

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

In the Matter of

AGRICULTURAL BANK OF CHINA LIMITED  
Beijing, People's Republic of China and

and

AGRICULTURAL BANK OF CHINA  
NEW YORK BRANCH  
New York, New York

**CONSENT ORDER UNDER  
NEW YORK BANKING LAW §§ 39 and 44**

The New York State Department of Financial Services (the "Department" or "DFS"), Agricultural Bank of China Limited ("Agricultural Bank of China") and Agricultural Bank of China, New York Branch (the "New York Branch" or the "Branch") (together, "Agricultural Bank of China" or the "Bank") are willing to resolve the matters described herein without further proceedings:

**Introduction**

1. Preventing terrorist financing, money laundering and other illicit financial transactions is a chief imperative of law enforcement agencies and regulators. International terrorist groups, organized criminal enterprises, and cybercriminals across the globe seek every day to conscript the international financial system to their illicit purposes. Law enforcement agencies nationally and abroad work diligently to detect and prevent such transactions.

2. Global financial institutions serve as the first line of defense against such illegal financial transactions in today's fast-paced, interconnected financial network.

Federal law and the law of New York require these institutions to design, implement and execute policies and systems to prevent and detect illegal financial transactions. The Bank Secrecy Act (öBSAö), for example, requires these institutions to report suspicious transactions (via öSuspicious Activity Reportsö or öSARsö) to the U.S. Treasury Department's Financial Crimes Enforcement Network (öFinCENö), enabling law enforcement agencies to conduct investigations that result in the future interdiction of these transactions and, ultimately, prosecution or even elimination of bad actors. The BSA likewise requires financial institutions to have solid anti-money laundering (öAMLö) systems in place (together, öBSA/AMLö).

3. New York law imposes these same requirements on its regulated financial institutions.<sup>1</sup>

4. The law obligates financial institutions to devise and implement systems reasonably designed to identify and block suspicious transactions and transactions prohibited by law. Each institution is expected to configure a system based on the particular risks faced by the institution, considering such factors as its size, geographical reach, and the specific lines of business it engages in. Moreover, the institution must employ or engage sufficient numbers of trained compliance professionals to ensure systems run properly.

5. One such system is known as ötransaction monitoring.ö This is the process by which an institution monitors financial transactions after their execution for potential BSA/AML violations and Suspicious Activity Reporting. While this process may be carried out manually, larger institutions often employ electronic systems using

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<sup>1</sup> See Part 115 of the Superintendent's Regulations (3 NYCRR 115), Part 116 (3 NYCRR 116), Part 416 (3 NYCRR 416) and Part 417 (3 NYCRR 417)

advanced software to monitor transactions and, in the first instance, screen them even before execution for possible violations of federal economic sanctions laws.

6. An effective transaction monitoring system is essential to compliance with anti-money laundering and counter-terrorist financing laws. For this reason, the Department recently issued regulations that clarify and prescribe the required attributes of an effective transaction monitoring program, and require the board of directors or a senior officer (as applicable) of each regulated institution to submit an annual certification containing a resolution or finding of compliance with this regulation. *See* Part 504 of the Superintendent's Regulations (eff. Jan. 1, 2017).

7. The ultimate responsibility for the design and implementation of these policies and systems belongs at the very top echelon of the institution. The board of directors and senior management must devote careful study to the design of the anti-money laundering and other compliance systems that lie at the core of this first line of defense. They must provide sufficient resources to undergird these systems and structures, including appropriate and evolving technology where cost effective. Adequate staffing must be put in place, and training must be ongoing.

8. Management cannot be focused solely on business or branch development. Compliance must be a central pillar of management's responsibilities. Senior executives need to be proactive, dedicated to a strong program, and unwavering in their commitment to keep the program on their agenda. When there is a material failure in a compliance program -- in its structure, implementation, execution or policing -- senior management must bear responsibility.

9. The failure of a strong compliance program creates a substantial risk that terrorist groups and other criminals will use a financial institution to support their dangerous activities. Given the grave risk to the U.S. financial system and law enforcement objectives, the failure of an institution to have a strong and working compliance program warrants serious sanctions.

10. As set forth more fully below, this Consent Order addresses serious and persistent compliance failures found by the Department at Agricultural Bank of China and the New York Branch during its examinations in 2014 and 2015, and based on the Department's investigation in 2016. The Department's findings demonstrate that compliance failures found at the New York Branch indicate a fundamental lack of recognition of the need for a vigorous compliance infrastructure, and inadequate attention of the Bank to the state of compliance at the New York Branch.

