

OFFICE OF THRIFT SUPERVISION

APPROVAL OF APPLICATION FOR CONVERSION

Order No. : 98-15

Date: February 12, 1998

Bay State Federal Savings Bank, Brookline, Massachusetts (the "Savings Bank"), filed on November 17, 1997, as amended on January 23, 1998, and February 5, 1998, with the Office of Thrift Supervision ("OTS"), an application (the "Application") for approval to convert from a federally chartered mutual savings bank to a federally chartered stock savings bank pursuant to Section 5(i) of the Home Owners' Loan Act of 1933 (the "HOLA"), and 12 C.F.R. Part 563b. In connection with its conversion to a stock savings bank, the Savings Bank has formed a holding company, Bay State Bancorp, Inc., Brookline, Massachusetts (the "Corporation"), which will acquire all of the Savings Bank's capital stock to be issued upon conversion. The Savings Bank also has submitted a proposed charter and bylaws for approval pursuant to 12 C.F.R. Part 563b.

In addition, the Savings Bank has requested the waiver of certain provisions of the OTS Conversion Regulations, under 12 C.F.R. Part 563b, for the proposed contribution by the Corporation of an amount of its common stock equal to 8.0 percent of the shares to be sold in the conversion, between 120,700 shares (at the minimum) and 163,300 (at the maximum), to The Bay State Federal Savings Charitable Foundation (the "Foundation"), a private foundation that is being established in connection with the conversion and that will be incorporated under Delaware law as a non-stock corporation. In order to allow the proposed contribution by the Corporation to the Foundation, the Savings Bank has requested that the OTS waive the following provisions: **§ 563b.3(c)(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); **§ 563b.3(c)(6)** (any shares not sold to subscribers shall be sold in a public offering); **§ 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 1.0 percent under the Plan), and **§ 563b.3(c)(10)** (all shares sold in the conversion shall be sold at a uniform price).

For the reasons set forth in the Corporate Activities digest, dated February 12, 1998, including the therein referenced Corporate Activities Digest accompanying Order No. 96-44, dated May 14, 1996, and in the legal opinion from the Business Transactions Division, dated February 12, 1998, the Application is hereby approved, the proposals by the Savings Bank's board of directors to amend the Savings Bank's charter and bylaws to read as set forth in the Application are hereby declared approved, and

12 C.F.R. § 563b.3(c)(1), (c)(6), (c)(7), and (c)(10) are hereby waived to the extent necessary to allow the proposed contribution to the Foundation by the Corporation of an amount of its common stock equal to 8.0% of the shares to be issued in the conversion, provided that the following requirements are fulfilled:

- (1) The Corporation's capital stock to be sold in connection with the conversion of the Savings Bank shall be sold in compliance with the restrictions contained in 12 C.F.R. § 563.76;
- (2) Promptly after the completion of the sale of all the shares of capital stock to be sold in connection with the conversion, the Savings Bank shall submit: (a) a certification by the Savings Bank'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 Bank's charter, the appropriate form of bylaws as prescribed by 12 C.F.R. § 552.5 and a certification by the Savings Bank's secretary that the copies are in conformity with the proposal of the board of directors adopted by the Savings Bank's members; and (c) a statement by the Savings Bank'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 Corporation's and the Savings Bank's total pro forma market value at the time of sale;
- (3) That the following general principles of conversion contained in 12 C.F.R. Part 563b shall apply to the Corporation and, if applicable, any successor corporation subsequent to the conversion as if the Corporation were the converting association: 563b.3(i), 563b.3(c)(9), 563b.3(c)(17), 563b.3(c)(18), 563b.3(c)(19), and 563b.3(g);
- (4) For a period of one year following the completion of the conversion, neither the Corporation nor the Savings Bank shall, without the prior written consent of the Director, Corporate Activities, or her designee, take any action with a view toward a transaction which would require stockholder approval under 12 C.F.R. § 552.13(h);
- (5) The establishment and funding of the Foundation with an amount of the Corporation's common stock equal to 8.0 percent of the Corporation's common stock to be sold in the conversion is subject to the approval of a majority of the total outstanding votes of the Savings Bank's members eligible to be cast at the special meeting to be held to consider the proposed conversion;

