

FRB Order No. 2012-11  
(October 31, 2012)

FEDERAL RESERVE SYSTEM

Sumitomo Mitsui Financial Group, Inc.  
Sumitomo Mitsui Banking Corporation  
Tokyo, Japan

Order Approving Acquisition of Shares of a  
Bank Holding Company

Sumitomo Mitsui Financial Group, Inc. (“SMFG”) and Sumitomo Mitsui Banking Corporation (“SMBC”), both of Tokyo, Japan (collectively, “Applicants”), foreign banking organizations that are bank holding companies under the Bank Holding Company Act of 1956, as amended (“BHC Act”),<sup>1</sup> have requested the Board’s approval under section 3(a) of the BHC Act to acquire up to 9.9 percent of the voting shares of The Bank of East Asia, Limited (“BEA”), Hong Kong SAR, People’s Republic of China, a foreign banking organization that is a bank holding company under the BHC Act by virtue of its ownership of The Bank of East Asia (U.S.A.) National Association (“BEA-USA”), New York, New York.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (76 Federal Register 70722

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<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> 12 CFR 225.11(c)(1). BEA and its subsidiary, East Asia Holding Company, Inc., New York, New York, are bank holding companies by virtue of their ownership of 20 percent of the voting shares of BEA-USA. With the Board’s prior approval, the Industrial and Commercial Bank of China Limited (“ICBC”), Beijing, People’s Republic of China, recently acquired 80 percent of the voting shares of BEA-USA from BEA. See Industrial and Commercial Bank of China Limited, FRB Order No. 2012-4 (May 9, 2012). BEA has an option to sell the remaining shares of BEA-USA to ICBC beginning 18 months after this transaction. If BEA exercises its option, BEA would continue to be treated as a bank holding company subject to the BHC Act because it operates branches in the United States. 12 U.S.C. § 3106(a).

(November 15, 2011)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

SMFG, with total assets of approximately \$1.7 trillion, is the third largest banking organization in Japan.<sup>3</sup> SMFG, through its subsidiaries, including SMBC, engages in a broad range of banking and financial services throughout Japan, Asia, the United Kingdom, and North and South America. Outside Japan, SMFG owns subsidiary banks in the United Kingdom, Brazil, Canada, People's Republic of China, Indonesia, Russia, and Malaysia, and SMBC operates branches in more than a dozen additional countries. In the United States, Applicants own Manufacturers Bank, Los Angeles, California, with consolidated assets of \$2.1 billion and deposits of approximately \$1.6 billion. Manufacturers Bank engages in retail and commercial banking in the United States through 10 branches in California. SMBC operates uninsured state branches in New York City, Los Angeles, and San Francisco and representative offices in Houston and Jersey City. Applicants also maintain nonbanking subsidiaries in the United States.<sup>4</sup> SMFG and SMBC are each a qualifying foreign banking organization and, upon consummation of the proposal, would continue to meet the requirements for a qualifying foreign banking organization under Regulation K.<sup>5</sup>

BEA, with total consolidated assets of approximately \$82.6 billion, is the third largest bank in Hong Kong. BEA engages primarily in retail and commercial

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<sup>3</sup> Unless otherwise provided, asset and ranking data are as of June 30, 2012, and are based on the exchange rate as of that date, as appropriate. Japan Trustee Services Bank, Ltd. ("JTTSB") and The Master Trust Bank of Japan, Ltd. ("MTBJ") own approximately 6.4 percent and 5.2 percent of the shares of SMFG, respectively, as of March 31, 2012. Both JTTSB and MTBJ hold these shares as registered nominee accounts for various beneficial shareholders, none of which owns 5 percent or more of the shares of SMFG. No other shareholder owns 5 percent or more of the outstanding shares of SMFG.

<sup>4</sup> These nonbanking subsidiaries include SMBC Capital Markets, Inc.; SMBC Leasing and Finance, Inc.; SMBC Nikko Securities America, Inc.; and JRI America, Inc., all of New York, New York.

