

FEDERAL RESERVE SYSTEM

Bank of Communications Co., Ltd.
Shanghai, People's Republic of China

Order Approving Establishment of a Branch

Bank of Communications Co., Ltd. ("BOCOM"), Shanghai, People's Republic of China, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA¹ to establish a limited federal branch in San Francisco, California. 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.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in San Francisco, California (*The Recorder*, March 9, 2009). The time for filing comments has expired, and the Board has considered all comments received.

BOCOM, with total assets of approximately \$599 billion, is the fifth largest bank in China.² The government of China owns approximately 43.8 percent of BOCOM's shares.³ The Hongkong and Shanghai Banking Corporation Limited, Hong Kong, People's Republic of China, a subsidiary of HSBC Holdings plc, London, England, owns 19 percent of the shares of BOCOM. No other shareholder owns more than 5 percent of the shares of BOCOM.

BOCOM engages primarily in corporate and retail banking and treasury operations throughout China, including Hong Kong and Macau. Outside China, BOCOM operates branches in Japan, Singapore, South Korea, and Germany and a representative office

¹ 12 U.S.C. § 3105(d).

² Asset and ranking data are as of December 31, 2010.

³ The Ministry of Finance of the People's Republic of China owns approximately 26.5 percent, and the National Council for Social Security Fund of the People's Republic of China ("NCSFF") owns approximately 11.4 percent of BOCOM's total outstanding shares. HKSCC Nominees Limited, an indirect, wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited, holds NCSFF's shares as its registered nominee. The remaining 6 percent is widely held among state-owned enterprises.

in the United Kingdom. In the United States, BOCOM operates a federal branch in New York. BOCOM would meet the requirements for a qualifying foreign banking organization under Regulation K.⁴

The proposed San Francisco branch would engage in wholesale deposit-taking, lending, trade finance, and other banking services. As a limited branch, it would be prohibited from accepting deposits from sources other than those permitted by section 5 of the IBA and section 25A of the Federal Reserve Act.⁵

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished the Board with the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisors.⁶ The Board also considers additional standards as set forth in the IBA and Regulation K.⁷

⁴ 12 CFR 211.23(a).

⁵ BOCOM's home state is New York. Under section 5 of the IBA, a foreign bank may establish a branch outside its home state if the branch limits its deposit-taking to that of an Edge corporation operating under section 25A of the Federal Reserve Act. 12 U.S.C. § 3103(a)(7)(A). 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).

⁶ 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. 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; (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.

⁷ 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: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the appropriate supervisors in the home country may share

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.⁸ This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve the application provided that: (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval.⁹ In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board must also consider whether the foreign bank has adopted and implemented procedures to combat money laundering.¹⁰ The Board also may take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.¹¹ That is the standard applied by the Board in this case.

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

The Board is continuing to work actively with the appropriate supervisory authorities in China to understand their system for the consolidated supervision of BOCOM and other major Chinese banks. Those discussions are constructive and ongoing. Based on all the facts of record, the Board has determined that BOCOM's home country supervisory authority is, at a minimum, actively working to establish arrangements for the consolidated supervision of BOCOM and that considerations relating to the steps taken by BOCOM and its

information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; the bank's record of operation. The Board may also take into account, 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).

⁸ 12 U.S.C. § 3105(d)(6).

⁹ 12 U.S.C. § 3105(d)(6)(A).

¹⁰ 12 U.S.C. § 3105(d)(6)(B).

¹¹ Id.

home jurisdiction to combat money laundering are consistent with approval under this standard. The Board has approved applications from other Chinese banks to establish U.S. branches under this standard.¹²

The China Banking Regulatory Commission (“CBRC”) is the principal supervisory authority of BOCOM, including its foreign subsidiaries and affiliates.¹³ The CBRC has the authority to license banks, regulate their activities, and approve expansion, both domestically and abroad. The CBRC has no objection to BOCOM’s establishment of the proposed branch. It supervises and regulates BOCOM, including its subsidiaries and foreign operations, through a combination of targeted on-site examinations and continuous consolidated off-site monitoring. Since its establishment in 2003, the CBRC has enhanced existing supervisory programs and developed new policies and procedures designed to create a framework for the consolidated supervision of banks in China.

