

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98103 / August 10, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4437 / August 10, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21559

In the Matter of

**GRUPO AVAL ACCIONES
Y VALORES S.A. and
CORPORACIÓN
FINANCIERA
COLOMBIANA S.A.,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Grupo Aval Acciones y Valores S.A. (“Grupo Aval”) and Corporación Financiera Colombiana S.A. (“Corficolombiana”) (referred to, collectively, as “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondents admit the Commission’s jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Exchange Act, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

Summary

These proceedings arise out of Corficolombiana's involvement, through its former president as described below, in a bribery scheme related to the largest highway construction project in the history of Colombia, known as Ruta del Sol II ("RDS 2"), and specifically the construction of a road extension to the RDS 2 (the "Ocaña-Gamarra Extension"). The bribe scheme took place against a backdrop of a failure to maintain sufficient internal accounting controls and books and records that concealed the bribes as legitimate business expenses. As Grupo Aval's agent, Corficolombiana violated the anti-bribery provisions of the Foreign Corrupt Practices Act ("FCPA") and was a cause of Grupo Aval's violations of the books and records and internal accounting controls provisions of the FCPA.

Respondents

1. Grupo Aval, a Colombian financial holding company based in Bogota, is one of the largest commercial banking groups in Colombia. Grupo Aval's shares are listed on the NYSE, and its securities have been registered with the Commission under Section 12 of the Exchange Act since 2011 and has reporting obligations under Section 13 of the Exchange Act.

2. Corficolombiana is Grupo Aval's merchant bank subsidiary and the largest finance corporation in Colombia. Grupo Aval consolidates Corficolombiana's results of operations into its financial statements. Corficolombiana's board of directors included officers of Grupo Aval.

Background

3. Colombia's Ruta del Sol highway project is a long-term project to rehabilitate and construct highways connecting Bogota with large urban and rural areas throughout Colombia. In 2009, the Colombian government started a bidding process for RDS 2, a 328-mile highway infrastructure project. Corficolombiana sought partnerships with leading infrastructure companies to bid on RDS 2 on behalf of Grupo Aval. At the time, the RDS 2 project was the largest infrastructure project in Colombia's history and was valued at approximately \$1 billion.

4. In 2009, Corficolombiana's former president ("Corficolombiana Executive") negotiated a bidding proposal with a Brazilian construction company for the RDS 2 contract on behalf of Corficolombiana. The Corficolombiana Executive reported to Corficolombiana's board of directors.

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. Corficolombiana and the Brazilian construction company submitted a bid for the RDS 2 project on October 27, 2009, and the Colombian government agency assigned to review the RDS 2 bidding proposals awarded the project to them on December 15, 2009.

6. Soon thereafter, Corficolombiana, the Brazilian construction company, and a third company formed two legal entities based in Colombia: a company to manage the project and a construction company to build the highway (referred to, collectively, as the “RDS 2 Joint Venture”). The Brazilian construction company held an approximately 62% equity interest in the two entities, and Corficolombiana, through a Corficolombiana subsidiary, maintained an approximately 33% equity interest in the ventures.

7. Corficolombiana’s participation in the RDS 2 bidding proposal was critical because it had a well-known record in the financial sector, including financing infrastructure projects in Colombia. Corficolombiana, through the Corficolombiana Executive and its subsidiary, maintained influence over the financial and accounting operations of the RDS 2 Joint Venture, including nominating and appointing employees responsible for monitoring and approving third party obligations at the RDS 2 Joint Venture (such as the controller responsible for monitoring the compliance framework and the contract administrator with joint approval authority over third-party obligations).

8. Beginning as early as 2012, the RDS 2 entity that was granted the rights to operate the RDS 2 project (“concession company”) lobbied the Colombian government to add to the RDS 2 concession contract a road extension project that would intersect the Ruta del Sol highway. The Colombian government later added the Ocaña-Gamarra Extension to the original RDS 2 contract.

9. In 2013, a senior executive at the Brazilian construction company in Colombia (“Brazilian Executive”) agreed to pay two individual intermediaries a success fee in exchange for the approval and acceleration of the Ocaña-Gamarra Extension. The Brazilian Executive knew that a portion of the success fee paid to the intermediaries would be paid to Colombian government officials as bribes.

10. Soon thereafter, the Brazilian Executive told the Corficolombiana Executive about the bribe scheme to obtain the Ocaña-Gamarra Extension. The Corficolombiana Executive agreed to the bribery scheme and authorized the bribe payments to intermediaries through the RDS 2 Joint Venture using his influence over the financial and accounting operations of the RDS 2 Joint Venture.

11. On March 14, 2014, Colombian government officials signed the Ocaña-Gamarra Extension as a contract addendum to the RDS 2 highway project contract. At the time, the Ocaña-Gamarra Extension addendum was intended to create at least \$350 million in additional revenue and added new financing obligations for the RDS 2 highway project. As a result of the bribery scheme, the Colombian government approved the Ocaña-Gamarra Extension without a new public tendering process.

12. After March 14, 2014, Colombian government officials reviewed the new financing obligations for the Ocaña-Gamarra Extension addendum critical to the RDS 2 Joint Venture. In May 2014, before Colombian government officials approved the new financing obligations for the Ocaña-Gamarra Extension, the Brazilian Executive agreed to pay additional bribes to Colombian government officials in the form of illicit campaign contributions.

13. The Brazilian Executive informed the Corficolombiana Executive, and the Corficolombiana Executive agreed to the bribery scheme and authorized the bribe payments to intermediaries through the RDS 2 Joint Venture using his influence over the financial and accounting operations of the RDS 2 Joint Venture.

