

FEDERAL RESERVE SYSTEM

Macquarie Bank Limited
Sydney, Australia

Order Approving Establishment of Representative Offices

Macquarie Bank Limited ("Bank"), Sydney, Australia, a foreign bank within the meaning of the International Banking Act (AIBA@), has applied under section 10(a) of the IBA (12 U.S.C. ' 3107(a)) to establish representative offices in New York, New York, and Houston, Texas. 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 representative office 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 New York, New York (*New York Post*, March 28, 2003), and Houston, Texas (*Houston Chronicle*, April 17, 2003). The time for filing comments has expired, and all comments have been considered.

Bank, with total assets of approximately \$25 billion, is the sixth largest bank in Australia.¹ Bank's shares are publicly traded. The largest shareholder, Commonwealth Bank of Australia Group, holds 12 percent of Bank's shares.² Bank is engaged substantially in investment banking activities.

¹ Asset data are as of September 30, 2003.

² Substantially all these shares are held by fund management entities in the Commonwealth Bank of Australia Group in trust for investors. In addition, the Permanent Trustee Company Limited holds 7.21 percent, Deutsche Australia

It is the parent of the Macquarie Group and conducts a wide range of nonbanking activities through its subsidiaries, including investment management and advisory services, investment in infrastructure projects, and underwriting and dealing as principal and agent in securities and derivatives. Bank currently operates a number of nonbanking subsidiaries in the United States engaged in real estate financing, commodities trading, and investment banking.

Bank seeks to establish representative offices in New York and Houston to provide liaison services and to market corporate loans, project finance loans, commodities forwards, options, swaps, and other structured derivatives. The representative offices will not make any credit decisions; will not have responsibility for the execution, delivery, or performance of any contract; and will not bind Bank to any contract other than contracts necessary for the operation of the offices, such as leases and personnel contracts.

In order to approve an application by a foreign bank to establish a representative office in the United States, the IBA and Regulation K require the Board to determine that the foreign bank applicant engages directly in the business of banking outside the United States and has furnished to the Board the information it needs to assess the application adequately. The Board also shall take into account whether the foreign bank and any foreign bank parent is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (12 U.S.C. § 3107(a)(2); 12 C.F.R. 211.24(d)(2)).³

Limited holds 6.08 percent, Merrill Lynch Investment Management holds 5.27 percent, and ING Australia Holdings Limited holds 5 percent of Bank's shares. No other shareholder holds 5 percent or more of the Bank's shares.

³ In assessing this standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has

In the case of an application to establish a representative office, the standard with respect to home country supervision will be met if the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed office, taking into account the nature of the activities and the operating record of the applicant. (12 C.F.R. 211.24(d)(2)). The Board may also take into account additional standards as set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)-(4); 12 C.F.R. 211.24(c)(2)).

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

With respect to supervision of Bank by home country authorities, the Board has considered the following information. Bank is an authorized deposit-taking institution and is supervised by the Australian Prudential Regulation Authority (“APRA”). APRA supervises and regulates Bank through a combination of regular on-site reviews and off-site monitoring. On-site examinations cover the areas of credit quality, balance sheet and market risk, insurance risk and operational risk. Off-site monitoring is conducted

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. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board’s determination.

through a monthly review of Bank's balance sheet for domestic operations and a quarterly review of Bank's international operations and consolidated balance sheets. APRA also obtains quarterly global consolidated data on capital adequacy, market risk, impaired assets, large exposures and profit and loss.

Bank is subject to annual statutory audit, the results of which are communicated to APRA. Bank, its external auditors, and APRA meet annually to discuss any issues arising from reports of the external auditors. Bank's internal controls are also subject to review by the external auditors.

Based on all the facts of record, it has been determined that factors relating to the supervision of Bank by its home country supervisor are consistent with approval of the proposed representative offices.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)-(4); 12 C.F.R. 211.24(c)(2)) have also been taken into account. APRA has no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Bank, taking into consideration Bank's record of operation in its home country, its overall financial resources, and its standing with its home country supervisor, it has been determined that financial and managerial factors are consistent with approval of the proposed representative offices. Bank appears to have the experience and capacity to support the proposed representative offices and has established controls and procedures for the proposed representative offices to ensure compliance with U.S. law.

Australia is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Australia has enacted laws and developed regulatory standards to deter money laundering. Money laundering

is a criminal offense in Australia, and Bank has established internal policies, procedures, and systems for the detection and prevention of money laundering throughout its worldwide operations. Bank's anti-money laundering policies and procedures are monitored by the Australian Transaction Reports and Analysis Centre, which is Australia's financial intelligence unit and anti-money laundering agency.

With respect to access to information about Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank 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, Bank 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 conditions described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank, as well as the terms and conditions set forth in this order, Bank's application to establish representative offices in New York and Houston is hereby approved.⁴ Should any restrictions on access to

⁴ Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. *See* 12 C.F.R. 265.7(d)(12).

information on the operations or activities of Bank or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.⁵ The commitments and conditions referred to above are deemed to be conditions imposed in writing in connection with these findings and decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board,
effective November 26, 2003.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁵ The authority to approve the establishment of the proposed representative offices parallels the continuing authority of New York and Texas to license offices of a foreign bank. Approval of this application does not supplant the authority of those states or their agents to license the proposed representative offices of Bank in accordance with any terms or conditions that they may impose.