On-site examinations by the CBRC cover, among other things, the major areas of operations: corporate governance and senior management responsibilities; capital adequacy; asset structure and asset quality (including structure and quality of loans); off-balance-sheet activities; earnings; liquidity; liability structure and funding sources; expansionary plans; internal controls (including accounting controls and administrative systems); legal compliance; accounting supervision and internal auditing (including accounting controls and administrative systems); and any other areas deemed necessary by the CBRC.

Off-site monitoring is conducted through the review of required annual, semiannual, quarterly, or monthly reports on, among other things, asset quality, capital adequacy, liquidity, risk management, corporate governance, affiliate transactions, and internal controls.

¹² See China Merchants Bank Co., Ltd., 94 Federal Reserve Bulletin C24 (2008); Industrial and Commercial Bank of China, Limited, 94 Federal Reserve Bulletin C114 (2008); and China Construction Bank Corporation, 95 Federal Reserve Bulletin B54 (2009).

¹³ Before April 2003, the People’s Bank of China (“PBOC”) acted both as China’s central bank and its primary banking supervisor, including oversight of anti-money laundering matters. In April 2003, the CBRC was established as the primary banking supervisor and assumed the majority of the PBOC’s regulatory functions. The PBOC maintained its roles as China’s central bank and the primary supervisor for anti-money laundering matters.

BOCOM is required to be audited annually by an accounting firm approved by the PBOC, and the results are shared with the CBRC and the PBOC. The scope of the required audit includes a review of BOCOM's financial statements, asset quality, and internal controls. The CBRC may order a special audit at any time. In addition, in connection with its listing on the Shanghai and Hong Kong stock exchanges, BOCOM is required to have external audits conducted under both International Financial Reporting Standards and generally accepted accounting practices under Chinese law. BOCOM is required to publish its financial statements annually. BOCOM conducts internal audits of its offices and operations, including its overseas operations, generally on an annual schedule. The internal audit results are shared with the CBRC, the PBOC, and BOCOM's external auditors. The proposed branch would be subject to internal audits.

Chinese laws impose various prudential limitations on banks, including limits on transactions with affiliates and on large exposures. The CBRC is authorized to require any bank to provide information and to impose sanctions for failure to comply with such requests. The CBRC also has authority to impose administrative penalties, including warnings, fines, and removal from office, for violations of applicable laws and rules. Criminal violations are transferred to the judicial authorities for investigation and prosecution.

In recent years, the Chinese government has enhanced its anti-money laundering regime. In 2005, it took initial steps to adopt an anti-money laundering law, the PRC Anti-Money Laundering Law ("AML Law"). The AML Law and two related rules, the Rules for Anti-Money Laundering by Financial Institutions ("AML Rules") and the Administrative Rules for the Reporting of Large-Value and Suspicious Transactions by Financial Institutions ("LVT/STR Rules") were enacted in October 2006 and December 2006, respectively. The AML Law and AML Rules became effective on January 1, 2007, and the LVT/STR Rules became effective on March 1, 2007. Together, the law and two related rules establish a regulatory infrastructure to assist China's anti-money laundering efforts.

An Anti-Money Laundering Bureau ("AML Bureau") was established within the PBOC in 2003¹⁴ to coordinate anti-money laundering efforts at the PBOC and among other

¹⁴ The AML Bureau conducts administrative investigations and handles violations of AML Rules. Money laundering cases are referred to the Ministry of Public Security, China's main law enforcement body, for investigation and prosecution.

agencies. The AML Bureau also supervised the creation of the China Anti-Money Laundering Monitoring and Analysis Center (“AML Center”) in September 2004. The AML Center collects, monitors, analyzes, and disseminates suspicious transaction reports and large-value transaction reports. The AML Center sends suspicious transaction reports to the AML Bureau for further investigation. The PBOC issued additional rules in 2007 and 2008 providing clarification of, or further strengthening the implementation of, operating procedures, customer due diligence and risk classification, recordkeeping, AML monitoring and reporting of suspicious transactions to the AML Center, and the international remittance agency business. China improved its AML regime in 2009 by amending its criminal law to further criminalize money laundering activities and other financial crimes.

China participates in international fora that address the prevention of money laundering and terrorist financing. China is a member of the Financial Action Task Force (“FATF”)¹⁵ and is a party to the 1988 U.N. Convention Against the Illicit Traffic of Narcotics and Psychotropic Substances, the U.N. Convention Against Transnational Organized Crime, the U.N. Convention Against Corruption, and the U.N. International Convention for the Suppression of the Financing of Terrorism.

