

FEDERAL RESERVE SYSTEM

Agricultural Bank of China Limited  
Beijing, People's Republic of China

Order Approving Establishment of a Branch

Agricultural Bank of China Limited ("ABC"), Beijing, 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 IBA<sup>1</sup> to establish a state-licensed branch in New York, New York. 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 New York, New York (*The New York Post*, October 4, 2010). The time for filing comments has expired, and the Board has considered all comments received.

ABC, with total assets of approximately \$1.85 trillion, is the fourth largest bank in China.<sup>2</sup> The government of China owns approximately 83 percent of ABC's shares.<sup>3</sup> No other shareholder owns more than 5 percent of the shares of ABC.

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<sup>1</sup> 12 U.S.C. § 3105(d).

<sup>2</sup> Asset and ranking data are as of December 31, 2011.

<sup>3</sup> The Ministry of Finance owns approximately 39 percent, and The National Council for Social Security Fund owns approximately 3.9 percent of ABC's shares. Central Huijin Investment Ltd. ("Huijin") owns approximately 40 percent of ABC's shares. Huijin was formed to assist in the restructuring of major Chinese banks. The government transferred shares of several Chinese banks, including ABC, to Huijin at the time of the recapitalization and restructuring of these banks between 2004 and 2006. Huijin also owns a majority interest in China Construction Bank Corporation ("CCB") and Bank of China Limited ("BOC"), and together with the Ministry of Finance, it owns a majority interest in Industrial and Commercial Bank of China Limited ("ICBC"), all of Beijing. CCB and ICBC each operate a branch in New York City, and BOC operates branches in New York City and Los Angeles. The government of China transferred the ownership of Huijin to China Investment Corporation ("CIC"), an investment fund that is also wholly owned by the government of China. CIC owns 9.9 percent of the shares of Morgan Stanley, New York,

ABC engages primarily in retail and commercial banking throughout China, including Hong Kong SAR and Macau SAR. Outside China, ABC operates a subsidiary in the United Kingdom, branches in Singapore and Korea, and representative offices in Japan, Germany, and Australia. In the United States, ABC operates a representative office in New York City. ABC is a qualifying foreign banking organization under Regulation K.<sup>4</sup>

The proposed New York branch would engage in wholesale deposit-taking, lending, trade finance, and other banking services.

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 to the Board 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.<sup>5</sup> In

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New York, a bank holding company that owns a bank in Utah and a bank in New York. Both CIC and Huijin are non-operating companies that hold investments on behalf of the government of China. Neither CIC nor Huijin engages directly in commercial or financial activities.

Under the IBA, any company that owns a foreign bank with a branch in the United States is subject to the Bank Holding Company Act (“BHC Act”) as if it were a bank holding company. Because of their ownership of CCB, BOC, and ICBC, CIC and Huijin are subject to the BHC Act. The Board has provided certain exemptions to CIC and Huijin under section 4(c)(9) of the BHC Act (12 U.S.C. § 1843(c)(9)), which authorizes the Board to grant exemptions to foreign companies from the nonbanking restrictions of the BHC Act when the exemptions would not be substantially at variance with the purposes of the act and would be in the public interest. The exemptions provided to CIC and Huijin would not extend to ABC or any other banking subsidiary of CIC or Huijin that operates a branch or agency in the United States. See Board letter to H. Rodgin Cohen, Esq., dated August 5, 2008.

<sup>4</sup> 12 CFR 211.23(a).

<sup>5</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 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, 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

assessing the comprehensive, consolidated supervision standard, the Board has considered the Basel Core Principles for Effective Banking Supervision (“Basel Core Principles”),<sup>6</sup> which are recognized as the international standard for assessing the quality of bank supervisory systems, including with respect to comprehensive, consolidated supervision.<sup>7</sup> The Board also considers additional standards as set forth in the IBA and Regulation K.<sup>8</sup>

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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 determinative, and other elements may inform the Board’s determination. The Board has long held that “the legal systems for supervision and regulation vary from country to country, and comprehensive supervision or regulation on a consolidated basis can be achieved in different ways.” 57 Federal Register 12992, 12995 (April 15, 1992).

