

FEDERAL RESERVE SYSTEM

Banco de Bogota S.A.
Santafe de Bogota, D.E., Colombia

Order Approving Establishment of an Agency

Banco de Bogota S.A. (“Bank”), Santafe de Bogota, D.E., Colombia, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA (12 U.S.C. § 3105(d)) to establish an agency in Miami, Florida. 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 an agency in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Miami, Florida (*Miami Herald*, March 9, 1998). The time for filing comments has expired, and the Board has considered the application and all comments received.

Bank, with total consolidated assets of approximately \$3.7 billion, is the third largest bank in Colombia.¹ Bank is the oldest commercial bank in Colombia, and operates through 274 branches in Colombia. Bank also owns bank subsidiaries in Panama and the Bahamas. In the United States, Bank operates an agency in New York, New York, and an Edge corporation in Miami, Florida. Grupo Aval Acciones y Valores, S.A. (“Aval”), a holding company engaged in financial activities, owns a majority of Bank’s outstanding voting shares.²

The proposed agency would be used to further develop Bank’s trade-

¹Unless otherwise indicated all data are as of December 31, 2000.

²Aval is controlled by Dr. Luis Carlos Sarmiento Angulo, who directly and indirectly owns more than 90 percent of its shares.

related business. Bank also intends to consolidate and enhance the business lines that have been the primary focus of Bank's Miami Edge corporation: trade finance, private banking, foreign exchange, and portfolio investment business.³

In order to approve an application by a foreign bank to establish an agency in the United States, the IBA and Regulation K require the Board to determine that the foreign bank applicant engages directly in the business of banking outside of the United States, and has furnished to the Board the information it needs to assess the application adequately. The Board also shall take into account whether the foreign bank and any foreign bank parent is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor

(12 U.S.C. § 3105(d)(2); 12 C.F.R. 211.24).⁴ The Board may also take into account additional standards as set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)-(4); 12 C.F.R. 211.24(c)(2)-(3)).

The IBA includes a limited exception to the general requirement relating to comprehensive, consolidated supervision (12 U.S.C. § 3105(d)(6)).

³Bank intends to close its Miami Edge corporation in connection with the establishment of the proposed agency.

⁴In assessing this standard, the Board considers, among other factors, 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. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board's determination.

This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve an application by such foreign bank if: (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval (12 U.S.C. § 3105(d)(6)(A)). In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board shall also consider whether the foreign bank has adopted and implements procedures to combat money laundering (12 U.S.C. § 3105(d)(6)(B)). The Board also may take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering (12 U.S.C. § 3105(d)(6)(B)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by Bank's home country authorities, the Board has considered the following information. Bank is supervised by the Colombian Superintendency of Banking ("Superintendency").⁵ The Superintendency is primarily responsible for the regulation and supervision of

⁵Aval is supervised by the Superintendency of Securities because of its size and because its shares are registered on the Colombian stock exchanges. Both the Superintendency and the Superintendency of Securities are part of the Finance Ministry and may share information.

Colombian financial institutions, including their foreign offices, subsidiaries, and affiliates. The Superintendency issues and promulgates supervisory regulations concerning accounting requirements, asset quality, management, operations, capital adequacy, loan classification and loan loss provision standards. The Superintendency is responsible for monitoring, inspecting, and assessing the management, operations, and asset quality of financial institutions. In addition, the Superintendency monitors compliance by financial institutions with applicable laws and regulations and may order preventive measures and impose sanctions on financial institutions.

In connection with its supervisory function, the Superintendency conducts on-site examinations of financial institutions annually and may conduct special targeted examinations if circumstances merit such inspections. For off-site monitoring purposes, the Superintendency requires extensive reporting from the institutions it supervises, including monthly, quarterly, and semiannual consolidated financial data covering liquidity, capitalization, affiliate transactions, asset quality, and earnings. Additionally, each foreign office and affiliate is required to submit copies of documents prepared to satisfy the requirements of local authorities. The Superintendency also has established guidelines for the external audit of financial institutions and requires external audits to be conducted annually. Reports of such audits are submitted to the Superintendency.

The Superintendency is empowered to coordinate and share information with other domestic governmental agencies regarding the institutions it supervises. The Superintendency has stated that it will generally share information with supervisors in jurisdictions where Colombian banks have operations. The Superintendency considers information sharing to be important for the adequate supervision of financial institutions and has entered into information sharing agreements with several foreign jurisdictions.

The Colombian government has taken a number of steps to combat money laundering. In the past decade, Colombia has enacted legislation to prevent money laundering and has established a regulatory infrastructure to assist this effort. Colombia has established a Financial Information and Analysis Unit in the Ministry of Finance, which is responsible for gathering and centralizing information from public and private entities in Colombia, as well as analyzing such information. The Prosecutor General's office has established a unit to investigate and prosecute money laundering cases and forfeiture actions. Colombia also participates in international fora that address the issues of asset forfeiture and the prevention of money laundering.⁶ In addition, the Superintendency has issued circulars that require financial institutions to establish systems for the prevention of money laundering.

Bank has implemented policies and procedures to ensure compliance with Colombian law and regulations.⁷ Bank has implemented a know your customer policy, which requires customer identification at the time of contracting for any product or service (customer identification is updated yearly). Bank also requires employees to identify and report unusual transactions and suspicious activities and

⁶Colombia is a party to the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("Convention"), and the United States has certified that Colombia has taken adequate measures to achieve full compliance with the goals and objectives of the Convention. Colombia also has signed the U.N. Convention against Transnational Organized Crime and is a member of the Organization of American States Inter-American Drug Abuse Control Commission Experts Group to Control Money Laundering.

⁷Bank's foreign bank subsidiaries have adopted the same policies and procedures for the prevention of money laundering.

may close a customer's account if appropriate.⁸ Additionally, Bank has established recordkeeping procedures and provides ongoing training for employees on its policies and procedures for the prevention of money laundering.

Based on all the facts of record, the Board has determined that Bank's home country authorities are actively working to establish arrangements for the consolidated supervision of Bank, and that considerations relating to the steps taken by Bank and its home country to combat money laundering are consistent with approval under this standard.

The Board has also taken into account the additional standards set forth in the IBA (12 U.S.C. § 3105(d)(3)-(4); 12 C.F.R. 211.24(c)(2)). The Superintendency has no objection to the establishment of the proposed agency.

Bank must comply with the minimum capital standards of the Basel Capital Accord ("Accord"), as implemented by Colombia. Bank's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to the capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank are also considered consistent with approval, and Bank appears to have the experience and capacity to support the proposed agency. Bank has established controls and procedures for the proposed agency to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

With respect to access to information about Bank's operations, the Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Bank operates and has communicated with relevant government authorities

⁸Employees use computer programs to facilitate the analysis and reporting of suspicious transactions.

regarding access to information. Bank and its parent have committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the Superintendency may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, the Board concludes that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of all the facts of record, and subject to the commitments made by Bank and its parent, as well as the terms and conditions set forth in this order, the Board has determined that Bank's application to establish an agency should be, and hereby is, approved. Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require or recommend termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application

and with the conditions in this order.⁹ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with its decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Bank and its affiliates.

By order of the Board of Governors,¹⁰ effective June 11, 2001.

(Signed)

Robert deV. Frierson
Associate Secretary of the Board

⁹The Board's authority to approve the establishment of the proposed agency parallels the continuing authority of the State of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Florida, or its agent, the Florida Department of Banking and Finance ("Department"), to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.

¹⁰Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Meyer and Gramlich. Absent and not voting: Governor Kelley.