

FEDERAL RESERVE SYSTEM

Industrial and Commercial Bank of China Limited
China Investment Corporation
Central Huijin Investment Ltd.
Beijing, People's Republic of China

Order Approving Acquisition of Shares of a Bank

Industrial and Commercial Bank of China Limited ("ICBC"), China Investment Corporation ("CIC"), and Central Huijin Investment Ltd. ("Huijin"), all of Beijing, People's Republic of China (collectively, "Applicants"), have requested the Board's approval to become bank holding companies under section 3 of the Bank Holding Company Act of 1956, as amended ("BHC Act"),¹ by acquiring up to 80 percent of the voting shares of The Bank of East Asia (U.S.A.) National Association ("BEA-USA"), New York, New York.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (76 Federal Register 21367 (April 15, 2011)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

ICBC, with total assets of approximately \$2.5 trillion, is the largest bank in China.³ The government of China owns approximately 70.7 percent of ICBC's shares through the Ministry of Finance and CIC and Huijin.⁴ No other shareholder owns more than 5 percent of ICBC's shares.

¹ 12 U.S.C. § 1842.

² The Bank of East Asia, Limited ("BEA"), Hong Kong SAR, People's Republic of China, and its subsidiary, East Asia Holding Company, Inc. ("EAHC"), New York, New York, both bank holding companies, currently own all the voting shares of BEA-USA and will continue to own 20 percent of the voting shares of the bank after the proposed transaction. BEA and EAHC will continue to be bank holding companies with respect to BEA-USA. BEA has an option to sell the remaining shares of BEA-USA to ICBC, beginning 18 months after consummation of the transaction.

³ Asset and ranking data are as of December 31, 2011.

⁴ The Ministry of Finance owns approximately 35.3 percent and CIC, indirectly through Huijin, owns approximately 35.4 percent of ICBC's shares, respectively. The National Council for Social Security Fund holds approximately 4 percent of ICBC's shares.

ICBC engages primarily in retail and commercial banking throughout China, including Hong Kong SAR and Macau SAR. Outside China, ICBC operates subsidiary banks in Canada, Indonesia, Kazakhstan, Luxembourg, Malaysia, Thailand, Russia, the United Arab Emirates, and the United Kingdom and operates branches in a number of countries, including Australia, Germany, India, Japan, Luxembourg, Pakistan, Singapore, South Korea, Vietnam, Qatar, and the United Arab Emirates. In the United States, ICBC operates an uninsured state-licensed branch in New York City and owns Industrial and Commercial Bank of China Financial Services LLC (“ICBCFS”), New York, New York, a registered broker-dealer that engages in securities brokerage and riskless principal activities.⁵ ICBC is a qualifying foreign banking organization and upon consummation of the proposal, it would continue to meet the requirements for a qualifying foreign banking organization under Regulation K.⁶

CIC is an investment vehicle organized by the Chinese government for the purpose of investing its foreign exchange reserves. CIC controls Huijin, a Chinese government-owned investment company organized to invest in Chinese financial institutions.⁷ In addition to ICBC, Huijin owns controlling interests in two Chinese banks that operate banking offices in the United States: Bank of China Limited and China Construction Bank

Commenters asserted that the government of China must file an application to become a bank holding company due to its control of CIC. The Board has a long-standing position that, as a legal matter, foreign governments are not “companies” for purposes of the BHC Act and, therefore, are not covered by the act. See Banca Commerciale Italiana, 68 Federal Reserve Bulletin 423, 425 (1982). However, the Board has determined that foreign government-owned corporations are considered “companies” under the BHC Act. See Board letters to Patricia Skigen, Esq., dated August 19, 1988; to H. Rodgin Cohen, Esq., dated August 5, 2008; and to Arthur S. Long, Esq., dated November 26, 2008. The foreign government-owned companies that control ICBC – CIC and Huijin – have filed to become bank holding companies in this case.

⁵ ICBC received approval to acquire ICBCFS under section 4(c)(8) of the BHC Act. 12 U.S.C. §1843(c)(8). See Federal Reserve Bank of New York letter to Douglas Landy, Esq., dated June 25, 2010.

⁶ 12 CFR 211.23(a).

⁷ CIC also owns a noncontrolling interest in Morgan Stanley, New York, New York. See China Investment Corporation, 96 Federal Reserve Bulletin B31 (2010) (“CIC Order”).