11. As further detailed below, the Department's investigation beyond these examinations has found credible evidence of wrongdoing. U.S. dollar transactions conducted through the New York Branch did not receive the important and necessary scrutiny required by state law concerning economic sanctions and anti-money laundering compliance.

12. Likewise, and as discussed more fully below, when the Chief Compliance Officer (CCO) raised concerns in 2014 about possible suspicious activity flowing through the Branch, Branch management failed to properly address these concerns; did not raise the CCO's concerns with the Department; and, indeed, responded by curtailing the CCO's independence and ability to carry out the compliance function effectively. Consequently, the CCO left the Branch in mid-2015.

13. **NOW, THEREFORE**, to resolve this matter without further proceedings pursuant to the Superintendent's authority under Sections 39 and 44 of the Banking Law, the Department and the Bank agree to the following:

### **Factual Background**

#### **Agricultural Bank of China**

14. Agricultural Bank of China, one of China's largest banks, is headquartered in Beijing, People's Republic of China. The Bank has overseas branches in Frankfurt, Sydney, Hong Kong, Tokyo, Dubai, Singapore, Seoul and New York, and subsidiaries in London and Moscow.

15. The Department licensed the New York Branch in August 2012 as a wholesale banking branch to hold demand deposits, conduct corporate lending and deposits, and carry out trade finance services; and treasury activities including foreign exchange. It is the Bank's only U.S. branch.

16. The Bank holds total assets of approximately \$2.8 trillion; assets held at the New York Branch total approximately \$9.5 billion. In 2014, Forbes ranked the Bank as one of the largest, most powerful companies in the world.

#### **The Branch Disregarded the Department's Warning In 2014 That It Should Not Expand Dollar Clearing at the Branch Until It Had Significantly Improved Its Compliance Function**

17. Since 2013, the New York Branch has conducted U.S. dollar clearing in rapidly increasing volumes through foreign correspondent accounts. U.S. dollar clearing is the process by which U.S. dollar-denominated transactions are satisfied between counterparties through a U.S. bank. U.S. dollar clearing may be a potentially high-risk

business line for many banks, as it may be used by bad actors to launder money or facilitate terrorist transactions. Yet it is a function that many bank customers engaged in international commerce must use in their daily operations, and that may be a profit center for a bank.

18. Following an examination conducted by the Department in 2014, the New York Branch was specifically cautioned that its transaction monitoring systems were inadequate for its existing risks. The type of deficiencies included transaction monitoring; the Branch's risk assessment; and policies, procedures and processes necessary to promote sustainability of the compliance program.

19. Given that the Bank had expressed its intent to expand in higher risk activities, such as U.S. dollar clearing and trade finance services, the Bank was warned that its then-existing transaction monitoring processes might not be adequate to mitigate heightened risks in the area of BSA/AML and economic sanctions. The Department strongly advised the Bank that dollar clearing transaction volumes should remain at then-current levels and not increase until identified monitoring deficiencies had been fully remediated and validated. The Department further warned the Bank that failure to fully address these issues by the next examination could result in a supervisory action, and that many of the issues required immediate attention.

20. In response, the Bank assured the Department that all of these issues would be resolved fully ahead of the deadlines required by the Department.

21. However, while the Branch took certain initiatives to perform a meaningful validation, the issues identified were far from resolved. The Bank nonetheless disregarded the Department's caution and substantially increased U.S. dollar

clearing activity. For example, during the period January - July 2014, the Branch processed an average of 148 daily dollar-clearing transactions, amounting to approximately \$26 billion for the period. In contrast, for the period January - July 2015, this volume grew (on average) to 330 daily transactions, totaling approximately \$72 billion for the period. The Branch created an untenable risk by failing to meet compliance requirements and causing (as discussed below) an unmanageable backlog of nearly 700 transaction monitoring alerts that needed to be investigated fully.

### **The Branch's Transaction Methods Were Not Sufficiently Transparent**

22. **SWIFT Messaging for U.S. Dollar Clearing.** A little background: the Society of Worldwide Interbank Financial Telecommunications (SWIFT) provides an electronic communications network through which banks exchange wire transfer messages with other financial institutions, including U.S. correspondent banks. SWIFT is a non-governmental entity owned by a consortium of banks. Each SWIFT message contains various blank fields for information to be inserted. The financial institution originating the communication is responsible for inserting the necessary information into the fields.

