

exchanges and quoted in the OTCBB by NASD members.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through April 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-3036 Filed 2-7-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20877; 812-9378]

### **Cityfed Financial Corp.; Notice of Application**

February 2, 1995.

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

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Cityfed Financial Corp. ("Cityfed").

**RELEVANT ACT SECTIONS:** Order requested under sections 6(c) and 6(e) of the Act.

**SUMMARY OF APPLICATION:** Applicant requests an order that would exempt it from all provisions of the Act, except sections 9, 17(a) (modified as discussed herein), 17(d) (modified as discussed herein), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder until the earlier of one year from the date of the requested order or such time as Cityfed would no longer be required to register as an investment company under the Act. The requested exemption would extend an exemption originally granted until March 15, 1995.

**FILING DATE:** The application was filed on December 20, 1994.

**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 27, 1995, 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, NW., Washington, DC 20549.

Applicant, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

#### **FOR FURTHER INFORMATION CONTACT:**

James M. Curtis, Senior Counsel, at (202) 942-0563, or Robert A. Robertson, 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.

#### **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"). 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 (the "OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation (the "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., whose deposits, assets, and liabilities in turn were acquired by City Savings, 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, 1994, Cityfed held cash and securities of approximately \$9.03 million. Because of Cityfed's asset composition, it may be an investment company under the Act. Rule 3a-2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to engage in a business other than investing in securities. Because of various claims against Cityfed and certain Cityfed officers and directors, Cityfed could not acquire an operating company within the one year safe harbor. The expiration of the safe harbor period necessitated the filing of an application for exemption from all provisions of the Act, with certain exceptions. In 1994, Cityfed was granted

conditional relief from all provisions of the Act until March 15, 1995.<sup>1</sup>

3. While Cityfed's board of directors 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 against Cityfed, whose liability thereunder cannot be reasonably estimated and may exceed its assets.

4. On June 2, 1994, the OTS issued a Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Notice of Charges") against Cityfed and certain current or former directors and, in some cases, officers of Cityfed and City Federal. The Notice of Charges requests that an order be entered by the Director of the OTS requiring Cityfed to make restitution, reimburse, indemnify or guarantee the OTS against loss in an amount not less than \$118.4 million, which the OTS alleges represents the regulatory capital deficiency reported by City Federal in the fall of 1989. The Notice of Charges provides that a hearing will be held before an administrative law judge on the question of whether a final cease and desist order should be issued against Cityfed. As of the date of the filing of the application, no date has been set for such hearing.

5. Also on June 2, 1994, the OTS issued a Temporary Order to Cease and Desist ("Temporary Order") against Cityfed. The Temporary Order required Cityfed to post \$9.0 million as security for the payment of the amount sought by the OTS in its Notice of Charges. Cityfed unsuccessfully petitioned the district court for an injunction against the Temporary Order. Cityfed has appealed to the Court of Appeals. On October 26, 1994, Cityfed and the OTS entered into an Escrow Agreement ("Escrow Agreement") with CoreStates Bank, N.A. ("CoreStates") pursuant to which Cityfed transferred substantially all of its assets to CoreStates for deposits into an escrow account to be maintained by CoreStates. Cityfed's assets in the escrow account continue to be invested in money market instruments with a maturity of one year or less and money market mutual funds. Withdrawals or disbursements from the escrow account are not permitted without the written authorization of the OTS, other than for (a) monthly transfer to Cityfed in the amount of \$15,000 for operating expenses, (b) the disbursement of funds

<sup>1</sup> Cityfed Financial Corp., Investment Company Act Release Nos. 20074 (Feb. 15, 1994) (notice) and 20135 (Mar. 15, 1994) (order).