



Office of Thrift Supervision

Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

April 6, 2011

Eric Luse, Esq.
Beverly J. White, Esq.
Luse Gorman Pomerenk & Schick, P.C.
5335 Wisconsin Avenue, N.W., Suite 400
Washington, D.C. 20015

Re: Minority Stock Issuance Application filed by a
Subsidiary of a Mutual Holding Company,
Pathfinder Bancorp, Inc., Oswego, New York,
OTS No. H-3708

Dear Mr. Luse and Ms. White:

Pathfinder Bancorp, Inc., Oswego, New York (Company), has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(o) and 12 C.F.R. § 575.7, to issue up to 150,000 shares of its common stock pursuant to the Company's 2010 Stock Option Plan (2010 Option Plan) and add 125,000 shares of its common stock to the existing employee stock ownership plan (ESOP) (Application). All shares to be issued would come from repurchased shares that the Company currently holds as treasury shares. In connection with the proposed transaction, the Company has requested that OTS waive 12 C.F.R. §§ 575.7(c)(2), 575.8(a)(1), 575.8(a)(9), 575.8(a)(11), 575.8(a)(14) and 575.8(a)(21).

Pathfinder Bancorp, MHC, Oswego, New York (MHC) currently holds 63.7 percent of the Company's common stock, and minority shareholders hold the remaining 36.3 percent. Pathfinder Bank, Oswego, New York (Association) completed its reorganization into a mutual holding company structure in 1995, and in connection with the reorganization, the Company conducted a minority stock offering. In 2001, the MHC and the Company converted to federal mutual holding companies simultaneously with the Association's election to be deemed a savings association pursuant to Section 10(l) of the Home Owners' Loan Act.

The Company promulgated a stock option plan (1997 Option Plan) and a management recognition plan (RRP) in 1997. Under the RRP, 52,900 shares were authorized and awarded, and under the 1997 Option Plan 132,250 options were authorized and all options have been awarded.¹ The ESOP, as originally established, had 92,574 shares, all of which have been awarded to employees. Over the years, the Company has repurchased 487,000 shares, which it now holds as treasury shares. The proposed additional issuance of shares will include only

¹ The numbers set forth herein are adjusted for subsequent stock splits.

treasury shares.

If all the shares for the ESOP (as amended) and the 2010 Option Plan were issued, the MHC's ownership interest in the Company would decrease from 63.7% to approximately 60.7%, and the minority interest would increase from 36.3% to approximately 39.3%.

The ESOP is a tax-qualified plan. The 2010 Option Plan will not be tax-qualified. Under the Company's charter, the Company's shareholders must approve the 2010 Option Plan. The Company's shareholders approved the 2010 Option Plan at the Annual Meeting held on April 28, 2010. The 2010 Option Plan was approved by a majority of the minority shares voting at that meeting.

OTS's Mutual Holding Company regulations (MHC Regulations), at 12 C.F.R. § 575.7(a), provide that no savings association subsidiary of a mutual holding company may issue stock to persons other than its mutual holding company parent unless the association obtains advance approval of each such issuance from OTS and the issuance complies with the criteria for approval set forth in 12 C.F.R. §§ 575.7 and 575.8. Stock issuances by the Company are subject to the provisions of the MHC Regulations pertaining to minority stock issuances as if the Company were a former mutual savings association that reorganized into a mutual holding company structure.²

Specifically, (i) the proposed issuance must be made pursuant to a Stock Issuance Plan (SIP) that meets the requirements of section 575.8, (ii) the SIP must be consistent with the charter of the association, (iii) the SIP must provide the association with fully sufficient capital and not be inequitable or detrimental to the association or the mutual holding company, or to the members of the mutual holding company, (iv) the price range of the stock must be reasonable, (v) the mutual holding company must hold more than 50 percent of the association's outstanding common stock after the transaction, (vi) the association must furnish all information required by the OTS, (vii) the proposed stock issuance must meet the convenience and needs standards set forth in the mutual to stock conversion regulations at 12 C.F.R. § 563b.200(c), and (viii) the proposed issuance must comply with all other applicable laws and regulations.

The Company's SIP meets the requirements of § 575.8, except for the provisions for which the Company has requested a waiver. The SIP provides that the MHC will hold more than 50 percent of the Company's common stock after the offering. The issuance complies with the quantitative limitations of 12 C.F.R. §§ 575.8(a)(3) – (a)(8).

The SIP is consistent with the Company's charter, which has authorized the number of shares that would be outstanding after the issuance, and requires a shareholder vote for issuances to management of the Company other than in a general public offering.

² 12 C.F.R. § 575.14(b) (2010).

As for provision of sufficient capital to the Association, the Association is well capitalized, as defined under the Federal Deposit Insurance Corporation's Prompt Corrective Action regulations. The proposed stock issuance, if completed in the manner described in the application, will not be inequitable to the Association, the Company, or the MHC's members. With respect to the provision of information required by OTS, the Company has furnished all information OTS has requested.