Corporation, both also of Beijing.⁸ Under the International Banking Act, any foreign bank that operates a branch, agency, or commercial lending company in the United States, and any company that controls the foreign bank, is subject to the BHC Act as if the foreign bank or company were a bank holding company.⁹ As a result, CIC and Huijin are subject to the BHC Act as if they were bank holding companies.¹⁰ Through the proposed acquisition of BEA-USA, Applicants would become bank holding companies under the BHC Act.

BEA-USA, with total consolidated assets of approximately \$780 million and deposits of approximately \$621 million,¹¹ engages in retail and commercial banking in the United States. BEA-USA operates 13 branches in New York and California.

Competitive Considerations

The Board has considered the competitive effects of the proposal in light of all the facts of the record. Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to

⁸ Bank of China Limited operates two grandfathered insured federal branches in New York City and a limited uninsured federal branch in Los Angeles and has received Board approval to establish an additional uninsured federal branch in Chicago. Bank of China Limited, FRB Order No. 2012-6 (May 9, 2012). Bank of China Limited also controls a wholly owned subsidiary bank, Nanyang Commercial Bank, Limited, Hong Kong SAR, People's Republic of China, that operates an uninsured federal branch in San Francisco. China Construction Bank Corporation operates an uninsured state-licensed branch and a representative office in New York City. Huijin also owns a controlling interest in Agricultural Bank of China Limited, Beijing, People's Republic of China, which operates a representative office in New York City and has received Board approval to establish an uninsured state-licensed branch in New York City. Agricultural Bank of China Limited, FRB Order No. 2012-5 (May 9, 2012).

⁹ 12 U.S.C. § 3106.

¹⁰ The Board previously provided certain exemptions to CIC and Huijin under section 4(c)(9) of the BHC Act, which authorizes the Board to grant to foreign companies exemptions 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. See 12 U.S.C. § 1843(c)(9). The exemptions provided to CIC and Huijin do not extend to ICBC, Bank of China Limited, China Construction Bank Corporation, or any other Chinese banking subsidiary of CIC or Huijin that operates a branch or agency in the United States. See Board letter dated August 5, 2008, to H. Rodgin Cohen, Esq.

¹¹ Deposit data are as of December 31, 2011.

monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹²

BEA-USA operates in New York and in California. As noted, Bank of China Limited maintains insured branches in New York City that compete directly with BEA-USA in the metropolitan New York-New Jersey-Pennsylvania-Connecticut (“Metropolitan New York”) banking market.¹³ CIC also owns a noncontrolling interest in Morgan Stanley, which competes in that market. The Board has reviewed the competitive effects of the

¹² 12 U.S.C. § 1842(c)(1). See, e.g., Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996). One commenter conjectured, without providing any supporting information, that this proposal would result in an anticompetitive effect for the United States banking system if ICBC’s primary purpose is to control or strongly influence the U.S. financial system. In addition to the facts cited below, the Board notes that BEA-USA is relatively small and that BEA-USA, the ownership and operation of BEA-USA by Applicants, and the activities of Applicants in the United States are subject to the supervisory, examination, and enforcement authority of the federal banking agencies, including the Board, and to all applicable U.S. laws, including banking and financial laws. In addition, any subsequent bank acquisitions or commencement of additional banking activities by Applicants in the United States are subject to the same standards, including antitrust and financial stability standards, that are applicable to similar proposals by domestic organizations.

¹³ The Metropolitan New York banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties and the northern portion of Mercer County in New Jersey; Monroe and Pike Counties in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.

Applicants do not currently compete with BEA-USA in any other relevant banking market. ICBC and China Construction Bank Corporation operate branch offices in the Metropolitan New York banking market. Bank of China Limited operates a branch in Los Angeles and Bank of China Limited’s subsidiary, Nanyang Commercial Bank, Limited, operates a branch in San Francisco. None of these branches is insured by the Federal Deposit Insurance Corporation, and these branches generally cannot accept retail deposits.

proposal in the Metropolitan New York banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by relevant institutions,¹⁴ and the concentration level of market deposits and the increase in that level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”) as if CIC controlled Morgan Stanley.¹⁵

Consummation of the acquisition would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Metropolitan New York banking market. On consummation, the banking market would remain moderately concentrated as measured by the HHI, which would remain unchanged at 1401. In addition, numerous competitors would remain in the market, which would continue to have 270 insured depository institution competitors upon consummation of this proposal. The combined deposits of the relevant institutions in the Metropolitan New York banking market represent less than 1 percent of market deposits.

