

## OFFICE OF THRIFT SUPERVISION

### APPROVAL OF APPLICATIONS FOR CONVERSION TO A FEDERAL SAVINGS BANK CHARTER, TRUST POWERS, AND HOLDING COMPANY ACQUISITION

ORDER NO.: 98-27

DATE: March 23, 1998

Hickory Point Bank and Trust, **Forsyth**, Illinois (“the Bank”), has applied for approval of the Office of Thrift Supervision (the “OTS”) pursuant to 12 U.S.C. **§ 1464** and 12 C.F.R. **§§ 552.2-1** and 552.2-6 for permission to convert **from** an Illinois-chartered bank to a **federal** savings bank (the “New FSB”) and, pursuant to 12 U.S.C. **§ 1464(n)** and 12 C.F.R. Section 550.2, to exercise full trust powers. **In** addition, Archer-Daniels-Midland Company, Decatur, Illinois (the “Holding Company”), seeks approval under 12 U.S.C. **§ 1467a(e)** and 12 C.F.R. **§ 574.3** to acquire the New FSB (collectively, “the Applications”).

The Director or her designee (the “Director”) has considered the Applications under the factors set forth in 12 U.S.C. **§§ 1464(e)**, 1464(n) and **1467a(e)** and 12 C.F.R. **§§ 550.2**, 552.2-1, 552.2-6 and 574.7 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 Director has considered a digest **from** the Central Regional Office, an analysis prepared by Corporate Activities and a legal opinion **from** the Business **Transactions** Division (collectively, the “St&Memoranda”), a protest **from** Walter T. Morey and certain agreements with the United States Department of Justice, the United States Department of Agriculture and the Commodities Futures Trading Commission and certain steps taken by the Holding Company and its **affiliates** to comply with such agreements. For the reasons **set** forth in the Staff Memoranda, the Director finds that the Applications satisfy the applicable approval standards provided that the following conditions are complied with in a manner satisfactory to the **Central** Regional Director, or his designee (“Regional Director”). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The proposed transaction shall 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** officer of the Bank 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 Bank and the Holding Company, respectively, since the date of the financial statements submitted with the **Applications**;


3. *The* Bank shall obtain all required regulatory and shareholder approvals prior to consummation, and will 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 conversion, New FSB shall file with the Regional Director, a certification by legal **counsel** stating the effective date of the conversion and that the conversion has been consummated in accordance with the provisions of all applicable laws and regulations, the application and this order,
5. No person implicated **or otherwise known** by the Holding Company to have been directly, or indirectly, involved in any of the conduct or activities described in the **criminal** information **filed** in United States of America v. Archer-Daniels-Midland Company, No. **96-CR-640 (N.D. Ill.)**, on October 15, 1996, shall serve as an employee, officer or director of New FSB;
6. No later than 180 days **from** the date of consummation, New FSB shall expand its board of directors to include two "outside" members who are not, nor have been within the past five years, officers or employees of the Holding Company, or its **affiliates** or subsidiaries;
7. *Any* subsidiary of the Holding Company that engages in securities brokerage activities ("Broker Dealer **affiliate**") must be operated as a separate legal entity **from** New FSB 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,
8. A majority of New **FSB's** board of directors must not be comprised of individuals who are directors or employees of any Broker Dealer **affiliate**;
9. New FSB and any Broker Dealer **affiliate** are prohibited **from** sharing common officers unless prior written 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;
10. With respect to transactions between New FSB and any Broker **Dealer affiliate**, New FSB 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. Section 563.200; corporate opportunity, 12 C.F.R Section 563.201; self-dealing, **12** C.F.R Section 550.10; and any other additional or successor statements of policy or regulations addressing these subjects. The officers and directors of New FSB and the Broker Dealer 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 New FSB; or b) place the Broker Dealer **affiliate** in a position that leads to, or could create the appearance of a potential conflict of interest;

11. New FSB, the **Holding** Company and the Broker Dealer **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 New FSB and the Holding Companies 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 its representatives market, or offer for sale, deposit products of the New FSB;
12. New FSB shall not directly, or indirectly, engage in any financial derivatives activity not **specifically** authorized under 12 C.F.R. Sections **563.173, 563.174** or 563.175, or any such successor regulations or policy statements, without prior approval of the Regional Director,
13. New FSB shall not directly, or indirectly, engage in any **transaction** with any Futures Commission Merchant **affiliate**, or knowingly lend funds to any customer of its Futures Commission Merchant **affiliate** for the purpose of enabling the customer to engage in a forward commitment, futures or financial option **transaction** with the Futures Commission Merchant, without prior approval of the Regional Director,
14. For the two-year period following the date of **consummation**, New FSB **shall** submit to the Central Regional Office, on a quarterly basis, a detailed listing, including **all** relevant terms, of **all** significant **transactions** with **affiliates**, including those activities **pertaining** to cash management except records of individual debit and credit **transactions** to Automated Clearing House or checking accounts;
15. New FSB shall operate within the parameters of the business plan contained within the application. Any proposed material changes **from** the plan **shall** be submitted to, and approved by, the Regional Director a minimum of 30 days before the proposed change is implemented; and
16. New **FSB's** Year 2000 Project Management Program must adhere to the Year 2000 guidance issued by the OTS and/or the Federal Financial Institutions **Examination Council ("FFIEC")** including the May **5, 1997 FFIEC Year 2000 Project Management Awareness** statement, the December **17, 1997 FFIEC Safety and Soundness Guidelines Concerning the Year 2000 Business Risk**, the March 17, 1998 **FFIEC Guidance Concerning Institution Due Diligence in Connection with Service Provider and Software Vendor Year 2000 Readiness**, the March 17, 1998 **FFIEC Guidance Concerning the year 2000 Impact on Customers** and any subsequent OTS or FFIEC Year **2000** guidance.

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This approval order shall also serve as notice to New FSB that the OTS reserves the authority to evaluate the appropriateness of marketing disclosures as they pertain to the differentiation between insured and uninsured products by having its examiners periodically, and without identification as OTS examiners, solicit New FSB employees for information on nondeposit investment or insured products.

By Order of the Director of the Office of **Thrift** Supervision, or her designee, effective March 23, 1998.

  
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John E. Ryan  
Acting Executive Director, Supervision