

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

In the Matter of

INDUSTRIAL AND COMMERCIAL BANK OF  
CHINA LTD.  
Beijing, People's Republic of China

and

INDUSTRIAL AND COMMERCIAL BANK OF  
CHINA LTD.  
NEW YORK BRANCH  
New York, New York

Docket Nos. 18-013-B-FB  
18-013-B-FBR

Cease and Desist Order Issued  
Upon Consent Pursuant to the  
Federal Deposit Insurance Act, as  
amended

WHEREAS, Industrial and Commercial Bank of China Ltd., Beijing, People's Republic of China (the "Bank") is a foreign bank as defined in section 1(b)(7) of the International Banking Act (12 U.S.C. § 3101(7));

WHEREAS, the Bank conducts operations in the United States through a branch in New York, New York (the "Branch") for which the Board of Governors of the Federal Reserve System (the "Board of Governors") is the appropriate federal supervisor;

WHEREAS, the most recent examination of the Branch conducted by the Federal Reserve Bank of New York (the "Reserve Bank") identified significant deficiencies in the Branch's risk management and compliance with applicable federal and state laws, rules, and regulations relating to anti-money laundering ("AML") compliance, including the Bank Secrecy Act ("BSA") (31 U.S.C. § 5311 *et seq.*); the rules and regulations issued thereunder by the U.S.

Department of the Treasury (31 C.F.R. Chapter X); and the requirements of Regulation K of the Board of Governors to report suspicious activity and to maintain an adequate BSA/AML compliance program (12 C.F.R. §§211.24(f) and 211.24(j)) (collectively, the “BSA/AML Requirements”);

WHEREAS, it is the common goal of the Board of Governors, the Reserve Bank, the Bank, and the Branch that the Branch operates in compliance with all applicable federal and state laws, rules, and regulations;

WHEREAS, the Bank, the Branch, and the Board of Governors have mutually agreed to enter into this consent Cease and Desist Order (the “Order”) and

WHEREAS, on 2<sup>nd</sup> March, 2018, the board of directors of the Bank, at a duly constituted meeting, adopted a resolution authorizing and directing Shu Gu and Yuqiang Xiao to enter into this Order on behalf of the Bank and the Branch, respectively, and consenting to compliance with each and every provision of this Order by the Bank and the Branch, and waiving all rights that the Bank and the Branch may have pursuant to section 8 of the Federal Deposit Insurance Act, as amended (the “FDI Act”) (12 U.S.C. § 1818), including, but not limited to: (i) the issuance of a notice of charges on any and all matters set forth in this Order; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Order; (iii) judicial review of this Order; and (iv) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Order or any provision hereof.

NOW, THEREFORE, it is hereby ordered that, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, pursuant to sections 8(b)(1) and (4) of

the FDI Act (12 U.S.C. §§ 1818(b)(1) and 1818(b)(4)), the Bank and the Branch shall cease and desist and take affirmative action as follows:

**Corporate Governance and Management Oversight**

1. Within 60 days of this Order, the Bank’s board of directors and the Branch’s management shall jointly submit a written plan to enhance oversight, by the management of the Bank and Branch, of the Branch’s compliance with the BSA/AML Requirements and the regulations issued by the Office of Foreign Assets Control of the United States Department of the Treasury (“OFAC”) (31 C.F.R. Chapter V) (the “OFAC Regulations”) acceptable to the Reserve Bank. The plan shall provide for a sustainable governance framework that, at a minimum, addresses, considers, and includes:

(a) actions the Bank’s board of directors will take to maintain effective control over, and oversight of, Branch management’s compliance with the BSA/AML Requirements and the OFAC Regulations;

(b) measures to improve the management information systems reporting of the Branch’s compliance with the BSA/AML Requirements and the OFAC Regulations to senior management of the Bank and the Branch;

(c) measures to ensure BSA/AML compliance issues are appropriately tracked, escalated, and reviewed by both the Branch and the Bank’s senior management, and reported directly to the Bank’s board of directors;

(d) measures to ensure that the person or groups at the Bank and the Branch charged with the responsibility of overseeing the Branch’s compliance with the BSA/AML Requirements and the OFAC Regulations possess appropriate subject matter expertise and are actively involved in carrying out such responsibilities; and

(e) allocation of adequate staffing levels and resources to ensure the Branch's compliance with this Agreement, the BSA/AML Requirements, and the OFAC Regulations.

### **BSA/AML Compliance Program**

2. Within 60 days of this Order, the Bank and the Branch shall jointly submit a written revised BSA/AML compliance program for the Branch acceptable to the Reserve Bank.

