

PUBLIC

28 JUL 1994

Our Ref. No. 94-417-CC
RESPONSE OF THE OFFICE OF CHIEF COUNSEL First Coastal Corporation
DIVISION OF INVESTMENT MANAGEMENT File No. 132-3

By letter dated July 8, 1994, you request our assurance that we would not recommend enforcement action to the Commission if First Coastal Corporation (the "Company") dissolves and liquidates its assets without registering under the Investment Company Act of 1940 (the "Investment Company Act") in reliance on the exemption in Section 7(a) of the Investment Company Act for "transactions which are merely incidental to the dissolution of an investment company."

The Company is a bank holding company, incorporated in the State of Delaware. Its common stock was delisted from the National Association of Securities Dealers Automatic Quotation System ("NASDAQ") on September 1, 1991. Coastal Savings Bank, an FDIC-insured savings bank ("Coastal"), is a wholly owned subsidiary of the Company. On April 26, 1994, the Company and Coastal entered into a settlement agreement (the "Settlement Agreement") with the FDIC that provides that the FDIC will receive preferred stock in Coastal (the "Preference Stock"), convertible into 95% of Coastal's outstanding common stock. 1/ The Company's stockholders must approve the Settlement Agreement. The closing of the Settlement Agreement is scheduled to occur within ten business days of stockholder approval. 2/

The Company intends to dissolve and liquidate. The Company's Board of Directors has adopted a plan for the Company's dissolution and liquidation (the "Plan"), and will submit the Plan, as well as the Settlement Agreement, to stockholders for approval at the annual stockholders' meeting, which is scheduled for September 13, 1994. 3/ The Plan authorizes, among other things: (i) the filing of a certificate of dissolution (the "Certificate of Dissolution"); (ii) the winding up of the Company's affairs; and (iii) the liquidation of the Company's assets. The Company expects to complete the implementation of

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- 1/ The Preference Stock converts into Coastal common stock upon its disposition by the FDIC. You represent that the FDIC will try to sell the Preference Stock as soon as possible on terms the FDIC deems acceptable.
- 2/ Telephone conversation between Edward J. Rubenstein and James G. McMillan (July 26, 1994).
- 3/ Telephone conversation between Edward J. Rubenstein and James G. McMillan (July 26, 1994).

the Plan and liquidation of the Company as soon as practicable after the stockholders approve the Plan. 4/

You also state that as of the closing of the Settlement Agreement, the Company's assets are expected to be one automobile, cash, and 100,000 shares of Coastal common stock ("Coastal shares"). Following the filing of the Certificate of Dissolution, and on paying, or providing for, all debts and liabilities, the Company will distribute the Coastal shares, or the proceeds received from the sale of the shares, to the Company's stockholders. If the Company sells the Coastal shares, the Company may, pending distribution to former stockholders, invest the proceeds in U.S. government and agency securities, certificates of deposit, and, to a limited extent, in short-term, investment grade debt securities.

In addition, you represent that after the filing of the Certificate of Dissolution:


- the Company will not issue any securities required to be registered under the Securities Act of 1933, except securities issued pursuant to existing employee stock option plans;
- the Company will comply with all applicable reporting and disclosure obligations under the Securities Exchange Act of 1934;
- the Company will not (and will not permit its directors, officers, or employees to) place advertisements in the media promoting investment in the Company on the basis of the composition of, or the returns earned on, its portfolio;
- the Company will hold itself out as a company in the process of liquidation, rather than as an investment company;

4/ You represent that under the Delaware General Corporation Law (the "DGCL"), the Company's dissolution becomes effective upon the execution and filing of a Certificate of Dissolution with the Delaware Secretary of State. Under the DGCL, however, the Company will continue as a corporate entity for three years after the dissolution becomes effective, or for such longer period as the Delaware Court of Chancery directs, for the purpose of prosecuting and defending suits by or against the Company and winding up the Company's business and affairs, but not for the purpose of continuing the Company's business.

