

OFFICE OF THRIFT SUPERVISION

**APPROVAL OF APPLICATIONS FOR PERMISSION TO
ORGANIZE A FEDERAL SAVINGS BANK AND
HOLDING COMPANY ACQUISITION**

Order No.: 99-39

Date: June 30, 1999

Lehman Brothers Holdings Inc., New York, New York and Lehman Brothers Bancorp Inc., New York, New York (collectively, the "Applicants"), have applied to the Office of Thrift Supervision ("OTS"), pursuant to 12 U.S.C. §§ 1464(e), 1467a(e), and 1828(c) and 12 C.F.R. §§ 552.2-1, 552.13, and 574.3, to organize and acquire an interim savings association and merge the interim savings association into Delaware Savings Bank, F.S.B., Wilmington, Delaware (the "Savings Bank"). (The foregoing are collectively referred to herein, as "the Applications.") The Savings Bank is and will remain a member of the Savings Association Insurance Fund. The Savings Bank is a critically undercapitalized savings association in need of immediate action to avert an insolvency liquidation.

The OTS has considered the Applications as supplemented by representations by the Applicants (a copy of which is attached hereto) under the standards set forth in 12 U.S.C. §§ 1464(e), 1467a(e), and 1828(c) and 12 C.F.R. §§ 552.2-1, 552.13, 563.22(d), and 574.7, and under the Community Reinvestment Act, 12 U.S.C. §§ 2901 *et seq.*, and the OTS regulations thereunder, 12 C.F.R. Part 563e. In addition, the OTS has also considered the digest by the OTS Northeast Regional Office ("Regional Office"), a legal opinion by the Business Transactions Division, an analysis by Supervision, and a memorandum from Office of Compliance Policy (collectively the "Staff Memoranda"). For the reasons set forth in the Staff Memoranda, the OTS has determined that the Applications satisfy all applicable statutory and regulatory criteria, provided that the conditions set forth below are satisfied. Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The Applicants and the Savings Bank must receive all required regulatory approvals, including any required by the FDIC, prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Office;
2. On the business day prior to the date of consummation of the proposed transaction, the Chief Financial Officers of the Applicants and the Savings Bank must certify in writing to the Northeast Regional Director or his designee ("Regional Director") that no material adverse changes have occurred with respect to the financial condition or operation of the Applicants and the Savings Bank, respectively, as disclosed in the Applications, including but not limited to directors, shareholders, or the business plan; and provided further, that no additional information having an adverse bearing on any feature of the Applications has been brought to the attention of the Applicants, the Savings Bank, or the OTS since the date of the financial

statements submitted with the Applications, aside from the financial condition of the Savings Bank;

3. The proposed transaction must be consummated within one hundred and twenty (120) calendar days from the date of this Order or within such additional period as the Regional Director may grant;
4. The Applicants and the Savings Bank must advise the Regional Office in writing within 10 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications and this Order;
5. By no later than January 1, 2000, the Savings Bank must have in place a team of permanent, full-time senior executive officers, who are not dual employees of Applicants or any of its affiliates. All changes in the composition of the Savings Bank's executive officers during the three-year period following consummation of the merger and acquisition of the Savings Bank must receive the prior written non-objection by the Regional Director;
6. At least 40 percent of the Savings Bank's board of directors must be comprised of individuals who are not officers or employees of the Applicants or affiliates thereof and at least one member of the Savings Bank's board of directors must be an individual who is not an officer, director or employee of the Applicants or any affiliate and who is not an officer or employee of the Savings Bank. At least 50 percent of the Savings Bank's audit and investment committees must be comprised of directors who are not officers or employees of the Savings Bank, the Applicants or any affiliates;
7. For its first three years of operations, the Savings Bank must submit independent audit reports to the Regional Office that comply with the audit rules set forth at 12 C.F.R. § 562.4 and must submit to the Regional Office quarterly variance reports to the Savings Bank's business plan;
8. The Savings Bank must operate within the parameters of the business plan (as revised on June 11, 1999) that the Applicants filed with the OTS, and the Applicants must fulfill their undertakings as set out in the business plan. Consistent with the business plan, Applicants must take all appropriate actions, including any specified capital infusions, to cause the Bank's capital ratios to be in such amounts, on a daily basis, that: (i) the Savings Bank would be deemed to be "well capitalized" under section 38 of the FDI Act and the OTS's regulations thereunder at 12 C.F.R. Part 565; (ii) the Savings Bank's core (leverage) capital ratio is maintained at no less than 6.0 percent; and (iii) the Savings Bank's total ratio of core capital to total risk-weighted assets is maintained at no less than 9.0 percent. Any proposed major deviations or material changes from the business plan (including changes resulting from decisions made by either of the Applicants) will require the Savings Bank to submit a revised business plan for review and approval by the Regional Director. The request for change must be submitted a minimum of 30 days before the proposed change is implemented;