14. In October 2014, the Colombian government approved new financing obligations for the Ocaña-Gamarra Extension addendum to the RDS 2 contract that were more favorable to the RDS 2 concession company. The Brazilian Executive, together with the Corficolombiana Executive, intended to influence, and did influence, the approval and acceleration of the Ocaña-Gamarra Extension by, among other things, causing the payment of bribes paid so the addendum would be included in the RDS 2 contract without a public tender or bidding process.

15. The Corficolombiana Executive caused the RDS 2 Joint Venture to pay approximately \$28 million in bribes to Colombian government officials from 2014 through 2016 for the Ocaña-Gamarra Extension. Specifically, the Brazilian construction company paid approximately \$4 million in 2014; the RDS 2 concession company paid approximately \$13.2 million from 2014 through 2016 (approximately \$2.7 million through a correspondent bank located in the United States), and the RDS 2 construction company paid approximately \$10.9 million from 2014 through 2016.

16. The Brazilian construction company, the Brazilian Executive, and the Corficolombiana Executive used no-work contracts and sham invoices to pay bribes from the RDS 2 Joint Venture to Colombian government officials by reimbursing or paying intermediaries directly. These contracts and invoices involved work that the RDS 2 construction company handled internally or were fictitious, but were recorded as legitimate business expenses in the books and records of the RDS 2 Joint Venture. Grupo Aval reported these expenses on financial statements it filed with the Commission. As a result, Corficolombiana, through the Corficolombiana Executive, its subsidiary, and RDS 2 Joint Venture, caused Grupo Aval to inaccurately record the payments in its books and records.

17. Corficolombiana, through the Corficolombiana Executive and its subsidiary, exercised influence over the financial and accounting operations of the RDS 2 Joint Venture. For example, the Corficolombiana Executive caused the RDS 2 construction company to approve payments to vendors for work that was already performed or lacked supporting documentation. These payments resulted in the disposition of assets to pay for bribes.

18. The bribery scheme provided Corficolombiana and other Grupo Aval subsidiaries with an improper financial benefit in the form of fees, interest income, and investment

distributions totaling approximately \$32 million. These illicit profits were consolidated to Grupo Aval's financial statements and accrued to Grupo Aval through 2020.

LEGAL STANDARDS AND VIOLATIONS

19. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or would be the cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

Corficolombiana Violated Exchange Act Section 30A

20. As a result of the conduct described above, the Corficolombiana Executive caused Corficolombiana to violate Section 30A of the Exchange Act, which prohibits any issuer with securities registered pursuant to Section 12 of the Exchange Act or which is required to file reports under Section 15(d) of the Exchange Act, or any officer, director, employee, or agent acting on its behalf, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an effort to pay or offer to pay anything of value to foreign officials for the purpose of influencing their official decision-making, in order to assist in obtaining or retaining business.

Grupo Aval Violated Exchange Act Section 13(b)(2)(A) and Corficolombiana Caused Grupo Aval's Violations

21. As described above, the RDS 2 Joint Venture used no-work contracts and sham invoices to pay bribes to Colombian government officials. These payments were recorded as legitimate business expenses in the books and records of the RDS 2 Joint Venture and of Corficolombiana, and were reported in Grupo Aval's financial statements. In addition, the Corficolombiana Executive signed various sub-certifications in connection with Grupo Aval's financial reporting that falsely stated he was unaware of illegal acts. As a result, Corficolombiana caused violations of, and Grupo Aval violated, Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

Grupo Aval Violated Exchange Act Section 13(b)(2)(B) and Corficolombiana Caused Grupo Aval's Violations

22. As described above, bribe payments to intermediaries were approved by Corficolombiana, through the Corficolombiana Executive and its subsidiary, relying on invoices lacking supporting documentation or using contracts for vaguely described services typically handled internally rather than by third parties. As a result, Corficolombiana caused violations of, and Grupo Aval violated, Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances

that transactions are executed and access to assets is permitted only in accordance with management's general or specific authorization.

Disgorgement and Non-Imposition of a Civil Penalty

23. Respondents acknowledge that the Commission is not imposing a civil penalty based upon the imposition of a \$20,300,000 criminal fine as part of Corficolombiana's resolution with the U.S. Department of Justice.

24. The disgorgement and prejudgment interest referenced in paragraph IV.C., below, is consistent with equitable principles, does not exceed Grupo Aval's net profits from its violations, and returning the money to Grupo Aval would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest referenced in paragraph IV.C. shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Grupo Aval's Remedial Efforts

25. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff. Respondents' cooperation included voluntarily summarizing and providing facts developed during their own internal investigation and producing and translating certain documents. Respondents' remediation included conducting a comprehensive risk assessment; re-evaluating and re-designing their anti-corruption compliance program; improving policies and procedures; and enhancing internal controls, including those related to joint venture entities and investments.

Deferred-Prosecution Agreement

26. Corficolombiana has entered into a deferred-prosecution agreement with the U.S. Department of Justice that acknowledges responsibility for criminal conduct relating to the findings in the Order. *United States v. Corporación Financiera Colombiana S.A.* (to be filed in D. Md.)

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Grupo Aval cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent Corficolombiana cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 30A of the Exchange Act.

C. Grupo Aval shall, within 10 days of the entry of this Order, pay disgorgement of \$32,139,731 and prejudgment interest of \$8,129,558 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

Payment must be made in one of the following ways:

- (1) Grupo Aval may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Grupo Aval may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Grupo Aval may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Grupo Aval and Corficolombiana as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Charles E. Cain, Chief of the FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5631B.

By the Commission.

Vanessa A. Countryman
Secretary