

OFFICE OF THRIFT SUPERVISION

Order No. 98-51

Date: May 14, 1998

**Baltimore County Savings Bank, F.S.B.
Baltimore, Maryland**

**Order Approving the Issuance of Common Stock
by a Stock Holding Company
subsidiary of a Mutual Holding Company**

Baltimore County Savings Bank, F.S.B., Baltimore, Maryland ("Savings Bank"), 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 for its proposed stock holding company, BCSB Bankcorp, Inc., Baltimore, Maryland (the "Holding Company"), which would be established as a subsidiary of Baltimore County Savings Bank, M.H.C. ("Mutual Holding Company") in connection with the Savings Bank's proposed mutual holding company reorganization ("Reorganization"), to issue up to 38% of its common stock to persons other than its parent Mutual Holding Company (the "Offering").

The Holding Company proposes to contribute 75,000 shares of common stock, representing approximately 4.3% of the Holding Company's shares to be sold to the public and approximately 1.6% of the Holding Company's total shares of common stock to be outstanding after the Reorganization, to the Baltimore County Savings Bank Foundation (the "Foundation"), a private foundation that is being established in connection with the Reorganization and that will be incorporated under Maryland law as a non-stock corporation.

In connection with the establishment of the Foundation and the contribution of shares to the Foundation, the Savings Bank has requested that the OTS waive certain provisions of the OTS Conversion Regulations, pursuant to 12 C.F.R. § 575.1(b) and 563b.1(a). These regulations are applicable to the proposed offering by virtue of 12 C.F.R. § 575.7(d)(6)(ii). Specifically, the Savings Bank has requested that the OTS waive the following provisions: (1) 12 C.F.R. § 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); (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 1.0 percent under the Plan), and (4) 12 C.F.R. § 563b.3(c)(10) (all shares sold in a 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 § 575.7, and all other applicable statutes and regulations. In addition, the OTS has considered the digest submitted by the OTS Southeast 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, and the applicability of 12 C.F.R. §§ 563b.3(c)(1), (c)(6), (c)(7) and (c)(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 the Offering shall be sold in accordance with the application on Form MHC-2, and the restrictions set forth at 12 C.F.R. Section 563.76;

Any additional offering materials not authorized for use by this Order are 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 Holding Company shall submit a certification by its chief executive officer stating the exact number of shares acquired in the Offering by persons other than the Mutual Holding Company, and the gross and net proceeds of the Offering and the date of completion of the Offering;

4. Prior to closing of the Offering, the Savings Bank shall submit a statement by the Savings Bank's independent appraiser that to the best of the appraiser's knowledge and judgment, nothing of a material nature has occurred (taking into account all relevant factors) that would cause the appraiser to conclude that the value of the stock sold in the Offering was not compatible with the estimate of the Savings Bank's pro forma market value at the time of sale.

5. The establishment and funding of the Foundation with 75,000 shares of the Holding Company's common stock 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 Reorganization;

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 Bank and the Holding Company 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 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 shall bear the following legend: "The shares represented by this stock certificate shall be considered, by the board of directors of the [Holding Company or Savings Bank], as voted in the ratio as all other shares voted on each and every proposal considered by the stockholders of the [Holding Company 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 the Holding Company contributed to the Foundation shall be conditioned to provide that the shares of the Holding Company for so long as such shares are controlled by the Foundation shall 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 shall 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 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 counsel that compliance with one or more of the conditions 7(a)-(d), respectively, would cause a violation of Maryland 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 Maryland 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 shall be persons that are not directors, officers or employees of

either the Holding Company, the Savings Bank, or of any affiliate thereof, or

(b) impose such other conditions relating to the control of such common stock of the Holding Company as is determined to be appropriate at that time;

9. The Foundation shall be subject to the restrictions on repurchases of Holding Company stock under 12 C.F.R. § 575.11(c) and any purchases of such stock by the Foundation shall be aggregated with any repurchases by the Holding Company for the purposes of such restrictions;

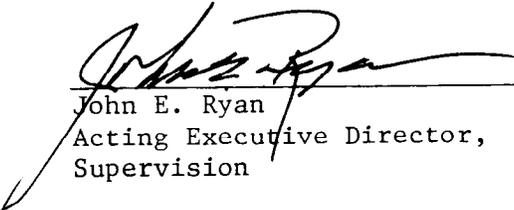
10. A proposed operating plan for the Foundation acceptable to the OTS Regional Director shall be submitted to the OTS prior to the consummation of the reorganization;

Promptly after consummation of the reorganization, seven executed copies of the following documents shall be submitted to the OTS (three of which shall be submitted to the Regional Office): 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;

12. Compensation paid to Foundation directors who are not directors, employees or affiliates of the Holding Company or Savings Bank shall be subject to the prior review of the OTS Regional Director; and

13. The amount of net offering proceeds retained by the Holding Company shall not exceed the lesser of 50 percent of the net offering proceeds or the amount permitted by OTS pursuant to 12 C.F.R. § 563.134.

By Order of the Director of the Office of Thrift Supervision, or her designee, effective May 14, 1998.


John E. Ryan
Acting Executive Director,
Supervision