

FEDERAL RESERVE SYSTEM

HSH Nordbank Aktiengesellschaft
Hamburg/Kiel, Germany

Order Approving Establishment of a Branch

HSH Nordbank Aktiengesellschaft (in Formation) (“Bank”), in both Hamburg and Kiel, Germany, 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 a branch in New York, New York. 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.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in New York, New York (*The New York Post*, March 28, 2003). The time for filing comments has expired, and all comments have been considered.

Bank will be established on the merger of Landesbank Schleswig-Holstein, Kiel, and Hamburgische Landesbank, Hamburg.¹ Bank would be a commercial bank organized as a private company and would succeed to the commercial business of Landesbank Schleswig-Holstein and Hamburgische Landesbank. Bank would have total consolidated assets of approximately \$191 billion.² It is expected that on its establishment, Bank would be a qualifying foreign banking organization.

Bank’s largest shareholder will be the City of Hamburg, with approximately 35 percent of Bank. WestLB AG, in both Münster and Düsseldorf, Germany, will

¹ Landesbank Schleswig-Holstein operates a branch and Hamburgische Landesbank operates a representative office, both in New York, New York. Hamburgische Landesbank’s representative office will be closed before the proposed merger.

² Unless otherwise indicated, data are as of December 31, 2002.

own approximately 27 percent of Bank.³ The State of Schleswig-Holstein and the Savings Bank and Clearing Association of Schleswig-Holstein, Kiel, will own approximately 19 percent and 18 percent of Bank, respectively.

The proposed branch would assist Bank with its existing business activities in the United States and would be used to develop new business in areas in which the bank specializes such as shipping, real estate, credit investments, and international finance. The proposed branch would also participate in syndicated loans, issue commercial paper and other debt instruments, and provide trade and public financing.

In order to approve an application by a foreign bank to establish a branch 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

³ WestLB AG, and its parent Landesbank Nordrhein-Westfalen, Düsseldorf, Germany, were established on the reorganization of the former Westdeutsche Landesbank Girozentrale (“WestLB”) in August 2002. WestLB AG is a wholesale bank organized as a private company and continues the commercial banking operations of WestLB. Landesbank Nordrhein-Westfalen is a public law institution and conducts the public mission activities of the former WestLB. Landesbank Nordrhein-Westfalen is owned by the State of North Rhine-Westphalia, the Regional Associations of the Rhineland and Westphalia-Lippe, and the Savings and Giro Associations of the Rhineland and Westphalia-Lippe.

⁴ In 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

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)).

As noted above, Bank, West LB AG, and Landesbank Nordrhein-Westfalen engage 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 home country authorities, the Board previously has determined, in connection with applications involving other German banks, that those banks were subject to home country supervision on a consolidated basis.⁵ Bank, West LB AG, and Landesbank Nordrhein-Westfalen are supervised by the German Federal Financial Supervisory Agency on substantially the same terms and conditions as the other banks. Based on all the facts of record, it has been determined that Bank,

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.

⁵ See *Hamburgische Landesbank Girozentrale*, 88 Federal Reserve Bulletin 397 (2002); *Landesbank Schleswig-Holstein Girozentrale*, 88 Federal Reserve Bulletin 399 (2002); *Allgemeine HypothekenBank Rheinboden AG*, 88 Federal Reserve Bulletin 196 (2002); *DePfa Bank AG*, 87 Federal Reserve Bulletin 710 (2001); *RHEINHYP Rheinische Hypothekenbank AG*, 87 Federal Reserve Bulletin 558 (2001); *Deutsche Hyp Deutsche Hypothekenbank*, 86 Federal Reserve Bulletin 658 (2000); *Deutsche Bank AG*, 85 Federal Reserve Bulletin 509 (1999); *Westdeutsche ImmobilienBank*, 85 Federal Reserve Bulletin 346 (1999); *Commerzbank AG*, 85 Federal Reserve Bulletin 336 (1999).

West LB AG, and Landesbank Nordrhein-Westfalen are subject to comprehensive supervision and regulation on a consolidated basis by their home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K (*see* 12 U.S.C. § 3105(d)(3)-(4); 12 C.F.R. 211.24(c)(2)) have also been taken into account. The German Federal Financial Supervisory Agency has no objection to the establishment of the proposed branch.

Germany's risk-based capital standards are consistent with those established by the Basel Capital Accord. Applying these standards, Bank's capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank also are considered consistent with approval, and Bank appears to have the experience and capacity to support the proposed branch. In addition, Bank has established controls and procedures for the proposed branch to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Germany is a member of the Financial Action Task Force and subscribes to its recommendations regarding measures to combat money laundering. In accordance with these recommendations, Germany has enacted laws and created legislative and regulatory standards to deter money laundering. Money laundering is a criminal offense in Germany and credit institutions are required to establish internal policies and procedures for the detection and prevention of money laundering.

With respect to access to information on Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. On the establishment of Bank, Bank and its parents will

commit 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 or otherwise, Bank and its parents will commit 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 German Federal Financial Supervisory Agency 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 conditions described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.⁶

On the basis of all the facts of record, and subject to the commitments made by Bank and its parents, and the terms and conditions set forth in this order, Bank's application to establish the branch is hereby approved.⁷ Should any restrictions on access to information on the operations or activities of Bank or any of 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 and indirect activities in the United States. Approval of this application also is

⁶ The Board's action on this proposal is conditioned on the Board's receipt of executed access to information commitments and consents to jurisdiction from Bank, West LB AG, and Landesbank Nordrhein-Westfalen.

⁷ Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board. *See* 12 C.F.R. 265.7(d)(12).

specifically conditioned on compliance by Bank and its parents with the commitments made in connection with this application and with the conditions in this order.⁸ 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 against Bank and its affiliates under 12 U.S.C. § 1818.

By order, approved pursuant to authority delegated by the Board, effective May 30, 2003.

(signed)

Jennifer J. Johnson
Secretary of the Board

⁸ The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Banking Department, to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.