

FEDERAL RESERVE SYSTEM

The Bank of East Asia, Limited  
Hong Kong SAR, People's Republic of China

Order Approving Establishment of a Branch

The Bank of East Asia, Limited (“BEA”), Hong Kong SAR (“Hong Kong”), People’s Republic of China (“China”), a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA<sup>1</sup> to upgrade its existing limited federal branch in Los Angeles, California, to a full-service branch.<sup>2</sup> The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.<sup>3</sup>

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Los Angeles, California (*The Los Angeles Daily News*, July 2, 2012). The time for filing comments has expired, and the Board has considered all comments received.

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<sup>1</sup> 12 U.S.C. § 3105(d).

<sup>2</sup> As a limited branch, the Los Angeles branch is prohibited from accepting deposits from sources other than those permitted by section 25A of the Federal Reserve Act. Under section 25A of the Federal Reserve Act, an Edge corporation may receive deposits outside the United States and only such deposits within the United States that are incidental to or for the purpose of carrying out transactions in foreign countries. 12 U.S.C. § 615(a). Regulation K defines the extent of permissible deposit-taking activities of Edge corporations. 12 CFR 211.6(a)(1). Upgrading the limited branch to a full-service branch would permit the branch to accept wholesale domestic deposits.

<sup>3</sup> Under the Board’s Regulation K, upgrading a limited branch to a full-service branch requires Board approval. 12 CFR 211.21(f) and (l)(4); 12 CFR 211.24(a)(1)(A).

BEA, with total consolidated assets of approximately \$101.0 billion, is the sixth largest bank in Hong Kong.<sup>4</sup> Sumitomo Mitsui Financial Group (“SMFG”), through its subsidiary, Sumitomo Mitsui Banking Corporation, both of Tokyo, Japan, owns approximately 19 percent of the voting shares of BEA.<sup>5</sup> Fundació Bancaria Caixa d’Estalvis i Pensions de Barcelona, “la Caixa” (“la Caixa”), through its subsidiary, Criteria Caixa, S.A., both of Barcelona, Spain, owns approximately 17.3 percent of the voting shares of BEA.<sup>6</sup> Guoco Management Company Limited (“Guoco”), Hong Kong, China, owns approximately 14.2 percent of the voting shares of BEA.<sup>7</sup> In addition, Elliot Capital Advisors, L.P. (“Elliot”), Wilmington, Delaware,

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<sup>4</sup> Asset data are as of June 30, 2017, and ranking data are as of December 31, 2016, and each figure is based on the exchange rate as of the respective date. Ownership data are as of December 31, 2016.

<sup>5</sup> SMFG received Board approval to acquire up to 19.9 percent of BEA’s shares. See Sumitomo Mitsui Financial Group, FRB Order No. 2015-07 (February 20, 2015).

<sup>6</sup> Both SMFG and la Caixa have provided passivity commitments to the Board to ensure that their ownership in, and business relationships with, BEA would not enable them or their affiliates to exercise a controlling influence over BEA for the purposes of the Bank Holding Company Act of 1956, as amended.

<sup>7</sup> Guoco is the beneficial owner of the shares, and a number of affiliated companies and individuals (together with Guoco, the “Guoco Group”) are deemed to have an interest in the shares through their direct or indirect ownership in Guoco. The Guoco Group has no director or senior management interlocks with BEA and does not engage in material business relationships with BEA. In connection with this application, BEA has committed to monitor the Guoco Group’s ownership of BEA and will inform the Federal Reserve Bank of New York if (1) the Guoco Group acquires more than 20 percent of BEA’s voting shares, (2) the Guoco Group nominates a director to BEA’s board of directors, (3) an individual associated with the Guoco Group is nominated to BEA’s board of directors, or (4) the Guoco Group proposes an item for vote at a shareholder meeting of BEA.

owns approximately 7.0 percent of the voting shares of BEA.<sup>8</sup> No other shareholder owns 5 percent or more of BEA's shares.<sup>9</sup>

BEA engages primarily in retail and commercial banking, wealth management, and insurance services. Outside of Hong Kong, BEA operates a bank subsidiary and branches in China and branches in Macau, Taiwan, the United Kingdom, Singapore, and Malaysia. In the United States, BEA operates three branches<sup>10</sup> and controls Industrial and Commercial Bank of China, National Association ("ICBC-USA"), New York City.<sup>11</sup> BEA is a qualifying foreign banking organization under Regulation K.<sup>12</sup>

BEA's home state is New York. BEA proposes to establish this branch outside of its home state by upgrading its Los Angeles limited branch to a full-service branch pursuant to section 5(a)(7)(B) of the IBA.<sup>13</sup>

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank has

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<sup>8</sup> Elliot's ownership in BEA is dispersed among a number of companies associated with Elliot, including funds managed by Elliot.

