

OFFICE OF THRIFT SUPERVISION

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

ORDER NO.: 98-63

DATE: June 22, 1998

Key West Bancgroup, Inc., Key West, Florida (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 Key West Bank, Key West, Florida (the "Savings Bank") (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) and 1467a(e), and 12 C.F.R. §§ 543.3, 552.2-1, 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 Southeast Regional Office, an analysis prepared by Corporate Activities and a legal opinion from the Business Transactions Division (collectively, the "Staff Memoranda"). 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 Southeast 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 Savings 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 Savings Bank and the Holding Company, respectively, since the date of the financial statements submitted with the Applications;
3. The Savings Bank shall obtain all required regulatory 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 proposed transaction, the Savings Bank shall 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 shall submit independent audit reports to the Regional Director for its first three fiscal years. These reports shall be in compliance with the audit rules set forth in 12 C.F.R. Section 562.4;
6. The Savings Bank shall operate within the parameters of its business plan. Any proposed major deviations or material changes from the plan, including those pertaining to Internet operations and the level of capital, shall receive the prior, written non-objection of the Regional Director. The request for change shall be submitted a minimum of 30 days before the proposed change is implemented;
7. Any material deviation from the Community Reinvestment Act Plan must be submitted to the Regional Director for review and non-objection. The revised plan should be submitted no later than 30 days prior to the desired implementation date;
8. Prior to opening, the Savings Bank shall submit to the Regional Director for approval, the name and qualifications of individuals to serve as Chief Financial Officer and Chief Lending Officer;
9. Prior to opening, the Savings Bank and the Holding Company must receive approval from the Regional Director for Dr. Kevin R. Chesebro to serve as a director;
10. Prior to purchasing any stock of the Holding Company, Mr. Bert Bender shall submit the Interagency Biographical Report, RB 20 Certification and FBI Card for review and non-objection from the Regional Director, or shall provide information pursuant to 12 C.F.R. Section 574.4(e) to successfully rebut concerted action with Messrs. Browning, Finigan, Sireci, Klitenick, Thompson and Carter as a result of their joint ownership of 701 Whitehead Street, Inc.;
11. At least 10 days prior to opening, the Holding Company shall provide a list of stockholders including names, addresses, number of shares and percentage of total shares. Any individuals presumed to be acting in concert pursuant to 12 C.F.R. Section 574.4 shall also be listed and the relationship giving rise to the action in concert shall be disclosed;
12. Any officer or director proposing to purchase up to an additional 10% of the minimum offering of the Holding Company, as disclosed in the Confidential Private Placement Memorandum, must first advise the Regional Director and obtain a letter not objecting to the additional purchase;
13. Any stock benefit plans, including warrants, and employment contracts entered into in connection with the formation of the Savings Bank and its acquisition by the Holding Company must receive the prior written approval of the Regional Director;

14. No later than five days from the date that the Savings Bank opens for business, the Chief Financial Officer shall provide a reconciliation of capital for both the Savings Bank and the Holding Company;
15. During the first three years of operation, any transactions between the Savings Bank and an affiliate shall be subject to a written agreement that must be submitted to the Regional Director for review and non-objection;
16. Any tax sharing agreement between the Holding Company and the Savings Bank must receive the prior written approval of the Regional Director;
17. Any shareholder proposing to exercise warrants that would result in the shareholder being presumed to be in control of the Holding Company pursuant to 12 C.F.R. Section 574.4 must receive prior approval from the Regional Director to exercise such warrants or successfully rebut the presumption of control pursuant to 12 C.F.R. Section 574.4; and
18. The Savings Bank's Year 2000 Project Management Program must adhere to the terms, deadlines, requirements and conditions contained in 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*, the April 10, 1998 *Guidance Concerning Testing for Year 2000 Readiness*, the May 13, 1998 *Guidance Concerning Contingency Planning in Connection with Year 2000 Readiness*, the May 13, 1998 *Guidance on Year 2000 Customer Awareness Programs* and any subsequent OTS or FFIEC Year 2000 guidance, regulations or other requirements.

By Order of the Director of the Office of Thrift Supervision, or her designee, effective June 22, 1998.


Richard M. Riccobono
Deputy Director