•the Company will establish personnel policies to avoid self-dealing by the Company's directors, officers, or employees in connection with sales or other dispositions of portfolio securities or property held by the Company. Specifically, the Company will not knowingly buy or sell any Coastal security, or any other security or property, from or to (i) any of the Company's directors, officers, or employees, or (ii) any other entities or persons affiliated (as defined in Section 2(a)(3) of the Investment Company Act) with the Company or with any of the Company's directors, officers, or employees, except that the Company may make the described pro rata distribution to all its stockholders; and

•the Company will dissolve and sell or distribute all of its assets within three years of the filing of the Certificate of Dissolution. 5/

We would not recommend enforcement action to the Commission if the Company dissolves and liquidates in the manner described in your letter. Any facts or representations different from those in your letter may require a different conclusion.



Edward J. Rubenstein
Senior Attorney

5/ You represent that if it appears that the Company will be unable to complete its liquidation within three years, the Company will apply to this Division for additional no-action relief. Of course, there can be no assurances that the staff will grant that relief.

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July 8, 1994

ACT ICAA 1940
SECTION 7(a)
RULE _____
PUBLIC AVAILABILITY 7/28/94

BY HAND DELIVERY

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Attention: Edward J. Rubenstein

Re: First Coastal Corporation – Request for No-Action Letter: Investment Company Act of 1940 – Sections 3(a) and 7(a)

Ladies and Gentlemen:

On behalf of First Coastal Corporation, a Delaware corporation (the "Company"), we respectfully request that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") confirm to us that it will not recommend that the Commission take any enforcement action if the Company proceeds to dissolve and liquidate its assets in the manner set forth below without registering as an investment company under Section 8 of the Investment Company Act of 1940 (the "1940 Act").

BACKGROUND INFORMATION

The Company is a bank holding company the common stock of which was delisted from the National Association of Securities Dealers Automatic Quotation System ("NASDAQ") on September 1, 1991. As of March 31, 1994, the Company's Common Stock was held of record by approximately 1,761 persons. Prior to September 6, 1991 the Company held all of the outstanding voting stock of Suffield Bank, a Connecticut-chartered savings bank ("Suffield"), the deposits of which were insured by the Federal Deposit Insurance Corporation (the "FDIC").

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On September 6, 1991 the Connecticut Banking Commissioner determined that Suffield was insolvent and appointed the FDIC as receiver. Through its intermediate holding company Coastal Bancorp, a Maine corporation ("Coastal Bancorp"), 1/ the Company also wholly owns Coastal Savings Bank, an FDIC-insured savings bank organized under the laws of Maine ("Coastal"). On September 1, 1993 the FDIC issued a Notice of Assessment against Coastal for its claimed losses in connection with Suffield pursuant to 12 C.F.R. § 308.166 which provides that an insured depository institution shall be liable for any loss incurred or reasonably anticipated to be incurred by the FDIC in connection with the default of a commonly controlled insured depository institution.

On April 26, 1994, the Company, Coastal, Coastal Bancorp and the FDIC entered into a Settlement Agreement (the "Settlement Agreement"), which provides for the settlement of the FDIC's claims. As part of the Settlement Agreement, the FDIC will be issued preferred stock in Coastal (the "Preference Stock") which will be convertible into shares of Coastal common stock representing, on a post-conversion basis, 95% of the outstanding Coastal common stock. The remaining 5% of Coastal's post-conversion common stock will be held by the Company as a result of the dissolution of Coastal Bancorp. The Settlement Agreement also contemplates that the Company will file a Certificate of Dissolution with the Secretary of State of the State of Delaware. 2/

The Company intends to schedule a stockholders' meeting in the latter part of August 1994. At this meeting, the Company's stockholders will be asked to approve, among other things, both the Settlement Agreement and a Plan of Dissolution and Liquidation with respect to the dissolution and liquidation of the Company.