The revised program, at a minimum, shall provide for:

(a) a system of internal controls reasonably designed to ensure compliance with the BSA/AML Requirements;

(b) controls reasonably designed to ensure compliance with all requirements relating to correspondent accounts for foreign financial institutions, including, but not limited to, affiliates;

(c) a comprehensive BSA/AML risk assessment that identifies and considers all products and services of the Branch, customer types, including, but not limited to, politically exposed persons, and geographic location, as appropriate, in determining inherent and residual risks;

(d) management of the Branch's BSA/AML compliance program by a qualified compliance officer, who is given full autonomy, independence, and responsibility for implementing and maintaining an effective BSA/AML compliance program that is commensurate with the Branch's size and risk profile, and is supported by adequate staffing levels and resources;

(e) identification of management information systems used to achieve compliance with the BSA/AML Requirements and a timeline to review key systems to ensure they are configured to mitigate BSA/AML risks;

(f) internal controls to ensure that the data received by the Branch's BSA/AML monitoring system is complete and interpretable by the system;

(g) comprehensive and timely independent testing for the Branch's compliance with applicable BSA/AML Requirements; and

(h) effective, ongoing training of all personnel including targeted training for personnel with compliance-related responsibilities, in all aspects of the BSA/AML Requirements and internal policies and procedures.

### **Customer Due Diligence**

3. Within 60 days of this Order, the Bank and the Branch shall jointly submit a written revised customer due diligence program for the Branch acceptable to the Reserve Bank.

At a minimum, the program shall include:

(a) a revised methodology for determining risk ratings to account holders that considers factors such as type of customer, type of products and services, transaction volume, and geographic location;

(b) policies, procedures, and controls to ensure that foreign correspondent accounts, including, but not limited to affiliates, are accorded the appropriate due diligence, and where necessary, enhanced due diligence;

(c) periodic reviews and evaluations of customer and account information for the entire customer base to ensure that information is current, complete, and that the risk profile reflects the current information, and if applicable, documenting rationales for any revisions made to the customer risk rating; and

(d) a plan to remediate deficient due diligence for existing customer accounts.

## **Suspicious Activity Monitoring and Reporting**

4. Within 60 days of this Order, the Bank and the Branch shall jointly submit a written program reasonably designed to ensure the identification and timely, accurate, and complete reporting by the Branch of all known or suspected violations of law or suspicious transactions to law enforcement and supervisory authorities, as required by applicable suspicious activity reporting laws and regulations acceptable to the Reserve Bank. At a minimum, the program shall include:

(a) a well-documented methodology for establishing monitoring rules and thresholds appropriate for the Branch's profile which considers factors such as type of customer, type of product or service, geographic location, and foreign correspondent banking activities, including U.S. dollar clearing activities;

(b) policies and procedures for analyzing, testing, and documenting changes to monitoring rules and thresholds;

(c) enhanced monitoring and investigation criteria and procedures to ensure the timely detection, investigation, and reporting of all known or suspected violations of law and suspicious transactions, including, but not limited to:

(i) effective monitoring of customer accounts and transactions, including, but not limited to, transactions conducted through foreign correspondent accounts and trade finance related transactions;

(ii) appropriate allocation of resources to manage alert and case inventory;

(iii) adequate escalation of information about potentially suspicious activity through appropriate levels of management; and

(iv) maintenance of sufficient documentation with respect to the investigation and analysis of potentially suspicious activity, including the resolution and escalation of concerns; and

(d) measures to ensure BSA/AML issues are appropriately tracked, escalated and reviewed by the Branch's senior management.

(e) A timeline to implement remediation of deficiencies identified in paragraphs 4(a) through 4(d).

### **Transaction Review**

5. (a) Within 30 days of this Order, the Bank and the Branch shall engage an independent third party acceptable to the Reserve Bank to conduct a review of the Branch's U.S. dollar clearing transaction activity from July 1, 2016 through December 31, 2016 to determine whether suspicious activity involving high risk customers or transactions at, by, or through the Branch was properly identified and reported in accordance with applicable suspicious activity reporting regulations (the "Transaction Review") and to prepare a written report detailing the independent third party's findings (the "Transaction Review Report").

(b) Based on the Reserve Bank's evaluation of the results of the Transaction Review, the Reserve Bank may direct the Bank and the Branch to engage the independent third party to conduct a review of the types of transactions described in paragraph 5(a) for additional time periods.

6. Within 10 days of the engagement of the independent third party, but prior to the commencement of the Transaction Review, the Bank and the Branch shall jointly submit to the Reserve Bank for approval an engagement letter that sets forth:

(a) the scope of the Transaction Review;

- (b) the methodology for conducting the Transaction Review, including any sampling procedures to be followed;
- (c) the expertise and resources to be dedicated to the Transaction Review;
- (d) the anticipated date of completion of the Transaction Review and the Transaction Review Report;
- (e) a commitment that the Transaction Review Report and any drafts thereof will be provided to the Reserve Bank at the same time that the report or draft is provided to the Bank and the Branch; and
- (f) a commitment that supporting material and any drafts thereof associated with the final Transaction Review and the Transaction Review Report will be made available to the Reserve Bank upon request.