23. Prior to December 2009, SWIFT permitted two types of payment communications to process U.S. dollar payments. The first, the serial method, employed what is known as an MT 103 Single Customer Credit Transfer message. The MT 103 message is transmitted from the ordering customer's financial institution, through correspondent banks, and through to the beneficiary customer's financial institution. The fields in the MT 103 identify the originating party, which is the customer of the originating financial institution, and the ultimate recipient, which is the customer of the receiving institution.

24. The second method, known as a "cover" payment, allowed for the MT 103 to be exchanged directly between the financial institutions that serviced the customer accounts, without being shared with any intermediary banks that served as correspondents to the originating or terminating banks. Rather, a separate, "covering" MT 202 General Financial Institution Transfer message was sent to clear and settle the payment at the inter-bank (bank-to-bank) level that might be one or more intermediaries between the originating and terminating institutions.

25. Thus, prior to December 2009, banks could obscure the actual originating and receiving parties to a transaction through use of an MT 202. Correspondent banks that intermediated between the originating and terminating banks which processed an MT 202 (like the New York Branch of Agricultural Bank of China) would not receive any information about (a) the ordering and beneficiary customers; (b) any other financial institution prior to the sender or following the receiver of the MT 103; or (c) parties possibly mentioned in the remittance information.

26. **Introduction of the MT 202 COV.** This changed in late 2009, after regulators around the globe -- including the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") and FinCEN -- sought to improve transparency of direct and cover payments in order to combat illicit financial transactions.

27. SWIFT responded by creating a new type of payment message, the "MT 202 COV."<sup>2</sup> This message is sent by or on behalf of the ordering institution either directly, or through correspondent(s), to the financial institution of the ultimate payment beneficiary. The MT 202 COV contains fields for originator and beneficiary

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<sup>2</sup> See <http://www.wolfsberg-principles.com/>

information. Thus, for any transaction that involves an MT 103, the MT 202 COV is mandatory.

28. Use of the MT 202 COV provides banks and regulators greater transparency into the ultimate parties transacting business through these institutions, thus facilitating an enhanced ability to stop terrorist financing, money laundering and other illicit conduct by domestic and cross-border entities, including criminal enterprises and state actors. Thus, by late 2009, all Banks conducting such transactions were well aware that they needed to employ an MT 202 COV for transactions that involved MT 103 payment messages.

**The Branch Failed to Report to the Department Concerns Raised by the Branch CCO About Suspicious Transactions, and Improperly Curtailed the CCO's Independence After the CCO Raised These Concerns**

29. Credible evidence obtained by the Department in its investigation during 2016 indicates the following:

30. In approximately September 2014, soon after joining the New York Branch and almost five years after the introduction of the MT 202 COV, the newly-hired Chief Compliance Officer (CCO) discovered a pattern in the Branch's SWIFT wire messaging for U.S. dollar-denominated transactions that appeared alarming.

31. Specifically, it appeared that a substantial portion of MT 202 messages moving through the New York Branch contained unidentified numeric codes, with each code preceded by the letters "OC" or "BP." These codes, were in a field of the SWIFT message not scanned by the Branch's U.S. sanctions filters (Field No. 21).

32. Thus, a substantial portion of MT 202 wire messages transiting through the New York Branch -- estimated by the former CCO to be 20 to 30 percent -- remained

virtually impervious to screening by the New York Branch or regulators for the true parties to transactions.

33. The CCO believed that many of these opaque transactions involved bank customers on each end of the trade finance transaction, like the seller and buyer of goods ó information that should have been disclosed for screening and monitoring purposes. The CCO further believed that this group of MT 202 messages contravened the BSA's "Travel Rule" ó a regulation applicable in New York requiring that the originator's financial institution include information that would identify customers in any transmittal order.<sup>3</sup> Information such as this, when mapped onto a SWIFT wire message, permits bank compliance staff to screen and monitor transactions in compliance with BSA/AML requirements, OFAC regulations, and the policies and practices of the Department and other regulators.