¹⁴ Call report, deposit, and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2011. The data are also based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, Inc., 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

¹⁵ Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its guidelines for bank mergers or acquisitions, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at <http://www.justice.gov/opa/pr/2010/August/10-at-938.html>.

The DOJ also has reviewed the matter and has advised the Board that the DOJ does not believe that the acquisition of BEA-USA by CIC, Huijin, and ICBC would be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the Office of the Comptroller of the Currency (“OCC”) and the Federal Deposit Insurance Corporation (“FDIC”) have been afforded an opportunity to comment and have not objected to the transaction.

Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal as well as the effectiveness of these companies in combatting money-laundering activities.¹⁶ Section 3 of the BHC Act also requires the Board to determine that an applicant has provided 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 appropriate to determine and enforce compliance with the BHC Act.¹⁷

The review was conducted in light of all the facts of record, including confidential supervisory and examination information regarding ICBC’s U.S. operations and BEA-USA, publicly reported and other financial information, and information provided by Applicants and by public commenters. The Board also has consulted with the China

¹⁶ The discussion of the effectiveness of the anti-money-laundering efforts of Applicants and their home country supervisors is included in the explanation of the Board’s assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

¹⁷ 12 U.S.C. § 1842(c)(3)(A).

Banking Regulatory Commission (“CBRC”), the agency with primary responsibility for the supervision and regulation of Chinese banking organizations, including ICBC.¹⁸

In evaluating financial factors, the Board reviews the financial condition of the applicants and the target depository institutions. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance.¹⁹ The Board also evaluates the financial condition of the combined organization and the impact of the proposed funding of the transaction. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

Applicants are large relative to the size of BEA-USA and have substantial financial resources to consummate the proposal and to provide ongoing financial support to BEA-USA. As discussed more fully below, the CBRC requires Chinese banks to follow the Basel I Capital Accord with certain enhancements from the Basel II Capital Accord.²⁰ The capital levels of ICBC 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 seeking to acquire an organization of the size and profile of BEA-USA. The Board notes that ICBC engages in a relatively traditional set of commercial banking activities. ICBC’s reported asset quality indicators, including nonperforming loans and reserves for loan losses, are consistent with approval of the proposal. ICBC has implemented enhancements to its internal risk management and internal control framework to monitor and manage its asset quality. ICBC’s earnings performance also is consistent with approval.

The proposed transaction is structured as a cash purchase of shares. ICBC will use existing resources to fund the purchase of shares and has sufficient financial resources to effect the proposal. BEA-USA is well capitalized and would remain so

¹⁸ The CBRC approved ICBC’s application to acquire 80 percent of BEA-USA on March 10, 2011.

¹⁹ Commenters expressed concerns regarding ICBC’s capital adequacy.

²⁰ The CBRC also requires all large, internationally active banks, such as ICBC, to have a minimum tier 1 risk-based capital ratio of 9 percent and a total risk-based capital ratio of 11.5 percent. ICBC’s capital ratios exceed these levels.

on consummation. In light of the size of ICBC in relation to BEA-USA, the transaction would have a minimal impact on ICBC's financial condition. In addition, ICBC would have the financial resources to provide continued financial support to BEA-USA as needed.

CIC and Huijin are government-owned investment companies that were capitalized by the government of China to invest the government's foreign exchange reserves. CIC's assets are primarily composed of long-term equity investments and financial assets such as equities and fixed-income securities. Huijin invests solely in the shares of Chinese financial institutions.

In considering the managerial resources of the organizations involved and the proposed combined organization, the Board has reviewed the examination records of ICBC's U.S. operations and BEA-USA, including assessments of their management, risk-management systems, and operations. The Board has also considered ICBC's plans for implementing the proposal and for the proposed management of BEA-USA after consummation. As noted, the Board has consulted with the CBRC. In addition, the Board has considered the managerial resources and future prospects of CIC and Huijin in light of the fact that CIC and Huijin are government-owned investment companies. The Board also has considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations, including consultations in connection with this proposal, and their records of compliance with applicable banking and anti-money-laundering laws. ICBC plans to gradually integrate BEA-USA into its operations and risk-management systems, drawing on experiences from its integration of the Bank of East Asia (Canada), Toronto, Canada, which ICBC acquired in 2010. ICBC has represented that it will devote adequate financial and other resources to address all aspects of the post-acquisition integration process for this proposal.