In light of the Association's "Satisfactory" Community Reinvestment Act rating, its compliance activities, and the fact that the Association contemplates no change in its products or services as a result of the proposed offering, the proposed transaction meets the convenience and needs standard set forth at 12 C.F.R. § 563b.200(c). Finally, we are aware of no information indicating that the proposed transaction is inconsistent with any statute or regulation (other than provisions for which a waiver has been requested).

The Company has requested that OTS waive 12 C.F.R. §§ 575.7(c)(2), 575.8(a)(1), 575.8(a)(9), 575.8(a)(11), 575.8(a)(14), and 575.8(a)(21). The MHC Regulations provide that OTS may waive a provision of the regulations for good cause.³ In addition, OTS regulations provide generally that the "Director may, for good cause and to the extent permitted by statute, waive the applicability of any provision of [Chapter V of 12 C.F.R.]."⁴

None of the provisions for which the Company has requested a waiver is mandated by statute. Therefore, the only issue regarding the waivers is whether "good cause" exists. The pertinent issue here is whether any of the requested waivers would, under the circumstances, be contrary to the purposes of the relevant regulation.

The restrictions applicable to minority stock issuances are imposed for the same reasons that similar restrictions are imposed in the mutual-to-stock conversion process, that is, to ensure that the stock issuance process is fair to all concerned, and not detrimental to the interests of the federal deposit insurance fund.

Both the MHC Regulations and the mutual-to-stock conversion regulations contemplate the issuance of stock pursuant to employee and director plans.

With respect to the § 575.8(a)(1) requirement that the Company issue stock at an aggregate price equal to the total *pro forma* market value of the stock, based upon an independent appraisal, the shares will be issued as a benefit to management and employees or options will be granted with an exercise price based on the market price of the stock at the date granted. An appraisal is not appropriate here, because the stock will be issued as compensation

³ 12 C.F.R. § 575.1(b) (2010).

⁴ 12 C.F.R. § 500.30(a) (2010).

at various times.

With respect to the § 575.8(a)(9) requirement that the Company's option and management recognition plans (here the RRPs), in the aggregate, encompass no more than 25 percent of the outstanding common stock held by persons other than the mutual holding company at the close of the proposed issuance, the purpose of the regulation is to ensure that management does not unduly enrich itself.⁵ If the 2010 Option Plan is aggregated with the 1997 Option Plan and the RRP, the plans would amount to more than 25 percent of the stock held by persons other than the MHC after the proposed stock issuance. However, the first stock option plan and RRP were issued in 1997, more than 13 years ago, and all of the options and awards that could be granted under the 1997 Option Plan and RRP have been granted. If the 1997 Option Plan and RRP are not considered, the aggregate amount of stock options and management recognition plan awards would be below the regulatory limit.

For purposes of considering this waiver request, it is reasonable to disregard issuances in stock benefit plans that were initially implemented more than ten years ago. Adherence to a contrary approach would deter companies from remaining in a mutual holding company structure over an extended period of time. This is the case because over such a period of time, once the regulatory limitations on stock benefit plans in a mutual holding company structure have been reached, management would be unable to receive additional stock benefit plans, whereas the regulatory limitations on stock options and RRPs for companies that have fully converted to stock form expire one year after the conversion. Furthermore, in this case, all shares that would be issued pursuant to option exercises under the 2010 Option Plan have been obtained in the secondary market, and are now held as treasury shares, so the impact of the proposed issuances on the interests of the MHC and its members will be no greater than that of the previous public stock issuances. Accordingly, we conclude that there is an adequate basis to grant a waiver of section 575.8(a)(9).

With respect to the § 575.8(a)(11) requirement that the Company issue the stock at a uniform per share price, plans such as the 2010 Option Plan and the amended ESOP, by their nature, do not issue shares at a uniform price, primarily because the shares are awarded for no cash consideration, or options are granted over an extended period of time.

With respect to the § 575.8(a)(14) requirement that insiders of the Company not purchase stock of the Company during the three years following the offering, except with OTS approval (except in certain circumstances), the requirement is intended to be triggered by public offerings of stock. Issuances in plans approved in connection with public offerings have not been subject to a separate limitation.

⁵ See, 67 FR 17232 (Apr. 9, 2002).

Eric Luse, Esq.
Beverly J. White, Esq.
Luse Gorman Pomerenk & Schick, P.C.
Page 5

With respect to the limits on the duration of a stock offering set forth at 12 C.F.R. §§ 575.7(c)(2) and 575.8(a)(21), the regulatory limits are directed at public offerings, and plan offerings, by their nature, commonly continue over an extended period of time.

For the reasons stated above, OTS finds that the application satisfies the applicable approval standards and that there is an adequate basis to grant the waiver requests. Accordingly, the application is hereby approved and the requested waivers are granted.

Sincerely,

_____/s/_____
Donald W. Dwyer
Director, Applications
Corporate & International Activities

_____/s/_____
Kevin A. Corcoran
Deputy Chief Counsel for
Business Transactions

cc: Regional Director
Regional Counsel
Dave Rochefort
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David A. Permut, BTB
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