34. Additionally, unrelated to the above-described MT 202 issue, other personnel in the compliance function of the New York Branch discovered additional transaction patterns that were alarming, including (but in no way limited to):

- a. Unusually large round dollar transfers between Chinese trading companies and Russian lumber companies;
- b. Unusually large round dollar payments from Yemen to companies primarily in the Zhejiang Province of China;
- c. Dollar denominated payments from trading companies located in the United Arab Emirates; and
- d. Dollar transactions remitted by a Turkish Bank customer for its Afghan Bank client which is known by the U.S. Treasury

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<sup>3</sup> A Bank Secrecy Act rule, 31 CFR 103.33(g), ó often called the "Travel" rule ó requires all financial institutions to pass on certain information to the next financial institution, in certain funds transmittals involving more than one financial institution. See <https://www.sec.gov/about/offices/ocie/aml2007/fincen-advisu7.pdf>.

Department for its associations with a hawala network having associations with narcotics traffickers and illicit cash flows.

35. Investigation by other compliance personnel also revealed that certain invoices that had been obtained to investigate potentially suspicious transactions involving China and Russia appeared to be counterfeit or falsified. Other documents obtained suggested U.S. dollar trade with Iranian counterparties, including documentation indicating dollar transactions were made for the benefit of a sanctioned Iranian party.

36. When, in the Fall of 2014, the CCO brought these concerns regarding the SWIFT messages to the attention of the CCO's supervisors at the New York Branch including, ultimately, the Branch Head, management disagreed with the CCO's assessment. Reluctantly, however, Branch management allowed the CCO to communicate these concerns to the Federal Reserve Bank of New York ("FRBNY") in the form of a so-called "request for guidance."

37. There, the CCO expressed "concern" that "Trade Finance is a new frontier for money laundering" and communicated to the FRB that it appeared "transactions related to clearing U.S. Dollars for ABC's Trade related customers for Letters of Credit and Collection transactions . . . are not identified on [the Branch's] payment messages."

38. The FRBNY responded in February 2015 in a letter to the Branch. The FRB's letter observed that the New York Branch "was processing significant volumes of trade finance-related transactions via MT202 messages," and that this, "coupled with overall heightened risks posed by trade finance activities due to the lack of adequate transparency raise concerns of undue BSA/AML and OFAC risks to the branch."

39. The FRBNY warned the Branch's General Manager and Deputy General Manager that "it is prudent for the branch to require transparency about all underlying

customers in such transactions by having the head office and other respondents use the MT 202 COV format when the bank-to-bank transactions are customer-related.

40. In response, the Branch took steps to improperly curtail the independence of the CCO, and impede the CCO's ability to effectively carry out these important compliance responsibilities. For example, Branch management directed the CCO to (i) refrain from communicating with regulators; and (ii) have supervisors, particularly the New York Branch's General Manager or Deputy General Manager, review all requests for information (RFIs) of the Bank's headquarters and branch networks necessary to obtain missing information in correspondent transactions.

41. In the face of this restricted environment, the CCO took leave from the Branch in April 2015, and left the Branch in June 2015. Much of the remaining compliance staff at the New York Branch resigned by August 2015. And deficiencies in the Branch's compliance systems did not improve.

42. For the six months following the CCO's departure, the New York Branch's compliance department was run by a temporary compliance consultant, who was overseen by the Branch CFO. To the extent that the compliance function made any RFIs thereafter and there apparently were few -- these requests were still screened by New York Branch supervisors -- which as noted had the effect of improperly limiting the necessary independence and authority of the compliance function of the New York Branch.

43. Indeed, as noted above, the Department's examiners who came on-site in July 2015 discovered an unmanageable backlog of nearly 700 alerts of potential suspicious transactions at the New York Branch that had not yet been investigated.

### **The New York Branch's Inadequate Compliance Function**

44. In July and August 2015, the Department and FRBNY conducted a joint examination of the New York Branch for the period ending March 2015. As already noted, due to key deficiencies identified during a joint examination the prior year, the Bank had been warned that its failure to address those issues could result in supervisory action. Yet regulators were not apprised of the conduct discussed in Paragraphs 29 to 43 above.

45. The 2015 examination focused on the New York Branch's risk management and its compliance with applicable federal and state laws, rules and regulations pertaining to anti-money laundering compliance including the BSA; the rules and regulations of OFAC; and the regulations of the Department in 3 N.Y.C.R.R. Parts 116 and 300.

