

February 4, 1998

Re:\*\*\*\*\*Application to Acquire

Dear \*\*\*\*\*:

This responds to the application received by the Pennsylvania Department of Banking ("Department") for \*\*\*\*\* Bank ("Bank"), a Pennsylvania state-chartered stock savings bank, to acquire/merge with\*\*\*\*\* ("Acquiree"), a Pennsylvania state-chartered mutual savings bank. Bank would be the surviving institution upon consummation of the proposed merger. Bank is part of a mutual savings bank holding company structure in which\*\*\*\*\*. MHC ("MHC"), is a mutual holding company which owns approximately % of an intermediate stock holding company named \*\*\* ("BHC") which in turn owns 100% of the common stock of Bank. The remaining approximately % of BHC stock is owned by certain minority shareholders, many of whom were depositors of Bank at the time of the original mutual holding company reorganization of the Bank. According to your letter to the Department dated , 1998, Bank was previously reorganized into a mutual savings bank holding company structure in a transaction in which Bank issued a total of \*\*\*\* shares of its common stock. Of such shares, \*\*\* shares were issued to MHC, and\*\*\*\*\* shares were issued to the public in a subscription and community offering. Since such time, Bank has paid two 100% stock dividends, and as of December 31, 1997 (based on information you stated was provided to you by Bank), Bank had\*\*\*\*shares of common stock outstanding, \*\*\*\*\* shares of which were held by MHC (all of which will be converted into shares of BHC's common stock).<sup>1</sup>

Pursuant to the terms and conditions of this letter, the Department approves the proposed acquisition of Acquiree.

The Proposed Transaction

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<sup>1</sup> The Department understands that BHC has not yet been established but is expected by Bank to be placed into the present mutual holding company structure in which MHC presently owns approximately % of Bank. If, however, BHC is not placed into such structure prior to the proposed transaction herein, then references in this letter to "BHC" should be replaced by "Bank" and other references to BHC should be reinterpreted accordingly.

The proposed transaction may be viewed as a partial merger conversion. BHC would acquire 100% of Acquiree as follows. Acquiree would convert from mutual to stock form. No stock would be issued by Acquiree upon its conversion from mutual to stock form. Acquiree would immediately merge with and into Bank.

Authorized but unissued shares of BHC would be issued in the following percentages: approximately % of such shares to MHC and approximately % of such shares would be offered to eligible account holders at Acquiree and other persons who qualify within the tiers of priority for subscribing to and purchasing stock described below. Preemptive rights to purchase such stock would be afforded to the eligible account holders at Acquiree.

The amount of stock to be issued by BHC to accomplish this acquisition and merger transaction would correspond in aggregate monetary amount to the appraised value of Acquiree within a range consistent with Department policy and federal regulations of the Office of Thrift Supervision ("OTS") and the Federal Deposit Insurance Corporation ("FDIC").

According to Bank, the proposed tiers of priority pursuant to which stock would be purchased are as follows.

1. Acquiree depositors who had deposit accounts totaling \$50 or more as of the close of business on March 31, 1996 (the "Eligibility Record Date," and such depositors "Eligible Account Holders") would be given first priority subscription rights pursuant to 12 CFR 333.4(d)(1) and 563b.3(c)(2), (14) and (23). Stock may be purchased only by such eligible account holders at a % discount to the BHC stock price. Other tiers below would purchase the stock at the prevailing market price.
2. The Bank's Employee Stock Ownership Plan (the "ESOP"), which is tax qualified, would be given second priority subscription rights pursuant to 12 CFR 563b.3(c)(23), and would be eligible to purchase not in excess of % of the stock offered in the proposed transaction.
3. Acquiree depositors who had deposit accounts totaling \$50 or more as of the close of business on the last day of the calendar quarter preceding regulatory approval of the Merger ("Supplemental Eligible Account Holder") would be given third priority subscription rights pursuant to 12 CFR 563b.3(c)(4) and (23).
4. Acquiree depositors as of the close of business on the voting record date for the Special

Meeting of Acquiree depositors that would be held to approve the Plan ("Other Depositors") would be given fourth priority subscription rights pursuant to 12 CFR 563b.3(c)(5) and (23).

