

OFFICE OF THRIFT SUPERVISION

APPROVAL OF APPLICATIONS FOR PERMISSION TO ORGANIZE A FEDERAL SAVINGS BANK, HOLDING COMPANY ACQUISITION, TRANSFER OF ASSETS AND TRUST POWERS

ORDER NO.: 99-28

DATE: May 21, 1999

Legg Mason, Inc., Baltimore, Maryland (the "Holding Company"), has applied for approval of the Office of Thrift Supervision (the "OTS") pursuant to 12 U.S.C. §§ 1464(e) and 1467a(e), and 12 C.F.R. §§ 552.2-1 and 574.3 for permission to organize and acquire Legg Mason Trust Bank, F.S.B., Baltimore, Maryland (the "Savings Bank"), and pursuant to 12 U.S.C. § 1464(n) and 12 C.F.R. Part 550 and 12 C.F.R. § 545.96, for the Savings Bank to exercise trust powers as described in the trust powers application and establish agency offices at which trust services will be offered. In addition, the Holding Company has applied to merge its wholly owned subsidiary, Legg Mason Trust Company ("Subsidiary"), a Maryland-chartered trust company, with and into the Savings Bank pursuant to 12 C.F.R. § 563.22. (Collectively, the foregoing are referred to as "the Applications".) The Savings Bank will be a member of the Savings Associations Insurance Fund.

The OTS has considered the Applications under the standards set forth in 12 U.S.C. §§ 1464(e), 1464(n) and 1467a(e), and 12 C.F.R. §§ 545.96, 552.2-1, 563.22 and 574.7, Part 550 and other applicable statutes and regulations. The OTS also has considered the Applications 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 considered a digest and a supplemental digest from the Southeast Regional Office, an analysis from the Fiduciary Unit of the Office of Supervision, an analysis from the Office of Examination and Supervision, and a legal opinion and supplemental legal opinion from the Business Transactions Division (collectively, the "Staff Memoranda"). For the reasons set forth in the Staff Memoranda, the OTS finds that the Applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Southeast Regional Director, or his designee ("Regional Director"). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The proposed transaction must be consummated no later than 120 calendar days after the date of this approval order, unless an extension is granted for good cause by the Regional Director;
2. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Subsidiary and the Holding Company shall certify to the Regional Director, in writing, that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the Subsidiary and the Holding Company, respectively, since the date of the financial statements submitted with the Applications;

3. The Holding Company, the Subsidiary, and the Savings Bank must obtain all required regulatory and shareholder approvals prior to consummation, and must act to satisfy all requirements and conditions imposed by the OTS, and comply with all applicable laws, rules and regulations;
4. No later than 5 calendar days from the date of consummation of the proposed transaction, the Savings Bank must file with the Regional Director a certification by legal counsel stating the effective date of the proposed transaction and of the Savings Bank's insurance of accounts, and that the transaction has been consummated in accordance with the provisions of all applicable laws and regulations, the Applications and this order;
5. The Savings Bank must submit independent audit reports to the Regional Office for its first three fiscal years. These reports must be in compliance with the audit rules set forth in 12 C.F.R. Section 562.4;
6. Within 90 days from the date of this Order, the Savings Bank must take the necessary steps to ensure that: (i) at least 40 percent of the Savings Bank's board of directors is comprised of individuals who are not officers or employees of the Holding Company or affiliates thereof; (ii) at least one member of the Savings Bank's board of directors is an individual who is not an officer, director or employee of the Holding Company or any affiliate and who is not an officer or employee of the Savings Bank; (iii) at least 50 percent of the Savings Bank's board of directors' audit, investment and trust committees is comprised of directors who are not officers or employees of the Savings Bank, the Holding Company or any affiliates; and (iv) a majority of the Savings Bank's board of directors is comprised of individuals who are not officers or directors of any affiliated securities brokerage company. For purposes of this condition, the term "affiliate" does not include the Savings Bank. Any directors other than those for who biographical information was submitted with the Applications must be approved by the Regional Director;
7. With the exception of the positions of controller and treasurer and secretary, no officer of the Savings Bank may serve in dual capacities with both the Savings Bank and any affiliate of the Savings Bank without the approval of the Regional Director. The Savings Bank must obtain the services of an individual with investment experience who will be responsible for the oversight of investments being made to accounts under management by the Savings Bank. This individual cannot work for any broker-dealer subsidiary of the Savings Bank's holding company or any other affiliate of the Savings Bank that is a broker-dealer, but may work for a registered investment advisory firm subsidiary of the Savings Bank's holding company or an affiliate of the Savings Bank that is a registered investment advisory firm. If, however, it is subsequently determined by the Regional Director that more intensive or frequent oversight and review is necessary than can be provided by an employee of an affiliated entity, the Savings Bank will engage an individual with appropriate experience for this position who is not employed by any affiliate of the Savings Bank;

8. Except with regard to dual employees referred to in Condition 7 above, compensation arrangements (including bonuses and other benefit plans) for officers of the Savings Bank must be attributable to the financial and operational results of the Savings Bank;
9. The Savings Bank must operate within the parameters of its business plan. Any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Holding Company), and in particular, those pertaining to cross-marketing, trust fee structure, and investment in proprietary mutual funds, will require the Savings Bank to submit a revised business plan for the approval of the Regional Director. The request for change shall be submitted a minimum of 60 days before the proposed change is implemented;
10. At least 30 days prior to the commencement of operations, the Holding Company must ensure that a formal communications process is in place between the committees and the board of directors of the Savings Bank that will provide the board with all pertinent information to oversee the Savings Bank's fiduciary activities;
11. Prior to the commencement of operations as a Federal savings bank, the Holding Company must develop and submit to the Regional Director for review a functioning oversight program. The program must consist of a comprehensive audit function, a compliance management program, and a risk management process:

The audit function must address auditor qualifications, audit scope and method, committee involvement, reporting, and the process for effectuating corrective action.