<sup>6</sup> See Bank for International Settlements, Basel Committee on Banking Supervision, Core Principles for Effective Banking Supervision (October 2006), available at <http://www.bis.org/publ/bcbs129.pdf>.

<sup>7</sup> See e.g., 93<sup>rd</sup> Annual Report of the Board of Governors of the Federal Reserve System (2006), at 76 (“The Core Principles, developed by the Basel Committee in 1997, have become the de facto international standard for sound prudential regulation and supervision of banks.”).

<sup>8</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: 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 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; whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; 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; 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 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).

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

For a number of years, authorities in China have continued to enhance the standards of consolidated supervision to which banks in China are subject, including through additional or refined statutory authority, regulations, and guidance; adoption of international standards and best practices; enhancements to the supervisory system arising out of supervisory experiences; upgrades to the China Banking Regulatory Commission (“CBRC”), the agency with primary responsibility for the supervision and regulation of Chinese banking organizations, in the areas of organization, technological capacity, staffing, and training; and increased coordination between the CBRC and other financial supervisory authorities in China.<sup>9</sup>

The Board has reviewed the record in this case and has determined that the enhancements to standards of bank supervision in China with respect to ABC warrant a finding that ABC is subject to comprehensive, consolidated supervision by its home country supervisors. In making this determination, the Board has considered that the CBRC is the principal supervisory authority of ABC, including its foreign subsidiaries and affiliates, for all matters other than money laundering.<sup>10</sup> The CBRC has primary responsibility and authority for regulating the establishment and activities and the expansion and dissolution of banking

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<sup>9</sup> The Board has previously approved applications from Chinese banks to establish U.S. branches under a lower standard than the comprehensive, consolidated supervision standard. See China Merchants Bank Co., Limited, 94 Federal Reserve Bulletin C24 (2008); Industrial and Commercial Bank of China Limited, 94 Federal Reserve Bulletin C114 (2008); China Construction Bank Corporation, 95 Federal Reserve Bulletin B54 (2009); and Bank of Communications Co., Ltd. (order dated April 8, 2011), 97 Federal Reserve Bulletin 49 (2<sup>nd</sup> Quar. 2011). In each case, the Board made a determination that the bank’s home country supervisors were actively working to establish arrangements for the consolidated supervision of the bank. 12 U.S.C. § 3105(d)(6).

<sup>10</sup> Before April 2003, the People’s Bank of China (“PBOC”) acted as both China’s central bank and primary banking supervisor, including with respect to anti-money-laundering matters. In April 2003, the CBRC was established as the primary banking supervisor and assumed the majority of the PBOC’s bank regulatory functions. The PBOC maintained its roles as China’s central bank and primary supervisor for anti-money-laundering matters.

institutions, both domestically in China and abroad. The CBRC has no objection to ABC's establishment of the proposed branch. The CBRC monitors Chinese banks' consolidated financial condition, compliance with laws and regulations, and internal controls through a combination of on-site examinations, off-site surveillance through the review of required regulatory reports and external audit reports, and interaction with senior management.

Since its establishment in 2003, the CBRC has augmented its supervisory structure, staffing, and internal operations; enhanced its existing supervisory programs; and developed new policies and procedures to create a framework for the consolidated supervision of the largest banks in China. The CBRC also has strengthened its supervisory regime related to accounting requirements and standards for loan classification, internal controls, risk management, and capital adequacy, and it has developed and implemented a risk-focused supervisory framework.

The CBRC has issued additional guidance in various supervisory areas, including stricter prudential requirements for capital, loan-loss allowance coverage, executive compensation, banks' equity investments in insurance companies, and enhanced risk-management requirements for operations, liquidity, derivatives, reputational, and market risk. The guidance is designed to make supervision more risk focused and to strengthen practices consistent with the Basel Core Principles.

The CBRC has its head office in Beijing and branch offices in other provinces. The head office sets policy and directs supervisory activities for the largest banks in China, including ABC. Although some day-to-day supervisory activities are undertaken by the CBRC's branch offices, the head office directs these efforts and ensures consistency of approach through training programs and frequent communication with the branches.