<sup>9</sup> HKSCC Nominees Limited and The Bank of East Asia (Nominees) Limited hold approximately 79.7 percent and 6.3 percent, respectively, of the shares of BEA as the registered nominees of other shareholders.

<sup>10</sup> In addition to the limited federal branch in Los Angeles, BEA operates both an insured and an uninsured federal branch in New York City.

<sup>11</sup> BEA and its subsidiary, East Asia Holding Company, Inc., New York, New York, own 20 percent of the voting shares of ICBC-USA and are bank holding companies by virtue of their control of ICBC-USA.

<sup>12</sup> 12 CFR 211.23(a).

<sup>13</sup> 12 U.S.C. § 3103(a)(7)(B). That section permits the upgrade of a limited branch to a full-service branch outside a foreign bank's home state if the establishment and operation of the full-service branch is permitted by the host state and if the limited branch was in operation in the host state prior to September 29, 1994. The proposed upgrade meets the requirements of that section.

furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.<sup>14</sup> The Board also considers additional standards as set forth in the IBA and Regulation K.<sup>15</sup>

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<sup>14</sup> 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to an affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

<sup>15</sup> 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i) whether the bank's home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes;

As noted above, BEA engages directly in the business of banking outside the United States. BEA also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

The Board previously has determined, in connection with applications involving BEA and other banks in Hong Kong, that those banks were subject to comprehensive supervision on a consolidated basis by their home jurisdiction supervisor, the Hong Kong Monetary Authority (“HKMA”).<sup>16</sup> BEA continues to be supervised by the HKMA on substantially the same terms and conditions. Based on all the facts of record, BEA continues to be subject to comprehensive supervision on a consolidated basis by its home jurisdiction supervisor.

The financial and managerial and other applicable factors in the case have also been taken into account. The HKMA has no objection to the establishment of the proposed full-service branch. Hong Kong’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Accord”). BEA’s capital is in excess of the minimum levels that would be required by the Accord and is considered

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(vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank’s record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

<sup>16</sup> See Letter dated May 14, 2007, from the Federal Reserve Bank of New York to The Hongkong and Shanghai Banking Corporation Limited; Citic Ka Wah Bank Limited, 89 Federal Reserve Bulletin 435 (2003); Letter dated June 29, 2001, from the Federal Reserve Bank of San Francisco to The Bank of East Asia, Limited; The Bank of East Asia, Limited, 84 Federal Reserve Bulletin 886 (1998); Liu Chong Hing Bank, 81 Federal Reserve Bulletin 905 (1995); Hong Kong and Shanghai Banking Company, 81 Federal Reserve Bulletin 902 (1995); Dah Sing Bank, Ltd., 80 Federal Reserve Bulletin 182 (1994).

equivalent to capital that would be required of a U.S. banking organization. BEA appears to have the experience and capacity to support the proposed branch and has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general. Taking into consideration BEA's overall financial and managerial resources, financial and managerial factors are considered consistent with approval.

Hong Kong is a member of the Financial Action Task Force ("FATF") and subscribes to the FATF's recommendations on measures to combat money laundering and terrorist financing. In accordance with these recommendations, Hong Kong has enacted laws and developed regulatory standards to deter money laundering and terrorist financing. Money laundering is a criminal offense in Hong Kong, and Hong Kong financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering and terrorist financing throughout their worldwide operations. BEA has policies and procedures to comply with these laws and regulations, and BEA's compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

BEA has committed to make available to the Board such information on the operations of BEA and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, BEA has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the HKMA may share information on BEA's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that BEA

has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.<sup>17</sup> Information relevant to the standard regarding risk to the stability of the United States financial system has been reviewed. In particular, consideration has been given to (1) the size and scope of BEA's activities, including the type of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability, and (2) the framework in place for supervising BEA in its home jurisdiction. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by BEA as well as to the terms and conditions set forth in this order, BEA's application to upgrade its limited branch in Los Angeles to a full-service branch is hereby approved by the Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.<sup>18</sup> Should any restrictions on access to information on the operations or activities of BEA and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by BEA or its affiliates with applicable federal statutes, the Board may require termination of any of BEA's direct

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<sup>17</sup> 12 U.S.C. § 3105(d)(3)(E).

<sup>18</sup> 12 CFR 265.7(d)(12).

or indirect activities in the United States or, in the case of any such operation licensed by the Office of the Comptroller of the Currency (“OCC”), recommend termination of such operation. Approval of this application also is specifically conditioned on compliance by BEA with the commitments made in connection with this application and with the conditions in this order.<sup>19</sup> The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board,  
effective September 28, 2017.

*Margaret McCloskey Shanks (signed)*

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Margaret McCloskey Shanks  
Deputy Secretary of the Board

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<sup>19</sup> The Board’s authority to approve the upgrade of the limited branch parallels the continuing authority of the OCC to license offices of a foreign bank. The Board’s approval of this application does not supplant the authority of the OCC to license the proposed office of BEA in accordance with any terms or conditions that the OCC may impose.