only to the orders and decrees of the court or official having jurisdiction thereof.” 18 U.S.C. § 981(c). These risks only compound the underlying risk in any litigation—that the Foreign Representative may lose, *after* incurring significant costs in that litigation.

29. Here, the Foreign Representative submits that transfers provided under the Settlement Agreement amply meet the Fifth Circuit’s business judgment standard. The negotiation process between the Foreign Representative and the Government was extensive and the Foreign Representative believes the Settlement Agreement represents the best deal possible under the circumstances. See Kobayashi Decl. ¶¶ 11-14. The transfer of the Released Funds from the Government to the Foreign Representative is the result of an arm’s-length negotiation process, avoids the unnecessary risks, delays and expenses related to potential litigation over the underlying seizures, and benefits all of MtGox’s creditors because the Released Funds, upon transfer to the Foreign Representative, will be available for distribution in the Japan Bankruptcy.

See id.¹⁰

⁹ To overcome this burden, MtGox would need to prevail at trial on the predicate offense of operating as an unlicensed money transmitting business.

¹⁰ The Foreign Representative notes that MtGox is required to indemnify the Government against claims resulting from or arising out of the release of the Released Funds to MtGox. This was a condition that the Government insisted upon through the negotiations of the Settlement Agreement. However, the Government agreed to limit MtGox’s indemnification obligations, if any, to the amount of Released Funds. Moreover, the risk of the indemnification obligation being triggered is very low, taking into account, among other things, that no U.S. creditor has an interest in the Seized Funds. See Kobayashi Decl. ¶ 13, n.6.

30. To the extent the Court considers it appropriate to review the matter as a settlement pursuant to Bankruptcy Rule 9019, that standard has been met.¹¹ Bankruptcy courts “should approve a settlement only when the settlement is fair and equitable and in the best interest of the estate.” Matter of Foster Mortg. Corp., 68 F.3d 914, 917 (5th Cir. 1995) (citing Jackson Brewing Co., 624 F.2d 599, 602 (5th Cir. 1980)). Central to the analysis is a balance of the “terms of the compromise with the likely rewards of litigation.” Id. (internal quotations omitted). The Fifth Circuit applies a three-part test when considering compromise settlements:

- (1) the probability of success in the litigation, with due consideration for the uncertainty in fact and law,
- (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
- (3) all other factors bearing on the wisdom of the compromise.

Id. (quoting Jackson Brewing, 624 F.2d at 609).

31. As discussed above, each factor considered by courts in the Fifth Circuit weighs in favor of authorizing the Settlement Agreement. For the first factor, the Foreign Representative stands across the table from the U.S. federal government, which is in possession of the Seized Funds, has developed evidence in support of multiple search and seizure warrants, and persuaded a U.S. Magistrate Judge to find probable cause that MtGox, through an affiliate, was operating an unlicensed money transmitting business. The second factor has already been addressed, but it bears repeating that the Foreign Representative must, in litigation, weather the full resources of the U.S. federal government, for whom a lengthy litigation poses no downside. Finally, the Settlement Agreement represents a near-term return of significant assets to the Japan

¹¹ The Foreign Representative notes that there is uncertainty whether Bankruptcy Rule 9019 applies in Chapter 15 cases. See In re Ace Track Co., Ltd., 556 B.R. 887, 909 (Bankr. N.D. Ill. 2016) (applying Bankruptcy Rule 9019 to a settlement in a Chapter 15 case but recognizing that “[a]n argument certainly could be raised that Rule 9019 should not apply . . . [a]s in chapter 9 cases, there is no bankruptcy estate.”) (citing In re City of Stockton, Cal., 486 B.R. 194, 195-98 (Bankr. E.D. Cal. 2013)).

Bankruptcy for future distribution in that proceeding (the “main” bankruptcy proceeding), while eliminating the risk of returning empty handed. The Foreign Representative submits that under either the Bankruptcy Code Section 363 standard or the Bankruptcy Rule 9019 standard, the Settlement Agreement and the transfers thereunder should be approved.

**II. Repatriation of the Released Funds is
Appropriate under Bankruptcy Code Section 1521(b).**

32. The repatriation of the Released Funds to Japan for distribution in the Japan Bankruptcy is permitted by the Bankruptcy Code and the Court should authorize and entrust the Released Funds to the Foreign Representative for their repatriation pursuant to Bankruptcy Code Section 1521(b). Section 1521(b) of the Bankruptcy Code authorizes the Court, in its discretion, to “entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative . . . , provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.” 11 U.S.C. § 1521(b); see also 11 U.S.C. § 1522(a) (“The court may grant relief under section . . . 1521, . . . only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.”).

33. Bankruptcy Code Sections 1521(b) and 1522 work in conjunction to “achieve an appropriate balance between the interests of creditors and other interested entities, including the debtor.” In re Vitro S.A.B. de C.V., 473 B.R. 117, 121 (Bankr. N.D. Tex. 2012); see In re Int’l Banking Corp. B.S.C., 439 B.R. 614, 626 (Bankr. S.D.N.Y. 2010) (“The idea underlying [Bankruptcy Code Section 1522] is that there should be a balance between relief that may be granted to the foreign representative and the interests of the persons that may be affected by such relief.”). Concerns over whether interested entities are sufficiently protected center around whether the relief sought “unduly favor[s] one group of creditors over another” or whether the relief falls afoul of the public policy exception embodied in Bankruptcy Code Section 1506. In

re Tri-Cont'l Exch. Ltd., 349 B.R. 627, 637-38 (Bankr. E.D. Cal. 2006); see In re Vitro S.A.B. de C.V., 473 B.R. at 123 (describing the Bankruptcy Code Section 1506 public policy exception as a safety valve for creditors in Chapter 15 proceedings).

34. Courts have entrusted the distribution of assets to foreign representatives pursuant to Bankruptcy Code Section 1521(b) in situations where the turnover of assets “would be more economical and efficient in that it would permit all of [the company’s] creditors worldwide to pursue their rights and remedies in one court of competent jurisdiction.” In re Atlas Shipping A/S, 404 B.R. 726, 742 (Bankr. S.D.N.Y. 2009). The Atlas court found that creditors’ ability to assert their rights to the transferred funds in the foreign court, without prejudice, was sufficient protection for creditors under Section 1521(b). See id. Here, the Japan Bankruptcy is a foreign main proceeding, and is the singular forum in which all creditors (including all U.S. and foreign creditors) are already seeking to satisfy their claims. See Kobayashi Decl. ¶¶ 14-18.¹²

35. By this Motion, the Foreign Representative is merely seeking to repatriate the Released Funds to Japan to be used in the administration of the Japan Bankruptcy, including providing distributions to all creditors. U.S. creditors and other interest holders will not be prejudiced by asserting their claims in the Japan Bankruptcy because all creditors, regardless of geographical or jurisdictional location, must utilize the same process in the same manner as all other creditors. See id. Therefore, the Debtor’s U.S. creditors, like the creditors in Atlas, are sufficiently protected under 11 U.S.C. §§ 1521(b) and 1522 because U.S. creditors may assert their rights to the transferred funds, without prejudice, in the same forum as all other creditors. Importantly, no U.S. or other creditors have a property interest in the Seized Funds. All MtGox

¹² For a summary of the status of the filing of bankruptcy claims as of September 28, 2016, see Trustee’s Report, MtGox Co., Ltd [Tokyo District Court] September 28, 2016, (fu) no. 3830, available at www.mtgox.com and attached hereto as **Exhibit G**.

customers, including those in the U.S., have the status of unsecured creditors and are being treated as such in the Japan Bankruptcy. See Kobayashi Decl. ¶ 14.

36. Moreover, there is no issue of public policy that justifies a contrary result. Indeed, permitting the Foreign Representative to repatriate the Released Funds for use in the Japan Bankruptcy would advance the express objectives of Chapter 15 set forth in Bankruptcy Code Section 1501, including: (i) the “fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the [D]ebtor,” 11 U.S.C. §1501(a)(3); and (ii) the “protection and maximization of the value of the [D]ebtor’s assets.” 11 U.S.C. § 1501(a)(4). Here, repatriation of the funds will, *inter alia*, increase the value of the Debtor’s estate in the Japan Bankruptcy, and subsequently result in increased distributions to all creditors in the Japan Bankruptcy. Thus, permitting the Foreign Representative to repatriate the Released Funds will materially aid the Foreign Representative’s efforts to maximize recoveries for, and provide for an equitable distribution of value among, all creditors.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CONCLUSION

37. For all of the foregoing reasons, the Foreign Representative respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit H**, (i) approving the Settlement Agreement pursuant to Bankruptcy Code Sections 363 and 1520(a)(2) insofar as it provides for the transfer of an interest of the Debtor in property in the United States; (ii) pursuant to Bankruptcy Code Sections 363 and 1520(a)(2), approving the transfer of Released Funds to the Foreign Representative and the forfeiture of the Forfeited Funds to the Government in accordance with the Settlement Agreement; and (iii) pursuant to Bankruptcy Code Section 1521(b), approving the repatriation of the Released Funds to Japan for distribution in the Japan Bankruptcy.

Dated: February 28, 2017
Dallas, Texas

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

/s/ Thomas C. Scannell

Marcus A. Helt (TX 24052187)

Thomas Scannell (TX 24070559)

Gardere Wynne Sewell LLP

2021 McKinney Avenue, Suite 1600

Dallas, Texas 75201

Telephone: (214) 999-3000

Facsimile: (214) 999-4667

Email: mhelt@gardere.com

Email: tscannell@gardere.com

- and -

BROWN RUDNICK LLP

David J. Molton (*admitted pro hac vice*)

Daniel J. Saval (*admitted pro hac vice*)

Seven Times Square

New York, New York 10036

Telephone: (212) 209-4800

Facsimile: (212) 209-4801

Email: dmolton@brownrudnick.com

Email: dsaval@brownrudnick.com

*Counsel for Nobuaki Kobayashi, in his capacity
as the Trustee and Foreign Representative
of MtGox Co., Ltd., a/k/a MtGox KK*

62713666 v1



U.S. Department of Justice

United States Attorney
District of Maryland

Evan Thomas Shea
Assistant United States Attorney
Evan.Shea@usdoj.gov

Suite 400
36 S. Charles Street
Baltimore, MD 21201-3119

DIRECT: 410-209-4982
MAIN: 410-209-4800
FAX: 410-962-9293

January 27, 2017

Daniel J. Saval, Esquire
Brown Rudnick LLP
Seven Times Square
New York, NY 10036

Re: United States v. \$2,117,414.96 in U.S. Currency,
USSS case no. 101-777-40003-J, seizure number 101-2013-004.

United States v. \$109,479.84 in U.S. Currency,
USSS case no. 101-777-40003-J, seizure number 101-2013-006.

United States v. \$2,915,507.40 in U.S. Currency,
CBP case no. 2013-1303-001294-01

Dear Mr. Saval:

In accordance with our recent communications concerning the above-referenced forfeiture actions, the following agreement is proposed. Once the agreement is fully executed and returned to me, I will forward it to the appropriate agencies for disposition.

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made between MtGox Co., Ltd. (the "Claimant"), by and through Nobuaki Kobayashi, solely in his capacity as the bankruptcy trustee and foreign representative of the Claimant (the "Foreign Representative"), and the United States Attorney's Office for the District of Maryland (the "Government" and, together with the Foreign Representative, the "Parties");

WHEREAS, on or about May 9, 2013, the U.S. Secret Service executed seizure warrant number 13-1085-SAG and seized \$2,117,414.96 in U.S. Currency under USSS case no. 101-777-40003-J before the United States District Court for the District of Maryland (the "Maryland Court"), seizure number 101-2013-004; and

WHEREAS, on or about May 14, 2013, the U.S. Homeland Security Investigations executed seizure warrant number 13-1162-SKG and seized \$2,915,507.40 in U.S. Currency under CBP case no. 2013-1303-001294-01 before the Maryland Court; and

WHEREAS, on or about July 3, 2013, the U.S. Secret Service executed seizure warrant number 13-1387-SAG and seized \$109,479.84 in U.S. Currency under USSS case no. 101-777-40003-J before the Maryland Court, seizure number 101-2013-006; and

WHEREAS, the total amount of U.S. Currency seized pursuant to the three seizure warrants described above is \$5,142,402.20 (the "Seized Assets"); and

WHEREAS, the Seized Assets are held in the District of Maryland; and

WHEREAS, the Claimant is presently involved in bankruptcy proceedings in Japan (the "Japan Bankruptcy Proceeding") before the Twentieth Civil Division of the Tokyo District Court, Japan (the "Tokyo Court") and a related Chapter 15 bankruptcy case in the United States before the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Chapter 15 Court"), and by order dated June 18, 2014, the Chapter 15 Court entered an order, *inter alia*, recognizing the Japan Bankruptcy Proceeding as a "foreign main proceeding" under Chapter 15 of the U.S. Bankruptcy Code and recognizing the Foreign Representative as the foreign representative of Claimant (the "Recognition Order");

WHEREAS, subsequent to the seizures of the Seized Assets and entry of the Recognition Order, counsel for the Foreign Representative, on behalf of the Claimant, contacted Government counsel and expressed an interest in the Seized Assets, and also provisionally waived any and all time limits for the filing of a civil forfeiture case affecting the Seized Assets; and

WHEREAS, during such a civil forfeiture case against the Seized Assets, the Claimant would have a right to a civil trial at which the Claimant could examine witnesses, present evidence, and give testimony; and

WHEREAS, the Claimant would prevail at such a trial if the Government could not establish by a preponderance of the evidence that the property was subject to forfeiture, or if the Claimant could establish that the Claimant was an innocent owner; and

WHEREAS, the Foreign Representative, on behalf of the Claimant, nevertheless wishes to settle this case and waive the right to a trial, and the Parties both wish to reach a fair and expedited resolution to this matter; and

WHEREAS, it appears to the Parties that no person other than the Claimant has any legal right, title, or interest in any part of the Seized Assets; and

WHEREAS, the Foreign Representative, on behalf of the Claimant, acknowledges that the Government has no obligation to any of the Claimant's customers, past or present, with respect to the Seized Assets, and the Foreign Representative, on behalf of the Claimant, agrees that all claims

by such customers pertaining to any funds that were held by the Claimant, at any time, on behalf of customers, or pertaining specifically to the Seized Assets are the sole responsibility of the Claimant;

NOW, THEREFORE, for the foregoing reasons and for good and substantial consideration, the adequacy and receipt of which is hereby acknowledged, the Foreign Representative, on behalf of the Claimant, and the Government agree as follows:

1. The Government agrees to **release a total of \$2,571,201.10 of the Seized Assets (the "Released Funds") as follows to the Foreign Representative, on behalf of the Claimant:**

- (a) release \$2,117,414.96 in U.S. Currency held under USSS case no. 101-777-40003-J, and seizure number 101-2013-004;
- (b) release \$109,479.84 in U.S. Currency held under USSS case no. 101-777-40003-J, and seizure number 101-2013-006; and
- (c) release \$344,306.30 in U.S. Currency held under CBP case no. 2013-1303-001294-01.

