

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listed and registration on the NYSE. By reason of Section 12(b) of the Act<sup>3</sup> and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under Section 13 of the Act.<sup>4</sup>

Any interested person may, on or before February 4, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24253; 812-11750]

### The Wachovia Funds and Wachovia Bank, N.A.; Notice of Application

January 14, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

#### SUMMARY OF THE APPLICATION:

Applicants, The Wachovia Funds (the "Trust") and Wachovia Bank, N.A. ("Wachovia"), request an order to permit them to enter into and materially amend subadvisory agreements without shareholder approval and to grant relief from certain disclosure requirements.

**FILING DATE:** The application was filed on August 17, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 7, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, c/o Courtney S. Thornton, Esq. Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, or George J. Zornada, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

#### Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently is comprised of sixteen series (each a "Fund"), including Wachovia Executive Equity Fund ("Equity Fund") and Wachovia Executive Fixed Income Fund ("Fixed Income Fund" and with the Equity Fund, the "New Funds"). Each Fund has its own investment objectives, policies and restrictions. Wachovia is a wholly-owned subsidiary of Wachovia Corporation, a publicly-held bank holding company, and is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"). Wachovia Asset Management (the "Adviser"), a business unit of Wachovia, serves as the

investment adviser to each of the Funds.<sup>1</sup>

2. The Trust, on behalf of each Fund, and the Adviser have entered into an investment management agreement ("Advisory Agreement") that was approved by the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the shareholder(s) of each Fund. Under the terms of the Advisory Agreement, the Adviser manages the investment of assets of each Fund and may, subject to oversight by the Board, hire one or more sub-advisers ("Sub-Advisers") to provide portfolio management services to each of the Funds pursuant to separate investment advisory agreements ("Sub-Advisory Agreements").<sup>2</sup> Each Sub-Adviser is, or will be, an investment adviser that is either registered or exempt from registration under the Advisers Act. Sub-Advisers are recommended to the Board by the Adviser and selected and approved by the Board, including a majority of the Independent Trustees. Each Sub-Adviser's fees are, or will be, paid by the Adviser out of the management fees received by the Adviser from the respective Fund.

3. The Adviser recommends Sub-Adviser based on its continuing quantitative and qualitative evaluation of their skills in managing assets pursuant to particular investment styles. The Adviser monitors the Funds and the Sub-Advisers and makes recommendations to the Board regarding allocation, and reallocation, of assets between Sub-Advisers and is responsible for recommending the hiring, termination and replacement of Sub-Advisers.

4. Applicants request relief to permit the Adviser, subject to the oversight of the Board, to enter into and materially amend Sub-Advisory Agreements without shareholder approval. The requested relief will not extend to a Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act,

<sup>1</sup> Applicants also request relief with respect to future Funds, and any other registered open-end management investment companies or series thereof (a) that are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser, and (b) which operate in substantially the same manner as the Funds ("Future Funds," and together with the Funds, the "Funds"). Any Fund that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The Trust is the only existing investment company that currently intends to rely on the order.

<sup>2</sup> The New Funds use Sub-Advisers, with Equity Fund having four Sub-Advisers and Fixed Income Fund having two Sub-Advisers.

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78m.

<sup>5</sup> 17 CFR 200.30-3(a)(1).

of the Trust or the Adviser, other than by reason of serving as a Sub-Adviser to one or more of the Funds (an "Affiliated Sub-Adviser").<sup>3</sup>

5. Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose the fees paid by the Adviser to the Sub-Advisers. The Trust will disclose for each Fund (both as a dollar amount and as a percentage of a Fund's net assets): (a) aggregate fees paid to the Adviser and Affiliated Sub-Advisers; and (b) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers ("Aggregate Fee Disclosure"). For any Fund that employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any sub-advisory fees paid to the Affiliated Sub-Adviser.