The Board has considered the future prospects of Applicants and BEA-USA in light of their financial and managerial resources and the proposed business plan for BEA-USA. ICBC plans to continue BEA-USA's lending and other activities in the markets and communities served by BEA-USA's branches. ICBC's management has the experience and resources to ensure that BEA-USA operates in a safe and sound manner. The Board has

also considered the level of capital that Applicants will have on consummation to support BEA-USA's current operations and any future expansion.

In addition, the Board has assessed whether Applicants have provided adequate assurances to provide information to the Board, as required by the BHC Act. Applicants have committed that, to the extent not prohibited by applicable law, they will make available to the Board such information on their operations and the operations of their affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable them or their affiliates to make such information available to the Board. The Board has consulted with the CBRC about access to information. The CBRC has represented that it would facilitate the Board's access to information, and it has entered into a statement of cooperation with the Board and other U.S. banking regulators with respect to the sharing of supervisory information.²¹ Moreover, U.S. bank regulators participated in the November 2009 supervisory college for ICBC hosted by the CBRC.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board, are consistent with approval.

Supervision or Regulation on a Consolidated Basis

In evaluating this application, and as required by section 3 of the BHC Act, the Board has considered whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.²² The

²¹ 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.

²² 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). 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

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.”²³ In applying this standard, the Board has considered the Basel Core Principles for Effective Banking Supervision (“Basel Core Principles”),²⁴ which are recognized as the international standard for assessing the quality of bank supervisory systems, including with respect to comprehensive, consolidated supervision (“CCS”).²⁵

ICBC: 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 CBRC in the areas of organization,

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 under section 211.24 of Regulation K, 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 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.

²³ 57 Federal Register 12992, 12995 (April 15, 1992).

²⁴ 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>.

²⁵ See, e.g., 93rd 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.”).

technological capacity, staffing, and training; and increased coordination between the CBRC and other financial supervisory authorities in China.²⁶

The Board has reviewed the record in this case and has determined that the enhancements to standards of bank supervision in China warrant a finding that ICBC is subject to CCS by its home country supervisors. In making this determination, the Board has considered that the CBRC is the principal supervisory authority of ICBC, including its foreign subsidiaries and affiliates, for all matters other than money laundering.²⁷ The CBRC has primary responsibility and authority for regulating the establishment and activities and the expansion and dissolution of banking institutions, both domestically in China and abroad. 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

²⁶ The Board has previously approved applications from Chinese banks, including ICBC, to establish U.S. branches under a lower standard than the CCS 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 (2nd 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).

²⁷ 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.

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 ICBC. 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 ICBC. 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 ICBC 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 ICBC, 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 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.

ICBC, 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 ICBC'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, ICBC is required to report financial statements under both International Financial Reporting Standards (“IFRS”) and Chinese Accounting Standards (“CAS”).²⁸ These financial statements are audited by an international accounting firm under applicable IFRS auditing standards.²⁹

²⁸ Based primarily on newspaper reports, several commenters criticized the reliability and accuracy of Chinese accounting methods. These newspaper articles focus on Chinese firms that are listed on U.S. exchanges through a process called “reverse mergers” whereby the Chinese firm acquires a listed U.S. firm and thereby becomes a listed firm. These articles allege that the listed Chinese firms have reported unreliable financial statements audited by Chinese auditing firms. China’s largest banks, such as ICBC, use the “Big Four” accounting firms. There is no evidence that Chinese accounting methods or practices at the large Chinese banks, such as ICBC, are unreliable. 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.

²⁹ The commenters also asserted that the “Big Four” accounting firms in the United States, including the parent company of ICBC’s auditor, Ernst & Young, were substantially fined for departing from U.S. generally accepted accounting principles (“U.S. GAAP”). The commenters argued, without providing any supporting data, that any operational deficiencies in the United States by Ernst & Young should be imputed to ICBC’s auditor and financial statements, and they requested that the Board require ICBC to submit financial data audited by a fully independent auditing firm that has not been the subject of substantial criticisms by the Public Company Oversight Accounting Board (“PCAOB”) or other regulatory body. The Board notes that the PCAOB did sanction Ernst & Young for failing to properly evaluate a specific company’s sales returns reserves, which the PCAOB found were both a material component of that company’s financial statements and not in conformity with U.S. GAAP. The PCAOB did not find that this was a widespread practice by Ernst & Young or indicative of behavior by any of its foreign accounting operations.

