

OFFICE OF THRIFT SUPERVISION

APPROVAL OF APPLICATION FOR A STOCK ISSUANCE BY A STOCK HOLDING COMPANY SUBSIDIARY OF A MUTUAL HOLDING COMPANY

Order No.: 98-82

Date: August 13, 1998

Sound Federal Savings and Loan Association, Mamaroneck, New York (the "Savings Association"), has applied pursuant to Section 10(o) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1467a(o) and 12 C.F.R. § 575.7 for approval of its proposed stock holding company, Sound Federal Bancorp, Mamaroneck, New York (the "Holding Company"), which will be established as a subsidiary of Sound Federal, MHC ("Mutual Holding Company") in connection with the Savings Association's proposed mutual holding company reorganization ("Reorganization"), to issue up to 44.12% of its common stock to persons other than its parent Mutual Holding Company (the "Offering")

The Holding Company proposes to contribute shares of its common stock, representing 4.4% of the Holding Company's shares to be sold to the public or approximately 1.96% of the Holding Company's total shares of common stock to be outstanding after the Reorganization, to the Sound Federal Savings and Loan Association Charitable Foundation (the "Foundation"), a private foundation that is being established in connection with the Reorganization and that will be incorporated under Delaware law as a non-stock corporation.

In connection with the establishment of the Foundation and the contribution of shares to the Foundation, the Savings Association has requested that the OTS waive certain provisions of the OTS Conversion Regulations, pursuant to 12 C.F.R. §§ 563b.1(a) and 575.1(b). These regulations are applicable to the proposed offering by virtue of 12 C.F.R. § 575.7(d)(6)(ii). Specifically, the Savings Association has requested that the OTS waive the following regulations: (1) 12 C.F.R. §§ 563b.3(c)(1) and 575.8(a)(1) (a converting association shall issue and sell its stock at a total price equal to the estimated pro forma market value of such stock); (2) 12 C.F.R. § 563b.3(c)(6) (any shares not sold to subscribers shall be sold in a public offering); (3) 12 C.F.R. § 563b.3(c)(7) (the total shares subscribed for or purchased by any group shall be subject to a limit of the total offering of shares, which is the greater of \$300,000 or 1% of the stock sold in the Offering); and (4) 12 C.F.R. §§ 563b.3(c)(10) and 575.8(a)(10) (all shares sold in the conversion shall be sold at a uniform price.)

The OTS has considered the application, including the waiver requests, under Section 10(o) of the HOLA, and 12 C.F.R. Part 563b and § 575.8, and all other applicable statutes and regulations. In addition, the OTS has considered the digest submitted by the OTS Northeast Regional Office, a legal opinion from the Business

Transactions Division, and an analysis by Corporate Activities (collectively, the "Staff Memoranda"). For the reasons set forth in the Staff Memoranda, the OTS has determined that approval of the application is appropriate, and that there is good cause to grant the requested waivers, provided the conditions set forth below are satisfied. Accordingly, the application is approved, including the request to include demand accounts in the definition of Qualifying Deposits, and the applicability of 12 C.F.R. §§ 563b.3(c)(1), (c)(6), (c)(7) and (c)(10) and 575.8(a)(1) and (a)(10) to the Reorganization and to the proposed contribution to the Foundation are hereby waived, subject to the following conditions:

1. The Holding Company's capital stock to be sold in connection with the offering must be sold in compliance with the restrictions contained in 12 C.F.R. § 563.76;
2. Any additional offering materials not authorized for use by this Order must be filed with and approved by the Chief Counsel, or her designee, prior to use;
3. Promptly after the completion of the sale of all the shares of capital stock to be sold in connection with the offering, the Savings Association must submit: (a) a certification by the Holding Company's chief executive officer stating that all the shares proposed to be sold have been sold, the price at which they were sold, and the date of completion of the offering; (b) seven executed copies of the proposed amendments to the Savings Association's charter, the appropriate form of bylaws as prescribed by 12 C.F.R. § 552.5 and a certification by the Savings Association's secretary that the copies are in conformity with the proposal of the board of directors adopted by the Savings Association's members; and (c) a statement by the Savings Association's independent appraiser that, to the best of his/her knowledge and judgment, nothing of a material nature has occurred (taking into account all of the relevant factors including those which would be involved in a change in the maximum subscription price) which would cause him/her to conclude that the sale price was not compatible with his/her estimate of the Holding Company's and the Savings Association's total pro forma market value at the time of sale;
4. The establishment and funding of the Foundation with 1.96% of the shares of the Holding Company's common stock is subject to the approval of a majority of the total outstanding votes of the Savings Association's members eligible to be cast at the special meeting to be held to consider the proposed conversion;
5. Prior to consummation of the transaction, a disinterested majority of the Savings Association's directors shall vote and approve the proposed contribution to the Foundation of 1.96% percent of the shares of the Holding Company's common stock, without the participation or voting of the interested directors on such contribution;