- (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 Corporation, the Savings Bank and the Corporation are directed to implement the following requirements:
- (a) The Foundation shall be subject to examination by the OTS, at the Foundation's own expense;
 - (b) The Foundation shall comply with all supervisory directives imposed by the OTS;
 - (c) The Foundation shall provide annual reports to the OTS describing the grants made and grant recipients;
 - (d) The Foundation shall operate in accordance with written policies adopted by its board of directors, including a conflict of interest policy; and
 - (e) the Foundation shall 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 Bank and the Corporation are directed to implement the following requirements:
- (a) The stock certificates for any shares of voting stock of either the Corporation or Savings Bank contributed to the Foundation or otherwise acquired by the Foundation shall bear the following legend: "The shares represented by this stock certificate shall be considered, by the board of directors of the [Corporation or Savings Bank], as voted in the ratio as all other shares voted on each and every proposal considered by the stockholders of the [Corporation or Savings Bank], for so long as such shares are controlled by the Foundation;"
 - (b) Any gift instrument for any shares of voting stock of either the Corporation or Savings Bank contributed to the Foundation shall be conditioned to provide that the shares of the Corporation for so long as such shares are controlled by the Foundation shall be considered by the [Corporation or Savings Bank] to be voted in the same ratio as all other shares voted on each and every proposal considered by the stockholders of the [Corporation or Savings Bank];

- (c) The Corporation and Savings Bank are required to consider any shares of the Corporation or Savings Bank 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 Corporation or Savings Bank; and
- (d) the certificate of incorporation of the Foundation shall provide that the directors of the Foundation shall vote any shares of the Corporation or Savings Bank controlled by the Foundation in the same ratio as all other shares voted on each and every proposal considered by the stockholders of the Corporation or Savings Bank;

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 shall deem any such conditions so waived to be void and of no effect ab initio, provided that such determination of voidness shall 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 Corporation or Savings Bank, 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 shall be persons that are not directors, officers or employees of either the Corporation, the Savings Bank, or of any affiliate thereof, or
 - (b) impose such other conditions relating to the control of such common stock of the Corporation or Savings Bank as is determined to be appropriate at that time; and

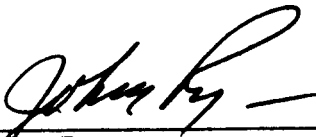
- (9) The Foundation shall be subject to the restrictions on repurchases of Corporation and Savings Bank stock under 12 C.F.R. § 563b.3(g) and any purchases of such stock by the Foundation shall be aggregated with any repurchases by the Corporation or the Savings Bank, for the purposes of such restrictions;
- (10) A proposed operating plan for the Foundation acceptable to the OTS Regional Director shall be submitted to the OTS prior to the consummation of the conversion;
- (11) Promptly after consummation of the conversion, seven executed copies of the following documents shall be submitted to the OTS: the effective Foundation charter, bylaws, operating plan, conflict of interest policy, and gift instrument for the contribution of Corporation common stock to the Foundation; and
- (12) Compensation paid to Foundation directors who are not directors, employees or affiliates of the Corporation or Savings Bank shall be subject to the prior review of the OTS Regional Director.

The proxy soliciting material included under Items 3 and 4 of the Application, and the stock offering materials included under Item 3 and Exhibit 2(b) of the Application are hereby approved, provided that the following requirements are fulfilled:

- (1) The Corporation's capital stock to be sold in connection with the conversion of the Savings Bank shall be sold in compliance with the restrictions contained in 12 C.F.R. § 563.76;
- (2) Any additional proxy soliciting or stock offering material not authorized for use by this order are filed with and cleared by the Chief Counsel, or her designee prior to use;
- (3) Within eleven days after the date of this approval, unless extended by the Chief Counsel, or her designee, the Savings Bank shall submit to its members the plan of conversion, together with the proxy solicitation materials identified as Items 3 and 4 of the Application; and

- (4) The Corporation's capital stock to be sold in connection with the conversion shall be sold for not less than **\$30,175,000** (at the minimum) nor more than **\$40,825,000** (at the maximum) and approximately 50% of the net proceeds received by the Corporation from the sale of such capital stock shall be contributed to the Savings Bank in exchange for all of the capital stock to be issued by the Savings Bank in connection with the conversion.

By the Order of the Director of the Office of Thrift Supervision, or her designee, effective Feb 12, 1998.



John E. Ryan
Acting Executive Director, Supervision