The compliance management program must ensure compliance with applicable laws, regulations, and sound fiduciary principles, and at a minimum include: (a) the assignment of specific compliance responsibilities to experienced staff; (b) training for affected staff; (c) routine self-evaluations; (d) periodic compliance audits that address, among other things, the review of trading and sales practices for individual accounts; and (e) appropriate written policies and procedures.

The risk management program must establish criteria to identify, measure, monitor, and control risks within the fiduciary activities;

12. At least 30 days prior to the commencement of operations as a Federal savings bank, the Holding Company shall submit evidence to the Regional Director that the Savings Bank will have in place for any outsourcing activities: (a) rationale for selecting a function(s) to outsource; (b) methods and criteria used to select a third party or affiliate to perform the service(s); and (c) the monitoring process used to evaluate the effectiveness of the outsourced services and any third party's or affiliate's performance;
13. Prior to engaging in any business other than that permitted pursuant to OTS approval under section 5(n) of the HOLA, and that specifically proposed in the Applications, the Savings Bank must apply to the OTS, and receive approval of an application to engage in such

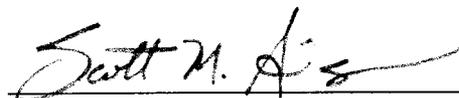
business. The OTS will consider any such application under the standards set forth at section 5(e) of the HOLA and OTS regulations thereunder, and under the Community Reinvestment Act and OTS regulations thereunder at 12 C.F.R. Section 563e.29. Any such application may be subject to the public notice and comment procedures set forth at 12 C.F.R. Part 516, Subparts B and C;

14. Any contracts or agreements pertaining to any transactions with affiliates, including any outsourced activities to third parties or any tax sharing agreement, not yet submitted to the OTS for review, must be provided to the Regional Director at least 30 days prior to execution and must receive his written non-objection prior to implementation;
15. Upon opening for business, the Savings Bank's initial capitalization must be at least \$2.4 million;
16. The Holding Company and the Savings Bank must comply with the anti-tying restrictions of 12 U.S.C. Sections 1464(q) and 1467a(n) and must develop written procedures to effect such compliance. The procedures must disclose any proposed bundling arrangements and must be submitted for the prior review and non-objection of the Regional Director;
17. Within 30 days of consummation of the proposed transaction, the Savings Bank must submit to the Regional Director written policies and procedures designed to address the risks associated with the use of affiliates' employees to (i) market the Savings Bank's products and services and (ii) provide asset allocation and investment management advice with regard to the Savings Bank's trust accounts;
18. If the Savings Bank is using discretionary trust authority it may not purchase securities in a transaction in which an affiliate acts as principal or acts as specialist or market maker in the security, except if the purchase is approved by a majority of the board of directors of the Savings Bank who are not officers or employees of the Savings Bank or any affiliate of the Savings Bank. In order for the Savings Bank to claim the foregoing exception, at least two directors of the Savings Bank must not be officers or employees of the Savings Bank or any affiliate of the Savings Bank;
19. Any subsidiary of the Holding Company that engages in securities brokerage activities ("Securities Brokerage Entity") must be operated as a separate legal entity from the Savings Bank so that: 1) their respective accounts and records are not intermingled; 2) each observes the procedural formalities of separate legal titles; 3) each is held out to the public as a separate enterprise; and 4) none dominates another to the extent that one is treated as a mere department of the other;
20. The Savings Bank and any Securities Brokerage 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. Section 563.200; corporate opportunity, 12 C.F.R. Section 563.201; self-dealing, 12 C.F.R. Part 550; and any other additional or successor statements of policy or regulations addressing these subjects. The officers and directors of the Savings

Bank and any Securities Brokerage affiliate are prohibited from using their influence to: (a) take advantage of a business opportunity for any Securities Brokerage affiliate's benefit when the opportunity is of present or potential advantage to the Savings Bank; or b) place any Securities Brokerage affiliate in a position that leads to, or could create the appearance of, potential conflict of interest;

21. The Savings Bank, the Holding Company and any Securities Brokerage affiliate are subject to the provisions of 12 C.F.R. Section 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 Holding Company shall ensure compliance by the Securities Brokerage Entity with, at a minimum, the General Guidelines in Disclosures and Advertising set forth in the InterAgency Statement whenever the Securities Brokerage Entity or its representatives market, or offer for sale, trust services of the Savings Bank;
22. The Savings Bank and any Securities Brokerage affiliate are prohibited from sharing common officers unless prior written approval is obtained from the Regional Director, which must be based on criteria such as regulatory compliance, experience, character, integrity, and the ability to perform both duties;
23. The Savings Bank must submit to the Regional Director, for a period of time specified by the Regional Director, quarterly reports which include (a) the number and type of trust accounts serviced and (b) the total asset value of the trust accounts; and
24. 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.

By Order of the Director of the Office of Thrift Supervision, or her designee, effective **May 21, 1999.**



Scott M. Albinson
Managing Director
Office of Supervision