

FEDERAL RESERVE SYSTEM

China Merchants Bank
Shenzhen, People's Republic of China

Order Approving Establishment of a Representative Office

China Merchants Bank ("Bank"), Shenzhen, People's Republic of China, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish a representative office 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 representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in New York, New York (*The New York Post*, August 16, 2002). The time for filing comments has expired, and all comments have been considered.

Bank, with total consolidated assets of approximately \$38.1 billion,¹ is a commercial bank offering retail and wholesale banking services throughout China. China Steam Navigation Co., Ltd., Beijing, People's Republic of China, which owns approximately 23.7 percent of Bank, is Bank's largest shareholder. No other shareholder directly or indirectly owns 10 percent or more of Bank's shares. Bank currently conducts no activities in the United States.

¹ Unless otherwise indicated, data are as of June 30, 2002.

The proposed representative office is intended to promote Bank's products and services to existing and potential customers in the United States. It would conduct research, act as a liaison with customers and correspondents of Bank, solicit loans, execute loan documents, and solicit purchasers of loans and parties to contract for the servicing of loans. All decisions on credit extended by Bank would be made at the head office.

In acting on an application to establish a representative office, the IBA and Regulation K provide that the Board shall take into account whether the foreign bank engages directly in the business of banking outside of 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)).² In this regard, in the case of an application to establish a representative office, the standard with respect to home country supervision would be met if the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed

² In assessing this standard, the Board considers, among other factors, 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. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

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 take into account additional standards 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 by home country authorities, the Board has considered the following information. The People's Bank of China ("PBOC") is the licensing, regulatory, and supervisory authority for banks and all other financial institutions in China, and, as such, is the home country supervisor of Bank. The PBOC has pursued a program of reforms intended to enhance bank supervision, strengthen management of banks, reduce accumulation of nonperforming loans, further tighten risk management, and promote use of international accounting standards. The PBOC authorizes the establishment of offices of banks outside China, regulates these offices, and has taken steps to implement annual on-site examinations of all foreign offices of Chinese banks.

The Board previously has determined, in connection with applications involving other banks from China, that those banks were subject to a significant degree of supervision by the PBOC.³ Bank is supervised by the PBOC on substantially the same terms and conditions as those other Chinese banks. Based on all the facts of record, it has been determined that factors

³ See *Agricultural Bank of China*, 83 Federal Reserve Bulletin 617 (1997); *Industrial and Commercial Bank of China*, 83 Federal Reserve Bulletin 212 (1997).

relating to the supervision of Bank by its home country supervisor are consistent with approval of the proposed representative office.

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. The PBOC 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 operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law.

Money laundering is a criminal offense in China and banks are required to establish internal policies and procedures for the detection and prevention of money laundering. PBOC regulations require banks to adopt know-your-customer policies, report suspicious transactions, and maintain an effective recordkeeping system. Additionally, the PBOC has established an Anti-Money Laundering Office, which is responsible for coordinating the anti-money laundering efforts of banks and law enforcement. This office may also coordinate and communicate with foreign agencies established to prevent money laundering.

With respect to access to information on 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 of 1956, as amended, 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 addition, subject to certain conditions, the PBOC may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that 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 and the terms and conditions set forth in this order, Bank's application to establish the representative office is hereby approved.⁴ Should any restrictions on access to 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 and 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

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).

order.⁵ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with its decision and may be enforced in proceedings against Bank and its affiliates under 12 U.S.C. § 1818.

By order, approved pursuant to authority delegated by the Board, effective October 22, 2002.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁵ The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Banking Department ("Department"), to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.