Within five (5) business days of the Effective Date (defined below), the Government shall initiate the transfer of the Released Funds, by electronic funds transfer, to a bank account to be designated by the Foreign Representative. The Foreign Representative agrees to provide Government counsel with completed ACH payment forms so that the transfer of the Released Funds can be made.

2. This Agreement is subject to (the "Effectiveness Conditions"): (i) the entry of an order by the Chapter 15 Court or any other court of competent jurisdiction (a) approving this Agreement; (b) approving the transfer of the Released Funds to the Foreign Representative pursuant to Sections 363 and 1520(a)(2) of the Bankruptcy Code; (c) approving the repatriation of the Released Funds to Japan for use in the Japan Bankruptcy Proceeding pursuant to Section 1521(b) of the Bankruptcy Code; and/or (d) any other and further relief necessary to effectuate this Agreement; and (ii) the entry of an order by the Tokyo Court approving this Agreement and granting any other and further relief necessary to effectuate this Agreement (the "Approval Orders"). The Parties agree that the Foreign Representative may file a motion seeking the Approval Orders in each of the Chapter 15 Court and the Tokyo Court. On the first date when both Effectiveness Conditions are satisfied (the "Effective Date"), this Agreement shall become effective and the payment of the Released Funds to the Foreign Representative shall be due and payable in accordance with paragraph 1 above. This Agreement shall terminate on the date (the "Termination Date") on which an order is entered denying approval of this Agreement by the Chapter 15 Court, the Tokyo Court, the Maryland Court or any other court of competent jurisdiction over the subject matter herein and, upon such termination, the Parties shall be restored to the same position they were in immediately before entry into this Agreement without waiver of any rights, remedies, claims, defenses, positions or arguments, including, without limitation, Claimant's right to a trial on the matter. Without limiting the foregoing, prior to the occurrence of

any Termination Date, the Foreign Representative, on behalf of the Claimant, shall not assert that there was a lack of reasonable cause for the Government's seizure of the Seized Assets.

3. The Foreign Representative, on behalf of the Claimant, agrees as of the Effective Date to withdraw its claims as to the remaining Seized Assets, and agrees to forfeit all rights, title, and interest in that portion of the Seized Assets to the Government. These forfeited funds are as follows: \$2,571,201.10 in U.S. Currency held under CBP case no. 2013-1303-001294-01 (the "Forfeited Funds").

4. The Parties agree that, if necessary, the Government may submit a copy of this Agreement to the Maryland Court in support of a motion seeking an order conforming to the terms of this Agreement and seeking judicial forfeiture of the Forfeited Funds specified in paragraph 3 above. The Government acknowledges that it does not require the approval of the Maryland Court to transfer the Released Funds to the Claimant.

5. The Claimant agrees to indemnify and hold the Government harmless from and against all claims, damages, losses, and actions resulting from or arising out of the release of the Released Funds to the Claimant, provided, however, that Claimant's obligations to the Government under this paragraph, if any, shall not exceed the amount of the Released Funds. Each of the Parties agrees to bear its own costs and attorney's fees in connection with the negotiation, documentation and seeking of any approval of this Agreement.

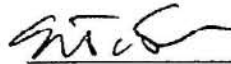
6. Notwithstanding the Government's agreement to release the Released Funds to the Foreign Representative, on behalf of the Claimant, the Foreign Representative understands that the United States Department of the Treasury's Bureau of the Fiscal Service administers a centralized offset program (the "Treasury Offset Program"), under which the federal agencies of the United States of America (the "Federal Agencies") may withhold parts or all of any funds in the possession of the United States of America until the Federal Agencies (including the Internal Revenue Service) have determined that the Claimant does not owe any unrelated, legally enforceable debts to the United States of America. See 31 U.S.C. § 3716. Notwithstanding the foregoing, the Foreign Representative and the Claimant do not waive any rights or protections available under 31 C.F.R. § 285.5 and all related statutes and regulations, including, without limitation, all statutes and regulations prohibiting the Government or the Federal Agencies from collecting or offsetting debts subject to the automatic stay in bankruptcy proceedings or debts covered by a statute that prohibits collection of such debt by offset. Furthermore, the Foreign Representative and the Claimant do not waive any rights or protections available based upon (i) the application of 11 U.S.C. § 362 to the Claimant and the property of the Claimant that is within the territorial jurisdiction of the United States of America pursuant to 11 U.S.C. § 1520(a)(1) and the Recognition Order, and/or (ii) the provisions of 11 U.S.C. § 1507 and 11 U.S.C. § 1521, including, without limitation, 11 U.S.C. § 1521(a)(5) and 11 U.S.C. § 1521(a)(7).

7. Notwithstanding anything herein to the contrary, the Foreign Representative is acting solely in a representative capacity and not individually as the bankruptcy trustee and foreign representative on behalf of the Claimant, and the Government agrees that the Foreign Representative shall bear no personal liability whatsoever in connection with (i) this Agreement,

(ii) any of the matters addressed herein, or (iii) any of Claimant's obligations hereunder, including, without limitation, any obligations that may arise under paragraph 5 hereof.

8. This Agreement states the entire agreement reached between the Parties hereto.

Rod J. Rosenstein
United States Attorney



Evan T. Shea
Assistant United States Attorney

1/30/2017

Date

2/28/2017

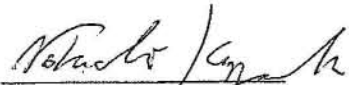
Date



Daniel J. Saval, Esquire
Brown Rudnick LLP
Attorney for Bankruptcy Trustee of MtGox, Co., Ltd

2/2/2017

Date



Nobuaki Kobayashi
Solely in his Representative Capacity as Bankruptcy
Trustee of MtGox, Co., Ltd. and not individually

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

MtGox Co., Ltd. (a/k/a MtGox KK),

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 14-31229-sgj-15

**DECLARATION
OF NOBUAKI KOBAYASHI,
AS FOREIGN REPRESENTATIVE,
IN SUPPORT OF THE MOTION FOR
AN ORDER APPROVING: (I) SETTLEMENT
AGREEMENT WITH U.S. GOVERNMENT; (II) TRANSFER
OF SEIZED FUNDS IN ACCORDANCE WITH THE SETTLEMENT
AGREEMENT, PURSUANT TO 11 U.S.C. §§ 363 AND 1520(a)(2); AND (III)
REPATRIATION OF THE RELEASED FUNDS TO JAPAN FOR DISTRIBUTION
IN THE JAPAN BANKRUPTCY PROCEEDING PURSUANT TO 11 U.S.C § 1521(b)**

I, Nobuaki Kobayashi, in my capacity as the bankruptcy trustee and foreign representative of MtGox Co., Ltd., a/k/a MtGox KK (the “Debtor” or “MtGox”), pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge and belief, including based upon my review of the books, records and documents of the Debtor and discussions with my counsel:

1. I am a resident of Japan, and after receiving an L.L.B from Chuo University in 1979, have been registered to practice law in Japan since 1983. I am currently a partner at Nagashima Ohno & Tsunematsu, a Japan-based law firm engaged in the provision of corporate reorganization, insolvency and related services in Japan. Since becoming an attorney at law, I have been a member of the Insolvency Law Study Group of the Tokyo Bar Association, and I was appointed Chairperson in 2002. Since 2013, I have been Chairperson of the Study

Committee on the Bankruptcy Law System of the Japan Federation of Bar Associations. I have lectured in a variety of programs and institutions and have delivered lectures on insolvency practice hosted by the Training and Research Institute for Court Officials of the Supreme Court of Japan and attended by Japanese judges. From 2007 to March 2014, I was a visiting Professor in insolvency law at Chuo University Law School in Tokyo, Japan. In 2012, I was ranked the fourth most valuable business law attorney in Japan based on a survey conducted by Nikkei.

2. In addition, I have extensive experience in each of Japan's three types of insolvency proceedings. Specifically, I have served as: (i) the bankruptcy trustee in approximately 30 Japan bankruptcy proceedings involving companies; (ii) the supervisor in approximately 30 Japan civil rehabilitation proceedings; and (iii) the reorganization trustee in approximately 10 Japan reorganization proceedings. As such, I am fully familiar with Japanese insolvency law and with MtGox's Japan Bankruptcy (as described below).

3. On April 24, 2014, I was appointed as the bankruptcy trustee of MtGox, which is the subject of a bankruptcy procedure under the Bankruptcy Act of Japan (the "Japan Bankruptcy"), currently pending before the Twentieth Civil Division of the Tokyo District Court in Japan (the "Tokyo Court").

4. On May 23, 2014, I, as bankruptcy trustee and Foreign Representative of MtGox, filed the *Amended Verified Petition for Recognition and Chapter 15 Relief* [Docket No. 126] in the United States Bankruptcy Court for the Northern District of Texas (the "Court") requesting, *inter alia*, that the Japan Bankruptcy be recognized as a foreign main proceeding.

5. On June 18, 2014, this Court entered the *Order Recognizing Foreign Main Proceeding and Granting Related Relief* [Docket No. 151] (the "Recognition Order"), recognizing the Japan Bankruptcy as a foreign main proceeding under title 11 of the United

States Code (the “Bankruptcy Code”) Sections 1517(a) and 1517(b)(1), and stating that all of the effects of recognition as set forth in Bankruptcy Code Section 1520 apply. The Recognition Order also established that I am the recognized foreign representative of the Debtor.

6. I submit this declaration in support of the *Motion for an Order Approving: (I) Settlement Agreement With U.S. Government; (II) Transfer of Seized Funds in Accordance With the Settlement Agreement, Pursuant to 11 U.S.C. §§ 363 and 1520(a)(2); and (III) Repatriation of Released Funds to Japan for Distribution in the Japan Bankruptcy Proceeding Pursuant to 11 U.S.C. § 1521(b)* (the “Motion”), which I, in my capacity as bankruptcy trustee and foreign representative of MtGox, have contemporaneously filed with the this Court seeking, *inter alia*, permission to have the Released Funds transferred to MtGox for repatriation and distribution in the Japan Bankruptcy.¹ Specifically, by the Motion, I respectfully seek an Order granting: (i) approval of the Settlement Agreement pursuant to Bankruptcy Code Sections 363 and 1520(a)(2), as the Settlement Agreement provides for the transfer of an interest of MtGox in property located in the United States; (ii) authorization to transfer the Released Funds to me, in my capacity as the bankruptcy trustee and foreign representative of MtGox, pursuant to Bankruptcy Code Sections 363 and 1520(a)(2); and (iii) authorization to repatriate the Released Funds to Japan pursuant to Bankruptcy Code Section 1521(b) for distribution in the Japan Bankruptcy.

7. Based on my review of the relevant documents and discussions with my U.S. counsel, I understand that from May through July 2013, the U.S. Government, acting through the U.S. Secret Service and U.S. Homeland Security Investigations, seized a total amount of \$5,142,402.20 (the “Seized Funds”) from Wells Fargo Bank, N.A. and Dwolla bank accounts of

¹ All capitalized terms used but not defined herein, shall have the meanings ascribed to such terms in the Motion.

a MtGox affiliate, Mutum Sigillum LLC, a Delaware entity (“Mutum”).² I have been advised the seizures were based on a finding, by a U.S. Magistrate Judge, that there was probable cause to believe that the MtGox affiliate was operating as an unlicensed money transmitting business in violation of 18 U.S.C. § 1960. The U.S. Government currently holds the Seized Funds in the District of Maryland.

8. I have been advised and it is my understanding that Mutum was used for the processing of funds relating to MtGox’s U.S. customers to and from the bitcoin exchange through an online payment processor, Dwolla, which was located in Iowa. More specifically, it is my understanding that, in order to facilitate trades on the MtGox exchange, Mutum funded its Dwolla account from its Wells Fargo account and, after a trade had been made, funds would be transferred from Mutum’s Dwolla account to its Wells Fargo account. Additionally, I have been advised and it is my understanding that MtGox would transfer, by international wire transfer, funds from Sumitomo Mitsui Bank in Japan in the name of Mt. Gox Company Ltd. for the benefit of the Mutum Wells Fargo account. After the funds were credited to the Mutum Wells Fargo account, they were frequently disbursed to the Dwolla account to purchase bitcoins which would then be registered on MtGox’s bitcoin registry.³

9. Subsequent to the seizures of the Seized Funds and following my appointment as bankruptcy trustee and Foreign Representative of MtGox, I instructed my United States counsel, Brown Rudnick LLP, to contact counsel for the United States Attorney’s Office for the District

² I have been advised that, pursuant to the seizure warrants, \$2,915,507.40 was seized from Mutum’s Dwolla account and \$2,117,414.96 was seized from Mutum’s Wells Fargo Bank, N.A. account. Additionally, I have been advised that a check in the amount of \$109, 479.84 drawn from a Wells Fargo Bank, N.A. account in the name of MtGox North America, Inc., a MtGox subsidiary, was seized by the U.S. Secret Service during its attempted transfer to a different bank. The Seized Funds comprise all of the aforementioned funds.

³ Although Mutum was used for the processing of funds in connection with the operation of the MtGox exchange, I understand, from MtGox’s books and records, that Mutum is a company wholly owned by Robert Marie Mark Karpeles. As the Court is aware, Mr. Karpeles is the founder of MtGox and its former sole director, but no longer has any control over MtGox.

of Maryland (the “Government”) in order to seek the return and repatriation of the Seized Funds to Japan for use and distribution in the Japan Bankruptcy, including to make distributions to creditors.

10. After lengthy, arm’s-length negotiations between the parties, I, on behalf of the Debtor, entered into a settlement agreement with the Government to resolve the disputes over the Seized Funds (the “Settlement Agreement”). The Settlement Agreement provides for the release of 50% of the Seized Funds -- *i.e.*, \$2,571,201.10 -- to me, in my capacity as bankruptcy trustee and foreign representative of MtGox and on behalf of MtGox.⁴

11. After multiple conversations with my counsel, my understanding of the extensive negotiations between my counsel and the U.S. government, and my business and professional experience, I believe that the Settlement Agreement represents the best deal possible under the circumstances.

12. In addition to returning a significant portion of the Seized Funds to MtGox, the Settlement Agreement also constitutes a more favorable result than litigation. I am advised that litigation to recover the Seized Funds would require substantial discovery, briefing, and a trial that would significantly deplete assets of the Debtor’s estate. Importantly, I have been advised that there are significant and unique impediments to MtGox recovering the full amount of the Seized Funds through litigation with the U.S. government. One of the principal hurdles is that should the U.S. government commence a formal forfeiture proceeding against the funds, under U.S. law, title to the funds would vest in the U.S. government and it would be MtGox’s burden to overcome that transfer of property interest through litigation.⁵

⁴ A copy of the Settlement Agreement is attached to the Motion as **Exhibit A**.

⁵ I have been advised that, to overcome this burden, MtGox must prevail at trial on the predicate crime of operating as an unlicensed money transmitting business.