5. Acquiree employees, officers and trustees who are not also Eligible Account Holders, Supplemental Eligible Account Holders or Other Depositors ("Eligible Employees and Trustees") would be given fifth priority subscription rights pursuant to 12 CFR 563b.3(d)(2).
6. A community offering may be held if there are insufficient subscriptions by Eligible Account Holders, the ESOP, Supplemental Eligible Account Holders, Other Depositors, and Eligible Employees and Trustees, with a preference given to persons residing in Acquiree's local community. This community offering would be conducted pursuant to 12 CFR 563b.3(c)(6).

#### Legal Authority for Proposed Transaction and Conditions of Approval

Overall Legal Authority: MHC may acquire a savings bank such as Acquiree through merger into Bank, according to section 115.1(d)(ii) of the Banking Code. To accomplish such merger, Acquiree may convert from mutual to stock form pursuant to section 1609(a)(vii) of the Banking Code. Acquiree may merge with and into Bank pursuant to sections 115.1(d)(ii), 1602(a)(i), and 1609(b)(ii) of the Banking Code.

Voting Rights and Lack of Shareholder Vote at Acquiree: The voting requirements for Acquiree to convert from mutual to stock form must be met pursuant to section 1609(b)(ii)(A) of the Banking Code. Voting requirements for Acquiree to merge with and into Bank are addressed in section 1609(b)(ii)(B) of the Banking Code. However, in this proposed partial merger conversion transaction, the Department concludes that under section 1609(b)(ii)(B) of the Banking Code, a shareholder vote regarding the proposed merger is not required to be held by Acquiree upon its conversion to stock and immediate merger with and into Bank. This is because no stock will be issued by Acquiree due to the impracticality of doing so in the proposed partial merger conversion transaction.

Department Review Finds Proposed Transaction Generally Conforms to Office of Thrift Supervision ("OTS") Technical Rules Applicable to Terms of Mutual to Stock Conversions and Mutual Holding Company Reorganizations: Acquiree in effect is reorganizing into an existing mutual holding company structure by converting to stock and merging into Bank. Section 115.1(f) of the Banking Code suggests that, in the absence of contrary specific authority in the Banking Code, OTS regulations should be the standard for Department review for reorganizations into mutual holding company structure. As a result, the Department has reviewed the proposed transaction not only for compliance with the Banking Code but also pursuant to OTS regulations at 12 CFR Parts 563b (Conversions from Mutual to Stock Form) and 575 (Mutual Holding Companies). As stated above,

the application is approved, based in part on such review of OTS regulations.

Authorized But Unissued Shares of BHC May Be Issued to Pay for Acquisition of Acquiree: The Department concludes that authorized but unissued shares of BHC may be issued to accomplish the acquisition of Acquiree. More specifically, as the conduit for indirect ownership of Bank stock by MHC and minority shareholders of BHC, BHC's authorized but unissued shares may be issued to MHC and eligible account holders at Acquiree and others in the proposed tiers of distribution, consistent with the general authority in section 115.1(d)(ii) of the Banking Code. The specific authority in section 115.1(d)(ii) of the Banking Code authorizing a mutual holding company to acquire a savings bank, coupled with the impracticality of a cash transaction and the practical and safety and soundness benefits of a stock purchase, has caused the Department to conclude that the specific authority of Pennsylvania banking law at 7 P.S. § 115.1(d)(ii) prevails over the general instructions set forth in subsection 115.1(f), which may otherwise make applicable any OTS rule that would restrict or prohibit the use of authorized but unissued shares of a mutual holding company's subsidiary stock holding company or subsidiary stock savings bank to pay for the acquisition of a target savings bank.<sup>2</sup> In other words, the specific merger authority at 7 P.S. § 115.1(d)(ii) overrules the general instructions at 7 P.S. § 115.1(f), pursuant to Pennsylvania's rules of statutory construction.<sup>3</sup>

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<sup>2</sup> It is the understanding of the Department that there is no such OTS rule or regulation at this time.

