

FEDERAL RESERVE SYSTEM

Bank Austria Aktiengesellschaft
Vienna, Austria

Order Approving Establishment of Branches

Bank Austria Aktiengesellschaft (“Bank”), Vienna, Austria, 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 federal branches in Greenwich, Connecticut, and 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 branches 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 Greenwich, Connecticut (*Greenwich Time*, October 18, 2000), and New York, New York (*The Daily News*, October 18, 2000). The time for filing comments has expired, and the Board has considered all comments received.

Bank, with total consolidated assets of approximately € 165 billion (\$148.2 billion), is the largest banking group in Austria.¹ Bank is a commercial and merchant bank and engages in a number of banking, financial, and other activities worldwide. Bank is owned by Bayerische Hypo- und Vereinsbank Aktiengesellschaft (“HVB”), the second largest banking group in Germany.² HVB provides a broad range of banking, financial, and related services to its customers through an extensive network of branches in Germany and worldwide.

¹Data are as of December 31, 2000.

²Munich Re AG, and Allianz AG, both of Munich, Germany, each indirectly owns more than 10 percent of the voting shares of HVB.

Bank was established through an internal reorganization undertaken in anticipation of a combination transaction with HVB. As part of this reorganization, Sparkasse Stockerau Aktiengesellschaft, Vienna, Austria, a savings bank subsidiary of the former Bank Austria Aktiengesellschaft (“old Bank Austria”) succeeded to substantially all the assets and liabilities of old Bank Austria and changed its name to Bank Austria Aktiengesellschaft. Old Bank Austria operated branches in Greenwich, Connecticut, and New York, New York, and Bank has requested authority to retain and operate these offices.³ Pursuant to Regulation K, the Board allowed the reorganization to proceed before an application to establish the offices was filed and acted on by the Board.⁴

In order to approve an application by a foreign bank to establish branches 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).⁵ The Board may also take into

³Bank’s original application also requested authority to retain Old Bank Austria’s representative offices in Atlanta, Georgia, and San Francisco, California. These offices have since been closed and, therefore, are not addressed in this order.

⁴See 12 C.F.R. 211.24(a)(3); Board Letter, dated November 1, 2000, to John C. Murphy, Jr., Esq.

⁵In assessing this standard, the Board considers, among other factors, the extent to which the home country supervisors: (i) ensure that the bank has adequate

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)).

As noted above, Bank and HVB 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 banks in Austria, that those banks were subject to home country supervision on a consolidated basis.⁶ Bank is supervised by the Austrian Federal Ministry of Finance (the “Ministry”) and the Austrian National Bank on substantially the same terms and conditions as those other banks. Based on all the facts of record, the Board has determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

With respect to supervision of HVB, the Board previously has determined, in connection with applications involving other banks in Germany, that

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.

⁶See *Bank Austria Aktiengesellschaft*, 86 Federal Reserve Bulletin 67 (2000); *Erste Bank der Österreichischen Sparkassen Aktiengesellschaft*, 84 Federal Reserve Bulletin 1123 (1998); *Creditanstalt-Bankverein*, 82 Federal Reserve Bulletin 594 (1996).

those banks were subject to home country supervision on a consolidated basis.⁷ HVB is supervised by the German Federal Banking Supervisory Office (“FBSO”) on substantially the same terms and conditions as those other banks. Based on all the facts of record, the Board has determined that HVB is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The Board has also taken into account 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)-(3)). The Ministry has no objection to the establishment of the proposed branches.

Austria’s risk-based capital standards conform to the European Union capital standards, which are consistent with those established by the Basel Capital Accord. 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 branches. In addition, Bank has established controls and procedures for the branches 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 and HVB operate and has communicated with relevant government authorities

⁷*See Deutsche Hyp Deutsche Hypothekenbank Frankfurt-Hamburg AG*, 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).

regarding access to information. Bank and its parents 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, 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 have 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 Ministry and FBSO 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, as well as the terms and conditions set forth in this order, the Board has determined that Bank's application to establish the two branches 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 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 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

⁸The Board's authority to approve the establishment of the proposed branches parallels the continuing authority of the Office of the Comptroller of the

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,⁹ effective June 4, 2001.

(Signed)

Robert deV. Frierson
Associate Secretary of the Board

Currency (“OCC”) to license federal offices of a foreign bank. The Board’s approval of this application does not supplant the authority of the OCC to license the proposed offices of Bank in accordance with any terms or conditions that it may impose.

⁹Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley and Meyer. Absent and not voting: Governor Gramlich.