

Stalute



MARCIA WEEKS
CHAIRMAN

RENZ D. JENNINGS
COMMISSIONER

DALE H. MORGAN
COMMISSIONER

JAMES MATTHEWS
EXECUTIVE SECRETARY

SECURITIES DIVISION
1300 West Washington
Third Floor

TELEPHONE: (602) 542-4242
FAX: (602) 542-3583

ARIZONA CORPORATION COMMISSION

November 3, 1993

Joel E. Rappoport, Esq.
Housley Goldberg & Kantarian, P.C.
Suite 700
1220 19th Street, N.W.
Washington, D.C. 20036

RE: Northwestern Financial Corp.
A.R.S. § 44-1844(A)(6)

Dear Mr. Rappoport:

On the basis of the facts set forth in your letters of October 28, 1993, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letters and should the transaction within Arizona be limited to the Subscription Offering. This position is consistent with prior no-action letters issued by the Division. However, the Division continues to analyze the breadth of the exemption found in A.R.S. § 44-1844(A)(6) and may take a different position on similar facts in the future. Furthermore, this response only expresses the Division's position on the applicability of the exemption claimed under A.R.S. § 44-1844(A)(6) and does not purport to express any legal conclusion on the availability of A.R.S. § 44-1844(A)(7) to the facts presented in your letters.

As this position is premised upon the facts set forth in your letters, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached photocopies of your letters. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:lb
Attachment

HOUSLEY GOLDBERG & KANTARIAN, P. C.

SUITE 700

1220 19TH STREET, N. W.

WASHINGTON, D. C. 20036

ALLAN D. HOUSLEY *
DANIEL J. GOLDBERG
HARRY K. KANTARIAN
LEONARD S. VOLIN
MATTHEW G. ASH
GARY R. BRONSTEIN
EDWARD E. CROSLAND, JR.
ROBERT I. LIPSHER
JAMES I. LUNDY, III
HOWARD S. PARRIS
DANIEL H. BURD
JAMES C. STEWART
K. SCOTT FIFE *
CYNTHIA R. CROSS
PAUL D. BORJA *
J. MARK POERIO *
JOEL E. RAPPOPORT
RUEL B. PILC *

TELEPHONE
(202) 822-9611
TELECOPIER
(202) 822-0140

* VIA FACSIMILE *

October 28, 1993

*NOT ADMITTED IN DC

Dee R. Harris, Director
Corporation Commission
Securities Division
1200 West Washington Street
Suite 201
Phoenix, Arizona 85007

Re: Northwestern Financial Corp.
No-Action Request

Dear Mr. Harris:

On behalf of Northwestern Savings Bank, F.S.B., Fargo, North Dakota (the "Bank") and Northwestern Financial Corp. (the "Company"), we are filing a no-action request pursuant to Section 44-1861(L) of the Arizona Blue Sky Act (the "Act"). The Company was incorporated on September 2, 1993 in order to become a savings and loan holding company for the Bank. The Bank will convert from a federally chartered mutual savings bank to a federally chartered stock savings bank (the "Conversion") and simultaneously become this wholly-owned subsidiary of the Company. In connection with the reorganization of the Bank, between \$3,697,500 (369,750 shares at \$10.00 per share), and \$5,752,870 (575,287 shares at \$10.00 per share) of the common stock of the Company, par value \$.01 per share (the "Common Stock") will be sold to certain persons, including residents of the State of Arizona. (Please note that these amounts are less than the dollar amounts noted on the front page of the enclosed Registration Statement, as the Company has received an appraisal setting the Current Valuation Range, as such term is used within the Registration Statement, below that indicated in the Registration Statement. The Registration Statement will be amended to reflect the Current Valuation Range established in the appraisal.).

The purpose of this letter is to request that the Division of Securities confirm that, with respect to the facts and circumstances discussed herein:

Dee R. Harris, Director
Corporation Commission
Securities Division
October 28, 1993
Page 2

(i) The proposed sale of Common Stock of the Company is exempt from registration in the State of Arizona pursuant to Sections 44-1844(6) and/or 44-1844(7) of the Act. We request that this exemption apply to (a) depositors and certain borrowers of the Bank residing in Arizona and (b) persons who are not depositors but wish to buy the Common Stock of the Company in the "Community Offering," as described below.