13. The Settlement Agreement averts the incumbent risks, costs and delays of a trial against the U.S. government and eliminates the risk of zero recovery at trial. In this way, the Settlement Agreement is beneficial to the Debtor's estate in two key ways: (i) it provides for the release of substantial funds that can be used for distribution in the Japan Bankruptcy; and (ii) it avoids draining the limited resources of the Debtor's estate in any trial against the Government.⁶

14. Furthermore, in granting the relief requested in the Motion, the interests of U.S. creditors are sufficiently protected. In the Japan Bankruptcy, all global creditors of MtGox (including U.S. creditors) with allowed claims will receive *pro rata, pari passu* distributions from MtGox's pool of assets located in Japan. Moreover, there are no U.S. customers or creditors that have an interest in the Seized Funds; rather, all U.S. creditors (including U.S. MtGox customers) are unsecured creditors and will be treated as such in the Japan Bankruptcy.

15. Regarding the claim reconciliation process in Japan, as of February 2, 2017, there were 24,750 persons who filed bankruptcy claims as asserted customers of the MtGox exchange—6,642 of whom were U.S. creditors. The total amount of claims that have been filed is JPY 263,519,268,303,371, which is approximately \$2,320,632,367,562 USD using a conversion rate of one (1) JPY to 0.0088 USD. I have challenged creditor claims in the total aggregate amount of JPY 263,473,508,143,986. Of the claims filed by U.S. creditors, 4,961 have been accepted by me in their entirety and 1,378 have been accepted by me in part, totaling JPY 12,317,265,506, which is approximately \$108,469,658 USD. I have accepted JPY 45,760,159,385 in total, which is approximately \$401,652,219 USD.

⁶ I note that MtGox is required to indemnify the Government against claims resulting from or arising out of the release of the Released Funds to MtGox. I have been advised by my counsel that this was a condition that the Government insisted upon throughout the negotiations of the Settlement Agreement. However, the Government agreed to limit MtGox's indemnification obligations, if any, to the amount of Released Funds. Moreover, I consider that the risk of the indemnification obligation being triggered is very low, taking into account, among other things, that no U.S. creditor has an interest in the Seized Funds. See *infra* ¶ 14.

16. I have challenged a total of 1,681 claims filed by U.S. creditors, 299 of which I have challenged in full. The total amount of U.S. creditor claims challenged is JPY 250,134,384,214.⁷ Further, I note that in the Japan Bankruptcy, any creditor who disagrees with my decision to challenge their claim may file a motion for appraisal of claims. As of February 2, 2017, one hundred and forty-three (143) creditors, including twenty five (25) U.S. creditors, have filed a motion for appraisal of claims.

17. Now that all bankruptcy claims have been accepted or challenged, subject to the ongoing appraisal of claims, I intend to move forward with the distribution process as soon as possible. However, the exact timing of distribution is not yet determinable because we must still: (i) collect all receivables of MtGox in the amount of approximately JPY 1,956,856,911⁸ (\$17,220,340 USD); (ii) liquidate the remainder MtGox's assets;⁹ and (iii) resolve all outstanding disputes against MtGox that have given rise to additional claims, including the claims asserted by CoinLab, Inc.¹⁰

⁷ I note that the largest challenged U.S. creditor claim was in the amount of JPY 233,637,622,403; this claim by itself represents 89.02% of the total amount claimed by U.S. creditors. The challenged claim amount with respect to U.S. creditors appears significant only because of a small number of very large filings. Taking into account the ten largest U.S. creditors' claims, the challenged amount is JPY 249,677,726,390, which constitutes 99.82% of the aggregate amount of challenge U.S. creditor claims.

⁸ This number represents the book value of MtGox assets that remain collectable as of September 27, 2016. I note that for certain of these assets it may be difficult to collect any or all of their full book value.

⁹ However, as I understand this Court has previously been advised, MtGox customers with allowed claims may have the option of electing to receive a distribution in either cash or bitcoin. Even in the case where I determine it is feasible to distribute bitcoins directly to creditors, the number of bitcoins to be distributed depends on the number of creditors who wish to receive in bitcoins in lieu of cash. As previously reported, I am in possession and control of approximately 202,185.35 bitcoin on behalf of the MtGox estate.

¹⁰ For a summary of the status of the filing of bankruptcy claims as of September 28, 2016, see Trustee's Report, MtGox Co., Ltd [Tokyo District Court] September 28, 2016, (fu) no. 3830, available at www.mtgox.com and attached to the Motion as **Exhibit G**.

18. Finally, repatriation of the Released Funds to Japan will make the distribution process more economically efficient as the Released Funds can simply be added to the pool of assets already located in Japan for administration of the Debtor's estate.

19. Based on the foregoing, I have determined that, in my business judgment, the Settlement Agreement provides for a resolution of the claims to the Seized Funds in a manner that is fair, equitable and in the best interests of MtGox and MtGox's creditors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is, to the best of my knowledge, information and belief, complete, true and correct.

Executed on this 27 of February, 2017
in Tokyo, Japan



Nobuaki Kobayashi

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

In the Matter of the Seizure of
(Address or brief description of property to be seized)

**The contents of one
Wells Fargo Bank account, and
up to \$50,000 in another Wells
Fargo Bank account.**

SEIZURE WARRANT
CASE NUMBER:

13-1085SAG

TO: Shaun Bridges, Special Agent, United States Secret Service, and any Authorized Officer of the United States:

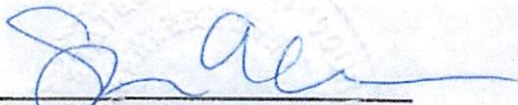
An Affidavit having been made before me by Shaun Bridges, Special Agent, United States Secret Service, who has reason to believe that in Maryland, and elsewhere there is now certain property which is subject to forfeiture to the United States, namely (describe the property to be seized)

**the contents of Wells Fargo Bank account 7657841313 in the name of
Mutum Sigillum LLC and up to \$50,000 contained in
Wells Fargo Bank account 6836757515 in the name of Mark Karpeles.**

I am satisfied that the affidavit establishes probable cause to believe that the property so described is subject to seizure and forfeiture and that grounds exist for the issuance of this seizure warrant.

YOU ARE HEREBY AUTHORIZED to seize within fourteen (14) days, the property specified, serving this warrant and making the seizure in the daytime - 6:00 AM to 10:00 PM - leaving a copy of this warrant and receipt for the property seized, and prepare a written inventory of the property seized and promptly return this warrant to any U.S. Magistrate Judge, as required by law. Service of this seizure warrant may be made by facsimile, provided that a hard copy is thereafter served by regular mail, overnight mail, or personal delivery.

Issued May 9, 2013, at Baltimore, Maryland, by
Date Issued



Honorable Stephanie A. Gallagher
United States Magistrate Judge

13-1085SAG

RETURN

DATE WARRANT RECEIVED

5/9/13

DATE AND TIME WARRANT EXECUTED

5/9/13 1009AM

COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH

Wells Fargo Bank

INVENTORY MADE IN THE PRESENCE OF

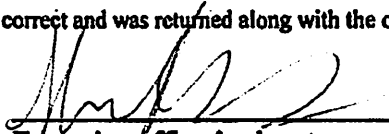
INVENTORY OF PROPERTY TAKEN PURSUANT TO THE WARRANT

- Account 7657841313 - USD \$ 2,109,214.09
- Account 6836757515 - USD \$ 8,200.87

CERTIFICATION

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated magistrate judge.

5/9/13
Date


Executing officer's signature

Shawn Bridges
Printed name and title

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

In the Matter of the Seizure of
(address or brief description of property to be seized)

**The contents of one
Wells Fargo Bank account, and
up to \$50,000 in another Wells
Fargo Bank account.**

**APPLICATION AND
AFFIDAVIT FOR SEIZURE WARRANT**
CASE NUMBER:

13-1085SAG

Shaun Bridges, Special Agent, United States Secret Service, being duly sworn deposes and says:

I have reason to believe that there is now certain property in Maryland, and elsewhere, which is the subject of forfeiture to the United States, namely (describe property to be seized):

**the contents of Wells Fargo Bank account 7657841313 in the name of
Mutum Sigillum LLC and up to \$50,000 contained in
Wells Fargo Bank account 6836757515 in the name of Mark Karpeles,**


which are (state one or more bases for seizure under the U.S. Code)

subject to forfeiture pursuant to 18 U.S.C. section 981(a)(1)(A) because the contents of the Mutum Sigillum LLC account were involved in transactions and attempted transactions in violation of 18 U.S.C. section 1960, and up to \$50,000 in the Mark Karpeles account was traceable to the property subject to forfeiture in the Mutum Sigillum LLC account.

The facts to support a finding of Probable Cause for issuance of a Seizure Warrant are set forth in the attached Affidavit.


Shaun Bridges
Special Agent
U.S. Secret Service

Sworn to before me, and subscribed in my presence on (Date) May 9, 2013 at Baltimore, Maryland.


Honorable Stephanie A. Gallagher
United States Magistrate Judge

Affidavit in Support of Seizure Warrant**I. Purpose of the Affidavit**

This Affidavit is submitted in support of an application for a seizure warrant for the contents of Wells Fargo Bank account 7657841313 in the name of Mutum Sigillum LLC and for \$50,000 contained in Wells Fargo Bank account 6836757515 in the name of Mark Karpeles.

I submit that there is probable cause to believe that the contents of Wells Fargo Bank account 7657841313 in the name of Mutum Sigillum LLC were involved in transactions and attempted transactions in violation of 18 U.S.C. section 1960, and that the contents of that account are subject to seizure and forfeiture pursuant to 18 U.S.C. section 981(a)(1)(A). I submit that there is also probable cause to believe that \$50,000 that was transferred from the 7657841313 account to the 6836757515 account constitutes property traceable to the property that is subject to seizure and forfeiture, and that \$50,000 in the 6836757515 account is also subject to seizure and forfeiture pursuant to 18 U.S.C. section 981(a)(1)(A).

II. Affiant

Your affiant, Shaun Bridges, is a Special Agent with the United States Secret Service (USSS). While working for the USSS your affiant has prepared and executed state and federal search and seizure warrants, seized evidence of both state and federal violations, interviewed suspects, witnesses, and informants, and evaluated evidence obtained during the course of these investigations.

III. Applicable Statutes**18 U.S.C. section 1960**

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term “unlicensed money transmitting business” means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

(C) otherwise involves the transportation or transmission of funds that are known to the

defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity;

(2) the term "money transmitting" includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

(3) the term "State" means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.

18 U.S.C. section 981

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957, or 1960 of this title, or any property traceable to such property.

* * *

IV. Probable Cause

The information set forth below is based upon your affiant's review of records and upon information provided by other sworn law enforcement officers participating in this investigation. I have not included each and every fact obtained pursuant to this investigation, but have set forth those facts that I believe are essential to establish the necessary foundation for the issuance of the seizure warrant for the specified account.

A company called "Mt. Gox," is the world's largest bitcoin exchange, and it operates out of Tokyo, Japan. Mt. Gox has a subsidiary company known as "Mutum Sigillum LLC." According to bank records, Mutum Sigillum LLC holds an account at Wells Fargo Bank, N.A. The account is held in the business name Mutum Sigillum LLC, which is incorporated in the state of Delaware. According to Wells Fargo Bank records, the account was established on May 20, 2011 with the account number 7657841313 and with a single authorized signer; Mark Karpeles. According to open source information, Karpeles is the owner of Mt. Gox. According to the bank records, Karpeles is also the owner of Mutum Sigillum LLC.

As part of the account opening process, Wells Fargo required Karpeles and Mutum Sigillum LLC to complete a "Money Services Business (MSB) Accounts, Identification of an MSB Customer" form. That document was completed on May 20, 2011, and identified Mutum Sigillum LLC as a business not engaged in money services. The application asks several questions; to include, "Do you deal in or exchange currency for your customer?" and "Does your business accept funds from customers and send the funds based on customers' instructions (Money Transmitter)?" Karpeles answered these questions "no," indicating that Mutum Sigillum

LLC does not deal in or exchange money, and that it does not send funds based on customer instructions.

Money transmitting businesses are required by 31 U.S.C. section 5330 to register as such with FinCEN. According to FinCEN records on May 6, 2013, neither Mt. Gox nor the subsidiary, Mutum Sigillum LLC is registered as a Money Service Business.

Mt. Gox acts as a digital currency exchange where customers open accounts and fund their respective accounts with fiat currency, which is then exchanged into crypto-currency by Mt. Gox; the crypto-currency is known as bitcoin. Fiat currency simply refers to any money that a government has declared to be legal tender. The exchange is bidirectional and allows customers to also exchange bitcoins back into fiat currency, and then withdraw those funds. The exchange of fiat currency and bitcoins incurs a floating rate fee charged by Mt. Gox and is determined by the customer's aggregate amount of funds exchanged on a monthly basis. So, the exchange of a small amount of bitcoin would include a larger fee than a larger exchange.

An online payment processor, known as Dwolla, is located in Iowa. People can purchase bitcoin by depositing funds with Dwolla and then directing that the funds be used to make the purchase from Mt. Gox, which then maintains the registry of the ownership of the bitcoin. Bank records show a number of deposits to the Mutum Sigillum account at Wells Fargo originating from international wires sent from Sumitomo Mitsui Bank in Japan. The wires indicate that the transfer is in the name of Mt. Gox Company Ltd. for the benefit of the Mutum Sigillum LLC account 7657841313.

After the funds are credited to that account, they are frequently disbursed to Dwolla, an online payment service for e-commerce; bank records show such transfers to Dwolla since at least in December 2011. The funds being sent to Dwolla are those of Mt. Gox customers that withdraw said funds from Mt. Gox and direct their transfer to Dwolla. A Confidential Informant (CI-1), who resides and banks in Maryland, provided information to government agents that has been corroborated. CI-1 stated that he initiated this process by establishing a new account, while in Maryland, with both Mt. Gox and Dwolla. After funding his Mt. Gox account with U.S. funds, he exchanged the currency for bitcoins. During the past six months, CI-1 exchanged the bitcoins back into U.S. dollars, which he directed Mt. Gox to transfer to Dwolla on his behalf.

According to bank records, this transfer was completed through the subsidiary, Mutum

Sigillum LLC. This demonstrates that Mutum Sigillum LLC is engaged in a money transmitting business but is not registered as required with FinCEN. Because the 7657841313 account was involved in this money transmitting activity, the contents of the account are subject to seizure and forfeiture in accordance with 18 U.S.C. section 981(a)(1)(A).

Bank records also show that nearly all of the activity in the account consists of wires between this account and Dwolla, which represent bitcoin transactions for customers. The other transactions in this account are not significant in number or amounts. Bank records indicate that the current balance in the account is in approximately \$2.1 million.

Bank records also show a transfer of \$50,000 in January 2012 from the 7657841313 account to a personal account at Wells Fargo in the name of Mark Karpeles with account number 6836757515. Based on training and experience, I know that courts have held that the government can forfeit the full value of unlawful funds traced into an account, regardless of how many subsequent transactions take place, so long as the value of the account retains a balance equal to or greater than the value of the unlawful funds traced into the account; otherwise, the government may only forfeit only the lowest intermediate balance after the traced funds entered the account. United States v. Banco Cafetero Panama, 797 F.2d 1154, 1158-62 (2nd Cir. 1986). Consequently, if the balance in this account dropped below \$50,000 after January 2012, then the lowest balance after that date would limit the amount that eventually can be forfeited.