46. The examiners also evaluated whether management undertook any corrective actions to address the issues raised from the prior examination conducted in 2014, noting that nearly the entire compliance team at the New York Branch, including the CCO, had resigned by August 2015. In comparing the examination of the previous year, DFS examiners found that a substantial number of the prior year's deficiencies, significant in both nature and volume, persisted.

47. The Department determined that the Branch's BSA compliance program was inadequate, due to the Bank's failure to take appropriate actions to address prior supervisory concerns, wide-spread transaction monitoring deficiencies, and significant concerns about the adequacy and independence of the Branch's internal audit function.

48. The failures of the compliance function were compounded by the significant risk assumed by the New York Branch in increased foreign correspondent

banking activities, including cross-border trade finance-related transactions ó a risk that the Department had specifically cautioned the Bank to avoid.

49. Among the serious deficiencies identified by the Department in the 2015 Examination (and without limitation):

- É The Branch was unable to retain a qualified, permanent CCO;
- É The interim BSA officer had limited contact with the Head Office and did not have a point of contact;
- É The CCO also held the role as BSA Officer, without adequate resources given the significant responsibility of these roles;
- É Deficiencies in documentation and a lack of knowledge transfer prevented the Branch from remediating the deficiencies found in the 2014 examination; and
- É Head Office and senior management did not adequately monitor remediation of the prior examination deficiencies and did not require substantiating details or documentation of the purported remediation.

50. Additionally, the Branch's transaction monitoring process was seriously deficient. Although the Branch had engaged a consultant to improve deficiencies pointed out in the 2014 examination, the 2015 examination determined that the monitoring criteria remained seriously flawed. Among other deficiencies, the examiners found that more than half of the transaction monitoring rules were improperly configured; high risk jurisdictions were not properly updated; and a wide variety of financial transactions were not properly monitored, or not monitored at all.

51. Moreover, internal policies concerning transaction monitoring failed to properly address the high-risk transactions associated with U.S. dollar clearing and trade finance activities, instead focusing on lower-risk activities such as treasury transactions.

52. When compounded with existing case backlogs, staff turnover and other problems, as noted above, the Branch had accumulated an enormous and

“unmanageable” backlog of nearly 700 alerts that needed to be investigated. Each one of these alerts was a potentially suspicious transaction.

53. As noted, the examination also found serious flaws in the New York Branch’s internal audit function. The Branch’s internal audit utterly failed to objectively evaluate the BSA/AML compliance program. Nor did its independent testing program include timely tracking of previously identified issues and deficiencies raised during the 2014 examination. And it was apparent that management had not verified that those deficiencies were remedied. In short, the prior problems involving internal audit remained entirely uncorrected.

54. The above is only a partial description of the numerous deficiencies uncovered during the 2015 examination; based on recent communications between the Bank and the Department, it appears that many, if not all, remain unremediated.

55. Moreover, as discussed above, additional investigation recently conducted by the Department since the 2015 examination uncovered evidence of potentially suspicious transactions. For these reasons, this Consent Order requires an independent monitor to conduct additional investigation of the New York Branch’s voluminous dollar-clearing and trade finance transactions conducted during the period May 2014 through October 2015.

### **Violations of Law and Regulation**

56. The Bank and the New York Branch failed to maintain an effective and compliant anti-money laundering program and OFAC compliance program, in violation of 3 N.Y.C.R.R. § 116.2.

57. The Bank and the New York Branch failed to maintain and make available at its New York Branch true and accurate books, accounts and records reflecting all transactions and actions, in violation of New York Banking Law § 200-c.

58. The Bank and the New York Branch failed to submit a report to the Superintendent immediately upon discovering fraud, dishonesty, making of false entries and omission of true entries, and other misconduct, in violation of 3 NYCRR § 300.1.

### **Settlement Provisions**

#### **Monetary Payment**

59. Agricultural Bank of China Bank shall pay a civil monetary penalty pursuant to Banking Law § 44 to the Department in the amount of \$215,000,000.00 as a result of the inadequate and deficient compliance program described above. The Bank shall pay the entire amount within ten (10) days of executing this Consent Order. Agricultural Bank of China agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

#### **Independent Monitor**

60. Within sixty (60) days of this Order, Agricultural Bank of China and the New York Branch shall engage an independent monitor (the "Independent Monitor") to: (i) conduct a comprehensive review of the effectiveness of the Branch's program for compliance with the BSA/AML requirements and the state laws and regulations (the "Compliance Review"); and (ii) prepare a written report of findings, conclusions, and recommendations (the "Compliance Report").