1/ The Company expects to dissolve and liquidate Coastal Bancorp by the end of July 1994, with the effect that Coastal Savings Bank will become a direct wholly-owned subsidiary of the Company.

2/ The Settlement Agreement may be terminated by the FDIC if, among other things, the stockholders of the Company fail to vote to approve the settlement, or approve the settlement but a Certificate of Dissolution is not filed within 10 business days after the date of the stockholders' meeting or such later date as the parties may agree in writing.

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Under the Delaware General Corporation Law, as amended (the "DGCL"), the dissolution of the Company becomes effective upon the execution and filing of a Certificate of Dissolution with the Secretary of State of the State of Delaware. Under the DGCL, the Company will continue as a corporate entity for three years after the dissolution becomes effective, or for such longer period as the Delaware Court of Chancery directs in its own discretion, for the purpose of prosecuting and defending suits by or against the Company and winding up the business and affairs of the Company, but not for the purpose of continuing the business of the Company.

As a result of the Settlement Agreement, the Company will have virtually no assets other than its holdings of the common stock of Coastal and a limited amount of cash. The Settlement Agreement prohibits any distribution to the stockholders of the Company other than the shares of Coastal common stock it holds (or the cash proceeds received by the Company from the sale of such shares) and cash in lieu of fractional shares. All cash assets of the Company, if any, remaining after paying or providing for all debts and liabilities of the Company, if any, are to be paid by the Company directly to Coastal or to the FDIC as set forth in the Settlement Agreement.

Upon conversion of the Preference Stock, which according to its terms will occur when the FDIC sells the Preference Stock, the Company's common stock interest in Coastal will be diluted from a 100% ownership interest to a 5% ownership interest. ^{3/} Because after conversion of the Preference Stock, Coastal will cease to be a majority-owned subsidiary of the Company, the Company will no longer fall under the exemption from the definition of investment company provided by Section 3(c)(6) of the 1940 Act for persons engaging in the business of banking through majority-owned subsidiaries.

^{3/} The Company understands that the FDIC will undertake to sell the Preference Stock to a third party or parties as soon as possible on terms the FDIC deems acceptable.

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ANALYSIS

Registration under the 1940 Act

Subsequent to the conversion of the Preference Stock and prior to the Company's ultimate discontinuation under the DGCL, the Company may be deemed an investment company under Section 3(a)(1) of the 1940 Act. Section 3(a)(1) broadly defines an investment company as any issuer which "is or holds itself out as being engaged primarily, or proposes to engage primarily in the business of investing, reinvesting, or trading in securities." The Company does not, and will not, engage primarily or hold itself out as engaging primarily in the business of investing, reinvesting or trading in securities. Once the Company files its Certificate of Dissolution, the Company's sole business activity will be settling the claims of creditors, winding up its affairs and liquidating its remaining assets. While it is possible that the Company may sell its remaining shares of Coastal common stock to the person or persons to whom the FDIC sells the Preference Stock, such a transaction is only ancillary to the Company's plan of liquidation. Accordingly, it is our view that since the Company will be engaged primarily in the process of dissolution, the Company should not be construed as being primarily engaged in the investing, reinvesting or trading in securities and thus will not be an investment company within the meaning of Section 3(a)(1) of the 1940 Act.

Alternatively, even if the Company were deemed to be an investment company, it is our view that it would nevertheless be exempt from the registration requirements of Section 8 by virtue of the exemption provided by the last sentence of Section 7(a) of the 1940 Act. Section 7(a) permits an unregistered investment company to engage in "transactions by an investment company which are merely incidental to its dissolution." As explained above, once the Company files a Certificate of Dissolution it will not engage in any transactions or any business except that which is designed to facilitate the Company's orderly dissolution.

