



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

August 5, 2008

H. Rodgin Cohen, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004-2498

Dear Mr. Cohen:

This letter is in response to the requests by China Investment Corporation (“CIC”) and Central SAFE Investments Limited (“Huijin”), both of Beijing, People’s Republic of China, for exemptions under section 4(c)(9) of the Bank Holding Company Act (“BHC Act” or “Act”) (12 U.S.C. § 1843(c)(9)) from the nonbanking restrictions of the Act.

CIC was incorporated by order of the State Council of the People’s Republic of China<sup>1</sup> on September 29, 2007, for the purpose of investing the foreign reserves of the Chinese government. CIC is wholly owned by the government of China and operates under the direct supervision and control of the State Council. Huijin is a limited liability investment holding company that is also wholly owned and controlled by the Chinese government. Huijin was established by the State Council on December 16, 2003, to invest in Chinese financial institutions and to implement and execute government policy with respect to those institutions. It has been represented that Huijin does not engage in any other commercial activities. Once governmental formalities are completed, Huijin will become a wholly owned subsidiary of CIC.

Huijin currently owns controlling interests in the Bank of China Limited (“BOC”), Industrial and Commercial Bank of China Limited (“ICBC”), and China Construction Bank (“CCB”), all also of Beijing. BOC operates two insured

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<sup>1</sup> The State Council is the highest executive body in the Chinese government.

branches in New York and one uninsured branch in California. ICBC and CCB have each filed an application under section 7(d) of the International Banking Act (“IBA”)<sup>2</sup> to establish a branch in New York, New York.<sup>3</sup> Under section 8 of the IBA, 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.<sup>4</sup> Consequently, Huijin, through its control of BOC, is subject to the BHC Act, and CIC would become subject to the Act upon its acquisition of more than 25 percent of the voting shares of Huijin. Thereafter, both CIC and Huijin would be subject to the nonbanking limitations and other requirements of the BHC Act.

CIC and Huijin have requested an exemption from the requirements of the BHC Act, based on their status as wholly state-owned vehicles.

The Board has previously considered the issues that arise when a foreign government-owned company seeks to conduct banking operations indirectly in the United States through foreign bank subsidiaries or through the acquisition of U.S. banks. In June 1982, in connection with an application by a foreign government-owned bank to acquire a U.S. bank, the Board noted that a number of significant policy issues were raised by the ownership of a U.S. bank by a foreign government or a foreign government agency, including in particular issues related to the mixing of banking and commerce and to interstate banking in the United States.<sup>5</sup> At that time, the Board noted that its practice was not to apply the provisions of the BHC Act to the foreign government owners of the foreign bank but that the issues raised by such ownership deserved further consideration.

The Board revisited the issues raised by foreign government ownership in 1988 in connection with an application by an Italian bank that was owned by Istituto per la Ricostruzione Industriale (“IRI”), a wholly government-owned financial public corporation. In reviewing this case, the Board determined that, as a legal matter, foreign governments were not themselves “companies” for

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<sup>2</sup> 12 U.S.C. § 3105(d).

<sup>3</sup> The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

<sup>4</sup> 12 U.S.C. § 3106.

<sup>5</sup> See 68 Federal Reserve Bulletin 423, 425 (1982).

purposes of the BHC Act, and so were not covered by the Act. However, the Board found that the investment vehicle used by the Italian government, IRI, was structured as a corporate vehicle and was, therefore, a company under the BHC Act.<sup>6</sup>

In making this determination, the Board stated that broad public policy issues are raised by applying the restrictions of the BHC Act to foreign government-owned companies. The Board noted that the Congress had been mindful of these concerns and had provided the Board with broad authority to exempt foreign companies from the nonbanking restrictions of the BHC Act where the Act has the effect of extending the impact of the U.S. regulatory framework to economic transactions and relationships that take place entirely overseas. The Board stated it was particularly appropriate to exercise the express authority of section 4(c)(9) of the Act in the case of foreign government-owned companies to ameliorate restrictions of the Act in the public interest.

The Board has considered the current exemption requests by CIC and Huijin in the context of this background.

Section 4(c)(9) of the BHC Act provides that the Board may exempt from the restrictions of the Act:

shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of [the Act] and would be in the public interest.<sup>7</sup>

The Board has reviewed information you have provided regarding CIC and Huijin and, based on its review, has determined that CIC and Huijin are companies under the Act. The Board has further determined that it would be in the public interest and not substantially at variance with the purposes of the Act to grant to CIC and Huijin exemptions from the nonbanking restrictions of the BHC Act under the authority of section 4(c)(9) of the Act.

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<sup>6</sup> See Board letter to Patricia Skigen, Esq., dated August 19, 1988.

<sup>7</sup> 12 U.S.C. § 1843(c)(9).