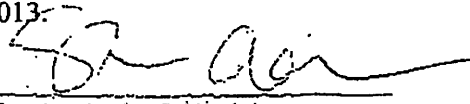
V. Conclusion

Based on the foregoing, I submit that there is probable cause to believe that the contents of Wells Fargo Bank account 7657841313 in the name of Mutum Sigillum LLC were involved in transactions and attempted transactions in violation of 18 U.S.C. section 1960, and that the contents of that account are subject to seizure and forfeiture pursuant to 18 U.S.C. section 981(a)(1)(A). I submit that there is also probable cause to believe that \$50,000 that was transferred from the 7657841313 account to the 6836757515 account constitutes property traceable to the property that is subject to seizure and forfeiture, and that \$50,000 is also subject to seizure and forfeiture pursuant to 18 U.S.C. section 981(a)(1)(A).


Shaun Bridges, Special Agent
United States Secret Service

13-1085SAG

Subscribed and sworn before me on May 9, 2013.



Stephanie A. Gallagher
United States Magistrate Judge

RCK

Exhibit D

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

In the Matter of the Seizure of
(Address or brief description of property to be seized)

SEIZURE WARRANT

CASE NUMBER:

13-1162 SKG

**The contents of one
Dwolla account.**

TO: Michael T. McFarland, Special Agent, United States Homeland Security Investigations (HSI),
and any Authorized Officer of the United States:

An Affidavit having been made before me by Michael T. McFarland, Special Agent, United States
Homeland Security Investigations (HSI), who has reason to believe that in Des Moines, Iowa, and
elsewhere there is now certain property which is subject to seizure and forfeiture to the United
States, namely (describe the property to be seized)


**the contents of Dwolla Account 812-649-1010 registered in the name of
Mutum Sigillum LLC, held in the custody of Veridian Credit Union.**

I am satisfied that the affidavit establishes probable cause to believe that the property so described is subject to seizure and
forfeiture and that grounds exist for the issuance of this seizure warrant.

YOU ARE HEREBY AUTHORIZED to seize within fourteen (14) days, the property specified, serving this warrant
and making the seizure in the daytime - 6:00 AM to 10:00 PM - leaving a copy of this warrant and receipt for the property
seized, and prepare a written inventory of the property seized and promptly return this warrant to any U.S. Magistrate Judge,
as required by law. Service of this seizure warrant may be made by facsimile, provided that a hard copy is thereafter served
by regular mail, overnight mail, or personal delivery.

Issued May 14, 2013, at Baltimore, Maryland, by

Date Issued



Honorable Susan K. Gauvey
United States Magistrate Judge

REC

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

In the Matter of the Seizure of
(address or brief description of property to be seized)

The contents of one
Dwolla account.

APPLICATION AND
AFFIDAVIT FOR SEIZURE WARRANT
CASE NUMBER: 13-1162 SKG

Michael T. McFarland, Special Agent, United States Homeland Security Investigations (HSI), being duly sworn deposes and says:

I have reason to believe that there is now certain property in Des Moines, Iowa, and elsewhere, which is the subject of forfeiture to the United States, namely (describe property to be seized):

the contents of Dwolla Account 812-649-1010 registered in the name of Mutum Sigillum LLC, held in the custody of Veridian Credit Union,

which are (state one or more bases for seizure under the U.S. Code)

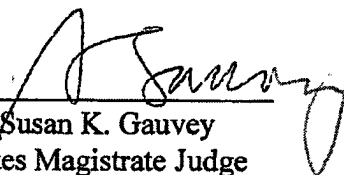
subject to forfeiture pursuant to 18 U.S.C. section 981(a)(1)(A) because the contents of the Mutum Sigillum LLC account were involved in transactions and attempted transactions in violation of 18 U.S.C. section 1960.

The facts to support a finding of Probable Cause for issuance of a Seizure Warrant are set forth in the attached Affidavit.



Michael T. McFarland
Special Agent
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

Sworn to before me, and subscribed in my presence on (Date) May 14, 2013 at Baltimore, Maryland.



Honorable Susan K. Gauvey
United States Magistrate Judge

RCW

Affidavit in Support of Seizure Warrant

13-1162 SKG

I. Purpose of the Affidavit

This Affidavit is submitted in support of an application for a seizure warrant for the contents of Dwolla Account 812-649-1010 registered in the name of Mutum Sigillum LLC, held in the custody of Veridian Credit Union. I submit that there is probable cause to believe that the contents of Dwolla account 812-649-1010 in the name of Mutum Sigillum LLC were involved in transactions and attempted transactions in violation of 18 U.S.C. section 1960, and that the contents of that account are subject to seizure and forfeiture pursuant to 18 U.S.C. section 981(a)(1)(A).

II. Affiant

Michael McFarland, is a Special Agent with Homeland Security Investigations (HSI). While working for the HSI your affiant has prepared and executed state and federal search and seizure warrants, seized evidence of both state and federal violations, interviewed suspects, witnesses, and informants, and evaluated evidence obtained during the course of these investigations.

III. Applicable Statutes

18 U.S.C. section 1960

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term “unlicensed money transmitting business” means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

(C) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity;

(2) the term “money transmitting” includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

(3) the term “State” means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.

18 U.S.C. section 981

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957, or 1960 of this title, or any property traceable to such property.

* * *

IV. Probable Cause

The information set forth below is based upon your affiant's review of records and upon information provided by other sworn law enforcement officers participating in this investigation. I have not included each and every fact obtained pursuant to this investigation, but have set forth those facts that I believe are essential to establish the necessary foundation for the issuance of the seizure warrant for the specified account.

A company called "Mt. Gox," is the world's largest bitcoin exchange, and it operates out of Tokyo, Japan. Mt. Gox has a subsidiary company known as "Mutum Sigillum LLC." According to bank records, Mutum Sigillum LLC holds an account at Wells Fargo Bank, N.A. The account is held in the business name Mutum Sigillum LLC, which is incorporated in the state of Delaware. According to Wells Fargo Bank records, the account was established on May 20, 2011, with the account number 7657841313 and with a single authorized signer; Mark Karpeles. According to open source information, Karpeles is the owner of Mt. Gox. According to the bank records, Karpeles is also the owner of Mutum Sigillum LLC.

As part of the account opening process, Wells Fargo required Karpeles and Mutum Sigillum LLC to complete a "Money Services Business (MSB) Accounts, Identification of an MSB Customer" form. That document was completed on May 20, 2011, and identified Mutum Sigillum LLC as a business not engaged in money services. The application asks several questions; to include, "Do you deal in or exchange currency for your customer?" and "Does your business accept funds from customers and send the funds based on customers' instructions (Money Transmitter)?" Karpeles answered these questions "no," indicating that Mutum Sigillum LLC does not deal in or exchange money, and that it does not send funds based on customer instructions.

Money transmitting businesses are required by 31 U.S.C. section 5330 to register as such with FinCEN. According to FinCEN records on May 6, 2013, neither Mt. Gox nor the subsidiary, Mutum Sigillum LLC, is registered as a Money Service Business.

Mt. Gox acts as a digital currency exchange where customers open accounts and fund their respective accounts with fiat currency, which is then exchanged into crypto-currency by Mt. Gox; the crypto-currency is known as bitcoin. Fiat currency simply refers to any money that a government has declared to be legal tender. The exchange is bidirectional and allows customers to also exchange bitcoins back into fiat currency, and then withdraw those funds. The exchange of fiat currency and bitcoins incurs a floating rate fee charged by Mt. Gox and is determined by the customer's aggregate amount of funds exchanged on a monthly basis. So, the exchange of a small amount of bitcoin would include a larger fee than a larger exchange.

An online payment processor, known as Dwolla, is located in Iowa. People can purchase bitcoin by depositing funds with Dwolla and then directing that the funds be used to make the purchase from Mt. Gox, which then maintains the registry of the ownership of the bitcoin. Bank records show a number of deposits to the Mutum Sigillum account at Wells Fargo originating from international wires sent from Sumitomo Mitsui Bank in Japan. The wires indicate that the transfer is in the name of Mt. Gox Company Ltd. for the benefit of the Mutum Sigillum LLC account 7657841313.

After the funds are credited to that account, they are frequently disbursed to Dwolla, an online payment service for e-commerce; bank records show such transfers to Dwolla since at least in December 2011. Dwolla is located in Des Moines, Iowa. The funds being sent to Dwolla are those of Mt. Gox customers that withdraw said funds from Mt. Gox and direct their transfer to Dwolla. A Confidential Informant (CI-1), who resides and banks in Maryland, provided information to government agents that has been corroborated. CI-1 stated that he initiated this process by establishing a new account, while in Maryland, with both Mt. Gox and Dwolla. After funding his Mt. Gox account with U.S. funds, he exchanged the currency in his Dwolla account for bitcoins. During the past six months, CI-1 exchanged the bitcoins back into U.S. dollars, which he directed Mt. Gox to transfer to Dwolla on his behalf. The funds were then credited to his Dwolla account.

According to bank records, this transfer was completed through the subsidiary, Mutum Sigillum LLC. This demonstrates that Mutum Sigillum LLC is engaged in a money transmitting business but is not registered as required with FinCEN. Because the 7657841313 account at Wells Fargo was involved in this money transmitting activity, the contents of the account were

subject to seizure and forfeiture in accordance with 18 U.S.C. section 981(a)(1)(A).

On May 9, 2013, the Honorable Stephanie A. Gallagher issued a seizure warrant for the contents of the Mutum Sigillum LLC account at Wells Fargo, based on the foregoing information. Bank records also show that nearly all of the activity in that Wells Fargo account consists of wires between that account and Dwolla, which represent bitcoin transactions for customers. The other transactions in this account are not significant in number or amounts.

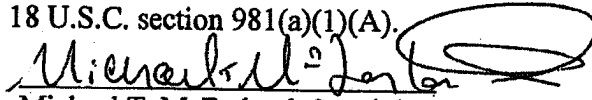
Dwolla records indicate that the destination for the funds wired from the Wells Fargo account was **Dwolla Account 812-649-1010 registered in the name of Mutum Sigillum LLC, held in the custody of Veridian Credit Union.** Dwolla records also indicate that the Wells Fargo account was the sole financial institution account that was funding the Dwolla account 812-649-1010. Therefore, it is evident that the Dwolla account was used exclusively to move funds between Mt. Gox and Mutum Sigillum and their customers. Consequently, there is probable cause to believe that Mt. Gox and Mutum Sigillum are using **Dwolla Account 812-649-1010 registered in the name of Mutum Sigillum LLC, held in the custody of Veridian Credit Union** to conduct transactions as part of an unlicensed money service business in violation of 18 U.S.C. section 1960, and that the contents of the account are involved in those transactions and attempted transactions.

Based upon my training and experience, I know that 18 U.S.C. section 981(b)(3) provides that "a seizure warrant may be issued ... by a judicial officer in any district in which a forfeiture action against the property may be filed under Section 1355(b) of title 28, and may be executed in any district in which the property is found...." According to 28 U.S.C. Section 1355(b)(1)(A), a forfeiture action may be brought in "the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred...." Because the affidavit demonstrates that transactions through the Dwolla and Mutum Sigillum accounts were initiated and caused by a customer in the District of Maryland, the forfeiture action can be brought in the District of Maryland, and the seizure warrant may be issued in the District of Maryland.

V. Conclusion

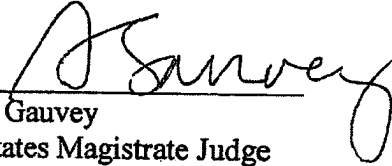
Based on the foregoing, I submit that there is probable cause to believe that the contents of **Dwolla Account 812-649-1010 registered in the name of Mutum Sigillum LLC, held in the custody of Veridian Credit Union,** were involved in transactions and attempted

transactions in violation of 18 U.S.C. section 1960, and that the contents of that account are subject to seizure and forfeiture pursuant to 18 U.S.C. section 981(a)(1)(A).



Michael T. McFarland, Special Agent
Homeland Security Investigations
Immigration and Customs Enforcement

Subscribed and sworn before me on May 14, 2013.



Susan K. Gauvey
United States Magistrate Judge

本申請につき、平成29年2月/日 許可があったことを証明する旨
前同日 東京地方裁判所民事第20部 裁判所書記官 浅香 大八郎

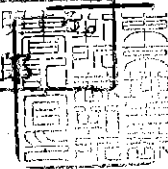


Exhibit E

平成26年(フ)第3830号

平成29年2月1日

東京地方裁判所民事第20部御中

和解契約締結に関する許可申請書

破産者 株式会社MTGOX

破産管財人 弁護士 小林信明



申請の趣旨

米国司法省 (U.S. Department of Justice. 以下「DOJ」という。)との間で、下記の条件で、添付の SETTLEMENT AGREEMENT (以下「本契約」という。)を締結することの許可を求める。

記

- (1) DOJは、(2)記載の条件が成就してから5営業日以内に、差し押さえている総額5,142,402.20米ドルの破産者の預け金(以下「差押預け金」という。)について、以下の内訳のとおり、総額2,571,201.10米ドル(以下「本払戻金」という。)を、破産管財人が指定する銀行口座に送金する。
 - ① USSS 事件番号 101-777-4003-J, 差押番号 101-2013-004 に基づき差し押さえている差押預け金のうち、2,117,414.96米ドル
 - ② USSS 事件番号 101-777-4003-J, 差押番号 101-2013-006 に基づき差し押さえている差押預け金のうち、109,479.84米ドル
 - ③ CBP 事件番号 2013-1303-001294-01 に基づき差し押さえている差押預

け金のうち、344,306.30 米国ドル

(2) 本契約の効力発生は、以下の①及び②の条件が成就することを停止条件とする。

① 米国チャプター15裁判所その他管轄権を有する裁判所が、次のイからニまでに掲げる命令を下すこと

イ 本契約の承認

ロ 米国連邦破産法第363条及び1520条(a)(2)に基づき、本払戻金の破産管財人への移転の許可

ハ 米国連邦破産法第1521条(b)に基づき、本払戻金を日本の破産手続きにおいて使用するために日本に送金することの許可

ニ その他本契約を発効させるために必要な処分

② 東京地方裁判所が本契約の締結を許可し、本契約を発効させるために必要な処分を行うこと

(3) 破産管財人は、本払戻金を除く差押預け金の残額（以下「本没収金」という。）についての権利を放棄し、これに関するすべての権利及び利益がDOJに没収されることに同意する。

(4) DOJ及び破産管財人は、必要がある場合には、DOJが、本没収金の没収に向けた法的手続を執るために、本契約の写しをメリーランド州裁判所に提出することについて同意する。なお、DOJは、本払戻金の返金に関して、メリーランド州裁判所の許可が必要でないことを確認する。

(5) 破産者は、本払戻金の返還に関連してDOJに生じるすべての損害から、DOJを免責し、補償する。但し、免責・補償の額は、本払戻金の額を超えないものとする。なお、本契約の交渉、作成、許可申請に関連