<sup>5</sup> 12 CFR 211.23(a).

banking, wealth management, and insurance services in People's Republic of China, North America, the United Kingdom, and Southeast Asia. In the United States, BEA controls BEA-USA and operates an insured federal branch in New York City and uninsured federal branches in New York City and Los Angeles. BEA-USA, with consolidated assets of approximately \$720.6 million and deposits of approximately \$561.1 million, engages in retail and commercial banking in the United States.

BEA-USA operates 13 branches in New York and California.

#### Noncontrolling Investment

Applicants own approximately 4.7 percent of the voting shares of BEA. Applicants have stated that they do not propose to control or exercise a controlling influence over BEA as a result of the proposal.<sup>6</sup>

Applicants have agreed to abide by certain commitments substantially similar to those on which the Board has previously relied in determining that an investing company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act ("Passivity Commitments"). For example, Applicants have committed not to exercise or attempt to exercise a controlling influence over the management or policies of BEA; not to seek or accept more than one representative on the board of directors of BEA; and not to have any other director, officer, employee, or agent interlocks with BEA or its subsidiaries. The Passivity Commitments also include certain restrictions on the business relationships between Applicants and BEA.

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<sup>6</sup> The Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. See, e.g., Mitsubishi UFG Financial Group, Inc., 95 Federal Reserve Bulletin B34 (2009) (acquisition of up to 24.9 percent of the voting shares of a bank holding company); Brookline Bancorp, MHC, 86 Federal Reserve Bulletin 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company); Mansura Bancshares, Inc., 79 Federal Reserve Bulletin 37 (1993) (acquisition of 9.7 percent of the voting shares of a bank holding company).

Based on these considerations and all the facts of record, the Board has concluded that Applicants would not, as a result of the structure of the proposed transaction, control or exercise a controlling influence over BEA or any of its subsidiaries through the acquisition of up to 9.9 percent of the voting common stock of BEA. The Board notes that the BHC Act requires Applicants to receive the Board's approval before they directly or indirectly acquire additional shares of BEA or attempt to exercise a controlling influence over BEA or any of its subsidiaries.<sup>7</sup>

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>8</sup>

The Board previously has stated that one company need not acquire control of another company to lessen competition between them substantially.<sup>9</sup> The Board has found that noncontrolling interests in directly competing depository institutions may raise competitive issues under the BHC Act and has stated that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.<sup>10</sup>

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<sup>7</sup> 12 U.S.C. § 1842. See, e.g., Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996) ("Emigrant Bancorp Order").

<sup>8</sup> 12 U.S.C. § 1842(c)(1). See, e.g., Emigrant Bancorp Order.

<sup>9</sup> See e.g., Sun Trust Banks, Inc., 76 Federal Reserve Bulletin 542 (1990).

<sup>10</sup> See e.g., BOK Financial Corp., 81 Federal Reserve Bulletin 1052, 1053-54 (1995).

Because the subsidiary banks of Applicants and BEA compete directly in California in the Los Angeles and San Francisco-Oakland-San Jose banking markets,<sup>11</sup> the Board has reviewed the competitive effects of the proposal in these markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) controlled by relevant institutions,<sup>12</sup> and the concentration level of market deposits and the increase in the level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”).<sup>13</sup>

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<sup>11</sup> The Los Angeles banking market is defined as the Los Angeles Ranally Metropolitan Area (“RMA”) and the cities of Acton in Los Angeles County and Rosamond in Kern County. The San Francisco banking market is defined as the San Francisco-Oakland-San Jose RMA and the cities of Byron in Contra Costa County, Hollister and San Juan Bautista in San Bonito County, Pescadero in San Mateo County, and Point Reyes Station in Marsh County. Applicants do not currently compete with BEA in any other relevant banking market. BEA operates an insured branch in New York, and BEA-USA operates in New York, SMBC’s New York branch is not insured by the Federal Deposit Insurance Corporation and generally cannot accept retail deposits. Moreover, neither banking organization controls a significant share of the New York banking market.