61. The Independent Monitor will be selected by the Department in the exercise of its sole discretion, and will report directly to the Department.

62. Within ten (10) days of the selection of the Independent Monitor, but prior to the Compliance Review, Agricultural Bank of China and the New York Branch shall jointly submit to the Department for approval an engagement letter that provides, at a minimum, for the Independent Monitor to:

- a. identify all of the Branch's business lines, activities, and products to ensure that such business lines, activities, and products are appropriately risk-rated and included in the Branch's BSA/AML compliance program, policies, and procedures;
- b. conduct a comprehensive assessment of the Branch's BSA/AML compliance program, policies, and procedures;
- c. complete the Compliance Review within sixty (60) days of the Department's approval of the engagement letter;
- d. provide to the Department a copy of the Compliance Report; and

- e. commit that any and all interim reports, drafts, workpapers, or other supporting materials associated with the Compliance Review will be made available to the Department.

63. The Independent Monitor shall also conduct a review of the New York Branch's U.S. dollar clearing transaction activity from May 1, 2014 through October 31, 2015, to determine whether transactions inconsistent with or in violation of the OFAC regulations, or suspicious activity involving high risk customers or transactions or possible money laundering at, by, or through the Branch were properly identified and reported in accordance with the OFAC regulations and suspicious activity reporting regulations and New York law (the "Transaction and OFAC Sanctions Review") and to prepare a written report to the Department detailing the Independent Monitor's findings (the "Transaction and OFAC Sanctions Review Report").

64. Within ten (10) days of the engagement of the Independent Monitor, but prior to the commencement of the Transaction and OFAC Sanctions Review, Agricultural Bank of China and the New York Branch shall jointly submit to the Department for approval additional terms in the engagement letter that set forth:

- a. the methodology for conducting the Transaction and OFAC Sanctions Review, including any sampling procedures to be followed;
- b. the expertise and resources to be dedicated to the Transaction and OFAC Sanctions Review;
- c. the anticipated date of completion of the Transaction and OFAC Sanctions Review and the Transaction and OFAC Sanctions Review Report; and

- d. a commitment that supporting material and drafts associated with the Transaction and OFAC Sanctions Review will be made available to the Department upon request.

65. Throughout the Transaction and OFAC Sanctions Review, Agricultural Bank of China and the New York Branch shall ensure that all matters or transactions required to be reported that have not previously been reported are reported in accordance with applicable rules and regulations.

**BSA/AML Compliance Program**

66. Within sixty (60) days of the submission of the Compliance Report, Agricultural Bank of China and the New York Branch shall jointly submit a written revised BSA/AML compliance program for the Branch, acceptable to the Department.

At a minimum, the program shall provide for:

- a. a system of internal controls designed to ensure compliance with the BSA/AML requirements and the state laws and regulations;
- b. controls designed to ensure compliance with all requirements relating to correspondent accounts for foreign financial institutions;
- c. a comprehensive BSA/AML risk assessment that identifies and considers all products and services of the New York Branch, customer types, geographic locations, and transaction volumes, as appropriate, in determining inherent and residual risks;
- d. management of the New York Branch's BSA/AML compliance program by a qualified compliance officer, who is given full autonomy, independence, and responsibility for implementing and

- maintaining an effective BSA/AML compliance program that is commensurate with the New York Branch's size and risk profile, and is supported by adequate staffing levels and resources;
- e. identification of management information systems used to achieve compliance with the BSA/AML requirements and the state laws and regulations and a timeline to review key systems to ensure they are configured to mitigate BSA/AML risks;
  - f. comprehensive and timely independent testing for the New York Branch's compliance with applicable BSA/AML requirements and the state laws and regulations; and
  - g. effective training for all appropriate Branch personnel and appropriate personnel of affiliates that perform BSA/AML compliance-related functions for the New York Branch in all aspects of the BSA/AML requirements, the state laws and regulations, and internal policies and procedures.