ICBC conducts internal audits of its offices and operations, including its overseas operations, generally on an annual schedule. The internal audit results are shared with the CBRC, the PBOC, and ICBC's external auditors.

Chinese law imposes various prudential limitations on banks, including limits on transactions with affiliates and on large exposures.³⁰ 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

³⁰ 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.

various sanctions depending upon the severity of the violation. The CBRC may suspend 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.

ICBC 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.

Authorities in China also have increased cooperation with international groups and supervisory authorities in other countries regarding bank supervision. In particular, 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. In addition, the PBOC, CBRC, other financial supervisory agencies, and other agencies in China have taken joint measures to maintain financial stability.³¹ Moreover, authorities in the United States and China that are responsible for the oversight of auditing services for public companies are engaged in

³¹ 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.

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.

The IMF recently concluded a financial system stability assessment of China (“FSSA”), including an assessment of China’s compliance with the Basel Core Principles.³² The FSSA determined that China’s overall regulatory and supervisory framework adheres to international standards.³³ 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 and was drawn extensively from international standards and the [Basel Core Principles] themselves.”³⁴ 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.”³⁵ 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

³² 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>.

³³ FSSA at 39.

³⁴ FSSA at 59; DAR at 12.

³⁵ FSSA at 64; DAR at 16.

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.³⁶

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.³⁷ The Chinese authorities noted that some of the recommendations of the FSSA are already being implemented, and others will be taken into account in the CBRC's plans to improve supervisory effectiveness.³⁸

³⁶ DAR at 7.

³⁷ 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.

³⁸ 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

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 ICBC, the Board has determined that ICBC is subject to comprehensive supervision on a consolidated basis by its home country supervisors. This determination is specific to ICBC.³⁹ By statute, the Board must review this determination in processing future applications involving ICBC 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 China. The Board also intends to further its relationship with Chinese supervisory authorities and continue to develop its understanding of Chinese banking matters.

CIC and Huijin: In connection with a prior application, the Board determined that CIC was subject to an appropriate type and level of CCS by its home country authorities, given its unique nature and structure.⁴⁰ There have been no material changes in the manner in which CIC is supervised or regulated by its home country authorities since the previous determination. Based on this and all the facts of record, the Board has determined that CIC continues to be subject to CCS.

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.

³⁹ See 58 Federal Register 6348, 6349 (January 12, 1993).

⁴⁰ CIC Order.

The Board has not made a CCS determination with respect to Huijin. In the CIC Order, the Board noted that the system of comprehensive supervision or regulation may vary, depending on the nature of the acquiring company and the proposed investment.⁴¹ The Board believes that, like CIC, Huijin is subject to an appropriate type and level of comprehensive regulation on a consolidated basis, given its unique nature and structure.

Huijin is a joint stock company established to invest in Chinese financial institutions and is wholly owned by the government of China through CIC.⁴² Huijin's articles of association do not permit it to conduct any other commercial activities or interfere in the day-to-day business of the financial institutions it controls. Huijin is governed by a five-member board of directors and a three-member board of supervisors. As is the case with CIC, the members are appointed by the State Council.

Oversight of the operations of CIC and Huijin by the State Council and other agencies of the Chinese government allows for review of the worldwide investment strategy and portfolio of CIC and of Huijin's role as a major shareholder of Chinese financial institutions. On this basis, appropriate authorities in China would appear to have full access to and oversight of Huijin and its activities.

The Board also has taken into account that CIC and Huijin are not operating entities and that CIC's and Huijin's proposed investment in BEA-USA would be indirect and through a substantial foreign bank supervised and regulated by the CBRC. CIC and Huijin have represented that they do not directly engage in the business of banking and do not intervene in the day-to-day business operations of the Chinese financial institutions in which Huijin invests. CIC and Huijin have further represented that they were not involved in the decision by ICBC to enter into the proposed acquisition of BEA-USA or in the negotiation of the terms of the investment, and they conducted no additional due diligence on BEA-USA.