6. In connection with the establishment of the Foundation, including the instruments creating the Foundation and any gift instrument for the proposed contribution to the Foundation by the Holding Company, the Savings Association and the Holding Company are directed to implement the following requirements:
 - a) The Foundation must be subject to examination by the OTS, at the Foundation's own expense;
 - b) The Foundation must comply with all supervisory directives imposed by the OTS;
 - c) The Foundation must provide annual reports to the OTS describing the grants made and grant recipients;
 - d) The Foundation must operate in accordance with written policies adopted by its board of directors, including a conflict of interest policy; and
 - e) The Foundation must not engage in self-dealing and shall comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code;

7. In connection with the establishment of the Foundation, the Savings Association and the Holding Company are directed to implement the following requirements:
 - a) The stock certificates for any shares of voting stock of the Holding Company contributed to the Foundation or otherwise acquired by the Foundation must bear the following legend: "The shares represented by this stock certificate shall be considered, by the board of directors of the Holding Company, as voted in the ratio as all other shares voted on each and every proposal considered by the stockholders of the Holding Company, for so long as such shares are controlled by the Foundation;"
 - b) Any gift instrument for any shares of voting stock of the Holding Company contributed to the Foundation must be conditioned to provide that the shares of the Holding Company for so long as such shares are controlled by the Foundation must be considered by the Holding Company to be voted in the same ratio as all other shares voted on each and every proposal considered by the stockholders of the Holding Company;
 - c) The Holding Company is required to consider any shares of the Holding Company controlled by the Foundation as voted in the same ratio as all other shares voted on each and every proposal considered by the stockholders of the Holding Company; and

- d) The certificate of incorporation of the Foundation must provide that the directors of the Foundation shall vote any shares of the Holding Company controlled by the Foundation in the same ratio as all other shares voted on each and every proposal considered by the stockholders of the Holding Company;

The Office of Thrift Supervision will waive one or more of the conditions (7)(a)-(d) above, upon submission of:

- (i) an opinion satisfactory to the OTS from tax counsel that compliance with any of the conditions (7)(a)-(d) would cause the Foundation to (1) lose its tax-exempt status or otherwise have a material and adverse tax consequence on the Foundation or (2) be subject to an excise tax under § 4941 of the Internal Revenue Code of 1986, and based on tax counsel's opinion, OTS must deem any such conditions so waived to be void and of no effect ab initio, provided that such determination of voidness must not affect shareholder actions already taken; or
 - (ii) an opinion satisfactory to OTS from Delaware counsel that compliance with one or more of the conditions (7)(a)-(d), respectively, would cause a violation of Delaware state statute or common law, provided, however, that the OTS reserves the right to withhold waiver of one or more of the conditions (7)(a)-(d), respectively, if OTS reasonably determines that federal law pre-empts the application of Delaware state statute or common law;
8. In the event that the preceding condition number seven is waived in whole or in part, or for any reason becomes unenforceable, and provided that the Foundation controls voting stock of the Holding Company, the Director of the OTS, or her designee, may either:
- a) impose a condition that provides that a certain portion of the members of the Foundation's board of directors must be persons who are not directors, officers or employees of either the Holding Company, the Savings Association, or of any affiliate thereof, or
 - b) impose such other conditions relating to the control of such common stock of the Holding Company or Savings Association as is determined to be appropriate at that time;
9. The Foundation must be subject to the restrictions on repurchases of Holding Company stock under 12 C.F.R. § 575.11 and any purchases of such stock by the Foundation shall be aggregated with any repurchases by the Holding Company or the Savings Association, for the purposes of such restrictions;

10. A proposed operating plan for the Foundation acceptable to the OTS Regional Director must be submitted to the OTS prior to the consummation of the offering;
11. Promptly after consummation of the offering, seven executed copies of the following documents must be submitted to the OTS: the effective Foundation charter, bylaws, operating plan, conflict of interest policy, and gift instrument for the contribution of Holding Company common stock to the Foundation; and
12. Compensation paid to Foundation directors who are not directors, employees or affiliates of the Holding Company or Savings Association must be subject to the prior review of the OTS Regional Director.

By the Order of the Director of the Office of Thrift Supervision, or her designee,
effective AUGUST 13TH 1998


Richard M. Riccobono
Deputy Director