して発生する弁護士費用その他の支出は各自が負担する。

申請の理由

1 経緯の概要

破産者は、平成25年5月に、米国国土安全保障省 (U.S. Department of Homeland Security) により、破産者の関連会社 Mutum Sigillum LLC の米国預金口座の預金 5,142,402.20 米ドルの差押えを受けた。

差押預け金は、その実質は破産者に帰属すべきものであるため、差押預け金が米国政府から返還されるべき性質のものであれば、破産財団を構成することから、破産管財人は、これまで、差押預け金を所管するDOJとの間で差押預け金の返還交渉を継続していたところ、この度、DOJとの間で差押預け金の返還に関する条件について合意に至ったものである。

2 必要性及び相当性

差押預け金は、その実質は破産者に帰属すべきものであるため、差押預け金が米国政府から返還されるべき性質のものであれば、早期に回収し、破産財団に組み入れる必要がある。本契約を締結しない場合には、米国裁判所に対して、DOJからの差押預け金の返還及び米国政府に対するディスカバリーの申立てを行い、又はDOJの捜査官及び米国政府に対する損害賠償訴訟を提起する等他の手続を執る必要がある。しかるに、破産管財人が委任する米国法律事務所であるブラウン・ラドニック法律事務所の助言を踏まえ、他の手続に要する時間及び費用、並びに他の手続を執った場合の差押預け金の回収の見込み等を勘案すると、DOJとの和解契約の内容が相当なものである限りは、DOJとの和解契約によって、早期の回収を図ることが望ましく、

そのためには、本契約を締結する必要がある。

また、ブラウン・ラドニック法律事務所によれば、米国の没収に関する法律は、政府に幅広い裁量権を認めており、差押えの要件を満たしていれば、差押えの目的を問わず、没収が認められることになるとのことである。同法律事務所の助言を踏まえ、差押えの状況を踏まえたDOJのこれまでの交渉態度を勘案すると、これ以上の譲歩をDOJから引き出すことは困難であると考えられるし、総額上記の他の方法によって回収を目指す場合の時間、コスト及び成功の見込みを勘案すると、他の方法を使った場合に、これを上回る金額を回収することができる見込みは低いと考えられる。加えて、本払戻金である2,571,201.10米ドル（約2億9,162万8,199円）は、破産財団にとっても重要な収入となることが見込まれる。

以上にかんがみると、本契約の締結は必要かつ相当である。

よって、許可を申請する。

添 付 資 料

1 本契約書

1通

以 上

添付資料



U.S. Department of Justice

United States Attorney
District of MarylandEvan Thomas Shea
Assistant United States Attorney
Evan.Shea@usdoj.govSuite 400
36 S. Charles Street
Baltimore, MD 21201-3119DIRECT: 410-209-4982
MAIN: 410-209-4800
FAX: 410-962-9293

January 27, 2017

Daniel J. Saval, Esquire
Brown Rudnick LLP
Seven Times Square
New York, NY 10036Re: United States v. \$2,117,414.96 in U.S. Currency,
USSS case no. 101-777-40003-J, seizure number 101-2013-004.United States v. \$109,479.84 in U.S. Currency,
USSS case no. 101-777-40003-J, seizure number 101-2013-006.United States v. \$2,915,507.40 in U.S. Currency,
CBP case no. 2013-1303-001294-01

Dear Mr. Saval:

In accordance with our recent communications concerning the above-referenced forfeiture actions, the following agreement is proposed. Once the agreement is fully executed and returned to me, I will forward it to the appropriate agencies for disposition.

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made between MtGox Co., Ltd. (the "Claimant"), by and through Nobuaki Kobayashi, solely in his capacity as the bankruptcy trustee and foreign representative of the Claimant (the "Foreign Representative"), and the United States Attorney's Office for the District of Maryland (the "Government" and, together with the Foreign Representative, the "Parties"):

WHEREAS, on or about May 9, 2013, the U.S. Secret Service executed seizure warrant number 13-1085-SAG and seized \$2,117,414.96 in U.S. Currency under USSS case no. 101-777-40003-J before the United States District Court for the District of Maryland (the "Maryland Court"), seizure number 101-2013-004; and

WHEREAS, on or about May 14, 2013, the U.S. Homeland Security Investigations executed seizure warrant number 13-1162-SKG and seized \$2,915,507.40 in U.S. Currency under CBP case no. 2013-1303-001294-01 before the Maryland Court; and

WHEREAS, on or about July 3, 2013, the U.S. Secret Service executed seizure warrant number 13-1387-SAG and seized \$109,479.84 in U.S. Currency under USSS case no. 101-777-40003-J before the Maryland Court, seizure number 101-2013-006; and

WHEREAS, the total amount of U.S. Currency seized pursuant to the three seizure warrants described above is \$5,142,402.20 (the "Seized Assets"); and

WHEREAS, the Seized Assets are held in the District of Maryland; and

WHEREAS, the Claimant is presently involved in bankruptcy proceedings in Japan (the "Japan Bankruptcy Proceeding") before the Twentieth Civil Division of the Tokyo District Court, Japan (the "Tokyo Court") and a related Chapter 15 bankruptcy case in the United States before the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Chapter 15 Court"), and by order dated June 18, 2014, the Chapter 15 Court entered an order, *inter alia*, recognizing the Japan Bankruptcy Proceeding as a "foreign main proceeding" under Chapter 15 of the U.S. Bankruptcy Code and recognizing the Foreign Representative as the foreign representative of Claimant (the "Recognition Order");

WHEREAS, subsequent to the seizures of the Seized Assets and entry of the Recognition Order, counsel for the Foreign Representative, on behalf of the Claimant, contacted Government counsel and expressed an interest in the Seized Assets, and also provisionally waived any and all time limits for the filing of a civil forfeiture case affecting the Seized Assets; and

WHEREAS, during such a civil forfeiture case against the Seized Assets, the Claimant would have a right to a civil trial at which the Claimant could examine witnesses, present evidence, and give testimony; and

WHEREAS, the Claimant would prevail at such a trial if the Government could not establish by a preponderance of the evidence that the property was subject to forfeiture, or if the Claimant could establish that the Claimant was an innocent owner; and

WHEREAS, the Foreign Representative, on behalf of the Claimant, nevertheless wishes to settle this case and waive the right to a trial, and the Parties both wish to reach a fair and expedited resolution to this matter; and

WHEREAS, it appears to the Parties that no person other than the Claimant has any legal right, title, or interest in any part of the Seized Assets; and

WHEREAS, the Foreign Representative, on behalf of the Claimant, acknowledges that the Government has no obligation to any of the Claimant's customers, past or present, with respect to the Seized Assets, and the Foreign Representative, on behalf of the Claimant, agrees that all claims

by such customers pertaining to any funds that were held by the Claimant, at any time, on behalf of customers, or pertaining specifically to the Seized Assets are the sole responsibility of the Claimant;

NOW, THEREFORE, for the foregoing reasons and for good and substantial consideration, the adequacy and receipt of which is hereby acknowledged, the Foreign Representative, on behalf of the Claimant, and the Government agree as follows:

1. The Government agrees to release a total of \$2,571,201.10 of the Seized Assets (the "Released Funds") as follows to the Foreign Representative, on behalf of the Claimant:

- (a) release \$2,117,414.96 in U.S. Currency held under USSS case no. 101-777-40003-J, and seizure number 101-2013-004;
- (b) release \$109,479.84 in U.S. Currency held under USSS case no. 101-777-40003-J, and seizure number 101-2013-006; and
- (c) release \$344,306.30 in U.S. Currency held under CBP case no. 2013-1303-001294-01.

Within five (5) business days of the Effective Date (defined below), the Government shall initiate the transfer of the Released Funds, by electronic funds transfer, to a bank account to be designated by the Foreign Representative. The Foreign Representative agrees to provide Government counsel with completed ACH payment forms so that the transfer of the Released Funds can be made.

2. This Agreement is subject to (the "Effectiveness Conditions"): (i) the entry of an order by the Chapter 15 Court or any other court of competent jurisdiction (a) approving this Agreement; (b) approving the transfer of the Released Funds to the Foreign Representative pursuant to Sections 363 and 1520(a)(2) of the Bankruptcy Code; (c) approving the repatriation of the Released Funds to Japan for use in the Japan Bankruptcy Proceeding pursuant to Section 1521(b) of the Bankruptcy Code; and/or (d) any other and further relief necessary to effectuate this Agreement; and (ii) the entry of an order by the Tokyo Court approving this Agreement and granting any other and further relief necessary to effectuate this Agreement (the "Approval Orders"). The Parties agree that the Foreign Representative may file a motion seeking the Approval Orders in each of the Chapter 15 Court and the Tokyo Court. On the first date when both Effectiveness Conditions are satisfied (the "Effective Date"), this Agreement shall become effective and the payment of the Released Funds to the Foreign Representative shall be due and payable in accordance with paragraph 1 above. This Agreement shall terminate on the date (the "Termination Date") on which an order is entered denying approval of this Agreement by the Chapter 15 Court, the Tokyo Court, the Maryland Court or any other court of competent jurisdiction over the subject matter herein and, upon such termination, the Parties shall be restored to the same position they were in immediately before entry into this Agreement without waiver of any rights, remedies, claims, defenses, positions or arguments, including, without limitation, Claimant's right to a trial on the matter. Without limiting the foregoing, prior to the occurrence of

any Termination Date, the Foreign Representative, on behalf of the Claimant, shall not assert that there was a lack of reasonable cause for the Government's seizure of the Seized Assets.

3. The Foreign Representative, on behalf of the Claimant, agrees as of the Effective Date to withdraw its claims as to the remaining Seized Assets, and agrees to forfeit all rights, title, and interest in that portion of the Seized Assets to the Government. These forfeited funds are as follows: \$2,571,201.10 in U.S. Currency held under CBP case no. 2013-1303-001294-01 (the "Forfeited Funds").

4. The Parties agree that, if necessary, the Government may submit a copy of this Agreement to the Maryland Court in support of a motion seeking an order conforming to the terms of this Agreement and seeking judicial forfeiture of the Forfeited Funds specified in paragraph 3 above. The Government acknowledges that it does not require the approval of the Maryland Court to transfer the Released Funds to the Claimant.

5. The Claimant agrees to indemnify and hold the Government harmless from and against all claims, damages, losses, and actions resulting from or arising out of the release of the Released Funds to the Claimant, provided, however, that Claimant's obligations to the Government under this paragraph, if any, shall not exceed the amount of the Released Funds. Each of the Parties agrees to bear its own costs and attorney's fees in connection with the negotiation, documentation and seeking of any approval of this Agreement.


6. Notwithstanding the Government's agreement to release the Released Funds to the Foreign Representative, on behalf of the Claimant, the Foreign Representative understands that the United States Department of the Treasury's Bureau of the Fiscal Service administers a centralized offset program (the "Treasury Offset Program"), under which the federal agencies of the United States of America (the "Federal Agencies") may withhold parts or all of any funds in the possession of the United States of America until the Federal Agencies (including the Internal Revenue Service) have determined that the Claimant does not owe any unrelated, legally enforceable debts to the United States of America. See 31 U.S.C. § 3716. Notwithstanding the foregoing, the Foreign Representative and the Claimant do not waive any rights or protections available under 31 C.F.R. § 285.5 and all related statutes and regulations, including, without limitation, all statutes and regulations prohibiting the Government or the Federal Agencies from collecting or offsetting debts subject to the automatic stay in bankruptcy proceedings or debts covered by a statute that prohibits collection of such debt by offset. Furthermore, the Foreign Representative and the Claimant do not waive any rights or protections available based upon (i) the application of 11 U.S.C. § 362 to the Claimant and the property of the Claimant that is within the territorial jurisdiction of the United States of America pursuant to 11 U.S.C. § 1520(a)(1) and the Recognition Order, and/or (ii) the provisions of 11 U.S.C. § 1507 and 11 U.S.C. § 1521, including, without limitation, 11 U.S.C. § 1521(a)(5) and 11 U.S.C. § 1521(a)(7).

7. Notwithstanding anything herein to the contrary, the Foreign Representative is acting solely in a representative capacity and not individually as the bankruptcy trustee and foreign representative on behalf of the Claimant, and the Government agrees that the Foreign Representative shall bear no personal liability whatsoever in connection with (i) this Agreement,

(ii) any of the matters addressed herein, or (iii) any of Claimant's obligations hereunder, including, without limitation, any obligations that may arise under paragraph 5 hereof.

8. This Agreement states the entire agreement reached between the Parties hereto.

Rod J. Rosenstein
United States Attorney



Evan T. Shea
Assistant United States Attorney

1/30/2017

Date

Date

Daniel J. Saval, Esquire
Brown Rudnick LLP
Attorney for Bankruptcy Trustee of MtGox, Co., Ltd

Date

Nobuaki Kobayashi
Solely in his Representative Capacity as Bankruptcy
Trustee of MtGox, Co., Ltd. and not individually

Exhibit F

[Translation]

I hereby certify that the application hereunder was approved on February 1st, 2017.

February 1st, 2017

Daihachiro Asaka, Court Clerk, the 20th Civil Division, Tokyo District Court

SEAL

2014 (fu) No. 3830

February 1st, 2017

To: The 20th Civil Division, Tokyo District Court

APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

Bankrupt Entity MtGox Co., Ltd.

Bankruptcy Trustee Nobuaki Kobayashi, Attorney at law

SEAL

PURPOSE OF APPLICATION

I hereby seek the approval by the court of the execution of the attached Settlement Agreement with the U.S. Department of Justice (“**DOJ**”) with the following terms and conditions (such settlement agreement, the “**Settlement Agreement**”):

- (1) DOJ agrees to release a total of US\$ 2,571,201.10 (the “**Released Funds**”) out of US\$ 5,142,402.20, in aggregate, of the deposited funds seized by the U.S. Government (the “**Seized Funds**”) within five business days of the satisfaction of the conditions set forth in (2) below into the bank account to be designated

by the Bankruptcy Trustee, the breakdown of which is shown as follows:

- (a) US\$ 2,117,414.96 out of the Seized Funds held under USSS case no. 101-777-40003-J and seizure number 101-2013-004;
 - (b) US\$ 109,479.84 out of the Seized Funds held under USSS case no. 101-777-4003-J and seizure number 101-2013-006; and
 - (c) US\$ 344,306,30 out of the Seized Funds held under CBP case no. 2013-1303-001294-01;
- (2) The Settlement Agreement shall become effective upon satisfaction of the conditions in (a) and (b) below:
- (a) the entry of an order by the Chapter 15 court or any other court of competent jurisdiction ordering:
 - (i) approval of the Settlement Agreement;
 - (ii) approval of the transfer of the Released Funds to the Bankruptcy Trustee pursuant to Sections 363 and 1520(a)(2) of the U.S. Bankruptcy Code;
 - (iii) approval of the repatriation of the Released Funds to Japan for use in the Japan Bankruptcy Proceeding pursuant to Section 1521(b) of the U.S. Bankruptcy Code;
 - (iv) any other and further release necessary to effectuate the Settlement Agreement; and
 - (b) the entry of an order by the Tokyo District Court approving the Settlement Agreement and granting any other and further relief necessary to effectuate the Settlement Agreement;
- (3) Bankruptcy Trustee agrees to withdraw the claims as to the remaining Seized

Assets, and agrees to forfeit all rights and interest in that portion of the Seized Funds to the Government (the “**Forfeited Funds**”);

- (4) DOJ and Bankruptcy Trustee agree that, if necessary, DOJ may submit a copy of the Settlement Agreement to the Maryland Court in support of a legal action to seek judicial forfeiture of the Forfeited Funds. DOJ acknowledges that the approval of the Maryland Court is not required for the transfer of the Released Funds; and
- (5) Bankrupt Entity agrees to indemnify and hold DOJ harmless from and against any and all damages arising out of the release of the Released Funds; provided however, that the amount to be indemnified or held harmless shall not exceed the amount of the Released Funds. Each party shall bear its own costs and expenses including attorney’s fees in connection with the negotiation, documentation and seeking of any approval of the Settlement Agreement.

