

10-27-04

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION



**Application for Authority to Organize
BBU Bank, a State-Chartered Bank, Coral
Gables, Miami-Dade County, Florida**

DOAH Case No. 04-2801
OFR No. 0143-B-8/04

AT

LJS
CLOS

October 9 11:26 AM '04

CONDITIONAL FINAL ORDER OF APPROVAL

On March 26, 2004, the Office of Financial Regulation published in the Florida Administrative Weekly a Notice of Receipt of the above-referenced application pursuant to Section 658.21, Florida Statutes, for approval to organize a new state-chartered bank, to be known as BBU Bank. The Notice was published in accordance with Section 120.80(3)(a)1.a., Florida Statutes and Florida Administrative Code Rule 69U-105.103(1). Because the individuals who are proposed to be the primary shareholders and control parties of the proposed institution are Venezuelan nationals, a mandatory public hearing was required under Section 120.80(3), Florida Statutes. Accordingly, on August 9, 2004, the Office of Financial Regulation referred the application for a formal DOAH administrative hearing with respect to the proposed bank and its proposed control parties. On September 21, 2004, a hearing was held before DOAH Administrative Law Judge Larry J. Sartin. On October 27, 2004, Judge Sartin issued the attached Report of Public Hearing, which is adopted and incorporated herein by reference. On November 3, 2004, the Applicant submitted the attached waiver of the right to file exceptions to the Report.

Accordingly, it is ORDERED:

The application for approval to organize BBU Bank, Coral Gables, Florida, is APPROVED, subject to the Conditions of Approval specified below, which conditions

must be satisfied before the bank may open for business. Until these conditions have been met, or if any interim development is deemed to warrant further action by the Office of Financial Regulation, the Commissioner reserves the right to alter, suspend, or withdraw approval of the proposed bank. If, however, the Applicant has not obtained all necessary approvals from applicable federal regulators within one year of the date of this ORDER, this approval shall expire, unless the Commissioner grants an extension of time. The Conditions of Approval are as follows:

- (1) That the Federal Deposit Insurance Corporation gives its approval for insurance of accounts.
- (2) That the Board of Directors be composed of those persons identified in the Report.
- (3) That any changes in the composition of this Board of Directors must be submitted to the Office for its prior approval. The addition of any new directors will require submission of biographical and financial data with respect to any proposed new director, which information must be submitted to the Office at least 60 days prior to the bank's intended opening date.
- (4) That any substantial change in the structure of ownership from that proposed in the application must be reported to the Office to determine continued compliance with Section 658.28, Florida Statutes.
- (5) That the President and Chief Executive Officer is Jose R. Gutierrez.
- (6) That during the first three years of the bank's operation if the acting President and/or Chief Executive Officer resigns, is discharged, or unable to serve in that capacity for any reason, the bank will be required to submit an individual acceptable to the Office to perform the duties of the bank's President and/or Chief Executive Officer. That

individual's name, address, biographical, and financial data must be submitted to the Office for approval no later than 60 days after the position becomes vacant.

- (7) That a suitable Chief Financial Officer be selected and this individual's name, address, biographical, and financial data be submitted to the Office for approval at least 60 days prior to the bank's intended opening date.
- (8) That during the first three years of the bank's operation if the acting Chief Financial Officer resigns, is discharged, or unable to serve in that capacity for any reason, the bank will be required to submit an individual acceptable to the Office to perform the duties of the bank's Chief Financial Officer. That individual's name, address, biographical, and financial data must be submitted to the Office for approval no later than 60 days after the position becomes vacant.
- (9) That a suitable Chief Loan Officer be selected and this individual's name, address, biographical, and financial data be submitted to the Office for approval at least 60 days prior to the bank's intended opening date.
- (10) That during the first three years of the bank's operation if the acting Chief Loan Officer resigns, is discharged, or unable to serve in that capacity for any reason, the bank will be required to submit an individual acceptable to the Office to perform the duties of the bank's Chief Loan Officer. That individual's name, address, biographical, and financial data must be submitted to the Office for approval no later than 60 days after the position becomes vacant.
- (11) That, pursuant to Section 655.0385(1), Florida Statutes, the bank notify the Office of the proposed appointment of any individual to the board of directors or the employment of any individual as an executive officer or equivalent position at least

60 days before such appointment or employment becomes effective. Prior to serving in their proposed capacity, the individual must be approved in writing by the Office. This condition shall be in effect as of the date of the Report and for the first two years following opening of the bank.

- (12) That any director or executive officer who intends to vote and/or control 10 percent or more of the bank or bank holding company's outstanding shares of stock through the use of a trust or partnership agreement shall provide the Office a fully executed copy of the agreement at least 60 days prior to the bank's intended opening date.
- (13) That, no later than six months from the commencement of the bank's corporate existence, and at least 30 days prior to opening, the directors, in accordance with Section 658.235(1), Florida Statutes, shall have completed the stock offering and shall file with the Office a final list of subscribers to all of the capital stock of the proposed bank, showing the name and residence of each subscriber and the amount of stock of every class subscribed for by each.
- (14) That the bank, after subscriptions for stock have been fully paid and stock certificates issued, but no later than 30 days prior to its intended opening date, file with the Office a certification that the entire capital accounts have been fully and unconditionally paid in cash and that valid assets representing such total capital accounts are held by the bank in accordance with Section 658.235(3), Florida Statutes.
- (15) That the bank submit to the Office for approval under Section 658.235(2), Florida Statutes, biographical and financial data for any person who, together with any related interest(s), subscribes to 10 percent or more of the stock of the bank or bank holding

company. Any approved director or officer who has not previously been approved to acquire 10 percent or more of the stock must also be submitted for approval, but additional biographical and financial data will not generally be required for previously approved persons.