⁴¹ Id. at B33.

⁴² Both CIC and Huijin have stated that there is a strict firewall between the two companies regarding their investment activities.

Based on all the facts of record, the Board has determined that Huijin is subject to comprehensive supervision on a consolidated basis by its appropriate home country authorities for purposes of this application.

Efforts to Ensure Against Money Laundering: 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.⁴³ 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;⁴⁴ (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.

⁴³ As noted above, Huijin and CIC are investment vehicles that make investments in companies and debt securities and are directly overseen by a variety of government agencies in China, including the National Audit Office and the State Council.

⁴⁴ Those regulators are the CBRC, CSRC, and CIRC.

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 and terrorist financing in line with FATF standards.⁴⁵ EAG evaluates its member states’ AML and counter-terrorist-financing (“CFT”) systems for compliance with international standards.⁴⁶ 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.⁴⁷

⁴⁵ 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.

⁴⁶ A commenter alleged that Chinese authorities have failed in the past to supervise Chinese banks operating in Macau SAR with respect to AML matters and referred to sanctions imposed on a Macau bank by the U.S. Department of the Treasury in 2007. The commenter also alleges that money-laundering risks exist in China because the follow-up reports to the mutual evaluation of China’s progress in implementing recommendations of the FATF, undertaken by the EAG, rated China to be non-compliant or partially compliant on certain FATF recommendations. On this basis, the commenter requests that the Board delay any action on these applications until China is in full compliance with all recommendations of the FATF. This comment was submitted before the issuance of the most recent evaluation report on China, which found China to be largely compliant with FATF’s AML requirements.

⁴⁷ FATF, China Mutual Evaluation 8th 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

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 ICBC with AML requirements through a combination of on-site examinations and off-site monitoring. On-site examinations focus on ICBC'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.

ICBC has policies and procedures to comply with Chinese laws and rules regarding AML. ICBC states that it has implemented measures consistent with the institution-specific 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

improve its implementation. In particular, China has implemented legislation establishing a legislative framework and administrative authority for enforcement and it 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.

employee training at all ICBC branches. ICBC's compliance with AML requirements is monitored by the PBOC and by ICBC's internal and external auditors. On consummation, BEA-USA's operations will be integrated into ICBC's global regulatory compliance system, which includes compliance with U.S. law.

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").⁴⁸ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.⁴⁹

The Board has considered all the facts of record, including evaluations of the CRA performance record of BEA-USA, data reported by BEA-USA under the Home Mortgage Disclosure Act ("HMDA"),⁵⁰ as well as other information provided by ICBC, confidential supervisory information, and public comments received on the proposal. Several commenters requested that the Board bar ICBC from expanding BEA-USA's existing branch network for a three- to five-year period and require ICBC to develop a comprehensive CRA plan to ensure that BEA-USA effectively serves all minority and underserved communities. Several commenters also requested that the Board require ICBC to submit a CRA plan or

⁴⁸ 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

⁴⁹ 12 U.S.C. § 2903.

⁵⁰ 12 U.S.C. §§ 2801-2810.

enter into commitments that will ensure BEA-USA provides service to all underserved and minority communities in its service areas.⁵¹ In addition, several commenters raised concerns that BEA-USA might exclude African Americans, Hispanics, and Southeast Asians in the provision of its products and services. Other commenters alleged that BEA-USA excludes African Americans and Hispanics with respect to its home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has considered the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance record of the relevant insured depository institutions, including BEA-USA. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.⁵² As previously noted, CIC and Huijin control Bank of China Limited, which has two grandfathered federal branches whose deposits are insured by the FDIC. The branches received a "satisfactory" rating at their most recent CRA performance evaluation by the FDIC, as of August 18, 2008.⁵³ BEA-USA received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of January 4, 2010.⁵⁴ BEA-USA received an "outstanding" rating under each of the lending and community development tests.⁵⁵ Examiners noted that a substantial majority of BEA-USA's loans were originated

⁵¹ The Board consistently has stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization and that the enforceability of any such third-party pledges, initiatives, and agreements are matters outside the CRA. See Bank of America Corporation, 90 Federal Reserve Bulletin 217, 232-33 (2004).

⁵² See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642 at 11665 (2010).

⁵³ ICBC's uninsured branch and the uninsured branches of other Chinese banks controlled by CIC and Huijin are not subject to the CRA.