The CBRC head office prepares annual examination plans for the largest Chinese banks, including ABC. The plans encompass both on- and off-site activities. Applicable Chinese law and banking regulation do not require that on-site examinations be conducted at any specified interval. In practice, the CBRC performs on-site examinations of its largest banks frequently, although off-site surveillance is continuous. On-site examinations are scheduled based on the CBRC's continuous off-site monitoring tools,

analysis of the institution's periodic filings, results of the institution's internal stress testing, and the institution's overall risk profile and activities. On-site examinations by the CBRC typically cover, among other things, the major areas of operation: 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 control and administrative systems); legal compliance; accounting supervision and internal auditing; and any other areas deemed necessary by the CBRC. The PBOC examines ABC for compliance with anti-money-laundering laws and requirements.

Examination ratings are based on the CAMELS rating model and emphasize credit-risk management, the quality of the bank's loan portfolio, internal controls, liability structure, capital adequacy, liquidity, and the adequacy of reserves. The areas of emphasis reflect the fact that the largest Chinese banks, including ABC, engage in traditional commercial banking and are not materially engaged in complex derivatives or other activities. Ratings are derived from off-site quantitative and qualitative analysis and on-site risk reviews. Examination findings and areas of concern are discussed with senior management of the bank, and corrective actions taken by the bank are monitored by the CBRC. In 2009, the CBRC developed an information technology system to assist in on-site examinations by improving data analysis and assisting in regulatory information sharing.

Chinese banks are required to report key regulatory indicators to the CBRC periodically on general schedules. All Chinese banks are required to submit monthly, quarterly, semiannual, or annual reports relating to asset quality, lending concentrations, capital adequacy, earnings, liquidity, affiliate transactions, off-balance-sheet exposures, internal controls, and ownership and control.

Banks must report to the CBRC their unconsolidated capital adequacy ratios quarterly and their consolidated ratios semiannually. China's bank capital rules are based on the Basel I Capital Accord, while taking into account certain aspects of the Basel II Capital Accord. In addition, the CBRC, as a member of the Basel Committee on Banking Supervision, has supported the Basel III Capital Accord framework and implementation

time frame. The CBRC can take enforcement actions when capital ratios or other financial indicators fall below specified levels. These actions may include issuing supervisory notices, requiring the bank to submit and implement an acceptable capital replenishment plan, restricting asset growth, requiring reduction of higher risk assets, restricting the purchase of fixed assets, and restricting dividends and other forms of distributions. Significantly undercapitalized banks may be required to make changes in senior management or restructure their operations.

ABC, like other large Chinese banks, is required to be audited annually by an external accounting firm that meets the standards of Chinese authorities, including the Ministry of Finance, PBOC, and CBRC, and the audit results are shared with the CBRC and PBOC. The scope of the required audit includes a review of ABC's financial statements, asset quality, capital adequacy, internal controls, and compliance with applicable laws. At its discretion, 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, ABC is also required to report financial statements under both International Financial Reporting Standards ("IFRS") and Chinese Accounting Standards ("CAS"). These financial statements are audited by an international accounting firm under applicable IFRS auditing standards.<sup>11</sup>

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<sup>11</sup> CAS largely conform to IFRS, such that there currently are no material differences between financial statements produced for Hong Kong reporting requirements and Chinese reporting requirements. The International Monetary Fund's ("IMF") financial system stability assessment report and the accompanying detailed assessment report of observance with the Basel Core Principles, discussed in detail below, both found that "[s]ince 2005, [CAS] have substantially converged with [IFRS] and International Standards on Auditing, respectively." IMF, People's Republic of China, Financial System Stability Assessment at 57 (June 24, 2011); IMF and World Bank, People's Republic of China: Detailed Assessment Report of Observance with Basel Core Principles for Effective Banking Supervision at 9 (April 2012). In addition, the World Bank Report on Observance of Standards and Codes determined that CAS and IFRS are basically compatible and that the Chinese authorities and the International Accounting Standards Board have established a continuing convergence mechanism designed to achieve full convergence in 2012. World Bank, Report on Observance of Standards and Codes (ROSC) Accounting and Auditing – People's Republic of China at Executive Summary and at 12 (October 2009), available at [http://www.worldbank.org/ifa/rosc\\_aa\\_chn.pdf](http://www.worldbank.org/ifa/rosc_aa_chn.pdf).