The Staff has granted several favorable responses under Section 7(a) in similar situations. See e.g., The Fund American Co. Inc. (pub.avail. November 16, 1990); LDX Group, Incorporated (pub.avail. May 4, 1990); Keyes Offshore Limited (pub.avail. October 20, 1986); Merit Clothing Company (pub.avail. March 29, 1982); Sinclair Venezuelan Oil Company (pub.avail. November 8, 1979); Atlanta/LaSalle Corporation (pub.avail. May 18, 1979). Nor should it matter that the eventual cessation of the Company does not occur for three years. In situations where a plan of liquidation exists, where circumstances (such as the identification

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and satisfaction of creditors) preclude the immediate liquidation and dissolution of the corporation and where the liquidation and dissolution will be accomplished within a limited period, the Staff has recognized that an orderly liquidation process is in the interest of stockholders. For example, in Merit Clothing Company the Staff permitted a liquidation period to extend for up to ten years and in Keyes Offshore Limited for up to two years.

In recent years, the Staff also has issued a number of no-action letters in similar circumstances where the entities concerned formed liquidating trusts which would make final distributions of assets in not more than three years. See e.g., Oppenheimer Landmark Properties (pub.avail. March 9, 1993); VHA Enterprises, Inc. (pub.avail. January 7, 1993); Graphic Scanning Corporation (pub.avail. August 21, 1991); Crime Control, Incorporated (pub.avail August 3, 1987). As stated in LDX Group and Keyes Offshore Limited, however, formation of a liquidating trust should not be the determining factor as to whether the Section 7(a) exemption is available because the substance of the dissolution is the same whether or not a liquidating trust is formed.

Because the only activities the Company will engage in will be those activities conducive to the Company's liquidation and dissolution, it is our opinion that registration of the Company under Section 8 of the 1940 Act is not required.

To assist in your consideration of this request, please be advised that the Company has advised us of the following:

1. The Board of Directors of the Company will adopt a plan for the dissolution and liquidation of the Company substantially in the form attached hereto as Exhibit A (the "Plan") and will submit the Plan to its stockholders for approval at the annual meeting of stockholders currently scheduled to be held in August 1994.

2. The Plan, among other things, authorizes the officers and directors of the Company to: (i) dissolve the Company in accordance with the applicable provisions of the Delaware General Corporation Law, as amended (the "DGCL"), including the execution and filing of a certificate of dissolution (the "Certificate of Dissolution") with the Secretary of State of the State of Delaware, (ii) wind up the Company's affairs and (iii) liquidate the Company's assets.

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The Company expects to file the Certificate of Dissolution at or shortly after the closing of the Settlement Agreement, dated as of April 26, 1994 (the "Settlement Agreement"), and to complete the implementation of the Plan and the liquidation of the Company as promptly as practicable thereafter. Upon the payment of or reasonable provision for all debts and liabilities of the Company in accordance with the requirements of the DGCL, the Company will distribute all remaining assets, if any, to the former stockholders of the Company. Under the DGCL, the dissolution of the Company becomes effective upon the execution and filing of a Certificate of Dissolution. Under the DGCL, the Company will continue as a corporate entity for three years after the dissolution becomes effective, or for such longer period as the Delaware Court of Chancery directs in its own discretion, for the purpose of prosecuting and defending suits by or against the Company and winding up the business and affairs of the Company, but not for the purpose of continuing the business of the Company. The Plan provides that the implementation of the Plan is intended to be completed within three years of the filing of the Certificate of Dissolution. The Company understands that any no-action relief given by the Staff would be valid only for three years. If it appears that the Company will not complete the distribution of its assets and implementation of the Plan within such three-year period, the Company hereby undertakes to apply to the Division of Investment Management for additional relief under Section 7(a) of the 1940 Act prior to the expiration of such three year period.