<sup>3</sup> The Pennsylvania rules of statutory construction provide that "[w]henver a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provision shall prevail and be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall

Preemptive Rights to Subscribe for Shares: As a condition of Department approval, MHC, BHC, Bank, and Acquiree shall confirm to the Department in writing their acceptance of the following rules applicable to preemptive rights of depositors to purchase stock.

1. Acquiree depositors shall be given preemptive rights to purchase stock in the proposed transaction in the order of distribution specified above, consistent with section 1609(j) of the Banking Code.
2. Bank depositors do not have preemptive rights to purchase stock in the proposed transaction. This is because it is Acquiree that is converting from mutual to stock form, and it is Acquiree that is opting into a mutual holding company structure, albeit an existing one. Therefore, section 1609(j) of the Banking Code does not apply to Bank depositors in the proposed transaction.
3. Upon completion of the proposed transaction, the following preemptive rights to purchase BHC stock shall apply:
  - a. Preemptive Rights of Pre-Merger Bank Depositors to Purchase Certain Stock After the Proposed Merger of Acquiree into Bank: During Existence of MHC Structure: Preemptive rights to purchase the\*\*\*shares issued in the original minority stock offering (which at present is \*\*\*\* shares adjusted for stock splits) representing the difference between the approximately % and % of the stock issued in the original mutual holding company reorganization of Bank (which must be adjusted for stock splits and reverse stock splits) shall belong to the Bank depositors who were deemed eligible to purchase stock in the original reorganization of Bank. This is to protect the Bank depositors who at the time of the original mutual holding company reorganization could have purchased up to % of the stock issued in that transaction

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be the manifest intention of the General Assembly that such general provision shall prevail.” 1 Pa. C.S.A. § 1933. The Department’s interpretation of subsections 115.1(d)(ii) and 115.1(f) gives meaning to both provisions, consistent with the rules of statutory construction.

had such stock been made available for purchase by persons other than the MHC.

b. **Preemptive Rights of Acquiree Depositors to Purchase Certain Stock After the Proposed Merger and During Existence of the MHC Structure:** Preemptive rights to purchase the number of shares represented as a percentage issued to persons other than MHC in the proposed transaction, meaning the difference between the approximately % and % of the stock to be issued in the proposed transaction shall belong to Acquiree depositors who would be deemed eligible to purchase stock in this proposed partial merger conversion transaction in which Acquiree converts to stock and merges with and into Bank. This is to protect the Acquiree depositors who at the time of the proposed transaction will not be able to purchase up to % of the stock being issued to accomplish the purchase of Acquiree by merger with and into Bank.

c. **Preemptive Rights of Depositors After the Merger of Acquiree into Bank and in the Event of Full Conversion of MHC to Stock Form:** In a full conversion of MHC to stock form at anytime, or in sales of shares after the % of BHC stock is issued, MHC, Bank, and BHC shall comply with Pennsylvania law as interpreted by the Department at that time with respect to preemptive rights and priority subscription rights. In such a transaction, depositors of Acquiree prior to the proposed merger with and into Bank shall have the same preemptive rights and priority subscription rights as depositors of Bank prior to the proposed merger. For example, if the eligibility record date (“ERD”) in a full conversion of MHC to stock form precedes the completion date of the proposed merger of Acquiree into Bank, then depositors of Acquiree at that ERD shall have the same preemptive rights to purchase stock held by MHC as depositors of Bank at that ERD. In addition, based on OTS regulations in their present form, preemptive rights to purchase stock held by MHC in a full conversion of MHC to stock form would belong to existing depositors of the proposed merged Bank at the time of the conversion.

d. **Maintaining Depositor Records:** Failure to maintain a system of current names and addresses of depositors with preemptive rights (the “system”) as stated in this letter may cause the Department to deny any future proposed acquisitions or stock-related transactions by Bank or its affiliates. The Department understands that some depositors could fail to comply with system requirements causing Bank to be unable to maintain current addresses for such persons. If the system and efforts of Bank to maintain the system have been reasonable in the sole determination of the Department, then failure of Bank to maintain the system may not by itself constitute

a basis for the Department to deny future proposed acquisitions or stock-related transactions by Bank or its affiliates.