<sup>12</sup> Call report, deposit, and market share data are based on data reported by insured depository institutions in the summary of deposits data, as of June 30, 2011. The data are also based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, Inc., 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

<sup>13</sup> Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Los Angeles and San Francisco banking markets. The transaction would not change the HHI in the Los Angeles banking markets and on consummation, the market would remain moderately concentrated, as measured by the HHI.<sup>14</sup> The HHI in the San Francisco banking market would also remain unchanged.<sup>15</sup> In each banking market, numerous competitors would remain in the market.

The DOJ also has reviewed the matter and has advised the Board that it does not believe that the ownership interest of Applicants in BEA is likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the application.

Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval of the proposal.

#### Financial, Managerial, and Other Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources (including consideration of the competence, experience, and integrity of officers, directors, and principal shareholders) and future prospects of the

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confirmed that its guidelines for bank mergers or acquisitions, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>14</sup> The HHI would remain unchanged at 1018 in the Los Angeles banking market, which has 145 insured depository institution competitors. The combined deposits of the institutions involved in the proposal in the banking market represent less than 1 percent of market deposits.

<sup>15</sup> The HHI would remain unchanged at 2048 in the San Francisco banking market, which has 92 insured depository institution competitors. The combined deposits of the institutions involved in the proposal in the banking market represent less than 1 percent of market deposits.

companies and depository institutions involved in the proposal, as well as the effectiveness of these companies in combatting money laundering activities.<sup>16</sup> Section 3 of the BHC Act also requires the Board to determine that an applicant has provided 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 appropriate to determine and enforce compliance with the BHC Act.<sup>17</sup>

The review was conducted in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, and information provided by Applicants and by public commenters. The Board also has consulted with the Japanese Financial Services Agency (“JFSA”), the agency with primary responsibility for the supervision and regulation of Japanese banking organizations, including Applicants.

In evaluating financial factors, the Board reviews the financial condition of the applicants and the target depository institutions. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board also evaluates the effect of the transaction on the financial condition of the applicants, including their capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The capital levels of Applicants exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization seeking to acquire

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<sup>16</sup> The Board has analyzed the effectiveness of Applicants’ anti-money-laundering efforts in connection with the Board’s assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

<sup>17</sup> 12 U.S.C. § 1842(c)(3)(A).

up to 9.9 percent of BEA.<sup>18</sup> Applicants' reported earnings performance and asset quality indicators, including nonperforming loans and reserves for loan losses, are consistent with approval of the proposal. Applicants' U.S. bank subsidiary, Manufacturers Bank, and BEA-USA are each well capitalized and would remain so on consummation.

The proposed transaction is structured as a cash purchase of shares, and Applicants will use existing resources to fund the proposed purchase of shares. In light of the relative size of Applicants to the size of the investment in BEA, the transaction would have a minimal impact on the financial condition of Applicants. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants' and BEA's U.S. operations, including assessments of their management, risk-management systems, and operations. The Board also has considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations, including consultations in connection with this proposal, and the organizations' records of compliance with applicable banking and anti-money-laundering laws. As noted, the Board has also consulted with the JFSA. In addition, the Board has considered the future prospects of Applicants, BEA, Manufacturers Bank, and BEA-USA in light of the financial and managerial resources of the organizations.

The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants have committed that, to the extent not prohibited by applicable law, they will make available to the Board such information on their operations and the operations of their affiliates

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<sup>18</sup> The Board has considered the total, and the tier 1 risk-based, capital ratios and the ratios of tier 1 capital to total consolidated assets of SMFG and SMBC.



that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable them or their affiliates to make such information available to the Board.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board, are consistent with approval.