3. Upon the consummation of the Settlement Agreement, the Company's assets are expected to consist of one automobile, cash, and 100,000 shares of common stock of Coastal Savings Bank ("Bank Common Stock"), representing five percent of the outstanding Bank Common Stock on a fully-diluted basis. Following the filing of the Certificate of Dissolution with the Secretary of State of the State of Delaware, the Company will dispose of its assets as provided in the Settlement Agreement and the Plan, and upon the payment of or provision for all debts and liabilities in accordance with the DGCL, will distribute the 100,000 shares of Bank Common Stock, or the proceeds received by the Company from the sale of such shares, to the former stockholders of the Company.

4. To the extent that the Company sells or otherwise disposes of the 100,000 shares of Bank Common Stock prior to their distribution to the stockholders of the Company, the Company will invest the proceeds from such sale or disposition in cash, U.S. government and agency securities, certificates of deposit, and, to a limited extent, short-term, investment grade debt securities pending distribution to stockholders as determined by the Board of Directors.

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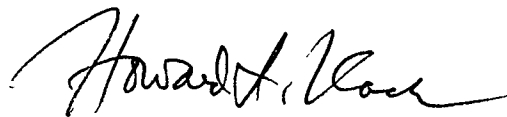
5. During the liquidation period, the Company will not issue any equity or debt securities required to be registered under the Securities Act of 1933, as amended, except securities issued pursuant to existing employee stock option plans.

6. The Company will establish personnel policies commencing upon the filing of the Certificate of Dissolution that will be designed to avoid the possibility of self-dealing by the Company's officers, directors, or employees in connection with sales or other dispositions of portfolio securities or property held by the Company. Specifically, the Company will not knowingly buy or sell any Coastal Savings Bank security, or any other security or property, from or to any director, officer or employee of the Company, or any entity or person affiliated, as defined in Section 2(a)(3) of the Investment Company Act, with the Company or a Company director, officer or employee, except that the Company may make a pro rata distribution to all stockholders of the Company.

7. Following the filing of the Certificate of Dissolution with the Secretary of State of the State of Delaware, the Company will hold itself out as a company in the process of liquidation, rather than as an investment company. While the Company will comply with applicable reporting and disclosure requirements under the Securities Exchange Act of 1934, as amended, until such reporting and disclosure obligations cease to be required, the Company will not (and will not permit its directors, officers, or employees to) place advertisements in the media promoting investment in the Company on the basis of the composition of or the returns earned on its portfolio.

If you have any questions or comments regarding the foregoing, please do not hesitate to contact the undersigned.

Very truly yours,



Howard I. Flack

cc: Charles B. McCarty
Securities and Exchange Commission

James H. Whittaker
First Coastal Corporation

PLAN OF DISSOLUTION AND LIQUIDATION

OF

FIRST COASTAL CORPORATION

This **PLAN OF DISSOLUTION AND LIQUIDATION** (the "Plan") is for the purpose of effecting (i) the complete voluntary dissolution of First Coastal Corporation, a Delaware corporation (the "Corporation"), in accordance with the applicable provisions of the Delaware General Corporation Law, as amended (the "DGCL") and (ii) the liquidation of the Corporation's assets pursuant to Sections 332 and 337 of the Internal Revenue Code of 1986, as amended (the "Code"), in substantially the following manner:

1. Authorization and Approval of the Plan. This Plan shall be submitted to the stockholders (the "Stockholders") of the Corporation, in accordance with the requirements of Section 275 of the DGCL, for authorization and approval at an annual meeting (the "Annual Meeting") of the Stockholders. This Plan shall be considered authorized and approved by the Corporation and shall become effective when the holders of a majority of the outstanding shares of common stock, par value \$1.00 per share (the "Common Stock"), of the Corporation authorize and approve the dissolution and liquidation of the Corporation in accordance with the Plan and the requirements of Section 275(b) of the DGCL; provided, however, as set forth in the proxy materials prepared and distributed to the Stockholders in connection with the Annual Meeting, the Plan shall not become effective unless and until the holders of a majority of the outstanding shares of Common Stock of the Corporation shall have approved the Settlement Agreement, dated as of April 26, 1994, as amended June __, 1994, by and among the Federal Deposit Insurance Corporation ("FDIC"), Coastal Savings Bank ("CSB"), Coastal Bancorp and the Corporation (the "Settlement Agreement").

