

NYSE's procedures for expiration days. Additionally, the Commission notes that, by permitting a Floor Official to authorize the publication of substantial MOC order imbalances on non-expiration days in any stock, the proposal should increase the information available to market participants and provide NYSE specialists with a mechanism, if necessary, to attract contra-side interest in any NYSE-listed stock.¹⁶

The Commission is approving the amendments to the NYSE's auxiliary closing procedures for expiration days as part of the existing pilot program that lasts until October 31, 1995. The Commission is approving the amendments to the NYSE's closing procedures for non-expiration days on a permanent basis.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 merely clarifies the scope of the original filing. Finally, the commission did not receive any comments on the original proposal, which was published in the **Federal Register** for the full comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-94-44 and should be submitted by May 8, 1995.

¹⁶ The Commission encourages the NYSE to propose a corresponding provision for expiration days that would provide for the dissemination of substantial MOC order imbalances on expiration days in stock other than pilot stocks.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSE-94-44) is approved, including Amendment No. 1 on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-9398 Filed 4-14-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-20992; International Series Release No. 801; 812-9414]

Banco de Comercio Exterior de Colombia S.A.; Notice of Application

April 11, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Banco de Comercio Exterior de Colombia S.A.

RELEVANT ACT SECTION: Order requested under section 6(c) for an exemption from all provisions of the Act.

SUMMARY OF THE APPLICATION: Applicant seeks an exemption under section 6(c) from all provisions of the Act. Applicant is a commercial bank owned and controlled by the Republic of Colombia. Applicant provides long- and short-term financing and specialized financial products to financial intermediaries. Applicant discounts loans that such financial intermediaries have made to finance Colombian exports and foreign trade-related activities. Applicant is in the process of establishing a global program for the issuance of debt securities.

FILING DATES: The application was filed on January 5, 1995 and amended on March 15, 1995 and April 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 4, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

¹⁷ 15 U.S.C. 78s(b)(2) (1988).

¹⁸ 17 CFR 200.30-3(a)(12) (1994).

of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549; Applicant, c/o Thomas A. Curtis, Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York, NY 10006.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, (202) 942-0565, or Barry D. Miller, Senior Special Counsel, (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a commercial bank owned and controlled by the Republic of Colombia ("Colombia," or the "Republic"). Applicant provides long- and short-term financing and specialized financial products to support Colombian exports and foreign trade-related activities. Applicant was incorporated as the successor to the Export Promotion Fund, a fund formed in 1967 by the government of Colombia (the "Government") to promote Colombian exports.

2. The Republic owns 99.7% of applicant's share capital and controls the applicant within the meaning of section 2(a)(9) of the Act.¹ Applicant's Board of Directors consists of Government representatives, a representative of the private sector appointed by the President of the Republic, and a representative of the private sector appointed by the exporters' associations registered with the Ministry of Foreign Trade.

3. Applicant is authorized to operate under the same legal regime as a private commercial bank, without any limitation on the type of commercial banking activities in which it may engage. Applicant's activities, like those of other Colombian banks, are subject to extensive regulation by the principal

¹ The Government recently offered shares in applicant representing 11% of applicant's outstanding share capital to applicant's employees, pension funds, cooperatives, unemployment funds and other institutions. As a result of such offering, 0.28% of the Bank's outstanding share capital were purchased by such employees and institutions. The shares that were not subscribed for in such offering will eventually be offered by the Government to the public in Colombia. The Government does not intend to offer such shares in the United States. Even after such sale, the Government would continue to control applicant's operations within the meaning of section 2(a)(9) of the Act.

entities governing the Colombian banking and financial system. These entities include the Congress of Colombia, the National Council for Economic and Social Policy, the Central Bank, and the Banking Superintendency. The regulations applicable to applicant include licensing, capital adequacy, foreign currency position requirements, and restrictions on lending activities and related-party transactions.

4. At September 30, 1994, applicant had assets of Ps1,085,338 million (U.S. \$1,290.7 million) and shareholders' equity of Ps403,768 million (U.S. \$480.2 million).

