

FEDERAL RESERVE SYSTEM

Aozora Bank, Ltd.
Tokyo, Japan

Order Approving Establishment of a Representative Office

Aozora Bank, Ltd. (“Bank”), Tokyo, Japan, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA (12 U.S.C. § 3107(a)) to establish a representative office 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 representative office 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 (*New York Times*, September 21, 2004). The time for filing comments has expired, and all comments have been considered.

Bank, with total consolidated assets of approximately \$44.5 billion,¹ is the 46th largest bank in Japan. Bank provides a range of financial services to corporate and retail clients. Outside Japan, Bank operates three representative offices in Singapore, Seoul, and Jakarta. Bank’s proposed New York office would be the first office in the United States under its current ownership.² A limited partnership, Cerberus NCB Acquisition, L.P. (“Acquisition”), Cayman Islands,

¹ Unless otherwise indicated, data are as of March 31, 2005.

² Bank was originally established in 1957 as the Nippon Fudosan Bank, Ltd. It was renamed the Nippon Credit Bank, Ltd. and by the mid-1990s operated both banking offices and nonbanking subsidiaries in the United States. The bank was intervened in 1998; U.S. operations were closed; and the government of Japan sold Bank’s shares to private investors, who changed Bank’s name to Aozora Bank, Ltd.

holds approximately 62 percent of Bank's shares.³ Two other companies, Tokio Marine & Nichido Fire Insurance Co., Ltd. and ORIX Corporation, both in Tokyo, each hold approximately 15 percent of Bank's shares.⁴

The proposed representative office would market Bank's services to existing and potential customers in the United States. The proposed office would also act as a liaison with customers of Bank and would conduct research on loan participation opportunities for Bank.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside of the United States, (2) has furnished to the Board the information it needs to assess the application adequately, and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisor (12 U.S.C. § 3107(a)(2); 12 C.F.R. 211.24(d)(2)).⁵ The Board also may consider additional standards set

³ The general partner of Acquisition, Cerberus Aozora GP LLC ("Cerberus Aozora"), is a U.S. entity controlled by three other U.S. entities, Cerberus Japan Investment LLC, Cerberus Series One Holdings, LLC, and Richter Investment Corporation, that hold interests of 49 percent, 26 percent, and 25 percent, respectively, in Cerberus Aozora. These companies are members of the Cerberus group, a U.S.-based investment group.

⁴ Regional Japanese banks hold the remaining shares of Bank.

⁵ In assessing the supervision 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

forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)-(4); 12 C.F.R. 211.24(c)(2)). The Board will consider that the supervision standard has been met if it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.⁶ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to proposals to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities (12 C.F.R. 211.24(d)(2)). This application has been considered under the lesser standard.

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 home country authorities, the Board previously has determined, in connection with applications involving other banks in Japan, that those banks were subject to home country supervision on a consolidated basis by their home country supervisor, Japan's Financial Services

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.

⁶ See, e.g., Jamaica National Building Society, 88 Federal Reserve Bulletin 59 (2002); RHEINHYP Rheinische Hypothekenbank AG, 87 Federal Reserve Bulletin 558 (2001); see also Promstroybank of Russia, 82 Federal Reserve Bulletin 599 (1996); Komerčni Banka, a.s., 82 Federal Reserve Bulletin 597 (1996); Commercial Bank "Ion Tiriac", S.A., 82 Federal Reserve Bulletin 592 (1996).

Agency (“FSA”).⁷ Bank is supervised by the FSA on substantially the same terms and conditions as those other banks. As noted above, however, Bank is part of a larger U.S.-based financial group with a complex ownership structure and is controlled by entities in the Cayman Islands and the United States.⁸ Based on all the facts of record, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

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 FSA has no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Bank, taking into consideration Bank’s record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Japan is a member of the Financial Action Task Force and subscribes to its recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Japan has

⁷ See e.g., Mitsubishi Tokyo Financial Group, Inc., 87 Federal Reserve Bulletin 349 (2001); Mizuho Holdings, Inc., 86 Federal Reserve Bulletin 776 (2000); The Sanwa Bank, Limited, 86 Federal Reserve Bulletin 54 (2000); The Fuji Bank, Limited, 85 Federal Reserve Bulletin 338 (1999).

⁸ Establishment of a representative office will not cause Bank and its parent companies to become subject to the Bank Holding Company Act.

enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Japan, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

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. Bank and its parent companies 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 or otherwise, 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 FSA 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, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, Bank's application to establish a representative office is hereby approved.⁹ Should any restrictions on

⁹ Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to

access to information on the operations or activities of Bank or 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 with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹⁰ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective June 29, 2005.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

authority delegated by the Board.

¹⁰ The Board's authority to approve the establishment of the proposed representative office 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 to license the proposed office of Bank in accordance with any terms or conditions that it may impose.