(ii) The Company will not be subject to broker-dealer registration pursuant to Section 44-1842 due to the sale of stock being an exempt transaction pursuant to Sections 44-1844(6) and/or 44-1844(7) of the Act.

(iii) For purposes of the proposed sale of stock, officers and directors of the Company will not be subject to registration as salesmen pursuant to Section 44-1842 due to the sale of stock being an exempt transaction pursuant to Sections 44-1844(6) and/or 44-1844(7) of the Act.

(iv) No filings are required to be made in connection with the proposed issuance of stock.

On August 17, 1993, the Board of Directors of the Bank adopted a Plan of Conversion (the "Plan") (included as Exhibit A to Proxy Statement filed as Exhibit 99.2 to the Registration Statement on Form S-1, enclosed herein), whereby the Bank will convert from a federally-chartered mutual savings bank to a federally-chartered stock savings bank, as a wholly-owned subsidiary of the Company. The Bank has filed with the Office of Thrift Supervision ("OTS") an Application for Approval of Conversion on Form AC for permission to convert to a stock savings bank. In connection with the Conversion of the Savings Bank from a mutual savings bank to stock savings bank, the Bank has proposed that all of its shares of capital stock to be issued in the Conversion will be acquired by the Company. The Company has filed a Registration Statement on Form S-1 with the Securities and Exchange Commission ("SEC") on September 24, 1993, to register the shares of Common Stock to be sold in the Conversion. The pro forma market value of the Common Stock to be sold in the Conversion has been determined by an independent appraisal prepared by Kemper Securities, Inc. ("Kemper"). Upon consummation of the Conversion, the Bank will become a wholly owned subsidiary of the Company, and, at such time, the Company's assets shall consist solely of the stock of the Bank, which it will acquire in the Conversion, the Company's initial capitalization and a note payable from the Bank's Employee Stock Ownership Plan which will purchase shares of Common Stock in the Conversion with funds

Dee R. Harris, Director
Corporation Commission
Securities Division
October 28, 1993
Page 3

borrowed from the Company. The Conversion is subject to the approval of the members of the Bank at a Special Meeting of Members expected to be held in December 1993.

As part of the Conversion, the Company is conducting a Subscription Offering of the Common Stock for holders of non-transferable subscription rights ("Subscription Rights") in the following order of priority: (i) tax-qualified employee stock benefit plans of the Bank and the Company; (ii) depositors of the Bank whose accounts in the Bank totalled \$50.00 or more on March 31, 1993 ("Eligible Account Holders") and (iii) borrower members and certain other account holders of the Bank, including the Company's Management Recognition Plans and Trusts ("Other Members") who are not Eligible Account Holders; subject to the provisions of the Plan. Concurrently, and subject to the prior rights of holders of Subscription Rights, the Company is offering the shares of Common Stock not subscribed for in the Subscription Offering for sale in an offering to certain members of the general public, with preference given to natural persons and trusts of natural persons residing in Cass and Richland Counties in North Dakota and Clay and Wilkin Counties in Minnesota (the "Community Offering").

The OTS conversion regulations require, with certain exceptions, that all shares of the Common Stock offered in the Conversion must be sold in order for the Conversion to become effective. At least \$3,697,500 of the Common Stock must be sold in order for the Conversion to be completed. All shares of the Common Stock not sold in the Subscription Offering will be offered in the Community Offering. Regulations further require completion of the Community Offering within 45 days after the last day of the Subscription and Community Offerings unless such period is extended by the Bank with the approval of the OTS.

We believe that the exemption pursuant to Section 44-1844(6) is applicable to these facts. The conversion of the Bank to stock form, the reorganization of the Bank into the holding company form of ownership, and the concurrent stock offering by the Company must be approved by the OTS pursuant to applicable statutes and the rules and regulations of the OTS, and by the depositor and borrower members of the Bank who currently hold voting rights in the Bank. The members of the Bank will also receive Subscription Rights to buy stock in the Subscription Offering. Such members are currently the equivalent of stockholders, but if they approve the Conversion, they will receive non-transferable Subscription Rights in the Conversion and will lose their voting rights upon the successful completion of the Conversion. In effect, they are exchanging their

Dee R. Harris, Director
Corporation Commission
Securities Division
October 28, 1993
Page 4

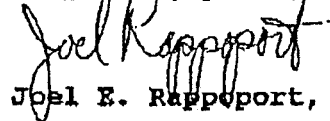
voting rights in the Bank in consideration for the right to buy the Common Stock of the Company in the Subscription Offering.

