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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
(602) 542-4242  
(602) 255-2600  
FAX: (602) 255-2617

June 2, 1992

Edward M. Alterman, Esq.  
Fried, Frank, Harris, Shriver & Jacobson  
One New York Plaza  
New York, NY 10004-1980

RE: Grupo Financiero Banamax Accival, S.A. de C.V.  
A.R.S. § 44-1844(A)(1), A.C.C. Rule R14-4-126

Dear Mr. Alterman:

On the basis of the facts set forth in your letter of May 28, 1992, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter. Please be aware that the Division interprets the provisions of A.C.C. Rule R14-4-126 to apply to offers and sales by issuers and also to offers and sales by an Arizona registered dealer pursuant to a firm commitment underwriting of a private placement.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dee Ridgell Harris".

DEE RIDDELL HARRIS  
Director of Securities

DRH:MGB:ck

Attachment

# FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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NEW YORK, NEW YORK 10004 · 1980  
212 · 820 · 8000  
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WRITER'S DIRECT LINE

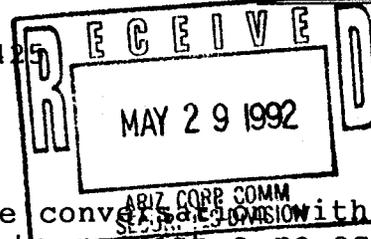
820-8104  
(FAX: 820-8586)

May 28, 1992

Ms. Sandra J. Forbes, Esq.  
Assistant Director of Securities for  
Law and Policy

Arizona Corporation Commission  
234 North Central Avenue, Suite 425  
Phoenix, Arizona 85004

BY FEDERAL EXPRESS



Dear Ms. Forbes:

Pursuant to my telephone conversation with Mr. Michael Bruton of your office, we write to request a no-action letter, regarding the availability of the exemption from registration contained in Sec. 44-1844(A)(1) of the Securities Act of Arizona (the "Act") for the transaction described herein.

A Mexican issuer whose capital stock is traded on the Mexican Stock Exchange proposes to conduct a registered public offering of its stock in Mexico concurrently with (a) a private placement of American Depositary Shares represented by American Depositary Receipts ("ADRs") to Qualified Institutional Buyers ("QIBs") and accredited investors as defined in Regulation D, Rule 501(a) in the United States, and (b) an offering of Global Depositary Receipts ("GDRs") outside of the United States and Mexico in reliance upon Regulation S under the Securities Act of 1933 (the "Federal Act"). Since the offering of the ADRs in the United States is being sold pursuant to a firm commitment purchase and resale by a U. S. and Arizona registered broker-dealer, neither § 4(2) of the Federal Act nor Regulation D promulgated thereunder are available for such offering.

Section 44-1844(A)(1) of the Act exempts from registration "... Transaction by an issuer not involving any public offering ..." As I have discussed with Mr. Bruton, we feel that this exemption should be available for the offering of the ADRs in Arizona.

The ADR offering may not be made pursuant to Section 4(2) of the Federal Act because Section 4(2) is specifically limited to "issuer transactions", and the broker-dealer which will give the firm commitment is not the "issuer" within the meaning of the Federal Act. The SEC has long recognized that this technical difficulty inherent in the statute should not prevent offerings such as the present one.

Sandra Forbes, Esq.

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In fact, their specific action to help overcome this difficulty has led to the creation of the "§ 4(1 1/2) exemption" pursuant to which the ADRs are being offered. Pursuant to the "§ 4(1 1/2)" exemption, offerings which do not technically fall within §4(2) because they are conducted by underwriters within the meaning of the Federal Act are carried out without registration under the Federal Act by complying with all the conditions of § 4(2) as if they were issuer transactions. The SEC has long held that such an offering need not be registered under the Federal Act.

Just as the SEC has allowed such offerings pursuant to the "§ 4(1 1/2)" exemption for offerings which otherwise are carried out in compliance with § 4(2), we believe that Arizona should take the same position with regard to the exemption set forth in Sec. 44-1844(A)(1) of the Act, as is inherent in Rule 14-4-126(F) which exempts any transaction provided the transaction complies with either federal court decisions interpreting § 4(2) or Arizona court decisions interpreting Sec. 44-1844(A)(1). The ADR offering will be conducted without public advertising or solicitation, will be made only to QIBs and accredited investors, will be made by a broker-dealer licensed in Arizona, and will be carried out through the use of offering materials open to inspection by your office. In addition, since this is a firm commitment offering, there are none of the concerns common to so many private placements as to whether enough of the securities will be placed as to allow the amount of proceeds realized to be sufficient to accomplish the issuer's aims in conducting the offering, thereby allaying the investor protection concerns usually evidenced by escrow requirements. Indeed, it would seem that any investor protection analysis would lead to the conclusion that the offering ought to be exempted from registration in Arizona.

Our belief that the exemption should be available for the ADR offering is further supported by a simple functional analysis of the difference between the ADR offering, made pursuant to a firm commitment, and the same offering were it to be conducted pursuant to a standard placement agreement, as is the case with most private placements. There seems to be little difference, and what difference there is appears to enure to the benefit of prospective purchasers. The issuer is strengthened by the fact that it is certain of receiving the amount of proceeds needed to accomplish the aims for which the offering is being conducted, which makes the purchasers' investment in the issuer less speculative. In short, either from a functional or an investor protection standpoint, there seems to be no reason to treat this offering differently from a similar offering made pursuant to a placement agreement, which obviously would qualify for the exemption.

Sandra Forbes, Esq.

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Lastly, in view of the fact that all purchasers will either be QIBs or accredited investors, it seems that allowing the ADR offering to be conducted in Arizona in reliance upon the exemption contained in Sec. 44-1844(A)(1) raises no more concern over investor protection than other offerings to such persons, who are presumed to have the capacity to protect their own interests in private placements. A prospective purchaser can not be said to lose the ability to evaluate the merits and risks of a prospective investment merely because the broker-dealer from which the investor purchases has agreed to purchase any unsold balance of the offering.

For the reasons expressed above, we respectfully request a no-action letter with respect to the described transaction, and would request that the no-action letter contain a statement to the effect that your office is granting the letter because it interprets the transaction to be within the statutory language of Sec. 44-1844(A)(1) of the Act.

A copy of the latest draft of the offering document describing the transaction is enclosed herewith for your information. We appreciate your kind attention to this matter. If you have any further questions or concerns, or wish further discussion in this regard, please do not hesitate to call me at the number shown above at any time.

Very truly yours,



Edward M. Alterman

EMA:bst:1341H  
Enclosure