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N-1A is the registered statement used by open-end investment companies. Item 15(a)(3) of Form N-1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

<sup>3</sup> The Trust employs officers and employees of the Trust's administrator, Federated Services Company ("Federated"), and affiliated persons of Federated, to serve as officers of the Trust. For purposes of the requested order, the term Affiliated Sub-Adviser includes Federated Investment Management Company, an affiliated person of Federated and a Sub-Adviser to Equity Fund, and any other affiliated person of Federated that serves as a Sub-Adviser to a Fund.

4. Form N-SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N-SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S-X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6-07(2)(a), (b), and (c) of Regulation S-X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the investors are relying on the Adviser's experience to select one or more Sub-Advisers best suited to achieve a Fund's desired investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements may impose unnecessary costs and delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

8. Applicants assert that some Sub-Advisers use a "posted" rate schedule to set their fees. Applicants state that the Adviser may not be able to negotiate below "posted" fee rates with Sub-Advisers if each Sub-Adviser's fees are required to be disclosed. Applicants submit that the nondisclosure of the individual Sub-Adviser's fees is in the best interest of the Funds and their shareholders, where the disclosure of such fees would increase costs to shareholders without an offsetting benefit to the Funds and their shareholders.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund, as defined in the Act, or in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering shares of such Fund to the public.

2. The Trust will disclose in its prospectus(es) the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Sub-advisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a change in Sub-Adviser is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Sub-Adviser, shareholders will be furnished all information about a new Sub-Adviser that would be contained in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Sub-Adviser. The Adviser will meet this condition by providing shareholders, within 90 days of the

hiring of a Sub-Adviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

7. The Adviser will provide management services to each Fund relying on the requested order, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board; will: (a) set the Fund's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to manage all or a part of the Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the investment performance of Sub-Advisers; and (e) ensure that the Sub-Advisers comply with the Fund's investment objectives, policies, and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No Trustee or officer of the Trust, or director or officer of Wachovia who participates directly in Wachovia's investment advisory activities (including the management or administration of the Trust) or otherwise is able to influence the selection of Sub-Advisers, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser except for (a) ownership of interests in (i) Wachovia or an entity that controls, is controlled by, or is under common control with Wachovia or (ii) Federated or an entity that controls, is controlled by, or is under common control with Federated; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. The Trust will disclose in its registration statement the Aggregate Fee Disclosure.

10. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the Independent Trustees.

11. With respect to the Funds relying on the relief requested, the Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per Fund basis. This information will reflect the

impact on the profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

12. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-1472 Filed 1-20-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24252; 812-11844]

### CityFed Financial Corp. Notice of Application

**DATE:** January 13, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 ("Act") for exemption from all provisions of the Act, except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

**SUMMARY OF APPLICATION:** The requested order would exempt the applicant, CityFed Financial Corp. ("CityFed"), from certain provisions of the Act until the earlier of one year from the date the requested order is issued or such time as CityFed would no longer be required to register as an investment company under the Act. The order would extend an exemption granted will February 12, 2000.<sup>1</sup>

**Filing Date:** The application was filed on November 5, 1999.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 8, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit or,

for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. CityFed, 35 Old South Road, P.O. Box 3126, Nantucket, MA 02584.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Staff Attorney, at (202) 942-0634, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C., 20549-0102 (tel. no. 202-942-8090).

### Applicant's Representations

1. CityFed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank ("City Federal"). During the five year period ending December 31, 1988, City Federal was the source of substantially all of CityFed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision ("OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation ("RTC") as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings Bank, F.S.B. ("City Savings"). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, CityFed no longer conducted savings and loan operations through any subsidiary and substantially all of its assets consisted of cash that has been invested in money market instruments with a maturity of one year or less and money market mutual funds. As of September 30, 1999, CityFed held cash and securities of approximately \$9.5 million.

3. While CityFed's board of directors ("Board") has considered from time to time whether to engage in an operating business, the Board has determined not to engage in an operating business at the present time because of the claims filed

<sup>1</sup> *CityFed Financial Corp.*, Investment Company Act Release Nos. 23659 (Jan. 20, 1999) (notice) and 23692 (Feb. 12, 1999) (order).