### **Suspicious Activity Monitoring and Reporting**

67. Within sixty (60) days of the submission of the Compliance Report, Agricultural Bank of China and the New York Branch shall jointly submit a written program to reasonably ensure the identification and timely, accurate, and complete reporting by the New York Branch of all known or suspected violations of law or suspicious transactions to law enforcement and supervisory authorities, as required by applicable suspicious activity reporting laws and regulations, acceptable to the Department. At a minimum, the program shall include:

- a. a well-documented methodology for establishing monitoring rules and thresholds appropriate for the New York Branches profile which considers factors such as type of customer, type of product or service, geographic location, and foreign correspondent banking activities, including U.S. dollar clearing activities;
- b. policies and procedures for analyzing, testing, and documenting changes to monitoring rules and thresholds;
- c. enhanced monitoring and investigation criteria and procedures to ensure the timely detection, investigation, and reporting of all known or suspected violations of law and suspicious transactions, including, but not limited to:
  - i. effective monitoring of customer accounts and transactions, including but not limited to, transactions conducted through foreign correspondent accounts;
  - ii. appropriate allocation of resources to manage alert and case inventory;
  - iii. adequate escalation of information about potentially suspicious activity through appropriate levels of management;
  - iv. maintenance of sufficient documentation with respect to the investigation and analysis of potentially suspicious activity, including the resolution and escalation of concerns; and

- v. maintenance of accurate and comprehensive customer and transactional data and ensuring that it is utilized by the New York Branch's compliance program.

**Customer Due Diligence**

68. Within sixty (60) days of the submission of the Compliance Report, Agricultural Bank of China and the New York Branch shall jointly submit a written enhanced customer due diligence program, acceptable to the Department. At a minimum, the program shall include:

- a. policies, procedures, and controls to ensure that the New York Branch collects, analyzes, and retains complete and accurate customer information for all account holders, including, but not limited to, affiliates;
- b. a plan to remediate deficient due diligence for existing customers accounts;
- c. a revised methodology for assigning risk ratings to account holders that considers factors such as type of customer, type of products and services, geographic locations, and transaction volume;
- d. for each customer whose transactions require enhanced due diligence procedures to:
  - i. determine the appropriate documentation necessary to verify the identity and business activities of the customer; and
  - ii. understand the normal and expected transactions of the customer.

- e. policies, procedures, and controls to ensure that foreign correspondent accounts are accorded the appropriate due diligence and, where necessary, enhanced due diligence; and
- f. periodic reviews and evaluations of customer and account information for the entire customer base to ensure that information is current, complete, and that the risk rating reflects the current information, and if applicable, documenting rationales for any revisions made to the customer risk rating.

### **Internal Audit**

69. Within sixty (60) days of the submission of the Compliance Report, the Bank and the Branch shall jointly submit a written revised internal audit program for the Branch acceptable to the Department that shall, at a minimum, provide for:

- a. Completion, at least annually, of a written Board of Directors-approved, risk-based audit plan that encompasses all appropriate areas of audit coverage;
- b. Timely escalation and resolution of audit findings and follow-up reviews to ensure completion of corrective measures; and
- c. Comprehensive tracking and reporting of the status and resolution of audit and examination findings to the Bank's Board of Directors.

### **Corporate Governance and Management Oversight**

70. Within sixty (60) days of the submission of the Compliance Report, Agricultural Bank of China's Board of Directors and the management of the New York Branch shall jointly submit to the Department a written plan to enhance oversight, by the

management of the Bank and New York Branch, of the New York Branch's compliance with the BSA/AML requirements, the state laws and regulations, and the regulations issued by OFAC acceptable to the Department. The plan shall provide for a sustainable governance framework that, at a minimum, addresses, considers, and includes:

- a. actions the board of directors will take to maintain effective control over, and oversight of, Branch management's compliance with the BSA/AML requirements, the state laws and regulations, and the OFAC regulations;
- b. measures to improve the management information systems reporting of the Branch's compliance with the BSA/AML requirements, the state laws and regulations, and the OFAC regulations to senior management of the Bank and the Branch;
- c. clearly defined roles, responsibilities, and accountability regarding compliance with the BSA/AML requirements, the state laws and regulations, and the OFAC regulations for the Bank's and the Branch's respective management, compliance personnel, and internal audit staff;
- d. measures to ensure BSA/AML issues are appropriately tracked, escalated, and reviewed by the Branch's senior management;
- e. measures to ensure that the person or groups at the Bank and the Branch charged with the responsibility of overseeing the Branch's compliance with the BSA/AML requirements, the state laws and regulations, and the OFAC regulations possess appropriate subject

matter expertise and are actively involved in carrying out such responsibilities;

- f. adequate resources to ensure the New York Branch's compliance with this Order, the BSA/AML requirements, the state laws and regulations, and the OFAC regulations; and
- g. a direct reporting line between the Branch's BSA/AML compliance officer and the Board of Directors or committee thereof.