As noted, the PBOC is China’s primary supervisor for anti-money laundering matters. Like the CBRC, the PBOC supervises and regulates BOCOM through a combination of on-site examinations and off-site monitoring. On-site examinations focus on BOCOM’s compliance with anti-money laundering laws and rules, including the AML Law, AML Rules, and LVT/STR Rules. Off-site monitoring is conducted through the review of periodic reports. In performing its responsibilities, the PBOC may require any bank to provide information and can impose administrative penalties for violations of applicable laws and rules.

The PBOC over time has increased requirements for its supervised institutions. In 2008, the PBOC promulgated a notice requiring the designation of a chief AML compliance officer as a high-level manager to ensure the provision of adequate AML resources and timely flow of information to employees with AML responsibility throughout the institution. The same notice also required the risk rating of customers, among other improvements in AML controls. The PBOC requires the filing of reports on suspicious activities and certain other transactions,

¹⁵ China became a member of FATF in June 2007.

and it recently has developed a policy of encouraging its supervised institutions to move from prescriptive criteria towards a more risk-based and subjective method of suspicious activity detection and reporting. In addition, banks are required to establish a customer identification system in accordance with applicable rules jointly promulgated by the PBOC and the three functional financial services regulators,¹⁶ to record the identities of customers and information relating to each transaction, and to retain retail transaction documents and books. BOCOM has policies and procedures to comply with Chinese laws and rules regarding anti-money laundering. BOCOM represents that it has taken additional steps on its own initiative to combat money laundering and other illegal activities. BOCOM states that it has implemented measures consistent with the recommendations of the FATF and that it has put in place policies, procedures, and controls to ensure ongoing compliance with all statutory and regulatory requirements, including designating anti-money laundering compliance personnel and conducting routine employee training at all BOCOM branches. BOCOM's compliance with anti-money laundering requirements is monitored by the PBOC and by BOCOM's internal and external auditors.

The Board has also considered carefully the financial and managerial factors in this case. China has adopted risk-based capital standards that are consistent with those established by the Basel Capital Accord ("Accord"). BOCOM's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of BOCOM are consistent with approval, and BOCOM appears to have the experience and capacity to support the proposed branch. In addition, BOCOM has established controls and procedures for the proposed branch to ensure compliance with U.S. law. In particular, BOCOM has stated that it will apply strict anti-money laundering policies and procedures at the branch consistent with U.S. law and regulation and will establish an internal control system at the branch consistent with U.S. requirements to ensure compliance with those policies and procedures.

¹⁶ Those regulators are the CBRC, China Securities Regulatory Commission, and China Insurance Regulatory Commission.

With respect to access to information about BOCOM's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which BOCOM operates and has communicated with relevant government authorities regarding access to information. BOCOM has committed to make available to the Board such information on the operations of BOCOM 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, BOCOM 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 light of these commitments and other facts of record, and subject to the condition described below, the Board has determined that BOCOM has provided adequate assurances of access to any necessary information that the Board may request.

China has made progress toward adopting a system of financial regulation for its financial system to mitigate the risk to financial stability from its banks. The PBOC, CBRC, other financial supervisory agencies, and other agencies in China have taken joint measures to strengthen and improve macroeconomic management, promote financial reform, and maintain financial stability. China has established a system of preliminary indicators for monitoring financial stability, developed methodology and operational frameworks for monitoring financial risks, and published an annual *China Financial Stability Report* since 2005. The CBRC has established mechanisms to cooperate with supervisory authorities in at least 25 other countries for the supervision of cross-border banking. In addition, the PBOC and CBRC officially joined the Basel Committee on Banking Supervision on behalf of China and since their accession, have actively participated in the revision of Basel II and in working groups. China also is active in the ongoing work of the Financial Stability Board.

On the basis of all the facts of record, and subject to the commitments made by BOCOM, as well as the terms and conditions set forth in this order, BOCOM's application to establish a branch is hereby approved. Should any restrictions on access to information on the operations or activities of BOCOM and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by BOCOM or its affiliates with applicable federal statutes, the Board may require termination of any of BOCOM's direct 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 BOCOM with the commitments made in connection with this application and with the conditions in this order.¹⁷ 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 12 U.S.C. § 1818 against BOCOM and its affiliates.

By order of the Board of Governors,¹⁸ effective April 8, 2011.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

¹⁷ The Board’s authority to approve the establishment of the proposed 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 BOCOM in accordance with any terms or conditions that it may impose.

¹⁸ Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, and Raskin.