5. Applicant operates primarily as a second-tier bank, extending loans to other commercial banks and finance companies in Colombia and abroad (collectively, "Financial Intermediaries") by discounting loans that such Financial Intermediaries have made to finance Colombian exporters and foreign trade-related activities as well as foreign buyers of Colombian goods and services. Applicant works together with the relevant Financial Intermediary in originating each discounted loan, both to ensure that the loan meets applicant's lending criteria and that the necessary funding will be available to the Financial Intermediary to make the loan. Applicant also takes physical possession of the promissory note for each loan, which is endorsed to applicant, to ensure recourse against the ultimate borrower in the event of a default by the Financial Intermediary.

6. Applicant does not purchase discounted loans from entities other than the loan originator, nor does it sell or otherwise trade in discounted loans. At September 30, 1994, approximately 99% of applicant's outstanding loans were discounted loans, with 62 Financial Intermediaries as obligors. Over 90% of these Financial Intermediaries are Colombian commercial banks and finance companies regulated in a manner substantially similar to applicant.

7. Applicant traditionally has relied on its shareholders' equity as the primary source of peso-denominated funds. Although applicant has the power under its charter to take deposits, it has not done so to date because most of applicant's loans are made in United States dollars, and funding such loans with peso deposits would be prohibitively expensive. To the extent applicant lends in pesos, its shareholders' equity provides a sufficient source of funds at a considerably lower cost than would be the case with deposits.

8. Applicant proposes a global program (the "Program") to issue and sell debt securities (the "Notes"), the net proceeds of which will be used to expand applicant's foreign trade-related financing activities and for other general corporate purposes. The principal amount of Notes outstanding at any time will not exceed in the aggregate United States \$300,000,000 (or its equivalent in other currencies at the date of issue), subject to future increases in the size of the Program. The Notes will not be obligations of, or guaranteed by, or otherwise backed by the credit of, the Republic of Colombia.

9. The Notes have not been and will not be registered under the Securities Act of 1933, as amended (the "Securities Act").²

All or a portion of a series of Notes may be offered for sale in the United States to "qualified institutional buyers," as defined in Rule 144A under the Securities Act, in reliance on Rule 144A, or to institutional "accredited investors," as defined in Rule 501(a) (1), (2), (3), and (7) under the Securities Act, that are not also qualified institutional buyers. All or a portion of a series of Notes also may be offered for sale in offshore transactions outside the United States in reliance on Regulation S under the Securities Act.

10. Applicant's intention is not to offer any Notes under the Program until the exemptive order sought hereby has been granted. Nevertheless, market conditions and applicant's funding needs may make it necessary to proceed with the first issuance under the Program prior to the granting of such order. In that case, applicant would offer an initial series of Notes (the "Initial Notes") to investors in the United States and abroad. In order to permit such offering to proceed while the present application for exemptive relief was being considered, applicant would impose special offering and resale restrictions on the Initial Notes (in addition to those required to comply with the Securities Act), including a limit on the number of U.S. resident holders that could hold the Initial Notes at any given time. Upon the granting of the exemptive order, such restrictions would be removed and resales of the Initial Notes, and any other Notes subject to such restrictions, would thereafter be subject only to the Securities Act restrictions applicable to the Program generally.

² Applicant does not hereby seek, and has not obtained, any assurance from the SEC regarding applicant's status prior to the issuance of any exemptive order on this application, nor has applicant received any assurance regarding the Notes' status under the Securities Act.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines an investment company to include any issuer engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and that owns or proposes to acquire investment securities having a value exceeding 40% of the issuer's total assets, exclusive of Government securities and cash items on an unconsolidated basis. Substantially all of applicant's assets consist of discounted loans. Such loans could be deemed to be investment securities within the meaning of section 3(a)(3). As a result, applicant recognizes, for purposes of this application only, that it could be deemed to be an investment company.

2. Rule 3a-6 exempts foreign banks from the definition of investment company for all purposes under the Act. A foreign bank is defined to include a banking institution engaged substantially in "commercial banking activity," which, in turn, is defined to include "accepting demand and other types of deposits." Although applicant is authorized to accept demand and other types of deposits, as a matter of policy it has chosen not to do so, and for this reason does not fall squarely within the terms of the exemption provided by rule 3a-6. Therefore, applicant may not be able to rely on rule 3a-6.