Grounds for Application

1 Summary of Background

The deposited amount of US\$ 5,142,402.20 in the U.S. bank account held in the name of Mutum Sigillum LLC, an affiliate of Bankrupt Entity, was seized by the U.S. Department of Homeland Security in May 2013.

Since the seized funds above actually belonged to Bankrupt Entity, if the said funds were to be released by the U.S. government, they would constitute a part of the bankrupt estate. Therefore, Bankruptcy Trustee has continued negotiating with DOJ, who is in charge of the release of the seized funds. Now, Bankruptcy Trustee and DOJ have reached an agreement on the terms and conditions of the release of

the Seized Funds.

2 Necessity and Appropriateness

Since the Seized Funds actually belong to Bankrupt Entity, as long as these are the funds to be released by the U.S. government, Bankruptcy Trustee owes an obligation to collect and add them to the bankrupt estate promptly. Without the Settlement Agreement, Bankruptcy Trustee would have to seek other remedies, including filing a motion to release the Seized Funds from DOJ and seeking a discovery order against the U.S. government or making an indemnity claim against prosecutors of DOJ and the U.S. government for the damages incurred by Bankrupt Entity. However, taking into consideration the time and costs necessary for the other remedies and the likelihood of success in collection of the Seized Funds, as well as the advice by Brown Rudnick LLP, the U.S. counsel to Bankruptcy Trustee, as long as the terms and conditions of settlement with DOJ are reasonable, it is preferable to collect the Seized Funds from DOJ in a prompt manner through the settlement, and the execution of the Settlement Agreement is needed for that purpose.

Further, according to Brown Rudnick LLP, Bankruptcy Trustee understands that the U.S. government has broad discretion as to forfeiture under U.S. law, and as long as the requirements are met, the U.S. government is allowed to forfeit the funds, no matter what the purpose of forfeiture is. Given the advice by Brown Rudnick LLP and DOJ's attitude in the negotiation so far, it would be difficult to gain further compromise from DOJ, and taking into account the time, costs and expected success of the other remedies as discussed above, it is hard to expect that Bankruptcy

Trustee will collect more than the amount agreed in the Settlement Agreement. Further, the amount of US\$ 2,571,201.10 (approximately JPY 291,628,199) would be significant income to the bankrupt estate.

Given the above, it is necessary and appropriate to sign the Settlement Agreement.

Now, therefore, I hereby apply for the approval.

ATTACHMENT

1	A copy of the Settlement Agreement	1 copy
---	------------------------------------	--------

End

東京地方裁判所平成 26 年（フ）第 3830 号
破産者 株式会社 MTGOX

報告書

平成 28 年 9 月 28 日

東京地方裁判所民事第 20 部合議係 御中

破産者 株式会社 MTGOX

破産管財人 弁護士 小林 信明



第 1 破産財団の経過及び現状

1 破産財団の現状

本報告書作成時までの調査による破産財団の状況は、財産目録及び貸借対照表記載のとおりであり、平成28年9月27日現在、当職が確保している預金残高は1,054,483,013円であり、第6回債権者集会時から約10,200,000円減少した。

但し、BTC の保有状況等に関する調査中であるため、当該目録及び貸借対照表には、破産者の保有する BTC は記載していない。

2 BTC 管理状況

平成 28 年 9 月 21 日時点において破産財団で管理する BTC は、202,185.35450043BTC となっている。当職は、現在も引き続き破産者が保有する BTC の有無を調査しており、かかる BTC が発見され次第、当職が管理するアドレスに移動させて管理する予定である。

第 2 破産債権の調査の状況

1 破産債権届出及び認否の状況

当職は、平成28年5月25日の債権調査期日において、破産者のビットコイン取引所のユーザー（以下「ユーザー」という。）から届け出られた破産者に対する BTC 及び金銭の返還に関する債権（以下「取引所関係破産債権」という。）の全てにつき、認否をした。平成28年5月25日時点における破産債権届出及び認否の状況の概要については、以下のとおりである。

	届出人数	届出金額 ※ 1	認めた金額 ※ 1	認めなかった金額 ※ 1
取引所関係破産債権を届け出た債権者	24750 名	263 兆 5192 億 6830 万 3371 円	456 億 0959 万 3503 円	263 兆 4736 億 5870 万 9868 円

※ 1 全て円転した金額である。

その後、当職は、上記の認めなかった金額のうち、19名34,884,662円につき異議を撤回し、認めるに至っている。

さらに、現在までに査定申立てが137件（査定申立額2,220,868,159円（元本のみ））なされている（但し、不適法なものを含む。）。

当職は、これらの査定申立書類を検討中であり、適宜答弁書を提出する方向で考えている。

2 取引所関係破産債権以外の債権届出の状況

取引所関係破産債権以外の債権を届け出た債権者に対しては、平成27年9月9日の債権調査期日において認否をしているが、うち2名から破産債権査定の申立てがあり、現在査定手続中である。

第3 BTC 消失経緯等調査

当職は、破産者におけるBTC及び法定通貨の消失の有無・経緯等に関し、有限責任監査法人トーマツ（関連法人を含む。）、及び税理士法人レクス会計事務所に委嘱し、かつ支援企業であるPaywardグループの協力も得ながら、調査を進めている。

また、カルプレス・マルク・マリ・ロバートは、後述のとおり、逮捕起訴されたが、当職は、警視庁などの捜査機関の捜査協力要請に対し、可能な協力を行ってきており、今後とも協力を行っていく方針である。なお、かかる警察捜査との関係でも、捜査又は調査に関する情報については、慎重に取り扱う必要が生じている。

存在する情報が限られていること等の事情もあり、全容の把握は難しいと考えているものの、今後も、可能な限りで、調査を続行する予定である。なお、上記調査の結果については、プライバシーの問題等について配慮した上で、適切な時期、方法及び内容にて公表することを予定している。

第4 関連会社

破産者には、複数の関連会社（親会社等）が存し、以下の会社等に対する貸付金等を有するため、その回収に努めている。

1 (株)TIBANNE

当職は、平成27年5月15日、破産者の親会社である(株)TIBANNEの破産手続（東京地方裁判所平成27年(ワ)第585号）において、破産債権の届出（届出破産債権額合計25,841,657,102円。なお、平成27年11月19日に306,362,100円を取り下げている。）をしたが、破産管財人栗田口太郎弁護士より異議を述べられたため、平成27年10月13日、破産債権査定の申立てを行った。現在、(株)TIBANNEの破産手続において査定手続中である。

2 (株)Bitcoin. Café

当職が(株) Bitcoin. Café の破産手続(東京地方裁判所平成26年(ワ)第5603号)において行った破産債権の届出(届出金額60,710,136円)について(株) Bitcoin. Café の債権者である東急建設株式会社が述べた異議に関し、東京高等裁判所において、同社を控訴人、当職を被控訴人とする破産債権査定異議請求控訴事件(東京高等裁判所平成28年(ネ)第1479号)が係属していたところ、平成28年7月13日、控訴を棄却する旨の控訴審判決がなされ、当職による上記届出を認めることを内容とする第一審判決が維持された。但し、東急建設株式会社は、同月26日、上記控訴審判決を不服として、上告及び上告受理申立てを行っている。

3 カルプレス・マルク・マリ・ロベート

当職は、平成27年10月23日、御庁に対し、破産者の代表取締役であるカルプレス・マルク・マリ・ロベートの破産手続開始の申立てを行った。その結果、同年11月10日、同人について破産手続開始決定がなされ、破産管財人に坂口昌子弁護士が選任された。

また、カルプレス・マルク・マリ・ロベートは、平成27年9月11日に私電磁的記録不正作出・同供用罪及び業務上横領罪の容疑で起訴され、さらに同年11月18日に同じく私電磁的記録不正作出・同供用罪及び業務上横領罪の容疑で追起訴されている。なお、同人は、平成28年7月14日に保釈された。

第5 破産法第177条第1項の規定による保全処分又は第178条第1項に規定する役員責任査定決定を必要とする事情の有無

破産法第177条第1項の規定による保全処分又は第178条第1項に規定する役員責任査定決定を必要とする事情の有無については、上記第3の調査と並行し引き続き調査をしている。

第6 破産手続進行に関する事項

1 配当の見込み等

全ての破産債権につき認否を終えたため、今後、可能な限り早期に配当手続に進みたいと考えている。しかし、その具体的日程については、当職の認否に対する各債権者の応答等によって影響を受けざるを得ない。したがって、現時点では、配当見込み、配当時期、及び配当方法等は未定である。

なお、破産配当が可能となる場合にBTCを配布する方法を用いるか否かについては、引き続き検討中である。

2 その他必要な情報のウェブサイトでの提供

本件では、極めて多数の債権者が各国に存するため、本件に関し債権者に必要な情報等は、できる限り、当職の管理するウェブサイト (<https://www.mtgox.com/>) に随

時公表する予定である。

以 上

財 産 目 録

(開始決定日:平成26年4月24日現在)
 (単位:円)

資産の部

番号	科目	簿 価	評価額(財団組入額)	備考	
1	現金及び預金	1,336,251	1,359,603		
	現金	0	0		
	みずほ銀行 渋谷支店 普通預金 No.1457705	120,000	152,602	解約入金済み。	
	みずほ銀行 渋谷支店 普通預金 No.1497669	0	47	解約入金済み。	
	みずほ銀行 渋谷支店 外貨普通預金 No.9110151	0	4	通貨:USD、解約入金済み。	
	みずほ銀行 渋谷支店 外貨普通預金 No.9110186	0	5	通貨:GBP、解約入金済み。	
	みずほ銀行 渋谷支店 外貨普通預金 No.9110216	0	97	通貨:AUD、解約入金済み。	
	みずほ銀行 渋谷支店 外貨普通預金 No.9110267	0	4	通貨:NZD、解約入金済み。	
	みずほ銀行 渋谷支店 外貨普通預金 No.9110232	91	87	通貨:DKK、解約入金済み。	
	みずほ銀行 渋谷支店 外貨普通預金 No.9110275	28	26	通貨:HKD、解約入金済み。	
	みずほ銀行 渋谷支店 外貨普通預金 No.9110283	25	25	通貨:SGD、解約入金済み。	
	みずほ銀行 渋谷支店 外貨普通預金 No.9110259	89	87	通貨:CHF、解約入金済み。	
	ゆうちょ銀行 渋谷支店 総合口座 No.10170-48410711	945	945	解約入金済み。	
	楽天銀行 第二営業支店 普通預金 No.7018261	279,457	279,213	解約入金済み。	
	ジャパンネット銀行 すずめ支店 普通預金 No.2559084	596,168	596,168	解約入金済み。	
	八千代銀行 渋谷支店 普通預金 No.0623839	7	7	解約入金済み。	
	八千代銀行 渋谷支店 外貨普通預金 No.0623949	95,357	93,468	通貨:AUD、解約入金済み。	
	八千代銀行 渋谷支店 外貨普通預金 No.0623950	141,608	136,041	通貨:EUR、解約入金済み。	
	八千代銀行 渋谷支店 外貨普通預金 No.0623938	102,476	100,677	通貨:USD、解約入金済み。	
りそな銀行 渋谷支店 普通預金 No.2973992	0	100	解約入金済み。		
2	短期貸付金	1,307,423,210	46,686,362	評価は平成28年9月27日までの換価実績による。	
	㈱TIBANNE	772,791,001	0	破産者の関係会社、平成27年1月30日破産手続開始決定。破産債権届出済み。	
	㈱Shade3D	338,139,321	46,686,362	破産者の関係会社。平成27年9月29日、債権譲渡契約に基づき回収。	
	㈱Bitcoin cafe	60,000,000	0	破産者の関係会社、平成26年6月18日破産手続開始決定。破産債権届出済み。	
	カルプレス・マルク・マリ・ロベート	136,175,781	0	破産者の代表者。平成27年11月10日破産手続開始決定。	
	MTGOX HongKong	317,107	0	破産者の関係会社。弁済請求中。	
3	未収入金	925,826	331,600	評価は平成28年9月27日までの換価実績による。	
	㈱TIBANNE	562,026	0	破産者の親会社、貸付金の未収利息。	
	渋谷税務署(法人税中間納付)	242,200	243,900	平成26年7月24日還付入金済み。	
	渋谷都税事務所(事業税及び地方税中間納付)	80,800	80,800	平成26年7月29日還付入金済み。	
渋谷都税事務所(住民税法人税中間納付)	40,800	6,900	均等割りと相殺の上、平成26年7月29日還付入金済み。		
4	仮払金(東京地方裁判所)	2,000,000	2,000,000	平成26年6月4日回収。	
	5	預け金	783,948,565	862,720,420	評価は平成28年9月27日までの換価実績による。
		申立代理人	241,459,630	231,557,866	平成26年5月12日に評価額にて引継ぎ済み。
		申立代理人	509,510,685	500,698,397	平成26年5月9日に評価額にて引継ぎ済み。
		申立代理人	32,978,250	32,977,386	平成26年5月8日に評価額にて引継ぎ済み。
その他	0	97,486,771	平成27年1月7日回収。		
6	他社預け金	1,693,444,088	706,433,012	評価は平成28年9月27日までの換価実績による。	
	CoinLab	500,000,000	0	訴訟継続中。	
	その他	1,193,444,088	706,433,012	一部回収。残額については回収作業中または検討中。	
7	工具器具備品	104,557,699	32,582,300	評価は平成28年9月27日までの換価実績による。	
	DELL サーバー	5,649,000			
	Violin Server	90,623,142	32,382,300	平成26年11月27日売却、入金済み。	
	Apple Japan ノートパソコン28台	5,383,438			
	Chair	2,902,119	200,000	平成27年6月8日売却、入金済み。	
8	敷金	700,000	0	評価は平成28年9月27日までの換価実績による。	
	ディ・エグゼクティブ・センター・ジャパン株式会社	540,000	0	解約済み。回収不能。	
ディ・エグゼクティブ・センター・ジャパン株式会社(駐車場敷金)	160,000	0	解約済み。回収不能。		
9	差入保証金	10,586,875	10,587,933	破産者が供託した仮差押解放金払渡金。回収済み。	
10	開発費	85,875,146	0	評価は平成28年9月27日までの換価実績による。	
	Applico Inc.	33,453,375	0	資産性なし	
	Internet Escrow Services	3,073,459	0	資産性なし	
	Mandalah KK	31,993,500	0	資産性なし	
	The Phuse Inc.	4,572,513	0	資産性なし	
	Winsoft Technology Solutions Inc.	12,782,299	0	資産性なし	
11	受取利息	0	356,617	預金利息	
12	破産申立予納金	0	18,063,297		
	破産申立予納金(カルプレス・マルク・マリ・ロベート)	0	3,026,000	破産申立予納金戻り(郵券等戻り含む)	
	破産申立予納金(㈱TIBANNE)	0	15,037,297	破産申立予納金戻り(郵券等戻り含む)	
資産合計		3,990,797,660	1,681,121,144		