- (16) That the bank transacts business under the name "BBU Bank" or any other name acceptable to the Office and the Florida Division of Corporations.
- (17) That the Office be provided with copies of any agreements or contracts between the proposed bank and its proposed directors, officers, or affiliated parties of the banks, and any company, partnership, or other business entity owned or controlled by any of the proposed directors, officers, or affiliated parties of the bank, prior to execution of any such agreement or the transaction of any business between the signatory parties under the terms of such agreement. Such agreements or contracts shall be acceptable to the Office. This condition shall be in effect for the first two years following opening of the bank.
- (18) That the Office is provided with copies of any employment agreements or contracts between the proposed bank and proposed or existing executive officers of the bank. Prior to the employment agreement or contract being effective, the Office must review and not object to it in writing. This condition shall be in effect for the first two years following opening of the bank.
- (19) That within one year of the bank opening, the outside directors, excluding any executive officers of BBU Bank, receive a minimum of 16 hours of training with respect to their service as directors of a state-chartered, federally insured financial institution.

- (20) That, after payment of all organization and pre-opening expenses and allowance for accounts payable and deferred expenses, the bank retain total capital accounts of not less than \$14,650,000 on opening day, of which not less than \$10,000,000 shall be allocated to paid-in capital and other capital accounts of not less than \$4,650,000 (allocated in accordance with Section 658.21(3), Florida Statutes), unless a reduction of these amounts has been specifically approved by the Office. Authorized but unissued shares, if any, must be issued in compliance with Section 658.34(4), Florida Statutes.
- (21) That the bank shall maintain a Tier 1 capital ratio of at least 8 percent for the first three years following opening of the bank. The bank will be required to inject funds within 15 days of the end of any quarter falling below that minimum, in order to increase the Tier 1 capital ratio to at least 8 percent.
- (22) That all capitalized expenses of the bank are supported by a statement from the bank's accountants of their eligibility for capitalization under generally accepted accounting principles and practices.
- (23) That, in accordance with Section 658.23, Florida Statutes, within three months after the Office's approval and all federal regulatory approvals, the bank submit to the Office the original executed Articles of Incorporation, in the form prescribed by the Office, together with the appropriate filing fee due to the Department of State under Section 607.0122, Florida Statutes. However, if within one year from the date of the Report Applicant has not obtained approval from applicable federal regulators, this Report shall expire.

- (24) That the bank shall open and conduct a general commercial bank business no later than 12 months after the commencement of its corporate existence.
- (25) That a written accounting of all organizational expenses be furnished to the subscribers and to the Office when the bank makes the call for payment of stock subscriptions, as required by Rule 69U-105.205(1), Florida Administrative Code.
- (26) That the bank, no later than 30 days prior to its opening, furnish written confirmation that it has obtained appropriate blanket bond and fidelity insurance protection which includes coverage of the bank's officers and employees.
- (27) That the bank, no later than 30 days prior to the intended opening date, notify the Office in writing of its proposed opening date and confirm its compliance with all conditions imposed in the Final Order of Approval issued by the Office. Upon receipt of such notice, the Office shall take the necessary steps to authorize opening of the bank.
- (28) That the bank, after all authorized stock has been issued, but no less than 30 days prior to the intended opening date, conduct a shareholder's meeting to elect those directors already approved by the Office, to approve all organizational expenses, and to conduct such other business relating to the corporation as may be appropriate. Within 10 days of this meeting, written minutes of the meeting must be furnished to the Office in accordance with Section 658.24, Florida Statutes.
- (29) That, no later than six months after opening, the Applicant shall reassess its initial business plan to determine if the original products, services, target market and projections identified in the application continue to be valid. If necessary, the institution shall submit revisions to the business plan to the Office for its review and

comment. Even if no revisions are necessary, the institution shall submit updated financial projections covering the remainder of that calendar year and the following two calendar years. The updated financial projections shall reflect current understanding of costs, competition, interest rate levels and trends, local demand for the products and services offered and other factors affecting the performance and growth of the institution. If the Office determines the institution has significantly deviated from the approved business plan within the first two years of operation, a new business plan shall be developed and submitted to the Office and the appropriate federal regulators for its review and concurrence.

It is so ordered.

DONE and ISSUED this 5th day of November, 2004 at Tallahassee, Florida.


DON B. SAXON, Commissioner
Office of Financial Regulation

NOTICE OF RIGHT TO APPELLATE REVIEW

ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS CONDITIONAL FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK, OFFICE OF FINANCIAL REGULATION, SUITE 526 FLETCHER BUILDING, 200 EAST GAINES STREET, TALLAHASSEE, FLORIDA 32399-0379; AND A COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY SECTION 35.22(3), FLORIDA STATUTES, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR. BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR IN THE APPELLATE DISTRICT IN WHICH PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF THE RENDITION OF THE FINAL ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Conditional Final Order of Approval has been furnished by U.S. Mail or hand delivery this 8th day of November, 2004, to Larry J. Sartin, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Raul J. Valdes-Fauli, Esquire, Steel, Hector & Davis, LLP, 200 South Biscayne Boulevard, Suite 4000, Miami, Florida 33131-2398; R. Michael Underwood, Esquire, Steel, Hector & Davis, LLP, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1804; and Bruce Kuhse, Esquire, Office of Financial Regulation, The Fletcher Building, Suite 526, 200 East Gaines Street, Tallahassee, Florida 32399-0379.



LEALAND L. MCCHAREN, ESQUIRE
Office of Financial Regulation
The Fletcher Building, Suite 526
200 East Gaines Street
Tallahassee, Florida 32399-0379