3. In adopting rule 3a-6, the SEC recognized that other financial entities might merit treatment similar to that afforded by the rule. The SEC indicated that such entities could file an application for individual exemptive relief under section 6(c) of the Act.³ Applicant believes that the exemptive relief contemplated by the Adopting Release is appropriate in the present case. Applicant is an "export-import bank" and is similar in function to U.S. banks and other exempted entities. Applicant is licensed as a commercial bank in Colombia and is subject to extensive regulation by the Colombian authorities. Such regulation affords substantial protection to investors. In addition, applicant is controlled by the Government of Colombia.

4. Section 3(c)(5)(B) of the Act exempts from the definition of "investment company" any person that is not engaged in the business of issuing certain specified securities and that is primarily engaged in the business of "making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified

³ See Investment Company Act Release No. 18381 (Oct. 29, 1991), note 15 and accompanying text (the "Adopting Release").

merchandise, insurance, and services.' Although other government-controlled export financing entities have obtained no-action relief under section 3(c)(5)(B), their lending activities were described as primarily sales financing; that is, the making of loans to either exporters or foreign buyers to finance particular sales transactions. Applicant was created to serve the same purpose as these other entities.

Applicant's loans can be described as indirect sales financing (goods cannot be exported unless they are first produced). The bulk of the loans extended by applicant, however, are "preshipment" loans, which finance the working capital needs of Colombian exporters, and are unlike the sales financing described in the no-action letters.

5. Applicant seeks an exemption under section 6(c) from all provisions of the Act. Applicant believes that it meets the standards for relief.

Applicant's Condition

Applicant agrees that the order granting the requested relief shall be subject to the following condition:

In connection with any offering of its securities in the United States, applicant will appoint an agent to accept any process which may be served on it in any action based on such securities and instituted in the Supreme Court of the State of New York or the United States District Court for the Southern District of New York by any holder of any such securities. Applicant further undertakes that it will expressly consent to the jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Southern District of New York in respect of any such action. Applicant also will waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of such securities have been paid. Applicant explicitly waives any immunity it may have from jurisdiction and from execution or attachment or any process in the nature thereof in respect of any suit, action or proceeding arising out of or relating to such securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-9399 Filed 4-14-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended April 7, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50262.

Date filed: April 4, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 735 Russian Federation-Japan fares r-1—043i r-3—063i r-5—084c r-2—053i r-4—063ii.

Proposed Effective Date: April 10, 1995.

Docket Number: 50263.

Date filed: April 4, 1995.

Parties: Members of the International Air Transport Association.

Subject: PAC/Reso/388 dated March 28, 1995. Finally Adopted Resos r-1 to r-7.

Proposed Effective Date: June 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95-9315 Filed 4-14-95; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Conveyance and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 7, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50257.

Date filed: April 3, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 1, 1995.

Description: Application of Kuwait Airways Corporation, pursuant to Section 402(c) of the Act 1958, as amended, 49 U.S.C. Section 211, 5 U.S.C. Section 558(c) and Parts 211 and 377 of the Departments Regulations and

Subpart Q of the Regulations, applies for amendment of its foreign air carrier permit authorizing Kuwait Airways to engage in scheduled air transportation of persons, property and mail between the State of Kuwait and the United States and charter operations.

Docket Number: 50260.

Date filed: April 4, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 2, 1995.

Description: Application of Ross Aviation, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests scheduled and on-demand passenger transportation for exclusive service to the Department of Energy covering the contiguous 49 states of the United States.

Docket Number: 50261.

Date filed: April 4, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 2, 1995.

Description: Application of LorAir, Ltd., pursuant to 401(d)(3), of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate and overseas charter air transportation.

Docket Number: 50269.

Date filed: April 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 4, 1995.

Description: Application of Islena De Inversiones S.A. De C.V. D/B/A Islena Airlines, pursuant to 49 U.S.C. Section 40109 and Subpart Q of the Regulations, requests a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail between a point or points in Honduras and Miami, Florida, New Orleans, Louisiana and Houston, Texas, and to engage in charter foreign air transportation of persons, property and mail.

Docket Number: 50274.

Date filed: April 7, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 5, 1995.

Description: Application of USAir, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing USAir to provide scheduled foreign air transportation of persons, property and mail between points in the United States and points in Canada.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95-9316 Filed 4-14-95; 8:45 am]

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