

hiring of a Sub-Adviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

7. The Adviser will provide management services to each Fund relying on the requested order, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board; will: (a) set the Fund's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to manage all or a part of the Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the investment performance of Sub-Advisers; and (e) ensure that the Sub-Advisers comply with the Fund's investment objectives, policies, and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No Trustee or officer of the Trust, or director or officer of Wachovia who participates directly in Wachovia's investment advisory activities (including the management or administration of the Trust) or otherwise is able to influence the selection of Sub-Advisers, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser except for (a) ownership of interests in (i) Wachovia or an entity that controls, is controlled by, or is under common control with Wachovia or (ii) Federated or an entity that controls, is controlled by, or is under common control with Federated; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. The Trust will disclose in its registration statement the Aggregate Fee Disclosure.

10. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the Independent Trustees.

11. With respect to the Funds relying on the relief requested, the Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per Fund basis. This information will reflect the

impact on the profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

12. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24252; 812-11844]

### CityFed Financial Corp. Notice of Application

**DATE:** January 13, 2000.

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

**ACTION:** Notice of application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 ("Act") for exemption from all provisions of the Act, except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

**SUMMARY OF APPLICATION:** The requested order would exempt the applicant, CityFed Financial Corp. ("CityFed"), from certain provisions of the Act until the earlier of one year from the date the requested order is issued or such time as CityFed would no longer be required to register as an investment company under the Act. The order would extend an exemption granted will February 12, 2000.<sup>1</sup>

**Filing Date:** The application was filed on November 5, 1999.

**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 8, 2000, 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, N.W., Washington, D.C. 20549-0609. CityFed, 35 Old South Road, P.O. Box 3126, Nantucket, MA 02584.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Staff Attorney, at (202) 942-0634, or Mary Kay Frech, 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, 450 Fifth Street, N.W., Washington, D.C., 20549-0102 (tel. no. 202-942-8090).

### 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"). During the five year period ending December 31, 1988, 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 ("OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation ("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. ("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, 1999, CityFed held cash and securities of approximately \$9.5 million.

3. While CityFed's board of directors ("Board") 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

<sup>1</sup> *CityFed Financial Corp.*, Investment Company Act Release Nos. 23659 (Jan. 20, 1999) (notice) and 23692 (Feb. 12, 1999) (order).

against CityFed, whose liability thereunder cannot be reasonably estimated any 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 ("Net Worth Maintenance Claim") reported by City Federal in the fall of 1989. On November 30, 1995, the OTS issued an Amended 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 ("Amended Notice of Charges") that is identical to the Notice of Charges, except that the Amended Notice of Charges includes a reference to a federal statutory provision not referred to in the Notice of Charges that the OTS asserts provides an additional basis for the issuance of a Cease and Desist Order against CityFed and certain current or former directors and, in some cases, officers of CityFed and of City Federal ("Respondents"). On February 1, 1996, an administrative law judge ("ALJ") issued a prehearing order ("Prehearing Order") granting the OTS's motion for partial summary disposition with respect to CityFed and denying both CityFed's motion for partial summary disposition of the OTS's assessment of civil money penalties and its cross-motion for summary adjudication. On June 12, 1996, CityFed moved for interlocutory review by the acting director of the OTS of the conclusions in the Prehearing Order and, if necessary, will seek appellate review of any adverse decision. On August 20, 1997, the OTS Director issued a decision and order granting CityFed's motion for interlocutory review. The Director concluded that the ALJ had erred in recommending summary disposition on the OTS Net Worth Maintenance Claim against CityFed and held that there were disputed issues of fact on that claim that precluded summary judgment, and he remanded the case to the ALJ for further proceedings consistent with his decision. The ALJ has lifted the stay of the proceedings, and CityFed and the

OTS have begun to engage in discovery on the Net Worth Maintenance Claim.

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 and the Respondents filed notices of appeal from the D.C. Court's Order to the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), and the Respondents filed a motion in the D.C. Circuit for an expedited appeal and an order enjoining the enforcement of the Temporary Order during the pendency of the appeal. The D.C. Circuit denied the Respondents' motion for injunction on October 21, 1994. On July 11, 1995, the D.C. Circuit affirmed the denial by the D.C. Court of the motions by CityFed and the Respondents for a temporary restraining order and an injunction against the Temporary Order. 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 deposit 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 transfers to CityFed in the amount of \$15,000 for operating expenses, (b) the disbursement of funds on account of purchases of securities by CityFed, and (c) the payment of the escrow fee and expenses to CoreStates. The Escrow Agreement also provides that CoreStates will restrict the escrow account in such a manner as to implement the terms of the Escrow Agreement and to prevent a change in status or function of the escrow account unless authorized by CityFed and the OTS in writing.

6. On December 7, 1992, the RTC filed suit against CityFed and two former officers of City Federal seeking damages of \$12 million dollars for failure to maintain the net worth of City Federal ("First RTC Action"). In light of the filing by the OTS of the Notice of Charges on June 2, 1994, the RTC and CityFed agreed to dismiss without prejudice the RTC's claim against CityFed in the First RTC Action.