⁵⁴ The evaluation period was January 1, 2006, to January 4, 2010.

⁵⁵ BEA-USA was evaluated under the intermediate small bank performance criteria, which only include a lending test and a community development test.

in its assessment areas, that the distribution of its loans reflects excellent penetration among businesses of different sizes in the assessment areas, and that the geographic distribution of loans reflects excellent dispersion throughout the assessment areas. Examiners also reported that BEA-USA's community development performance demonstrates excellent responsiveness to the needs of the assessment areas through loans, investments, and services.⁵⁶ ICBC has represented that it initially intends to maintain BEA-USA's existing business and will be prepared to expand offerings for BEA-USA's customers in the future.

B. HMDA and Compliance with Fair Lending and Other Consumer Protection Laws

The Board has considered the HMDA data for 2009, 2010, and 2011 reported by BEA-USA in its combined assessment areas and the fair lending record of BEA-USA in light of public comments received on the proposal.⁵⁷ Several commenters alleged, based on HMDA data reported in 2009, that BEA-USA had engaged in disparate treatment of minority individuals in its one- to four-family home mortgage lending. Specifically, the commenters asserted that BEA-USA excludes African Americans and Hispanics in home purchase and refinance lending and that it discriminates against Asian Americans with incomes below 100 percent of the median income of the metropolitan statistical area in its refinance lending.

BEA-USA is predominantly a commercial lender and makes a limited number of one- to four-family mortgage loans. Its one- to four-family mortgage lending largely results from walk-in traffic at the bank's branches, most of which are in Asian American

⁵⁶ For example, in the New York assessment area, BEA-USA made 15 community development loans totaling \$18.6 million, including 5 loans for affordable housing, and 22 qualified investments totaling approximately \$2.6 million, which consisted of \$2.5 million in Fannie Mae investments and \$100,000 in charitable donations. BEA-USA's staff also provided community development services during the review period, including financial literacy and homeownership seminars.

⁵⁷ BEA-USA's combined CRA assessment areas consist of Kings, Manhattan, and Queens Counties, which are in the New York-New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area; the entire San Francisco-San Mateo-Redwood City, California Metropolitan Division and the Alameda County portion of the Oakland-Fremont-Hayward, CA Metropolitan Division, both of which are part of the greater San Francisco-Oakland-Fremont, California Metropolitan Statistical Area; and the entire Los Angeles-Long Beach-Glendale Metropolitan Division.

neighborhoods. Throughout its combined assessment areas, BEA-USA made 32 one- to four-family mortgage loans in 2009, 26 in 2010, and 20 in 2011. During that same time period, BEA-USA received only one application for a one- to four-family mortgage loan from an African American and four applications from Hispanics. The HMDA data also indicate that BEA-USA made a material percentage of its one- to four-family mortgage loans to LMI borrowers (those with incomes of less than 80 percent of the area median income) in the bank's assessment areas. Between 2009 and 2011, 21 percent of BEA-USA's mortgage refinance loans and 35 percent of BEA-USA's conventional home purchase loans were made to LMI borrowers.⁵⁸

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not BEA-USA is excluding or imposing higher costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.⁵⁹ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Moreover, the Board believes that all bank holding companies and their

⁵⁸ More than one-half of BEA-USA's branches are in low- to moderate-income communities.

⁵⁹ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applications than other institutions attract and do not provide for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher cost credit) are not available from HMDA data.

affiliates should conduct mortgage lending operations that are free of abusive lending practices and in compliance with all consumer protection laws.

Because of the limitations of HMDA data, the Board has considered these data and taken into account other information, including examination reports that provide evaluations of compliance by BEA-USA with consumer protection laws. The Board also has consulted with the OCC, BEA-USA's primary federal supervisor.

The record of this application, including confidential supervisory information, indicates that BEA-USA has taken steps to ensure compliance with fair lending and other consumer protection laws and regulations. In BEA-USA's most recent CRA Performance Evaluation, examiners noted "no evidence of discriminatory or other illegal credit practices... ." ⁶⁰ In addition, BEA-USA's loan policies include information on prohibited discriminatory lending practices. BEA-USA's advertising and marketing policy contains specific guidance on practices that employees should avoid that would tend to discourage loan applicants on a prohibited basis. Additionally, the bank's employees involved in lending are required to participate in annual training that includes compliance with fair lending laws and other applicable laws and regulations. Moreover, ICBC has stated it intends to conduct a full review of BEA-USA's risk-management program for fair lending compliance after consummation of the proposal.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered all the facts of record, including evaluations of the CRA performance record of BEA-USA and other relevant insured depository institutions, information provided by ICBC and BEA-USA, comments received on the proposal, and confidential supervisory information. Based on a review of the entire record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval.