ABC conducts internal audits of its domestic offices and operations on an annual schedule and of its overseas branches and offices biennially. The internal audit results are shared with the CBRC, PBOC, and ABC's external auditors. The proposed branch would be subject to internal audits.

Chinese law imposes various prudential limitations on banks, including limits on transactions with affiliates and on large exposures.<sup>12</sup> Related-party transactions include credit extensions, asset transfers, and the provision of any type of services. Chinese banks are required to adopt appropriate policies and procedures to manage related-party transactions, and the board of directors must appoint a committee to supervise such transactions and relationships. Applicable laws require all related-party transactions to be conducted on an arm's-length basis.

Chinese banking law also establishes single-borrower credit limits. Loans to a single borrower may not exceed 10 percent of the bank's total regulatory capital, the aggregate lending to a group of related companies may not exceed 15 percent of the bank's total regulatory capital, and the aggregate amount of credit granted to all related parties may not exceed 50 percent of the bank's total regulatory capital. The status of related-party transactions must be reported to the CBRC quarterly.

In addition, the CBRC has certain operational limitations for commercial banks in China relating to matters such as liquidity and foreign currency exposure. In 2009, the CBRC issued new rules concerning liquidity management and corporate governance. Compliance with these limits is monitored by the CBRC through periodic reports and reviewed during on-site examinations.

The CBRC is authorized to require any bank to provide information and to impose sanctions for failure to comply with such requests. If the CBRC determines that a bank is not in compliance with banking regulations and prudential standards, it may impose various sanctions depending upon the severity of the violation. The CBRC may suspend

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<sup>12</sup> The CBRC definition of an "affiliate" or a "related party" of a bank includes subsidiaries, associates/joint ventures, shareholders holding 5 percent or more of the bank's shares, and key management personnel (and immediate relatives) and those individuals' other business affiliations.

approval of new products or new offices, suspend part of the bank's operations, impose monetary penalties, and in more serious cases, replace management of the bank. The CBRC also has authority to impose administrative penalties, including warnings and fines for violations of applicable laws and rules. Criminal violations are transferred to the judicial authorities for investigation and prosecution.

ABC is subject to supervision by several other financial regulators, including the State Administration for Foreign Exchange, China Securities Regulatory Commission ("CSRC"), and China Insurance Regulatory Commission ("CIRC"). These agencies receive periodic financial and operations reports, and they may conduct on-site examinations and impose additional reporting requirements. Chinese financial supervisors coordinate supervision and share supervisory information about Chinese financial institutions as appropriate.

The IMF recently concluded a financial system stability assessment of China ("FSSA"), including an assessment of China's compliance with the Basel Core Principles.<sup>13</sup> The FSSA determined that China's overall regulatory and supervisory framework adheres to international standards.<sup>14</sup> The FSSA found that "[t]he laws, rules and guidance that CBRC operates under generally establish a benchmark of prudential standards that is of high quality

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<sup>13</sup> The assessment reflects the regulatory and supervisory framework in place as of June 24, 2011. IMF, People's Republic of China, Financial System Stability Assessment (June 24, 2011), available at <http://www.imf.org/external/pubs/ft/scr/2011/cr11321.pdf>. The FSSA covers an evaluation of three components: (1) the source, probability, and potential impact of the main risks to macrofinancial stability in the near term; (2) the country's financial stability policy framework; and (3) the authorities' capacity to manage and resolve a financial crisis should the risks materialize. The FSSA is a key input to IMF surveillance. The FSSA is a forward-looking exercise, unlike the Board's assessment of the comprehensive, consolidated supervision of an applicant.

The IMF and World Bank separately publish a detailed assessment of the country's observance of the Basel Core Principles that discusses the country's adherence to the Basel Core Principles in much greater detail. See IMF and World Bank, People's Republic of China: Detailed Assessment Report of Observance with Basel Core Principles for Effective Banking Supervision (April 2012) ("DAR"), available at <http://www.imf.org/external/pubs/ft/scr/2012/cr1278.pdf>.

