

OFFICE OF THRIFT SUPERVISION

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

Order No.: 2000-20

Date: February 17, 2000

New York Life Insurance Company and NYLIFE LLC, New York, New York (the "Applicants"), have applied to the Office of Thrift Supervision ("OTS"), pursuant to 12 U.S.C. §§ 1464(e) and 1467a(e), and 12 C.F.R. §§ 552.2-1, 563.22(c), and 574.3, to organize and acquire New York Life Trust Company, FSB, Parsippany, New Jersey (the "Savings Bank"), and to transfer certain assets of New York Life Trust Company, New York, New York, to the Savings Bank. In addition, the Savings Bank has applied, pursuant to 12 U.S.C. § 1464(n) and 12 C.F.R. Part 550, to exercise trust powers as described in the application. (The foregoing are collectively referred to herein as "the Applications.") The Savings Bank will be a member of the Savings Association 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. §§ 543.3, 552.2-1(b), 563.22(d), and 574.7 and Part 550, 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 considered the digest prepared by the OTS Northeast Regional Office, a legal opinion by the Business Transactions Division, an analysis by the Compliance Policy and Specialty Examinations Division and an analysis by the Office of Examination and Supervision (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 conditions set forth below are complied with in a manner satisfactory to the Northeast Regional Director, or his designee ("Regional Director"). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The Applicants and the Savings Bank must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The proposed transaction must be consummated within one hundred and twenty (120) calendar days from the date of this Order;
3. 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 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. In addition, should additional

information having an adverse bearing on any feature of the Applications be brought to the attention of the Applicants, the Savings Bank, or the OTS since the date of the financial statements submitted with the Applications, the transaction shall not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;

4. The Applicants and the Savings Bank must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction and of the Savings Bank's insurance of accounts and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications, and this Order;
5. The Savings Bank must submit independent audit reports to the Regional Director for its first three fiscal years. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
6. The Savings Bank must operate within the parameters of its business plan. The Applicants and the Savings Bank must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Applicants), and in particular, those pertaining to cross-marketing of products of the Savings Bank and its affiliates, for the prior, written non-objection of the Regional Director. The request for change must be submitted a minimum of 30 calendar days before the proposed change is implemented;
7. Prior to engaging in any business activity other than that authorized pursuant to section 5(n) of the HOLA, the Savings Bank must apply to the OTS and receive approval of its application to engage in such business activity. The OTS will consider any such application under the standards required of a new federal thrift charter which are 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. § 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;
8. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Applicants or affiliates thereof or have not otherwise been determined by the Regional Director to lack sufficient independence, 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 or has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of any audit, investment, and trust committee established by the Savings Bank must be directors who are not officers or employees of the Savings

Bank, the Applicants or any affiliates or have not otherwise been determined by the Regional Director to lack sufficient independence. If compliance with this condition involves the selection of additional director(s), each director must receive the prior written approval of the Regional Director;

9. Prior to engaging in any fiduciary activity, the Savings Bank must develop and submit to the Regional Director for review a functioning oversight program, consisting of a comprehensive audit program, a compliance management program, and a risk management program. The audit program must be fully implemented prior to the commencement of operations. The compliance management program must be fully implemented within 90 days of commencement of operations. The risk management program must be fully implemented within 180 days of commencement of operations.
 - The audit program should address auditor qualifications, audit scope and method, committee involvement, reporting, and the process for effectuating corrective action.
 - The compliance management program should ensure compliance with applicable laws, regulations, and sound fiduciary principles. It should include, at a minimum: (a) the assignment of specific compliance responsibilities to experienced staff; (b) training for affected staff; (c) routine self-evaluations; (d) periodic compliance audits; and (e) appropriate written policies and procedures.
 - The risk management program should establish criteria to identify, measure, monitor, and control risks within the fiduciary activities;
10. Within 30 days after each calendar quarter, the Savings Bank must submit to the Regional Director quarterly activity reports on the number and type of trust accounts serviced, the total asset values of these accounts, and the minutes of the meetings of the Savings Bank's Trust and Investment Committee;
11. The Applicants, their affiliates and the Savings Bank must comply with the anti-tying restrictions of 12 U.S.C. §§ 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 review and non-objection of the Regional Director prior to the opening of the Savings Bank for business;
12. For the first eighteen months of operation, any contracts or agreements pertaining to transactions with affiliates, 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. In addition, the Savings Bank must fully document its justifications for using affiliated service providers. The

documentation should support the Savings Bank's assessment that use of the affiliate is in the best interests of the trust customers;