9. The Savings Bank may not enter into any agreements with the Applicants or any other affiliate unless previously the Savings Bank's board of directors has duly adopted a resolution authorizing the Savings Bank to enter into the agreement, having – (i) determined that the proposed agreement is in the best interests of the Savings Bank and (ii) been advised, in writing, by competent legal counsel that the agreement with the affiliate will not cause the Savings Bank to violate Sections 23A and 23B of the Federal Reserve Act and the OTS regulations thereunder. Before the Savings Bank may permit any affiliate to perform any services on its behalf, the Savings Bank and the specific affiliate must enter into a written contract relative to such services;
10. Any Applicant or affiliate of an Applicant that engages in securities brokerage activities ("Broker Dealer affiliate") must be operated as a separate legal entity from the Savings Bank so that: (a) their respective accounts and records are not intermingled; (b) each observes the procedural formalities of separate legal titles; (c) each is held out to the public as a separate enterprise; and (d) none dominates another to the extent that one is treated as a mere department of the other;
11. Except as permitted by the Regional Director, a majority of the Savings Bank's board of directors must not be comprised of individuals that are directors or employees of any securities affiliate;
12. The Savings Bank and the Broker Dealer affiliate must take measures necessary to ensure that their officers and directors adhere to the principles set forth in OTS regulations on conflicts of interest, 12 C.F.R. § 563.200; corporate opportunity, 12 C.F.R. § 563.201; self-dealing, 12 C.F.R. § 550.10; and any other additional or successor statements of policy or regulations addressing these subjects. The officers and directors of the Savings Bank and the Broker Dealer affiliate are prohibited from using their influence to: (a) take advantage of a business opportunity for the Broker Dealer affiliate's benefit when the opportunity is of present or potential advantage to the Savings Bank; or (b) place the Broker Dealer affiliate in a position that leads to, or could create the appearance of a potential conflict of interest;
13. The Savings Bank, the Applicants, and the Broker Dealer affiliate are subject to the provisions of 12 C.F.R. § 563.76, *Offers and Sales of Securities at an Office of Savings Association*, and related policy established in OTS Thrift Bulletins 23-2, *InterAgency Statement on Retail Sales of Nondeposit Investment Products* (the "InterAgency Statement"), and 23a, *Limited Exceptions to Prohibitions on Sales of Savings Institution's Securities*, and any additional or successor statements of policy or regulations addressing these subjects. The Savings Bank and the Applicants shall ensure compliance by the Broker Dealer affiliate with, at a minimum, the General Guidelines in Disclosures and Advertising set forth in the InterAgency Statement whenever the Broker Dealer affiliate or their representatives market, or offer for sale, financial services of the Savings Bank;
14. The Savings Bank must fulfill the local and national lending commitments set forth in its preliminary CRA plan submitted to the OTS, and, within 90 days of issuance of the approval

order, it must submit to the Regional Director an acceptable, detailed CRA plan for review and approval;

15. For the reasons set forth in the Staff Memoranda, the OTS finds that it must act immediately in order to prevent the probable default of the Savings Bank. Accordingly, the OTS hereby waives the publication and public comment provision of 12 C.F.R. § 563.22(e)(1). In addition, based on the supervisory nature of the transaction, the OTS hereby waives the publication and public comment provisions of 12 C.F.R. §§ 574.6(d) and (e);
16. At least 30 calendar days before beginning operations, the Savings Bank must submit written evidence, acceptable to the Regional Director, that the Savings Bank's Year 2000 efforts comply with the terms, milestone dates, requirements and conditions contained in the Year 2000 guidance issued by the OTS and/or the Federal Financial Institutions Examination Council .

Any time periods specified herein may be extended by the Regional Director, for good cause, for up to 120 calendar days.

By order of the Director of the Office of Thrift Supervision, or her designee, effective

June 30, 1999



Scott M. Albinson
Managing Director

Attachment