<sup>14</sup> FSSA at 39.

and was drawn extensively from international standards and the [Basel Core Principles] themselves.”<sup>15</sup> The FSSA additionally noted that “[c]onsolidated supervision of banks and their direct subsidiaries and branches on the mainland or offshore is of high quality.”<sup>16</sup> With respect to the CBRC, the FSSA found as follows:

All the banks, auditors, ratings agencies and other market participants that the mission interacted with were unhesitating in their regard for the role that the CBRC has played in driving professionalism, risk management and international recognition of the Chinese banking system. In particular, the mission observed that [the CBRC] has been the key driving force in driving improvements in risk management, corporate governance and internal control and disclosure in Chinese banks.<sup>17</sup>

Based on its review, the FSSA rated China’s overall compliance with the Basel Core Principles as satisfactory. In giving this overall rating, the FSSA noted several areas that merited improvement and made specific recommendations for continued advances in supervision and regulation.<sup>18</sup> The Chinese authorities noted that some of the

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<sup>15</sup> Id. at 59; DAR at 12.

<sup>16</sup> FSSA at 64; DAR at 16.

<sup>17</sup> DAR at 7.

<sup>18</sup> FSSA at 39-42 and 69-71; DAR at 99-101. China received a materially noncompliant rating in two of the thirty areas assessed by the FSSA. Specifically, the FSSA rated China as materially noncompliant for the Basel Core Principles on independence, accountability and transparency, and risk management process. DAR at 17 and 19. The FSSA stated that “budgeting arrangements, external headcount approval requirements and [the authority for the State Council to override] rules and decisions compromise CBRC effectiveness and could affect operational independence.” FSSA at 64; DAR at 17. The FSSA viewed the guidance that the CBRC has issued in risk management to be consistent with international standards but found that banking institutions’ compliance with CBRC guidance was lacking (although recognizing that the guidance on some risks “is recent and so could not be expected to be complied with as yet”). FSSA at 61; see also DAR at 53. The assessment team also believed that Chinese banks in general do not yet have robust enterprise-wide risk-management systems. FSSA at 66; DAR at 53-54. For comparison, the United Kingdom and Germany received three and two materially noncompliant ratings, respectively, and the United States received one materially noncompliant rating, in their recent financial system stability assessments.

recommendations of the FSSA are already being implemented and that others will be taken into account in the CBRC's plans to improve supervisory effectiveness.<sup>19</sup>

The Board has taken into account the FSSA's views that China is, overall, in satisfactory compliance with the Basel Core Principles and that there are areas for further improvement. The Board has also taken into account the responses by Chinese authorities to the FSSA report and the progress made by Chinese authorities to address the issues raised in that report.

Based on all the facts of record, including its review of the supervisory framework implemented by the CBRC for ABC, the Board has determined that ABC is subject to comprehensive supervision on a consolidated basis by its home country supervisors. This determination is specific to ABC.<sup>20</sup> By statute, the Board must review this determination in processing future applications involving ABC and also must make a determination of comprehensive, consolidated supervision in other applications involving different applicants from China.

As part of the Board's supervisory program for foreign banks, the Board actively monitors changes to the supervisory systems in the home countries of foreign banks, as well as differences that may exist in the supervisory framework as it is applied by a home country to institutions of different types or sizes, and would continue to do so with respect to

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<sup>19</sup> FSSA at 71-73; DAR at 101-103. Chinese authorities responded that, by law in China, the State Council of the People's Republic of China ("State Council") may alter or annul a rule or guideline of the CBRC only if the rule or guideline violates applicable law and that the State Council has never altered or annulled the rules and guidelines issued by the CBRC. Chinese authorities also noted that the State Council has supported the CBRC in undertaking banking regulation and supervision and that the CBRC has upgraded the number and quality of its staff over time. FSSA at 71-72; DAR at 102. In addition, Chinese authorities noted the significant improvements China has made in supervision as well as the relative simplicity of the Chinese banking system. FSSA at 72; DAR at 102-3. Despite the difference in views about the degree to which Chinese banks' risk management is commensurate with the current risk environment, Chinese authorities concurred with the FSSA that "continued improvements in banks' risk management are needed, as financial reform deepens and liberalization creates greater interconnectedness and complexities in the Chinese system." FSSA at 72; DAR at 103.