**Tax Qualified ESOP as Second Tier to Subscribe for Shares:** The Department has reviewed the proposal that the existing Bank ESOP be permitted a second tier opportunity to subscribe for BHC shares in the proposed transaction. Based on the specific circumstances of the proposed transaction, the Department approves of the Bank ESOP having a second tier priority opportunity to purchase BHC stock in the proposed transaction.

**Management Recognition Plan ("MRP") and Stock Option Plan:** The Department approves the proposed MRP and Stock Option Plan proposal to acquire % and % respectively of the stock issued in this transaction, provided the timing and other requirements in 12 CFR 563b.3(g)(4) are met.

**Compliance with Federal Law Required:** The Department requires that all legal requirements of the Federal Deposit Insurance Corporation, and the Federal Reserve regarding BHC's involvement in this transaction, be met by Acquiree, Bank, BHC, and MHC (the "parties") as a condition of this transaction. By this condition, the Department is requiring compliance with "all applicable [including federal] laws" by the parties regarding both the conversion from mutual to stock form by Acquiree, and the merger of Acquiree with and into Bank, consistent with section 1609(e)(i)(D) of the Banking Code. As evidence of compliance with federal law, the parties shall provide the Department with a copy of any approval or nonobjection letter received from the FDIC or Federal Reserve regarding the proposed transaction.

**Adequately Protected Interests of Depositors, Other Creditors, and Shareholders:** The Department finds that the plan for Acquiree to convert to stock through Acquiree's merger with and into Bank "adequately protect[s] the interests of depositors, other creditors and shareholders, if any, of a savings bank which is a party to the plan" consistent with section 1609(e)(i)(C) of the Banking Code. The Department finds that the preemptive rights of depositors are adequately protected by the conditions and conclusions of the Department stated herein. The rights of the present shareholders of BHC, who indirectly own Bank through ownership of BHC stock, also are adequately protected by the conditions and conclusions of the Department stated herein, and by the fact that their rights are not diluted by the acquisition of Acquiree. Creditors rights are not affected and, therefore, are adequately protected in the proposed transaction.

**Adequate and Sound Banking Transaction:** The Department finds the proposed transaction would be consistent with adequate and sound banking and in the public interest as required by section 1609(e)(i)(E) of the Banking Code on the basis of the financial history and conditions of the parties to the plan, their prospects, the character of their management, the potential effect of the proposed

transaction on competition, and the convenience and needs of the area primarily to be served by the resulting corporation, provided the conditions stated herein are met by the parties.

No Voluntary Liquidation for Ten Years: The resulting merged savings bank may not be voluntarily liquidated for a period of ten years from the date of conversion of Acquiree from mutual to stock form and merger into Bank, pursuant to 7 P.S. § 1609(j).

#### Conditional Approval of Transaction

Subject to the conditions stated herein, the application is approved by the Department pursuant to sections 103, 115.1, and Chapter 16 of the Banking Code, and the Department's Statement of Policy Regarding Mutual Holding Company Reorganizations for Mutual Savings Banks. Bank, BHC, and MHC must confirm in writing, through their counsel or directly, that the conditions stated herein have been met, and that the requirements and conditions stated herein regarding preemptive rights to purchase stock shall be adhered to by Bank, MHC, and BHC.

The Department's analysis is based upon the facts and conditions as stated in this letter. Any change in the facts could result in a reversal or amendment of the Department's conditional approval of the proposed transaction. For example, if there is a change in the structure of the proposed transaction, such as but not limited to an addition of an interim savings bank, or if there is a change in the terms of the transaction, then Bank is required to notify the Department in writing of such change. Bank would be required to obtain the prior written approval or nonobjection of the Department to such change as an additional condition of approval of the overall proposed transaction.

Sincerely,