負債の部

番号	科目	帳簿価額	届出金額	備考
1	財団債権・優先的破産債権(公租公課)	54,374,152	額未定	
	財団債権(その他経費)	19,253,642	額未定	
2	一般破産債権(取引所関係破産債権)	8,256,092,214	263,519,268,303,371	
	一般破産債権(取引先等)	402,470,293	13,119,083,453	
負債合計		8,732,190,301	額未定	

※1 「簿価」は、原則として、平成26年4月24日現在の破産者の帳簿価額を記載しており、当該金額が実際の換価額と一致するものではない。

※2 「評価額(財団組入額)」は、原則として、平成28年9月27日現在実際に回収された金額を記載している。

※3 破産者が保有するBitcoinは、上記資産には含まれていない。なお、平成28年9月21日時点において破産財団で管理するBitcoinは、202,185.35450043 BTCとなっている。

※4 本目録の記載は、現時点での調査結果に基づく内容であり、今後の調査により本目録に記載のない資産又は負債が判明する可能性がある。

収 支 計 算 書

自 平成26年 4月 24日
至 平成28年 9月 27日

平成26年(フ)第3830号
破産者 株式会社MTGOX
破産管財人 弁護士 小林 信明

(単位:円)

収 入 の 部			支 出 の 部		
番号	摘 要	金 額	番号	摘 要	金 額
1	引継現預金	766,593,252	1	事務費	30,191,242
2	引継予納金	2,000,000	2	破産開始決定通知書送付費用	6,890,292
3	供託金回収	10,587,933	3	消耗品費	8,840,785
4	受取利息	356,617	4	専門家報酬	275,530,917
5	税金還付	331,600	5	業務委託報酬	125,418,228
6	他社預け金の回収	706,433,012	6	和解金(通信関連契約解約費用)	6,310,433
7	破産手続の支援等に関する契約に基づくPaywardの支援金	32,382,300	7	旅費交通費	298,930
8	預け金の回収	97,486,771	8	管財人室家賃・敷金	5,260,540
9	備品売却収入	200,000	9	公租公課(管財人報酬の源泉所得税等)	29,010,413
10	(株)Shade3Dに対する貸付金譲渡代金	46,686,362	10	コールセンター費用	6,335,718
11	カルプレス・マルク・マリ・ロバート破産申立予納金戻り(郵券等戻り含む)	3,026,000	11	TIBANNE破産申立予納金	15,000,000
12	TIBANNE破産申立予納金戻り(郵券等戻り含む)	15,037,297	12	管財人報酬	114,550,633
			13	カルプレス・マルク・マリ・ロバート破産申立予納金	3,000,000
合 計		1,681,121,144	合 計		626,638,131

差引残金	1,054,483,013
------	---------------

平成26年(フ)第3830号
 破産者 株式会社MTGOX
 破産管財人 弁護士 小林 信明
 (破産手続開始の決定日:平成26年 4月24日現在)

【破産】貸借対照表

(単位:円)

科目	評価額(財団組入額)※1	科目	届出額
現金及び預金	1,359,603	財団債権及び優先的破産債権 ※3	73,627,794
短期貸付金	46,686,362	一般破産債権	263,532,387,386,824
未収入金	331,600		
仮払金	2,000,000		
預け金	862,720,420		
他社預け金	706,433,012		
工具器具備品	32,582,300		
敷金	0		
差入保証金	10,587,933		
開発費	0		
受取利息	356,617		
破産申立予納金	18,063,297		
資産計 ※2	1,681,121,144	負債計	263,532,461,014,618

- ※1 「評価額(財団組入額)」は、平成28年9月27日現在実際に回収された金額を記載している。
 ※2 破産者が保有するBitcoinは、上記資産には含まれていない。なお、平成28年9月21日時点において破産財団で管理するBitcoinは、202,185.35450043 BTCとなっている。
 ※3 財団債権及び優先的破産債権については、交付要求未了のため、破産手続開始決定時の破産者の帳簿に基づく金額である。
 ※4 本貸借対照表の記載は、現時点での調査結果に基づく内容であり、今後の調査により本貸借対照表に記載のない資産又は負債が判明する可能性がある。

[Translation]

Tokyo District Court 2014 (fu) No. 3830

Bankrupt Entity: MtGox Co., Ltd.

Report

September 28, 2016

To: Tokyo District Court, Collegiate Section of 20th Civil Division

Bankrupt Entity: MtGox Co., Ltd.

Bankruptcy Trustee: Nobuaki Kobayashi, Attorney-at-law

I. Past Events and Present Situation Concerning Bankruptcy Estate

1. Present Situation of Bankruptcy Estate

The status of the bankruptcy estate, based on the investigation conducted up to the time of preparation of this Report, is as shown in the List of Assets and the Balance Sheet, and the balance in the account that I have secured as of September 27, 2016 is JPY 1,054,483,013, i.e., a decrease of approximately JPY 10,200,000 from the time of the 6th creditors' meeting.

However, since the investigation of the status of the holdings of BTC is still on-going, such List of Assets and Balance Sheet do not contain BTC held by the bankrupt entity.

2. Status of Management of BTC

The amount of BTC managed by the bankruptcy estate as of September 21, 2016 is 202,185.35450043BTC. Currently, I am still investigating the existence of additional BTC held by the bankrupt entity, and it is planned that, as soon as such BTC are found, I will move them to the address which I manage, and I will keep such BTC there.

II. Status of Investigation of Bankruptcy Claims

1. Status of Filing of Bankruptcy Claims and Acceptance or Rejection of Claims

On May 25, 2016, the date of the investigation of claims, I completed the task of accepting or rejecting each of the claims against the Bankrupt Entity seeking a refund of BTC or money that was filed by users of the Bankrupt Entity's Bitcoin exchange (such users, the "Users"; and such claims, the "Bankruptcy Claims Related to Exchange").

A summary of the status of filings of bankruptcy claims and the acceptance or rejection of claims as of May 25, 2016, is shown below.

	Number of persons who filed claims	Total amount of claims filed *1	Total amount of claims that have been accepted *1	Total amount of claims that have been rejected *1
Creditors who filed a claim only with respect to the Bankruptcy Claims Related to Exchange	24,750 persons	JPY 263,519,268,303,371	JPY 45,609,593,503	JPY 263,473,658,709,868

*1 All amounts have been converted into JPY.

Thereafter, out of the claims that I had rejected, I have retracted my objection against claims by 19 creditors, the total amount of which is 34,884,662 yen, and accepted them.

In addition, to date, 137 petitions for assessment, the total amount of which is 2,220,868,159 yen (principal amount), have been filed; please note, however, that these figures include petitions that were improperly filed.

I am currently reviewing the documents filed in connection with these petitions, and planning to submit my written answers in due course.

2. Status of Filings of Claims Other than the Bankruptcy Claims Related to Exchange

With respect to creditors who filed claims other than Bankruptcy Claims Related to Exchange, these claims have been accepted or rejected at the investigation of claims that was held on September 9, 2015; however, there was a petition for a bankruptcy

claim assessment from two of the creditors, and the assessment is currently under way.

III. Investigation of Disappearance of BTC, etc.

I am conducting investigations into whether any BTC or money in other currencies that were possessed by or under the control of the bankrupt entity have disappeared, and if they have, the events leading to such disappearance by delegating such work to Deloitte Touche Tohmatsu LLC (and its affiliates) and ReEx Accounting Firm, as well as by obtaining the assistance of our supporting company, Payward.

Additionally, while Robert Marie Mark Karpeles was arrested and prosecuted as stated below, following a request made by investigation agencies such as the Metropolitan Police Department to cooperate with their investigation, I have been providing and will continue to provide them with cooperation as much as possible. In connection with such police investigation, the careful treatment of information relating to the investigation is now needed.

Due to the circumstances, such as the limited amount of information that exists, I believe it will be difficult to understand the full picture; however, I am planning to continue these investigations, as much as possible. We are planning to disclose the results of the aforesaid investigation at the appropriate time, in the appropriate manner and with the appropriate content, taking into account concerns as to privacy, etc.

IV. Affiliated Companies

The bankrupt entity has several affiliated companies (parent company, etc.), and has claims based on loan receivables, etc. against the following companies, etc. Therefore, I am making efforts to collect such loan receivables.

1. TIBANNE Co., Ltd.

On May 15, 2015, in the bankruptcy proceedings against TIBANNE Co., Ltd., which is the parent company of the bankrupt entity (Tokyo District Court 2015 (fu) No. 585), I filed a bankruptcy claim (the total amount of the bankruptcy claim that was filed is JPY 25,841,657,102; however, I have withdrawn a portion of that claim in the amount of JPY 306,362,100 on November 19, 2015). Mr. Taro Awataguchi,

who is the bankruptcy trustee of TIBANNE, made an objection to the claim; therefore, I filed a motion seeking an assessment of the bankruptcy claim on October 13, 2015. The assessment is currently being processed under the bankruptcy proceeding of TIBANNE, Co., Ltd.

2. K.K. Bitcoin. Café

With regard to the objection raised by TOKYU CONSTRUCTION CO., LTD., a creditor of K.K. Bitcoin. Café, against my filing of a bankruptcy claim (the amount of the bankruptcy claim is JPY 60,710,136) in the bankruptcy proceeding against K.K. Bitcoin. Café (Tokyo District Court 2014 (fu) No. 5603), the hearing in the appeal case regarding the objection to the bankruptcy claim assessment (Tokyo High Court 2016 (ne) No. 1479) was held before the Tokyo High Court, where TOKYU CONSTRUCTION CO., LTD. was the appellant and I was the appellee. The decision of the Tokyo High Court, which was entered on July 13, 2016, generally held that the appeal was to be dismissed, and therefore, the decision by the court of first instance approving the aforesaid bankruptcy claim that I had filed was upheld. However, TOKYU CONSTRUCTION CO., LTD. was not satisfied with the aforesaid decision entered by the Tokyo High Court, and filed a final appeal as well as a petition for acceptance of final appeal on July 26, 2016.

3. Robert Marie Mark Karpeles

I filed a petition for the commencement of bankruptcy proceeding regarding Robert Marie Mark Karpeles, who is the representative director of the bankrupt entity, with the court on October 23, 2015. As a result, the commencement of the bankruptcy proceeding against Mr. Karpeles was determined on November 10, 2015, and Ms. Masako Sakaguchi was appointed as the bankruptcy trustee.

Robert Marie Mark Karpeles was prosecuted on September 11, 2015 on the charges of unauthorized creation and use of private electromagnetic records and suspicion of corporate embezzlement. Furthermore, he was subsequently prosecuted on November 18, 2015 on the same charges of unauthorized creation and use of private electromagnetic records and suspicion of corporate embezzlement. He was released on bail on July 14, 2016.

V. Existence of Circumstances Requiring a Temporary Restraining Order, as

Stipulated in Article 177, Paragraph 1 of the Bankruptcy Act, and Officer's Liability Assessment Order, as Stipulated in Article 178, Paragraph 1 of the Bankruptcy Act

With respect to the existence of circumstances requiring a temporary restraining order, as stipulated in Article 177, Paragraph 1 of the Bankruptcy Act, and officer's liability assessment order, as stipulated in Article 178, Paragraph 1 of the Bankruptcy Act, an investigation is still required to take place concurrently with the investigation stated in section III above.

VI. Matters regarding Progress of Bankruptcy Proceedings

1. Probability of Distribution, etc.

Now that all bankruptcy claims have been accepted or rejected, henceforth, I wish to proceed to the distribution process as soon as possible. However, the detailed schedule thereof will inevitably be affected by each creditor's response to the acceptance or rejection of his or her claim, etc. Therefore, at present, the possibility of carrying out a distribution and the timing and method thereof, etc. have not yet been determined.

I will continue to consider whether, in the case where a distribution is possible, a distribution will be made by way of distributing BTC.

2. Provision of Other Necessary Information on Website

Since an extremely large number of creditors exist worldwide in this case, as much as possible, I plan to disclose information, etc., that are necessary for creditors to be aware of regarding this case on the website that I manage (<https://www.mtgox.com>) from time to time.

End of document

* This translation is prepared for reference purposes only. The Japanese version is the original and if there is any discrepancy between the Japanese original and this translation, the Japanese original supersedes and governs.

[Translation]

[Case Number:] Tokyo District Court 2014 (fu) No. 3830
 Bankrupt Entity: MtGox Co., Ltd.
 Bankruptcy Trustee: Nobuaki Kobayashi, Attorney-at-law

List of Assets

(As of April 24, 2014, the date of the order of commencement of bankruptcy proceedings)
 (In JPY)

Assets

No.	Item	Book value *1	Appraised amount (amount incorporated into the bankruptcy estate)*2	Remarks
1	Cash and deposits	1,336,251	1,359,603	
	Cash	0	0	
	Mizuho Bank, Shibuya Branch, Ordinary deposit account No.1457705	120,000	152,602	The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Mizuho Bank, Shibuya Branch, Ordinary deposit account No.1497669	0	47	The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Mizuho Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 9110151	0	4	Currency: USD; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Mizuho Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 9110186	0	5	Currency: GBP; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Mizuho Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 9110216	0	97	Currency: AUD; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Mizuho Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 9110267	0	4	Currency: NZD; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Mizuho Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 9110232	91	87	Currency: DKK; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Mizuho Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 9110275	28	26	Currency: HKD; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Mizuho Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 9110283	25	25	Currency: SGD; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Mizuho Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 9110259	89	87	Currency: CHF; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Yucho Bank, Shibuya Branch, Consolidated account No. 10170-48410711	945	945	The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Rakuten Bank, Second Sales Branch, Ordinary deposit account No. 7018261	279,457	279,213	The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Japan Net Bank, Suzume Branch, Ordinary deposit account No.2559084	596,168	596,168	The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Yachiyo Bank, Shibuya Branch, Ordinary deposit account No. 0623839	7	7	The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Yachiyo Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 0623949	95,357	93,468	Currency: AUD; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Yachiyo Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 0623950	141,608	136,041	Currency: EUR; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Yachiyo Bank, Shibuya Branch, Foreign currency ordinary deposit account No. 0623938	102,476	100,677	Currency: USD; The account has been closed, and the cash in the account has already been transferred into the account of the trustee.
	Resona Bank, Shibuya Branch, Ordinary deposit account No.2973992	0	100	The account has been closed, and the cash in the account has already been transferred into the account of the trustee.