7. In addition, the RTC filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans ("Second RTC Action"). The RTC seeks in excess of \$200 million in damages. Under its bylaws, CityFed may be obligated to indemnify these former officers and directors and advice their legal expenses. On the advice of counsel to a special committee of CityFed's Board, comprised of directors who have not been named in the First or Second RTC Action, CityFed advanced reasonable defense costs to such former directors and officers in such Actions. CityFed is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims, although the amount may be material.

8. On August 7, 1995, CityFed, acting in its own right and as shareholder of City Federal, filed a civil action in the United States Court of Federal Claims ("Claims Court") seeking damages for loss of "supervisory goodwill." CityFed's goodwill suit is presently pending in that court. The Claims Court has established a procedure for deciding supervisory goodwill claims and its decision on this issue may affect CityFed's right to assert a claim for the loss of supervisory goodwill on the books of City Federal.

9. Currently, CityFed's stock is traded sporadically in the over-the-counter market. CityFed has one employee who is president, chief executive officer, and treasurer. CityFed's secretary does not receive any compensation for her service.

#### **Applicant's Legal Analysis**

1. Section 3(a)(1)(A) defines an investment company as any issuer who "is or holds itself out as being engaged primarily \* \* \* in the business of investing, reinvesting or trading in securities." Section 3(a)(1)(C) further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash).

2. Section 6(c) of the Act provides that the SEC may exempt any person from any provision of the Act "if and to the extent that such exemption is necessary or appropriate in the public interest." Section 6(e) provides that in connection with any SEC order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were

registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. CityFed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, CityFed requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions described below. CityFed requests an exemption until the earlier of one year from the date of the requested order or such time as it would no longer be required to register as an investment company under the Act.

4. In determining whether to grant an exemption for a transient investment company, the SEC considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. CityFed believes that it meets these criteria.

5. CityFed believes that its failure to become primarily engaged in a non-investment business by February 12, 2000, is due to factors beyond its control. CityFed asserts that the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed its assets. If CityFed is unable to resolve these claims successfully, it states that it may seek protection from the bankruptcy courts or liquidate. CityFed also asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved. Additionally, CityFed states that its circumstances are unlikely to change over the requested one year period in light of the number of claims currently pending against it and because of the existence of the Escrow Agreement. Since the filing of its initial application for exemptive relief under sections 6(c) and 6(e) on October 19, 1990, CityFed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

6. During the term of the proposed exemption, CityFed states that it will comply with sections 9, 17(a) and (d) (subject to the exception below and the modifications described in condition 3, below), 17(e), 17(f), 36 through 45, and

47 through 51 of the Act and the rules thereunder. With respect to section 17(d), CityFed represents that it established a stock option plan when it was an operating company. Although the plan has been terminated, certain former employees of City Federal have existing rights under the plan. CityFed believes that the plan may be deemed a joint enterprise or other joint arrangement or profit-sharing plan within the meaning of section 17(d) and rule 17d-1 thereunder. Because the plan was adopted when CityFed was an operating company and to the extent there are existing rights under the plan, CityFed seeks an exemption to the extent necessary from section 17(d).

#### **Applicant's Conditions**

CityFed agrees that the requested exemption will be subject to the following conditions:

1. CityFed will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by CityFed's Board, subject to two exceptions:

a. CityFed may make an equity investment in issuers that are not investment companies as defined in section 3(a) of the Act (including issuers that are not investment companies because they are covered by a specific exclusion from the definition of investment company under section 3(c) of the Act other than sections 3(c)(1) and 3(c)(7)) in connection with the possible acquisition of an operating business as evidenced by a resolution approved by CityFed's Board; and

b. CityFed may invest in one or more money market mutual funds that limit their investments to "Eligible Securities" within the meaning of rule 2a-7(a)(10) promulgated under the Act.

2. CityFed's Form 10-KSB, Form 10-QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that CityFed and other persons, in their transactions and relations with CityFed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if CityFed were a registered investment company, except as permitted by the order requested hereby.

3. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of CityFed may engage in a transaction that otherwise would be prohibited by these sections with CityFed:

a. If such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to CityFed, and (ii) the participation of CityFed in the proposed transaction will not be on a basis less advantageous to CityFed than that of other participants; and

b. In connection with each such transaction, CityFed shall inform the bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release 34-42335; File No. 600-23]**

### **Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Extending Temporary Registration as a Clearing Agency**

January 12, 2000.

Notice is hereby given that on December 30, 1999, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> requesting that the Commission grant GSCC full registration as a clearing agency or in the alternative extend GSCC temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.<sup>2</sup> The Commission is publishing this notice and order to solicit comments from interested persons and to extend GSCC's temporary registration as a clearing agency through July 31, 2000.

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act<sup>3</sup> and Rule 17Ab2-1 promulgated thereunder,<sup>4</sup> the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of

<sup>1</sup> 15 U.S.C. 78s(a).

<sup>2</sup> Letter from Sal Ricca, President and Chief Operating Officer, GSCC (December 30, 1999).

<sup>3</sup> 15 U.S.C. 78q-1(b) and 78s(a).

<sup>4</sup> 17 CFR 240.17Ab2-1.