Supervision or Regulation on a Consolidated Basis

In evaluating this application and as required by section 3 of the BHC Act, the Board has considered whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.<sup>19</sup>

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<sup>19</sup> 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). 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 any 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 under section 211.24 of Regulation K, 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.

The Board previously has determined that SMBC is subject to comprehensive supervision on a consolidated basis by its home country supervisor.<sup>20</sup> SMBC continues to be supervised by the JFSA on substantially the same terms and conditions. Based on this finding and all the facts of record, the Board has concluded that SMBC continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In evaluating this proposal, the Board also has considered whether SMFG is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in its home country. As noted, the JFSA is the supervisor of Japanese banking organizations, including holding companies such as SMFG. As such, the JFSA conducts inspections of SMFG and its subsidiaries and requires SMFG to submit reports about its operations on a consolidated basis. The JFSA also reviews transactions between SMFG and its subsidiaries and has authority to require SMFG to take measures necessary to ensure the safety and soundness of the SMFG organization. The Board has previously determined that other Japanese holding companies of Japanese banks were subject to comprehensive, consolidated supervision by the JFSA.<sup>21</sup> SMFG has represented, and the JFSA has confirmed, that SMFG is subject to the same supervisory regime as those other Japanese holding companies. Based on all the facts of record, the Board has determined that SMFG is subject to comprehensive supervision on a consolidated basis by its appropriate home country authorities for purposes of this application.

In evaluating the effectiveness of Applicants' policies and procedures to combat money-laundering activities in connection with these determinations, the Board considered Applicants' anti-money-laundering policies and procedures as well as the

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<sup>20</sup> The Wakashio Bank, Limited, 89 Federal Reserve Bulletin 217 (2003). SMBC merged with and into The Wakashio Bank, Limited, which was subsequently renamed Sumitomo Mitsui Banking Corporation.

<sup>21</sup> See, e.g., Mitsubishi UFJ Financial Group, Inc. (Order dated June 14, 2011), 97 Federal Reserve Bulletin 10 (2<sup>nd</sup> Quar. 2011); Chuo Mitsui Trust Holdings, Inc. (Order dated March 15, 2011), 97 Federal Reserve Bulletin 30 (1<sup>st</sup> Quar. 2011).

Board's supervisory experiences and those of other relevant banking supervisory organizations with Applicants' compliance record. On the basis of all facts of record, the Board has determined that Applicants' anti-money-laundering measures are consistent with approval.

#### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").<sup>22</sup> The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>23</sup>

The Board has considered all the facts of record, including evaluations of the CRA performance records of Manufacturers Bank, BEA-USA, and BEA's insured New York City branch; data reported by BEA-USA under the Home Mortgage Disclosure Act ("HMDA");<sup>24</sup> other information provided by Applicants; confidential supervisory information; and public comments received on the proposal. A commenter alleged, based on 2009 HMDA data, that BEA-USA had excluded African Americans and Hispanics in its conventional home purchase and refinance lending ("one-to-four family lending") and Asian Americans with income below 100 percent of the median income of the metropolitan statistical area in its refinance lending.

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<sup>22</sup> 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

<sup>23</sup> 12 U.S.C. § 2903.

<sup>24</sup> 12 U.S.C. §§ 2801-2810.

### A. CRA Performance Evaluations

As provided in the CRA, the Board has considered the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions, including BEA-USA. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>25</sup>

Manufacturers Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of November 29, 2010.<sup>26</sup> BEA's insured federal branch in New York City received an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of January 4, 2010.<sup>27</sup> BEA-USA received an "outstanding" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of January 4, 2010.<sup>28</sup> The bank received an "outstanding" rating under each of the lending and community development tests.<sup>29</sup>

BEA-USA has approximately \$561.1 million in total deposits and \$720.6 million in total assets. The bank is primarily a commercial lender and engages in

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<sup>25</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642 at 11665 (2010).

