

FEDERAL RESERVE SYSTEM

KfW IPEX-Bank GmbH  
Frankfurt, Germany

Order Approving Establishment of a Representative Office

KfW IPEX-Bank GmbH (“Bank”), a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA<sup>1</sup> 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 (*The Daily News*, New York, New York). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$65.6 billion,<sup>2</sup> is a newly created indirect subsidiary that is wholly owned by Kreditanstalt für Wiederaufbau (“KfW”), also of Frankfurt.<sup>3</sup> Bank engages in project and export finance activities. KfW is a government-owned development bank that engages in lending and financing activities in furtherance of public-sector initiatives. In the United States, KfW operates a representative office in New York, New York

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<sup>1</sup> 12 U.S.C. § 3107(a).

<sup>2</sup> Asset data are as of December 31, 2007.

<sup>3</sup> The federal government of Germany owns 80 percent of the shares of KfW; the remaining 20 percent is owned by various state governments in Germany.

(“KfW Office”), and KfW International Finance, Inc., Wilmington, Delaware, a finance vehicle established to access U.S. capital markets.

On January 1, 2008, pursuant to an agreement between KfW and the European Commissioner for Competition, KfW established Bank as a separately incorporated subsidiary and transferred its export and project finance activities to Bank.<sup>4</sup> Bank’s proposed representative office would act as a liaison with existing and potential customers and conduct market research for Bank.<sup>5</sup>

In acting on a foreign bank’s application under the IBA and Regulation K to establish a representative office, the Board shall take into account whether the foreign bank 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.<sup>6</sup> The Board also shall take into account whether the foreign bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.<sup>7</sup> Under Regulation K, a representative office application may be approved if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed

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<sup>4</sup> The purpose of the transaction was to ensure that these activities would be conducted in a manner consistent with KfW’s status as a government-owned development bank and in compliance with European Union competition policy. To facilitate the transfer, KfW first established a separate division within KfW, KfW IPEX Bank (“IPEX Division”), in January 2004 and transferred the export and project finance activities to IPEX Division. KfW subsequently received Board approval to establish KfW Office. See Kreditanstalt für Wiederaufbau, 92 Federal Reserve Bulletin C135 (2006). KfW stated that it will close KfW Office when Bank’s proposed representative office is established.

<sup>5</sup> KfW also has representative offices in Brazil, China, India, Russia, Thailand, Turkey, and the United Kingdom that have or will become offices of Bank.

<sup>6</sup> 12 U.S.C. § 3107(a)(2).

<sup>7</sup> Id.

representative office, taking into account the nature of such activities.<sup>8</sup> This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications 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.<sup>9</sup> The Board also considers additional standards set forth in the IBA and Regulation K.<sup>10</sup>

As noted above, KfW and Bank 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. In the proposed representative office, Bank may engage only

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<sup>8</sup> 12 CFR 211.24(d)(2).

<sup>9</sup> A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank; conducting research; acting as a liaison between the foreign bank's head office and customers in the United States; performing preliminary and servicing steps in connection with lending; and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

<sup>10</sup> See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation.

in activities permissible for a representative office under Regulation K, which include the proposed customer liaison and market research activities noted above.<sup>11</sup>

With respect to supervision by home country authorities, the Board previously determined that KfW is subject to a supervisory framework that is consistent with the activities of KfW Office, taking into account the nature of such activities.<sup>12</sup> There has been no material change in the manner in which KfW is supervised by the Federal Ministry of Finance. With respect to Bank, the Board has considered that Bank is supervised by the Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”), the primary regulator of commercial banks in Germany. The Board previously has considered the supervisory regime in Germany for commercial banks in connection with applications involving other German banks.<sup>13</sup> Bank is supervised by BaFin on substantially the same terms and conditions as those other banks.<sup>14</sup> Based on all the facts of record, it has been determined that KfW and Bank are subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

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<sup>11</sup> See supra note 9.

<sup>12</sup> Kreditanstalt für Wiederaufbau, supra note 4.

<sup>13</sup> See, e.g., Deutsche Genossenschafts-Hypothekenbank AG, 92 Federal Reserve Bulletin C61 (2006).

<sup>14</sup> To find that a foreign bank is subject to comprehensive, consolidated supervision, the Board also must find that any foreign bank parent is subject to comprehensive, consolidated supervision. See 12 CFR 211.24(c)(1)(A). The order approving KfW’s representative office application in 2006 applied the lesser supervision standard to KfW because a determination of comprehensive, consolidated supervision was not required. The same standard has been applied in this case.

The additional standards set forth in section 7 of the IBA and Regulation K also have been taken into account.<sup>15</sup> With respect to the financial and managerial resources of Bank, taking into consideration Bank's record of operation as KfW's IPEX Division in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval. 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 and for its operations in general. The BaFin has no objection to the establishment of the proposed office.

Germany 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, Germany has 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 Germany, and Bank is subject to laws that require it to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout its worldwide operations. Bank has policies and procedures to comply with these laws and regulations, which include reporting suspicious transactions promptly to the German Financial Intelligence Unit and other appropriate law enforcement authorities.

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

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<sup>15</sup> See supra note 10.

regarding access to information. Bank has 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 (“BHC Act”), 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 BaFin 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.<sup>16</sup>

On the basis of all the facts of record, and subject to the commitments made by Bank and the terms and conditions set forth in this order, Bank’s application to establish the representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, acting pursuant to authority delegated by the Board.<sup>17</sup> 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 any of its affiliates with applicable federal statutes, the Board may require termination of any of

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<sup>16</sup> In addition, KfW previously made the same commitments in connection with its application to establish KfW Office. In light of these commitments, the Board has concluded that KfW also has provided adequate assurances of access to any appropriate information the Board may request.

<sup>17</sup> See 12 CFR 265.7(d)(12).

Bank's direct and 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.<sup>18</sup> The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with its finding and decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board,  
effective June 23, 2008.

(signed)

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>18</sup> 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 New York State Banking Department to license the proposed representative office of Bank in accordance with any terms or conditions that it may impose.