**Full and Complete Cooperation of Agricultural Bank of China Bank**

71. Agricultural Bank of China and the New York Branch each agrees that it will fully cooperate with the Independent Monitor and support the work of each by, among other things, providing each with access to all relevant personnel, consultants and third-party service providers, files, reports, or records, wherever located, consistent with applicable law.

72. The Independent Monitor will thereafter oversee the implementation of any corrective measures undertaken pursuant to the Compliance Report and/or plans discussed above in Paragraphs 60 - 65.

73. The Independent Monitor will assess the Bank's compliance with its corrective measures and will submit subsequent progress reports and a final report to the Department and the Bank, at intervals to be determined by the Department. The Department may, in its sole discretion, extend any reporting deadline set forth in this Order.

74. The term of the Independent Monitor's engagement will extend for two years from the date of its formal engagement by the Bank, to be extended in the

Department's sole discretion if Agricultural Bank of China fails to cooperate. Any dispute as to the scope of the Independent Monitor's authority or mandate will be resolved by the Department in the exercise of its sole discretion, after appropriate consultation with the Bank and the Monitor.

### **Interaction with the Department**

75. Within thirty (30) days of the submission of the Compliance Report, the Bank and the Branch shall jointly submit written policies and procedures that govern the conduct of the Branch's personnel in all supervisory and regulatory matters, including, but not limited to, interaction with and requests for information by examiners for the Branch, acceptable to the Department. The policies and procedures shall, at a minimum, ensure that all Branch personnel provide prompt, complete, and accurate information to examiners and provide for employee training that emphasizes the importance of full cooperation with banking regulators by all employees.

### **Breach of Consent Order**

76. In the event that the Department believes the Bank to be in material breach of the Consent Order, the Department will provide written notice to the Bank and the Bank must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

77. The parties understand and agree that the Bank's failure to make the required showing within the designated time period shall be presumptive evidence of the Bank's breach. Upon a finding that the Bank has breached this Consent Order, the

Department has all the remedies available to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing orders, hearings or notices.

**Waiver of Rights**

78. The parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

**Parties Bound by the Consent Order**

79. This Consent Order is binding on the Department and Agricultural Bank of China and the New York Branch, as well as any successors and assigns that are under the Department's supervisory authority. This Consent Order does not bind any federal or other state agency or law enforcement authority.

80. No further action will be taken by the Department against Agricultural Bank of China for the specific conduct set forth in this Order, provided that the Bank fully complies with the terms of the Order. Notwithstanding the foregoing or any other provision in this Consent Order, however, the Department may undertake additional action against the Bank for transactions or conduct that comes to the attention of the Department, either as a result of the Transaction and OFAC Sanctions Review, or in some other manner.

**Notices**

81. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Elizabeth Nochlin  
Megan Prendergast  
New York State Department  
of Financial Services  
One State Street  
New York, NY 10004

For Agricultural Bank of China:

Zhao Huan  
No. 69, Jianguomen Nei Avenue  
Dongcheng District, Beijing, P.R. China, 100005

Yu Ming  
277 Park Avenue  
New York, NY 10172

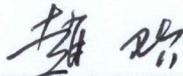
**Miscellaneous**

82. Each provision of this Consent Order shall remain effective and enforceable until stayed, modified, suspended, or terminated by the Department.

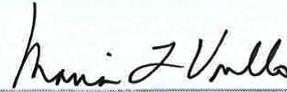
83. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of the Consent Order.

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 4th day of November, 2016.

AGRICULTURAL BANK OF CHINA  
LIMITED

By:   
\_\_\_\_\_  
ZHAO HUAN  
President

NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES

By:   
\_\_\_\_\_  
MARIA T. VULLO  
Superintendent of Financial Services

By:   
\_\_\_\_\_  
MATTHEW L. LEVINE  
Executive Deputy Superintendent of  
Enforcement

AGRICULTURAL BANK OF CHINA LIMITED, NEW YORK BRANCH

By:   
\_\_\_\_\_  
YU MING  
General Manager