13. The Savings Bank must submit a reasoned opinion of counsel to the Regional Director, within 90 days following the commencement of operations, that the Savings Bank has included in its planned investment decision process measures that address the inherent conflicts associated with investing in proprietary or affiliated mutual funds. Such measures should ensure that the investments are authorized under applicable law (including the Employee Retirement Income Security Act of 1974), subject to written policies and procedures, and appropriate for each individual account. The Savings Bank must also document its decision making process and provide disclosures regarding the fee arrangements;
14. The Savings Bank must comply with all applicable state and federal securities laws, relating to any requirements for registration as an investment advisor and submit evidence of such compliance acceptable to the Regional Director;
15. Any affiliate of the Savings Bank that engages in broker, dealer, investment company, or investment advisor activities ("Securities Affiliate(s)") 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;
16. A majority of the Savings Bank's board of directors must not be individuals who are officers, directors or employees of any Securities Affiliate;
17. The Savings Bank and any Securities Affiliate are prohibited from sharing common officers, unless prior approval is obtained from the Regional Director, which shall be based on criteria such as regulatory compliance, experience, character, integrity and the ability to perform both duties;
18. The Savings Bank, the Applicants, and the Securities Affiliates 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; trust fiduciary duties, 12 C.F.R. § 550.140; and any other additional or successor statements of policy or regulations addressing these subjects. The officers and directors of the Savings Bank and the Securities Affiliates are prohibited from using their influence to: (a) take advantage of a business opportunity for the Securities Affiliates' benefit when the opportunity is of present or potential

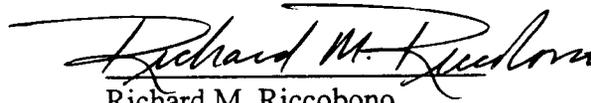
advantage to the Savings Bank; or (b) place the Securities Affiliates in a position that leads to, or could create the appearance of a potential conflict of interest;

19. The Savings Bank, the Applicants and the Securities 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*, 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 must submit, prior to opening for business, procedures acceptable to the Regional Director, setting forth how the Savings Bank will avoid confusion regarding the status of deposit insurance with respect to trust accounts;
20. For a period of two years following the consummation date, the Savings Bank must receive the prior non-objection of the Regional Director for any proposed new senior executive officer or director;
21. At least 30 days prior to engaging any third party to conduct a fiduciary activity on behalf of the Savings Bank, the Savings Bank shall (a) document the rationale and criteria for selecting the third party to conduct the activity, which documentation shall be available to OTS upon request and (b) during the first 18 months of operation, the Savings Bank shall submit to OTS for review and non-objection by the Regional Director all written agreements with third party providers;
22. The Savings Bank must separately submit an application to OTS pursuant to Part 550 of the OTS Regulations to engage in any additional trust activities not fully described in the business plan and factored into the financial projections;
23. Prior to the consummation date, the Savings Bank must submit to OTS for review and non-objection by the Regional Director a copy of the disclosure the Savings Bank will provide to trust customers of certain transactions with affiliates, including the following: (i) trust assets held by the Savings Bank are not insured by the FDIC and are subject to investment risk and the possible loss of principal; (ii) the Savings Bank may invest trust assets in mutual funds or annuity or insurance products for which an affiliate of the Savings Bank serves as the underwriter or investment adviser; (iii) the Savings Bank may delegate to an affiliated or unaffiliated third party the responsibility for making investment decisions with respect to the trust assets under its discretion; and (iv) broker-dealer affiliates of the Savings Bank may execute securities transactions on behalf of trust accounts; and

24. At least 30 days prior to opening for business, the Savings Bank must submit written evidence, acceptable to the Regional Director, that its data systems, programs, software and business applications will operate properly.

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

By order of the Director of the Office of Thrift Supervision, or her designee, effective FEBRUARY 17, 2000.



Richard M. Riccobono
Deputy Director