Under the exemptions, and subject to the conditions described below, CIC would be permitted to make investments in any company, including a U.S. company or a foreign company with U.S. operations, without regard to the nonbanking restrictions of the BHC Act. Huijin would be permitted to make investments in such companies directly or through its subsidiaries that are not banks that operate branches, agencies, or commercial lending companies in the United States.<sup>8</sup> Any foreign bank subsidiary of CIC or Huijin that operates a branch, agency, or commercial lending company in the United States would remain fully subject to the Board's Regulations K and Y with respect to its activities and investments and would be treated the same as any other foreign banking organization.

These exemptions are conditioned on compliance by CIC and Huijin with several limitations designed to minimize the potential for conflicts of interests, concentration of resources, and unsound banking practices, as well as to mitigate any potential competitive advantage that may accrue to CIC, Huijin, and their subsidiaries from the exemptions.

First, all transactions by a U.S. branch or agency of any foreign bank subsidiary of CIC or Huijin with a company in which CIC or Huijin (either separately or in combination) has made a controlling investment (a "controlled company") would be limited. Transactions by the U.S. branch or agency with a single controlled company are limited to 10 percent of the branch's or agency's lending base, as described below, and transactions with all controlled companies in the aggregate are limited to 20 percent of the branch's or agency's lending base,<sup>9</sup> and all such transactions must be fully collateralized. Any transaction between the U.S. branch or agency and a controlled company must be on market

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<sup>8</sup> A foreign bank subsidiary of CIC or Huijin that currently does not operate a branch, agency, or commercial lending company in the United States would be entitled to take advantage of this exemption granted to CIC or Huijin. If, however, such foreign bank were subsequently to establish a banking office in the United States, such foreign bank would be required to conform its activities and investments in the United States to the requirements of Regulations K and Y (12 CFR Parts 211 and 225).

<sup>9</sup> For purposes of this condition, the "lending base" of a U.S. branch or agency shall be equal to 5 percent of the branch's or agency's third party assets. "Third party assets" means the amount of total claims on nonrelated entities as reported on the report of condition filed by the branch or agency (FFIEC 002).

terms. The U.S. branches and agencies of foreign bank subsidiaries of CIC and Huijin may not cross-market goods and services in the United States with such controlled companies.

Second, each of CIC and Huijin must continue to conduct a majority of its business outside the United States, consistent with the requirement of section 4(c)(9) of the Act.

Third, CIC and Huijin may not directly or indirectly (including in combination) acquire control of or exercise a controlling influence over a securities company, an insurance company, or any other company that engages in activities in the United States that are permitted only to a financial holding company under section 4(k) of the BHC Act,<sup>10</sup> unless CIC and Huijin meet the standards of, and elect to be treated as, financial holding companies.

Fourth, consistent with the requirements of the BHC Act and the Federal Reserve Act, CIC and Huijin and any company, including any foreign bank, that is controlled by CIC or Huijin (either separately or in combination) are required to obtain prior Board approval to make a direct or indirect investment in 5 percent or more of the voting shares of a bank holding company or U.S. bank,<sup>11</sup> or to make a controlling investment in a corporation organized under section 25A of the Federal Reserve Act (an Edge corporation).<sup>12</sup> In addition, prior Board approval is required for the acquisition of a controlling interest in a U.S. insured depository institution.

The Board also has determined to exempt CIC and Huijin from the regular reporting, filing, and capital requirements of the BHC Act and the Board's regulations. With respect to reporting, CIC and Huijin must inform the Board of any acquisition of 25 percent or more of the shares of any company that engages in activities in the United States, except that CIC and Huijin must report any acquisition of more than 5 percent of the shares of any company that engages in activities that only a financial holding company may conduct in the United States. CIC and Huijin are not required to report separately an investment that is made by one of their subsidiary foreign banks that is subject to the BHC Act where such investment is reported by that bank to the Board as part of the bank's regular reporting requirements. In addition, CIC and Huijin must monitor investments

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<sup>10</sup> 12 U.S.C. § 1843(k).

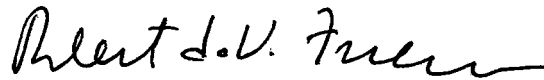
<sup>11</sup> 12 U.S.C. § 1842(a).

<sup>12</sup> 12 U.S.C. §§ 611 and 619.

made by their controlled companies to determine whether, in the aggregate, such investments might trigger an application threshold with respect to a U.S. depository institution or cause CIC or Huijin to be considered to control a company that owns a U.S. depository institution.

Based on all the facts of record, the Board has determined that the exemptions granted to CIC and Huijin would be in the public interest and not substantially at variance with the purposes of the BHC Act. The Board may reevaluate the determination in this letter in connection with any proposal by CIC, Huijin, or any of their subsidiaries to acquire control of a U.S. bank or other U.S. depository institution. This determination is based on all the facts presented and representations made in connection with the requests. The conditions contained herein have been relied on by the Board in connection with its findings and decision and may be enforced in proceedings under applicable law. Should there be a material change in the facts, the Board may review its determination.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert deV. Frierson".

Robert deV. Frierson  
Deputy Secretary of the Board