<sup>26</sup> Manufacturers Bank received a high satisfactory in each of the lending, investment, and service tests. The evaluation period was October 25, 2007, to November 29, 2010.

<sup>27</sup> The evaluation period was January 1, 2007, to September 30, 2009. SMBC's and BEA's uninsured branches are not subject to the CRA.

<sup>28</sup> The evaluation period was January 1, 2006, to January 4, 2010.

<sup>29</sup> BEA-USA was evaluated under the intermediate small bank performance criteria, which only include a lending test and a community development test.

limited residential lending.<sup>30</sup> Examiners noted that a substantial majority of BEA-USA's loans were originated in its assessment areas, that the distribution of its loans reflects excellent penetration among businesses of different sizes in the assessment areas, and that the geographic distribution of loans reflects excellent dispersion throughout the assessment areas. Examiners also reported that BEA-USA's community development performance demonstrates excellent responsiveness to the needs of the assessment areas through loans, investments, and services.<sup>31</sup> As indicated above, Applicants would not control BEA or BEA-USA as a result of the proposal and, accordingly, the proposal should not affect BEA-USA's CRA program or performance.

B. HMDA and Compliance with Fair Lending and Other Consumer Protection Laws

The Board has considered the HMDA data for 2009, 2010, and 2011 reported by BEA-USA in its combined assessment areas, as well as the fair lending record of BEA-USA in light of public comments received on the proposal.<sup>32</sup> A commenter alleged, based on HMDA data reported in 2009, that BEA-USA had engaged

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<sup>30</sup> HMDA-reportable loans were not part of BEA-USA's CRA performance evaluation because examiners did not consider the bank's volume of those types of loans to be sufficient enough to review.

<sup>31</sup> BEA-USA controls \$261 million in deposits in the New York banking market, which approximates its CRA assessment area in New York. In that assessment area, BEA-USA made 15 community development loans totaling \$18.6 million, including 5 loans for affordable housing, and 22 qualified investments totaling approximately \$2.6 million, which consisted of \$2.5 million in Fannie Mae investments and \$100,000 in charitable donations. BEA-USA's staff also provided community development services during the review period, including financial literacy and homeownership seminars.

<sup>32</sup> BEA-USA's combined CRA assessment areas consist of Kings, Manhattan, and Queens Counties in the New York-New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area; the San Francisco-San Mateo-Redwood City, California Metropolitan Division and the Alameda County portion of the Oakland-Fremont-Hayward, CA Metropolitan Division, which are part of the greater San Francisco-Oakland-Fremont, California Metropolitan Statistical Area; and the Los Angeles-Long Beach-Glendale Metropolitan Division.

in disparate treatment of minority individuals in its one-to-four family home mortgage lending. Specifically, the commenter has asserted that BEA-USA excludes African Americans and Hispanics in home purchase and refinance lending and discriminates against Asian Americans with income below 100 percent of the median income of the metropolitan statistical area in its refinance lending.

Although the HMDA data provide an insufficient basis by themselves on which to conclude whether or not BEA-USA is excluding or imposing higher costs on any racial or ethnic group on a prohibited basis, the Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending.<sup>33</sup> The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Moreover, the Board believes that all bank holding companies and their affiliates should conduct mortgage lending operations that are free of abusive lending practices and in compliance with all consumer protection laws.

Because of the limitations of HMDA data, the Board has considered these data and taken into account other information, including examination reports that provide evaluations of compliance by BEA-USA with consumer protection laws. The Board also has consulted with the OCC, BEA-USA's primary federal supervisor.