7. The Bank and the Branch shall provide to the Reserve Bank a copy of the Transaction Review Report and any drafts thereof at the same time that the report is provided to the Bank and the Branch.

8. Throughout the Transaction Review, the Bank and the Branch shall ensure that all matters or transactions required to be reported that have not previously been reported are reported in accordance with applicable rules and regulations.

#### **Office of Foreign Assets Control Compliance**

9. Within 60 days of this Order, the Bank and the Branch shall jointly submit a written plan to enhance the Bank's compliance with the OFAC Regulations acceptable to the Reserve Bank, including, but not limited to, enhanced OFAC screening procedures for foreign correspondent accounts and trade finance related transactions, documentation of alert review and

disposition, an improved methodology for assessing OFAC risks, and enhanced policies and procedures to ensure compliance with the OFAC Regulations.

### **Internal Audit**

10. Within 60 days of this Order, the Bank and the Branch shall jointly submit a written revised internal audit program for the Branch acceptable to the Reserve Bank that shall, at a minimum, provide for:

- (a) completion, at least annually, of a written, board of directors approved, risk-based audit plan that encompasses all appropriate areas of audit coverage;
- (b) timely escalation and resolution of audit findings and follow-up reviews to ensure completion of corrective measures; and
- (c) comprehensive tracking and reporting of the status and resolution of audit and examination findings to the Bank's board of directors.

### **Primary Contact**

11. Within 10 days of this Order, the Bank and the Branch shall designate an officer to be responsible for coordinating and submitting to the Reserve Bank the written programs, and engagement letter required under the terms of this Order.

### **Approval, Implementation, and Progress Reports**

12. (a) The Bank and the Branch shall jointly submit the written plans and programs that are acceptable to the Reserve Bank within the applicable time periods set forth in paragraphs 1, 2, 3, 4, 9, and 10 of this Order. Each plan and program shall contain a timeline for full implementation of the plan or program with specific deadlines for the completion of each component of the plan or program. An independent third party acceptable to the Reserve Bank shall be retained in accordance with the Reserve Bank's requirements by the Bank and the

Branch within the time period set forth in paragraph 5(a) of this Order. The engagement letter shall be submitted to the Reserve Bank within the time period set forth in paragraph 6 of this Order.

(b) Within 10 days of acceptance by the Reserve Bank, the Bank and the Branch shall adopt the plans and the programs. Upon adoption, the Bank and the Branch shall implement the plans and the programs and thereafter fully comply with them.

(c) During the term of this Order, the approved plans, programs, and engagement letter shall not be amended or rescinded without the prior written approval of the Reserve Bank.

13. Within 30 days after the end of each quarter following the date of this Order, the Bank and the Branch shall submit to the Reserve Bank written progress reports detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The Reserve Bank may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

## **Notices**

14. All communications regarding this Order shall be sent to:

- (a) Mr. Brian O'Halloran  
Vice President  
Federal Reserve Bank of New York  
33 Liberty Street  
New York, New York 10045
  
- (b) Mr. Shu Gu  
President  
Industrial and Commercial Bank of China Ltd.  
55 FuXingMenNei Avenue  
Xicheng District  
Beijing, Peoples Republic of China, 100140

(c) Mr. Yuqiang Xiao  
General Manager  
Industrial and Commercial Bank of China Ltd.  
New York Branch  
725 Fifth Avenue, 20th Floor  
New York, New York 10022

**Miscellaneous**

15. Notwithstanding any provision of this Order to the contrary, the Reserve Bank may, in its sole discretion, grant written extensions of time to the Bank and the Branch to comply with any provision of this Order. The Bank and the Branch must submit a written request to the Reserve Bank for any extensions of time.

16. The provisions of this Order shall be binding on the Bank and the Branch, and each of their institution-affiliated parties, as defined in sections 3(u) and 8(b)(4) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(4)), in their capacities as such, and their successors and assigns.

17. Each provision of this Order shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Reserve Bank.

18. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, the Reserve Bank, or any other federal or state agency from taking any other action affecting the Bank, the Branch, any of their subsidiaries, or any of their current or former institution-affiliated parties and their successors and assigns.

By order of the Board of Governors of the Federal Reserve System effective this 12th day of March, 2018.

INDUSTRIAL AND COMMERCIAL  
BANK OF CHINA LTD.

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

By: /s/ Shu Gu  
Shu Gu  
President

By: /s/ Ann E. Misback  
Ann Misback  
Secretary of the Board

INDUSTRIAL AND COMMERCIAL  
BANK OF CHINA LTD.  
NEW YORK BRANCH

By: /s/ Yuqiang Xiao  
Yuqiang Xiao  
General Manager