

FEDERAL RESERVE SYSTEM

Kreditanstalt für Wiederaufbau  
Frankfurt, Germany

Order Approving Establishment of a Representative Office

Kreditanstalt für Wiederaufbau, (“Bank”), Frankfurt, Germany, 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 Times*, July 27, 2005), and the time for filing comments has expired.

Bank, with total consolidated assets of approximately \$445 billion, is the seventh largest bank in Germany.<sup>1</sup> As a government-owned development bank,<sup>2</sup> Bank engages primarily in lending and financing activities in furtherance of public sector initiatives, such as providing loans for housing, small businesses, and municipal infrastructure, and provides various other services, such as disbursing German government loans and grants to developing countries and providing

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<sup>1</sup> Asset data are as of December 31, 2004.

<sup>2</sup> The federal government of Germany owns 80 percent of the shares of Bank. The remaining 20 percent of Bank’s shares is owned by various state governments in Germany.

advisory services in connection with privatizations. Bank also engages in export and project finance through a division of the Bank known as IPEX-Bank.<sup>3</sup> It has representative offices in Brazil, China, Thailand, and Turkey that primarily serve its IPEX-Bank division. In the United States, Bank operates KfW International Finance, Inc., Wilmington, Delaware, a funding vehicle established to access U.S. capital markets.

The proposed representative office primarily would act as a liaison with existing and potential customers and conduct market research for the IPEX-Bank division of Bank. Additionally, the proposed representative office would support Bank's activities with developing countries by acting as a liaison with multinational organizations located in the United States, such as the United Nations, the World Bank and the International Monetary Fund.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board shall take into account whether (1) the foreign bank has furnished the information the Board needs to assess the application adequately; (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisors (12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2)). The Board also may take into account additional standards set forth in the IBA and Regulation K (12 U.S.C. § 3105(d)(3)-(4); 12 CFR

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<sup>3</sup> Bank intends to divest the IPEX-Bank division by 2008. The European Commissioner for Competition determined that the IPEX-Bank division engages in activities that are inconsistent with Bank's status as a government-owned development bank.

211.24(c)(2)).<sup>4</sup> The Board will consider that the supervision standard has been met where 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.<sup>5</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 (12 C.F.R. 211.24(d)(2)).

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information

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<sup>4</sup> 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 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.

<sup>5</sup> See, e.g., Banco Financiera Comercial Hondurena, S.A., 91 Federal Reserve Bulletin \_\_\_ (April 20, 2005); Nacional Financiera, S.N.C., 91 Federal Reserve Bulletin 295 (2005); 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).

necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board has considered the following information. The Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”) is the primary regulator of commercial banks in Germany, and the Board has previously considered the supervisory regime in Germany for commercial banks.<sup>6</sup> Bank is not considered a commercial bank under German law. Rather, it is a development bank established pursuant to a special statute, and its primary regulator is the Federal Ministry of Finance (“MoF”). Although it is exempt from many of the legal provisions that govern commercial banks, Bank has voluntarily subjected itself to the guidelines that BaFin has established for commercial banks with respect to lending and trading activities, and internal audit, and as noted below, compliance with these guidelines is subject to annual audit. Bank is required by law to maintain minimum capital of €3.75 billion, and is prohibited from distributing profits. The MoF has authority to adopt all measures necessary to ensure that Bank’s business conforms with all applicable laws.

The MoF exercises its supervision in consultation with the Federal Ministry of Economics and Labor. The Ministers of Finance and of Economics and Labor alternate as chairmen and deputy chairmen of Bank’s supervisory board. The MoF may at any time request on-site examinations by third parties or conduct examinations itself, and such examinations can encompass all business areas, including subsidiaries and foreign offices. MoF officials meet with Bank officials

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<sup>6</sup> See, e.g., Deutsche Genossenschafts-Hypothekenbank AG, 91 Federal Reserve Bulletin \_\_\_\_ (October 25, 2005).

at least bi-weekly, including, on occasion, at Bank's foreign offices, to discuss Bank's strategy, new fields of activity, new products, and related issues.

The MoF also monitors Bank's condition through a review of required regulatory reports. These include quarterly financial reports and risk reports, annual audited consolidated financial statements that are filed with a report from the external auditor, results of internal audit reviews, and regular reports regarding risk analysis and measures taken to prevent money laundering.

Bank is subject to an annual external audit by auditors appointed by the MoF. The scope of the external audit includes the bank's consolidated financial statements, internal controls, including controls to prevent money laundering, and compliance with BaFin's guidelines for lending, trading activities, and internal audit. Inasmuch as Bank is a government-owned entity, the Federal Court of Auditors also has the discretion to audit Bank's financial statements. The results of such audits are reported to the upper and lower houses of parliament and to the MoF.

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 MoF has authorized Bank to establish the proposed 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 supervisors, 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.

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, or 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 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, 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 MoF 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.

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.<sup>7</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 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 specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.<sup>8</sup> The commitments and conditions referred to above are conditions imposed in writing

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<sup>7</sup> 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.

<sup>8</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 State of New York or its agent, the New York State Banking Department ("Department"), to license the proposed office of Bank in accordance with any terms or conditions that the Department may impose.

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 January 3, 2006.

*(signed)*

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Jennifer J. Johnson  
Secretary of the Board