We believe that the exemption from securities registration pursuant to Section 44-1844(7) is also applicable because the members are the equivalent of existing stockholders of the Bank and they will be offered non-transferable Subscription Rights in the Subscription Offering. The Conversion and offering of Common Stock in the Subscription and Community Offerings must be approved by a majority of the outstanding votes entitled to be cast by the members of the Bank.

The offering of the Common Stock of the Company will be carried out by the officers and directors of the Company, who will be given no commissions or additional remuneration for their role. The Bank has engaged Kemper to assist in the distribution of Common Stock, on a best efforts basis, in the Subscription and Community Offerings. All shares not subscribed for in the Subscription and Community Offering may be sold to the general public in an underwritten public offering, which would be managed by Kemper and commence as soon as practicable following completion of the Subscription and Community Offerings. If a public offering is made in Arizona, the Company will, at that time, register its shares of Common Stock with the Arizona Corporation Commission, Securities Division.

In connection with this request, enclosed herein is a check for \$200 in payment of the applicable fee and a copy of the Company's Registration Statement on Form S-1. Please do not hesitate to call Joel Rappoport or myself if you should have any questions in this regard.

Very truly yours,



Joel E. Rappoport, Esq.

JER:klc:1702

cc: David S. Paulson, President
Northwestern Financial Corp.
Gary R. Bronstein, Esq.
Lauren K. Martucci, Legal Assistant

file

HOUSLEY GOLDBERG & KANTARIAN, P. C.
SUITE 700
1220 18TH STREET, N. W.
WASHINGTON, D. C. 20036

ALLAN D. HOUBLEY *
DANIEL J. GOLDBERG
HARRY K. KANTARIAN
LEONARD S. VOLIN
MATTHEW G. ASH
GARY R. BRONSTEIN
EDWARD B. CROSLAND, JR.
ROBERT I. LIPSHER
JAMES I. LUNDY, III
HOWARD S. PARRIS
DANIEL H. BURD
JAMES C. STEWART
K. SCOTT FIFE *
CYNTHIA R. CROSS
PAUL D. BORJA *
J. MARK POERIO *
JOEL E. RAPPOPORT
RUEL B. FILE *

TELEPHONE
(202) 822-8611
TELECOPIER
(202) 822-0140

*NOT ADMITTED IN DC

* VIA FACSIMILE *

October 28, 1993

Ms. Leslie Block
Examiner
Corporation Commission
Securities Division
1200 West Washington Street
Suite 201
Phoenix, Arizona 85007

Re: Northwestern Financial Corp.
No-Action Request dated October 22, 1993

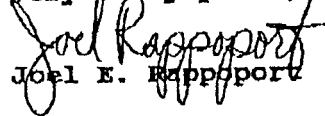
Dear Ms. Block:

Pursuant to your telephone conversation with Lauren Martucci of this office and in connection with the above-referenced No-Action Request, please be advised that the persons eligible to vote on the Plan of Conversion at the Special Meeting of Members (the "Special Meeting") are the members on the record date ("Voting Record Date") set by the Board of Directors of Northwestern Savings Bank, F.S.B. (the "Bank") and who continue as such until the date of the Special Meeting. Members of the Bank, under its current mutual charter, include all holders of the Bank's deposit or other authorized accounts and borrowers from the Bank. All members as of the Voting Record Date are entitled to notice of and to vote at the Special Meeting. For further information, see page 4 of the Proxy Statement included as Exhibit 99.2 to the Registration Statement on Form S-1.

Ms. Leslie Block
Corporation Commission
October 28, 1993
Page 2

I hope this answers any questions you may have. If you require any further information, please do not hesitate to call Lauren Martucci or me.

Very truly yours,


Joel E. Rappoport

JER:klc:1702

cc: Lauren K. Martucci, Legal Assistant