No.	Item	Book value *1	Appraised amount (amount incorporated into the bankruptcy estate)*2	Remarks
2	Short-term loans	1,307,423,210	46,686,362	The appraised amount is based on the amount actually converted into cash on or prior to September 27, 2016.
	TIBANNE Co., Ltd.	772,791,001	0	This company is an affiliated company of the bankrupt, and an order of commencement of bankruptcy proceedings for such company was issued on January 30, 2015. The filing of proof of claims has already been completed.
	K.K. Shade3D	338,139,321	46,686,362	This company is an affiliated company of the bankrupt. Collected under the claim assignment agreement on September 29, 2015.
	K.K. Bitcoin.Café	60,000,000	0	This company is an affiliated company of the bankrupt, and an order of commencement of bankruptcy proceedings for such company was issued on June 18, 2014. The filing of proof of claims has already been completed
	Robert Marie Mark Karpeles	136,175,781	0	This person is the representative of the bankrupt, and an order of commencement of bankruptcy proceedings for such person was issued on November 10, 2015.
	MTGOX HongKong	317,107	0	This company is an affiliated company of the bankrupt. Repayment of the loan is currently being requested.
3	Accounts receivable	925,826	331,600	The appraised amount is based on the amount actually converted into cash on or prior to September 27, 2016.
	TIBANNE Co., Ltd	562,026	0	This company is the parent company of the bankrupt. The accounts receivable against this company comprise of accrued interest on the loan.
	Shibuya Tax Office (Interim payment of corporation tax)	242,200	243,900	Tax refund was paid into the account of the trustee on July 24, 2014.
	Shibuya Metropolitan Taxation Office (Interim payment of enterprise tax and special local corporation tax)	80,800	80,800	Tax refund was paid into the account of the trustee on July 29, 2014.
	Shibuya Metropolitan Taxation Office (Interim payment of inhabitants tax on corporation tax basis)	40,800	6,900	Upon balancing by taxation on a per capita basis, a tax refund was paid into the account of the trustee on July 29, 2014.
4	Provisional payment (to the Tokyo District Court)	2,000,000	2,000,000	Collected on June 4, 2014
5	Deposits paid	783,948,565	862,720,420	The appraised amount is based on the amount actually converted into cash on or prior to September 27, 2016.
	Counsel for applicant	241,459,630	231,557,866	The money deposited was already succeeded at the appraised amount on May 12, 2014.
	Counsel for applicant	509,510,685	500,698,397	The money deposited was already succeeded at the appraised amount on May 9, 2014.
	Counsel for applicant	32,978,250	32,977,386	The money deposited was already succeeded at the appraised amount on May 8, 2014.
	Others	0	97,486,771	Collected on January 7, 2015
6	Money deposited with other companies	1,693,444,088	706,433,012	The appraised amount is based on the amount actually converted into cash on or prior to September 27, 2016.
	CoinLab	500,000,000	0	Pending litigation
	Others	1,193,444,088	706,433,012	Partly collected. As for the residual amount, the trustee is collecting and/or reviewing the collectibility.
7	Tools, furniture and fixtures	104,557,699	32,582,300	The appraised amount is based on the amount actually converted into cash on or prior to September 27, 2016.
	DELL Server	5,649,000	32,382,300	Sold on November 27, 2014. The consideration has already been transferred into the account of the trustee.
	Violin Server	90,623,142		
	Apple Japan; 28 laptop computers	5,383,438		
	Chair	2,902,119	200,000	Sold on June 8, 2015. The consideration has already been transferred into the account of the trustee.

No.	Item	Book value *1	Appraised amount (amount incorporated into the bankruptcy estate)*2	Remarks
8	Security deposit	700,000	0	The appraised amount is based on the amount actually converted into cash on or prior to September 27, 2016.
	The Executive Center Japan K.K.	540,000	0	The contract has been cancelled. Irrecoverable
	The Executive Center Japan K.K. (Security deposit for parking spaces)	160,000	0	The contract has been cancelled. Irrecoverable
9	Guaranty money deposited	10,586,875	10,587,933	This is a refund of the money for release from provisional seizure deposited by the bankrupt and has already been collected.
10	Development expenses	85,875,146	0	The appraised amount is based on the amount actually converted into cash on or prior to September 27, 2016.
	Applico Inc.	33,453,375	0	No value
	Internet Escrow Services	3,073,459	0	No value
	Mandalah KK	31,993,500	0	No value
	The Phuse Inc.	4,572,513	0	No value
	Winsoft Technology Solutions Inc.	12,782,299	0	This development expense is currently under investigation, but may be an expense spent in the past and may have no value.
11	Interest income	0	356,617	Interest on deposit
12	Prepayment for filing bankruptcy	0	18,063,297	
	Prepayment for filing bankruptcy against Robert Marie Mark Karpeles	0	3,026,000	Return of prepayment for filing bankruptcy against Robert Marie Mark Karpeles (including return of postal stamps, etc.)
	Prepayment for filing bankruptcy against TIBANNE Co., Ltd.	0	15,037,297	Return of prepayment for filing bankruptcy against TIBANNE (including return of postal stamps, etc.)
Total assets *3		3,990,797,660	1,681,121,144	

Liabilities

No.	Item	Book value	Reported amount	Remarks
1	Claims on the estate and preferred bankruptcy claims (Taxes and other public charges)	54,374,152	The amount has not yet been determined.	
	Claims on the estate (Other expenses)	19,253,642	The amount has not yet been determined.	
2	General bankruptcy claims (the "Bankruptcy Claims Related to Exchange")	8,256,092,214	263,519,268,303,371	
	General bankruptcy claims (Transacting parties, etc.)	402,470,293	13,119,083,453	
Total liabilities *3		8,732,190,301	The amount has not yet been determined.	

*1 The amounts stated in the "book value" column are, as a rule, entered by referring to the book value as of April 24, 2014, and such amounts do not correspond to their respective amounts of proceeds from their conversion into cash.

*2 As a rule, the "appraised amount (amount incorporated into the bankruptcy estate)" shows the amount actually collected on or prior to September 27, 2016.

*3 The bitcoins held by the bankrupt entity are not included in the assets set forth above. In addition, the amount of bitcoins managed by the bankruptcy estate as of September 21, 2016 is 202,185.35450043 BTC.

*4 This list has been prepared based on the investigation results at the present point in time, and assets or liabilities not included in this list may be discovered as a result of further investigation.

* This translation is prepared for reference purpose only. The Japanese version is the original and if there is any discrepancy between the Japanese original and this translation, the Japanese original supersedes and governs.

[Translation]

Income and Expenditure Statement

From April 24, 2014

Through September 27, 2016

[Case Number:] Tokyo District Court 2014 (*fu*) No. 3830

Bankrupt Entity: MtGox Co., Ltd.

Bankruptcy Trustee: Nobuaki Kobayashi, Attorney-at-law

(In JPY)

Income			Expenditure		
No.	Abstract	Amount	No.	Abstract	Amount
1	Cash and deposits succeeded from the bankrupt	766,593,252	1	Office expenses	30,191,242
2	Deposits succeeded from the court	2,000,000	2	Expenses for notice of commencement of bankruptcy proceedings to bankruptcy	6,890,292
3	Collection of monies deposited	10,587,933	3	Supplies expenses	8,840,785
4	Interest income	356,617	4	Professional fees	275,530,917
5	Tax refund	331,600	5	Outsourcing fees	125,418,228
6	Collection of money deposited with other companies	706,433,012	6	Settlement Money (Expense for terminating telecommunication related agreement)	6,310,433
7	Money provided as assistance by Payward under the contract for providing assistance and others in bankruptcy proceedings	32,382,300	7	Transportation expenses	298,930
8	Collection of deposits paid	97,486,771	8	Rent and deposit for the bankruptcy trustee's office	5,260,540
9	Proceeds from sale of fixtures	200,000	9	Tax and public dues (withholding tax of trustee's fee, etc.)	29,010,413
10	Price for assignment of loan to K.K. Shade3D	46,686,362	10	Call center expense	6,335,718
11	Return of prepayment for filing bankruptcy against Robert Marie Mark Karpeles (including return of postal stamps, etc.)	3,026,000	11	Prepayment for filing bankruptcy against TIBANNE	15,000,000
12	Return of prepayment for filing bankruptcy against TIBANNE (including return of postal stamps, etc.)	15,037,297	12	Trustee's fee	114,550,633
			13	Prepayment for filing bankruptcy against Robert Marie Mark Karpeles	3,000,000
Total		1,681,121,144	Total		626,638,131

Balance	1,054,483,013
---------	---------------

* This translation is prepared for reference purpose only. The Japanese version is the original and if there is any discrepancy between the Japanese original and this translation, the Japanese original supersedes and governs.

[Translation]

[Case Number:] Tokyo District Court 2014 (*fu*) No. 3830

Bankrupt Entity: MtGox Co., Ltd.

Bankruptcy Trustee: Nobuaki Kobayashi, Attorney-at-law

(As of April 24, 2014, the date of the order of commencement of bankruptcy proceedings)

[Bankruptcy] Balance Sheet

In JPY

Item	Appraised amount (amount incorporated into the bankruptcy estate)*1	Item	Filing amount
Cash and deposits	1,359,603	Claims on the estate and preferred bankruptcy claims *3	73,627,794
Short-term loans	46,686,362	General bankruptcy claims	263,532,387,386,824
Accounts receivable	331,600		
Provisional payment	2,000,000		
Deposits paid	862,720,420		
Money deposited with other companies	706,433,012		
Tools, furniture and fixtures	32,582,300		
Security deposit	0		
Guaranty money deposited	10,587,933		
Development expenses	0		
Interest income	356,617		
Prepayment for filing bankruptcy	18,063,297		
Total assets *2	1,681,121,144	Total liabilities	263,532,461,014,618

*1 The "appraised amount (amount incorporated into the bankruptcy estate)" shows the amount actually collected on or prior to September 27, 2016.

*2 The bitcoins held by the bankrupt entity are not included in the assets set forth above. In addition, the amount of bitcoins managed by the bankruptcy estate as of September 21, 2016 is 202,185.35450043 BTC.

*3 The amounts of these liabilities are based on the book value of the bankrupt at the time of the order of commencement of bankruptcy proceedings because requests for distribution have not yet been completed.

*4 This balance sheet has been prepared based on the investigation results at the present point in time, and assets or liabilities not included in this balance sheet may be discovered as a result of further investigation.

* This translation is prepared for reference purpose only. The Japanese version is the original and if there is any discrepancy between the Japanese original and this translation, the Japanese original supersedes and governs.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

MtGox Co., Ltd. (a/k/a MtGox KK),

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 14-31229-sgj-15

**ORDER APPROVING (I) SETTLEMENT
AGREEMENT WITH U.S. GOVERNMENT;
(II) TRANSFER OF SEIZED FUNDS IN ACCORDANCE
WITH THE SETTLEMENT AGREEMENT, PURSUANT
TO 11 U.S.C. §§363 AND 1520(a)(2); AND (III) REPATRIATION
OF THE RELEASED FUNDS TO JAPAN FOR DISTRIBUTION IN THE
JAPAN BANKRUPTCY PROCEEDING PURSUANT TO 11 U.S.C § 1521(b)**

This matter coming before the Court on the motion (the “Motion”) of Nobuaki Kobayashi, in his capacity as the bankruptcy trustee and foreign representative (the “Foreign Representative”) of MtGox Co., Ltd., a/k/a MtGox KK, a debtor in a bankruptcy proceeding under Japanese law (the “Japan Bankruptcy”), currently pending before the Twentieth Civil Division of the Tokyo District Court, Japan, for an Order: (i) approving the Settlement

Agreement;¹ (ii) pursuant to Bankruptcy Code Sections 363 and 1520(a)(2), approving the transfer of Released Funds to the Foreign Representative and the forfeiture of the Forfeited Funds to the Government in accordance with the Settlement Agreement; and (iii) pursuant to Bankruptcy Code Section 1521(b), approving the repatriation of the Released Funds to Japan for distribution in the Japan Bankruptcy; and the Court having jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having determined that the legal and factual bases set forth in the Motion establish cause for the relief granted herein;

IT IS HEREBY ORDERED that the Motion is granted to the extent set forth herein;

IT IS FURTHER ORDERED that the Settlement Agreement is approved pursuant to 11 U.S.C. §§ 363 and 1520(a)(2) insofar as it provides for the transfer of an interest of the Debtor in property within the territorial jurisdiction of the United States;

IT IS FURTHER ORDERED that, pursuant to 11 U.S.C. §§ 363 and 1520(a)(2), the Released Funds are authorized to be transferred to the Foreign Representative, and the Foreign Representative is authorized to forfeit the Forfeited Funds to the Government in accordance with the Settlement Agreement;

IT IS FURTHER ORDERED that, pursuant to 11 U.S.C. § 1521(b), the Released Funds are authorized to be repatriated to Japan for distribution in the Japan Bankruptcy; and

IT IS FURTHER ORDERED that the Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and enforcement of this Order.

End of Order

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

David J. Molton
Daniel J. Saval
BROWN RUDNICK LLP
Seven Times Square
New York, New York 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801
Email: dmolton@brownrudnick.com
Email: dsaval@brownrudnick.com

- and -

Marcus A. Helt (TX 24052187)
Thomas Scannell (TX 24070559)
GARDERE WYNNE SEWELL LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
Email: mhelt@gardere.com
Email: tscannell@gardere.com

*Counsel for Nobuaki Kobayashi, in his capacity
as the Bankruptcy Trustee and Foreign Representative
of MtGox Co., Ltd., a/k/a MtGox KK*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

MtGox Co., Ltd. (a/k/a MtGox KK),

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 14-31229-sgj-15

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing on the *Foreign Representative's Motion for an Order Approving (I) Settlement Agreement with U.S. Government; (II) Transfer of Seized Funds in Accordance with the Settlement Agreement Pursuant to 11 U.S.C. §§ 363 and 1520(a)(2); and (III) Repatriation of Released Funds to Japan for Distribution in the Japan Bankruptcy*

Proceedings Pursuant to 11 U.S.C. § 1521(b) [Docket No. 174] has been scheduled for **April 24, 2017, at 9:30 a.m. (prevailing Central time)** before the Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge for the Northern District of Texas, 1100 Commerce Street, Courtroom 1428, Dallas, Texas 75242-1496.

Dated: February 28, 2017

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

/s/ Thomas Scannell

Marcus A. Helt (TX 24052187)
Thomas Scannell (TX 24070559)
Gardere Wynne Sewell LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
Email: mhelt@gardere.com
Email: tscannell@gardere.com

- and -

BROWN RUDNICK LLP

David J. Molton
Daniel J. Saval
Seven Times Square
New York, New York 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801
Email: dmolton@brownrudnick.com
Email: dsaval@brownrudnick.com

*Counsel for Nobuaki Kobayashi, in his capacity
as the Trustee and Foreign Representative
of MtGox Co., Ltd., a/k/a MtGox KK*