<sup>20</sup> See 58 Federal Register 6348, 6349 (January 12, 1993).

China. The Board also intends to further its relationship with Chinese supervisory authorities and continue to develop its understanding of Chinese banking matters.

The government of China has adopted a statutory regime regarding anti-money laundering (“AML”) and suspicious activity reporting and has criminalized money-laundering activities and other financial crimes. The PBOC supervises and examines Chinese banks with respect to AML and coordinates efforts among other agencies. The PBOC collects, monitors, analyzes, and disseminates suspicious transaction reports and large-value transaction reports.

The PBOC over time has increased requirements for its supervised institutions regarding AML compliance. The PBOC issued rules providing clarification of, or further strengthening the implementation of, operating procedures, customer due diligence and risk classification, recordkeeping, AML monitoring and reporting suspicious transactions, and the international remittance agency business. The PBOC also requires the designation of a chief AML compliance officer as a high-level manager to ensure provision of adequate AML resources and timely flow of information to employees responsible for AML compliance throughout the institution. In addition, the PBOC requires the risk rating of customers and the filing of reports on suspicious activity and certain other transactions. Banks are required to (1) establish a customer identification system in accordance with applicable rules jointly promulgated by the PBOC and three functional financial services regulators;<sup>21</sup> (2) record the identities of customers and information relating to each transaction; and (3) retain retail transaction documents and books. Supervised institutions have been encouraged to move beyond a prescriptive-criteria basis to include a more expansive and risk-based approach to suspicious activity detection and reporting.

China participates in international fora that address the prevention of money laundering and terrorist financing. China became a member of the Financial Action Task Force (“FATF”) in June 2007. China also is a member of the Eurasian Group (“EAG”), a FATF-style regional body that supports member countries in their efforts to create and maintain an appropriate legal and institutional framework to combat money laundering

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<sup>21</sup> Those regulators are the CBRC, CSRC, and CIRC.

and terrorist financing in line with FATF standards.<sup>22</sup> EAG evaluates its member states' AML and counter-terrorist financing ("CFT") systems for compliance with international standards. In the most recent mutual evaluation report of China, dated February 17, 2012, the FATF considered China to be fully or largely compliant with almost all of the FATF recommendations and held that China has effective AML and CFT systems in force. As a result, the FATF has removed China from its regular follow-up process.<sup>23</sup>

Moreover, the Chinese government issues rules on implementing United Nations sanctions and may take enforcement actions to ensure compliance with those sanctions. The PBOC is also responsible for disseminating information to the banking industry regarding U.N. sanctions and supervising the enforcement of those sanctions.

The PBOC supervises and regulates compliance by ABC with AML requirements through a combination of on-site examinations and off-site monitoring.

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<sup>22</sup> China also is a party to other agreements that address money laundering or terrorist financing, including the 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.

<sup>23</sup> FATF, China Mutual Evaluation 8<sup>th</sup> Follow-up Report, Anti-Money Laundering and Combating the Financing of Terrorism (February 17, 2012), available at <http://www.fatf-gafi.org/dataoecd/5/34/49847246.pdf>. The report noted that China has made significant progress to address the remaining deficiencies and has "reached a satisfactory level of compliance with all six core Recommendations and eight of the [ten] key Recommendations." *Id.* at para. 41. In one of the key Recommendations where China has not attained a satisfactory level of compliance (implementation of international instruments related to terrorist financing), China has substantially addressed part of the deficiency and continues to make progress. With respect to the other key Recommendation (freezing of terrorist-related assets), China has made significant progress since June 2011 to improve its implementation. In particular, China has implemented legislation establishing a legislative framework and administrative authority for enforcement and has responded to foreign requests to freeze assets. The FATF was of the view that China should enact additional guidance to improve implementation, and Chinese authorities are currently drafting rules to do so. *Id.* at paras. 150-52 and 157-59.