As noted above, BEA-USA is predominantly a commercial lender and makes a limited number of one-to-four family mortgage loans. BEA-USA's one-to-four family mortgage lending largely results from walk-in traffic at BEA-USA's branches, most of which are in Asian American neighborhoods. Throughout its combined

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<sup>33</sup> The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applications than other institutions attract and do not provide for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher cost credit) are not available from HMDA data.

assessment areas, BEA-USA made a total of 32 one-to-four family mortgage loans in 2009, 26 in 2010, and 20 in 2011. During that same time period, BEA-USA received only one application for a one-to-four family mortgage loan from an African American and four applications from Hispanics. The HMDA data also indicate that the bank made a material percentage of its one-to-four family mortgage loans to LMI borrowers (those with incomes of less than 80 percent of the area median income) in BEA-USA's assessment areas. Between 2009 and 2011, 21 percent of BEA-USA's mortgage refinance loans, and 35 percent of BEA-USA's conventional home purchase loans, were made to LMI borrowers.<sup>34</sup>

The record of this application, including confidential supervisory information, also indicates that BEA-USA has taken steps to ensure compliance with fair lending and other consumer protection laws and regulations. In BEA-USA's most recent CRA performance evaluation, examiners noted no evidence of discriminatory or other illegal credit practices.<sup>35</sup> In addition, BEA-USA's loan policies include information on prohibited discriminatory lending practices and its advertising and marketing policy contains specific guidance on practices employees should avoid that would tend to discourage loan applicants on a prohibited basis. Additionally, the bank's employees who are involved in lending are required to participate in annual training that includes compliance with fair lending laws and other applicable laws and regulations.

### C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered all the facts of record, including evaluations of the CRA performance record of Manufacturers Bank (the bank controlled by Applicants), BEA-USA, and other relevant insured depository institutions, information provided by

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<sup>34</sup> More than half of BEA-USA's branches are located in low-to-moderate income communities.

<sup>35</sup> The Bank of East Asia, USA, National Association Community Reinvestment Act Performance Evaluation, January 4, 2010, at 5. Moreover, the CRA performance evaluation noted that BEA-USA's assessment areas do not arbitrarily exclude LMI areas. Id. at 4.

Applicants, comments received on the proposal, and confidential supervisory information. Based on a review of the entire record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval.

### Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act to require the Board also to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”<sup>36</sup>

In this case, the proposed acquisition of a noncontrolling interest in BEA is not a significant expansion by SMFG and would have a de minimis impact on SMFG’s systemic footprint. The value of the additional shares that Applicants propose to purchase is approximately \$415 million.<sup>37</sup> In addition, there is no evidence of any significant increase in interconnectedness, complexity, cross-border activities, or other risk factor, as the proposal merely increases the ownership by Applicants from approximately 4.7 percent to 9.9 percent of the voting shares of BEA. Applicants would neither consider BEA a subsidiary nor consolidate its financial performance on their balance sheets.

Based on these and all the other facts of record, the Board has determined that the proposal would not materially increase risk to the stability of the U.S. financial or banking system.

### Conclusion

Based on the foregoing and all the facts of record, the Board approves the proposal by Applicants to acquire up to 9.9 percent of the voting shares of BEA. In

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<sup>36</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

<sup>37</sup> This value is based on BEA’s listed price on the Hong Kong Stock Exchange as of October 17, 2012, and the exchange rate as of that date.



reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board conditions its decision on Applicants providing to the Board adequate information on their operations and activities as well as those of their affiliates to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes. Should any restrictions on access to information on the operations or activities of Applicants or any of their affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes, the Board may require termination or divestiture of any of Applicants' or their affiliates' direct or indirect activities in the United States.

The Board's approval is specifically conditioned on compliance by Applicants with the conditions imposed in this order and the commitments made to the Board in connection with the proposal.<sup>38</sup> For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection

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<sup>38</sup> The commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public hearing on an application to acquire shares of a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 262.3(e) and 262.25(d). The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit views and, in fact, submitted written comments that the Board has considered in acting on the proposal. The request fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied. The commenter raised additional concerns that address matters beyond the statutory factors the Board is authorized to consider. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>39</sup> effective October 31, 2012.

*(signed)*

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Robert deV. Frierson  
Secretary of the Board

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<sup>39</sup> Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, Raskin, Stein, and Powell.