⁶⁰ The Bank of East Asia, USA, National Association Community Reinvestment Act Performance Evaluation, January 4, 2010, at 5. Moreover, the CRA Performance Evaluation noted that BEA-USA's assessment areas do not arbitrarily exclude LMI areas. Id. at 4.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act amended section 3 of the BHC Act to require the Board also to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”⁶¹

Financial Stability Standard

In reviewing applications and notices under sections 3 and 4 of the BHC Act, the Board expects that it will generally find a significant adverse effect if the failure of the resulting firm, or its inability to conduct regular-course-of-business transactions, would likely impair financial intermediation or financial market functioning so as to inflict material damage on the broader economy. This kind of damage could occur in a number of ways, including seriously compromising the ability of other financial institutions to conduct regular-course-of-business transactions or seriously disrupting the provision of credit or other financial services.

On the other hand, certain types of transactions likely would have only a de minimis impact on an institution’s systemic footprint and, therefore, are not likely to raise concerns about financial stability. For example, a proposal that involves an acquisition of less than \$2 billion in assets, results in a firm with less than \$25 billion in total assets, or represents a corporate reorganization may be presumed not to raise financial stability concerns absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factor.

Analysis of the Financial Stability Impact of this Proposal

In this case, the proposal would have a de minimis impact on Applicants’ systemic footprint because BEA-USA has consolidated assets of approximately \$780 million. The acquisition of BEA-USA would not meaningfully increase ICBC’s size. The proposal also would not add any significant complexity to the overall operations of ICBC as

⁶¹ Section 604(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

BEA-USA is a traditional commercial bank that focuses largely on commercial lending. As noted above, ICBC operates subsidiary banks worldwide, including in the United Kingdom and Canada. While BEA-USA would add to ICBC's cross-border activities, BEA-USA operates only in the United States and ICBC already engages in banking and financial services in the United States through its New York branch, which has assets of \$1.5 billion, and its subsidiary U.S. broker-dealer.⁶² Moreover, neither ICBC nor BEA-USA is a major provider of any product or service that the Board believes has the potential to be critical to the functioning of the U.S. financial system. Finally, the extent of BEA-USA's interconnectedness with the U.S. financial system and its contribution to the complexity of the U.S. financial system are both sufficiently small to be considered de minimis.

Based on these and all the other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has approved the application by Applicants to acquire up to 80 percent of the voting shares of BEA-USA pursuant to section 3(a)(1) of the BHC Act. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.⁶³ The Board conditions its decision on Applicants providing to the Board adequate information on their operations and activities as well as those

⁶² ICBC has not been designated a global systemically important bank by the Basel Committee on Banking Supervision.

⁶³ Commenters also requested that the Board extend the comment period on the proposal. The Board already extended the comment period with respect to certain matters for ten days, allowing the commenters more than thirty-six days to submit comments. In the Board's view, the commenters have had ample opportunity to submit their views and, in fact, have provided written submissions that the Board has considered in acting on the proposal. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that further delay in considering the proposal, extension of the comment period, or denial of the proposal on the grounds discussed above, is not warranted.

of their affiliates to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes. Should any restrictions on access to information on the operations or activities of Applicants or any of their affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes, the Board may require termination or divestiture of any of Applicants' or their affiliates' direct or indirect activities in the United States.

The Board's approval is specifically conditioned on compliance by Applicants with the conditions imposed in this order and the commitments made to the Board in connection with the application.⁶⁴ For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.⁶⁵

⁶⁴ Commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from those authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify material factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e), 262.25(d). The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

⁶⁵ Commenters asserted that the proposal would raise national security concerns. The Board notes that Congress has provided other U.S. agencies the authority to review national security issues in proposals by foreign companies to acquire U.S. companies. Commenters raised additional concerns that address matters beyond the statutory factors the Board is authorized to consider. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,⁶⁶ effective May 9, 2012.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁶⁶ Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, and Raskin.