On-site examinations focus on ABC's compliance with AML laws and rules. The PBOC's headquarters conducts investigations of a financial institution's head office, and the PBOC's branches conduct investigations of the institution's branch offices in the same locality as the PBOC branches. During the course of an on-site examination, the PBOC will generally review account information, transaction records, and any other relevant materials. Upon completion of an investigation, if AML deficiencies are identified, the PBOC may issue sanctions and propose that remedial measures be imposed by appropriate government agencies or regulators against the financial institution and can refer any suspected money laundering to law enforcement authorities for further investigation. The PBOC performs off-site monitoring through periodic reports and has established requirements for Chinese banks to submit such reports. In order to improve off-site supervision and monitoring of large-amount cash transactions, the PBOC developed an interactive information technology system for AML/CFT supervision that has been in operation since October 2010 in both the PBOC and financial institutions.

ABC has policies and procedures to comply with Chinese laws and rules regarding AML. ABC 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 AML compliance personnel and conducting routine employee training at all ABC branches. ABC's compliance with AML requirements is monitored by the PBOC and by ABC's internal and external auditors.

Based on all the facts of record, the Board has determined that the AML efforts by ABC and its home country supervisors are consistent with approval.

The Board has also considered the financial and managerial factors in this case. As noted above, the CBRC requires Chinese banks to follow the Basel I Capital Accord with certain enhancements from the Basel II Capital Accord.<sup>24</sup> The capital levels

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<sup>24</sup> The CBRC also requires all large, internationally active banks, such as ABC, to have a minimum risk-based tier 1 capital ratio of 9 percent and total capital ratio of 11.5 percent. ABC's capital ratios exceed these levels.

of ABC exceed the minimum levels that would be required under the Basel I Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization. Managerial and other financial resources of ABC are consistent with approval, and ABC appears to have the experience and capacity to support the proposed branch. In addition, ABC has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general. In particular, ABC has stated that it will apply strict AML 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.

With respect to access to information about ABC's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which ABC operates and has communicated with relevant government authorities regarding access to information. ABC has committed to make available to the Board such information on the operations of ABC and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal laws. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, ABC also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable it or its affiliates to make such information available to the Board. The Board also has consulted with the CBRC about access to information. The CBRC has represented that it would facilitate the Board's access to information and has entered into a statement of cooperation with the Board and other U.S. banking regulators with respect to the sharing of supervisory information.<sup>25</sup> In light of these commitments and other facts of record, and subject to the condition described below, the Board has determined that ABC has provided adequate assurances of access to any necessary information that the Board may request.

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<sup>25</sup> See Memorandum of Understanding between the CBRC and the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, June 17, 2004.

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 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 the Basel II Capital Accord, in the formulation of the Basel III Capital Accord, and in other working groups. China also is active in the ongoing work of the Financial Stability Board. U.S. bank regulators and other bank supervisors in pertinent jurisdictions participated in two supervisory colleges hosted by the CBRC: one for ICBC in 2009 and one for CCB in 2011. Moreover, authorities in the United States and China that are responsible for the oversight of auditing services for public companies are engaged in continuing discussions with respect to enhancing cross-border cooperation, and the Board looks forward to timely negotiation of an agreement relating to cooperative actions by these authorities.

On the basis of all the facts of record, and subject to the commitments made by ABC, as well as the terms and conditions set forth in this order, ABC's application to establish a branch is hereby approved. The Board conditions its decision on ABC providing to the Board adequate information on its operations and activities as well as those of its affiliates to determine and enforce compliance by ABC or its affiliates with applicable federal statutes. Should any restrictions on access to information on the operations or activities of ABC or any of its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by ABC or its affiliates with applicable federal statutes, the Board may require termination or divestiture of any of ABC's or its affiliates' direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by ABC with the commitments made to

the Board in connection with this application and with the conditions in this order.<sup>26</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 12 U.S.C. § 1818 against ABC and its affiliates.

By order of the Board of Governors,<sup>27</sup> effective May 9, 2012.

*(signed)*

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>26</sup> The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the New York State Department of Financial Services to license offices of a foreign bank.

<sup>27</sup> Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, and Raskin.