

FEDERAL RESERVE SYSTEM

Absa Bank Limited
Johannesburg, South Africa

Order Approving the Establishment of a Representative Office

Absa Bank Limited (“Absa Bank”), Johannesburg, South Africa, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in New York, New York (the “New York Representative Office”). 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 Daily News*, May 17, 2019). The time for submitting comments has expired, and the Board has considered all comments received.

Absa Bank, with total assets of approximately \$81.8 billion, is the third largest bank in South Africa by asset size.² Absa Bank provides retail, business, corporate and investment banking, and wealth management products and services. The bank also has subsidiaries that engage in various activities, including information technology, automotive fleet management, and property development and investing. Foreign operations of the bank include representative offices located in Nigeria and Namibia.

¹ 12 U.S.C. § 3107(a).

² Asset data is as of June 30, 2019. Ranking data is as of December 31, 2018.

Absa Bank is a wholly-owned subsidiary of Absa Group Limited (“AGL” – consolidated assets of \$97.5 billion), Johannesburg, South Africa, a diversified financial services provider. In addition to Absa Bank, AGL has a majority stake in banks located in nine African countries and has subsidiaries that engage in insurance, property management, and asset management activities. AGL operates a broker dealer subsidiary in London, England, and is in the process of establishing a U.S. broker dealer subsidiary, Absa Securities U.S. Inc., New York, New York, that would engage in trading debt and equity securities.

AGL’s largest shareholder is Barclays Bank PLC (“Barclays”), London, England, which controlled AGL until 2018 and currently owns approximately 14.9 percent of AGL’s voting shares. The second largest shareholder, with 7.1 percent of AGL’s voting shares, is South Africa’s Public Investment Corporation, Pretoria, South Africa. The remaining shares of AGL are widely held.

The New York Representative Office would act as a liaison with U.S. clients and prospective clients of Absa Bank. The New York Representative Office also would market and solicit new business for banking products and services provided by Absa Bank, perform back-office functions, and assemble credit information.³

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside the United States, and (3) the foreign bank and any foreign

³ A representative office may engage in representational and administrative functions in connection with the banking activities of a foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank’s head office and customers in the United States, performing preliminary and servicing steps in connection with lending and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.⁴ The Board also considers additional standards set forth in the IBA and Regulation K.⁵

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that 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 such activities and the operating record of the applicant bank.⁶ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency

⁴ 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which 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 and relationships 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; and (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. 12 CFR 211.24(c)(1).

⁵ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards 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 and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards 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).

⁶ See 12 CFR 211.24(d)(2).

offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

In connection with this application, Absa Bank has provided certain commitments that limit the activities of the New York Representative Office. In particular, Absa Bank has committed that the New York Representative Office would not solicit deposits, make credit decisions or any other decisions that bind Absa Bank (except for local administrative matters), or engage in activities related to securities trading, foreign exchange, or money transmission. The New York Representative Office would engage only in the activities described in its application to the Board.

As noted above, Absa Bank engages directly in the business of banking outside the United States. Absa Bank has provided the Board with the 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 that Absa Bank is supervised by the Prudential Authority (“PA”), which operates under the South African Reserve Bank (“SARB”), and the Financial Sector Conduct Authority (“FSCA”).⁷

The South African financial regulatory regime has been materially enhanced in recent years, culminating in legislation establishing a “twin peaks” model of supervision in 2017 and 2018. The PA is responsible for regulating banks and financial institutions, while the SARB is the central bank of the Republic of South Africa and seeks to achieve price stability and financial stability. The FSCA is a stand-alone market conduct regulator and works towards efficiency and integrity of financial markets and consumer protection. Implementation of the twin peaks regulatory model is ongoing, and

⁷ The Board found that Absa Bank was subject to a level of supervision consistent with approval of the establishment of a representative office in July 1997, which was also the last time the Board considered the supervisory regime in South Africa. Board Order. See 83 Fed. Res. Bull. 788 (July 30, 1997). Following Barclays’ acquisition of Absa Bank in 2005, Barclays closed this representative office.

Absa Bank has indicated that it expects the South African government to enact additional legislation related to conglomerate supervision and financial institution conduct and resolution.

The PA and the SARB apply a risk-based supervisory approach. The PA and/or the SARB supervise banking organizations through a combination of off-site monitoring and on-site examinations that focus on compliance with applicable laws and regulations, including anti-money-laundering rules, corporate governance, audit, internal controls, risk management, and financial condition, including asset quality, capital, liquidity, and profitability. The PA and/or the SARB conduct off-site monitoring of Absa Bank and AGL through the review of a set of periodic reports on the bank's consolidated operations, including its branches, subsidiaries, and affiliates, both domestic and foreign. Absa Bank is required to provide annual audited financial statements to the SARB.

Based on all the facts of record, including the commitments provided by Absa Bank limiting the activities of the New York Representative Office, it has been determined that Absa Bank is subject to a supervisory framework that is consistent with the current and proposed activities of the New York Representative Office, taking into account the nature of such activities.

The following additional standards set forth in the IBA and Regulation K have also been considered: (1) 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; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.⁸

⁸ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

South Africa is a member of the Financial Action Task Force (“FATF”) regional organization, and Absa Bank has indicated that FATF recommendations have been implemented through the promulgation and implementation of the Financial Intelligence Centre Act, 2001 (“FIC Act”). The FIC Act requires the PA and/or SARB to ensure that banks have adequate controls in place to combat acts of money laundering the financing of terrorism. Accordingly, the PA and/or SARB inspects banks, including Absa Bank, on a routine and non-routine basis to assess whether they have appropriate measures in place, including anti-money laundering (AML) and sanctions policies, an AML training program, and client identification and verification requirements, as required by the FIC Act. Absa Bank has policies and procedures to comply with these laws and regulations, which are monitored by government entities responsible for AML compliance.

Absa Bank appears to have the experience and capacity to support the New York Representative Office. Absa Bank has several representative offices in Africa and has previously operated a representative office in the United States. In addition, Absa Bank has established controls and procedures for the New York Representative Office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration Absa Bank’s record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of Absa Bank’s application to establish the New York Representative Office.

Absa Bank has committed to make available to the Board such information on the operations of Absa 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,⁹ and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Absa Bank has

⁹ 12 U.S.C. § 1841 et seq.

committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the PA may share information on Absa 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 Absa Bank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the PA has no objection to the establishment of the New York Representative Office.

Whether Absa Bank's proposal would present a risk to the stability of the United States has also been considered. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of Absa Bank in its home country; the scope of Absa Bank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising Absa Bank in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record and subject to commitments made by Absa Bank, Absa Bank's application to establish the New York Representative Office is hereby approved by the Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹⁰ Should any restrictions on access to information on the operations or activities of Absa Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Absa Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Absa Bank's direct or indirect activities in the United States. Approval of this application also is

¹⁰ 12 CFR 265.7(d)(12).

specifically conditioned on compliance by Absa Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹¹ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective October 1, 2019.

Ann E. Misback (signed)

Ann E. Misback,
Secretary of the Board

¹¹ The Board's authority to approve the establishment of the New York 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 Department of Financial Services, to license the New York Representative Office in accordance with any terms or conditions that they may impose.