2. Filings. After the Stockholders have authorized and approved this Plan, the officers and directors of the Corporation are authorized to take all steps necessary or appropriate to (i) dissolve the Corporation in accordance with the applicable provisions of the DGCL, including, but not limited to, the execution and filing of a Certificate of Dissolution with the Secretary of State of the State of Delaware, (ii) wind up the Corporation's affairs and (iii) liquidate the Corporation's assets in accordance with the applicable provisions of the

Code, including, but not limited to, the execution and filing of any tax returns, certificates, documents and information returns required to be filed with the Internal Revenue Service, the Delaware Department of Revenue, and any other appropriate authority due to the dissolution of the Corporation and the liquidation of its assets.

3. Effective Date. The date on which the Corporation files a Certificate of Dissolution with the Delaware Secretary of State shall be the Effective Date.

4. Payment and Distribution to Claimants. Commencing on the Effective Date, the officers and directors of the Corporation, in the discretion of the board of directors of the Corporation then in office (the "Board"), shall (i) pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured contractual claims known to the Corporation, (ii) make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the Corporation or that have not arisen but that, based on facts known to the Corporation, are likely to arise or to become known to the Corporation prior to the expiration of the applicable statutes of limitation, (iii) make the FCC Payment (as defined in the Settlement Agreement), if any, to CSB in partial discharge of the Corporation's obligation to the FDIC, as set forth in, and subject to the terms and conditions of, Section 8.1 of the Settlement Agreement and (iv) make the Additional FCC Payment (as defined in the Settlement Agreement), if any, to the FDIC in partial discharge of the Corporation's obligation to the FDIC, as set forth in, and subject to the terms and conditions of, Section 8.2 of the Settlement Agreement. All claims of the Corporation shall be paid in full and any such provision for payment made shall be made in full if there are sufficient funds pursuant to the requirements of Sections 4(i) and (ii) of this Plan. If there are insufficient funds, such claims and obligations of the Corporation shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor.

5. Distribution to Stockholders. Upon the satisfactory completion of the requirements of Sections 4(i) and (ii) of this Plan, the officers and directors of the Corporation shall distribute in one or a series of distributions, at any time or from time to time, and in any manner that the Board, in its discretion, may determine, up to 100,000 shares of common stock, par value \$1.00 per share, of CSB, or the proceeds received by the Corporation from the sale of such shares, to the Stockholders in exchange for and in complete cancellation of all of the issued and outstanding Common Stock of the Corporation and on a pro

rata basis in accordance with the respective interests of the Stockholders in the Corporation. The respective interests of the Stockholders shall be fixed on the basis of the ownership of their outstanding shares of Common Stock of the Corporation on a record date to be determined by the Board. Cash shall be paid in lieu of the issuance of fractional shares.

6. Cessation of Business. Promptly after the Effective Date, the Corporation shall withdraw from all jurisdictions in which the Corporation is qualified to do business and shall not engage in any business activities, other than to wind up the Corporation's business and affairs under the applicable provisions of the DGCL and in accordance with this Plan. The Board and, at the pleasure of the Board, the officers, shall continue in office for that purpose.

7. Authority of Officers and Directors. The officers and directors of the Corporation shall have the authority to carry out and implement the provisions of this Plan, including, but not limited to, the authority to:

(i) sell, exchange, lease or otherwise dispose of any assets, other than cash, of the Corporation to any person or persons to the extent such transaction can be accomplished for consideration and upon terms and conditions deemed by the Board to be in the best interests of the Corporation and the Stockholders;

(ii) do, on behalf of the Corporation, all acts required to be done by the Corporation under this Plan or the applicable provisions of the DGCL and the Code;

(iii) provide for one or more liquidating trustees or receivers for the benefit of the Corporation's creditors and stockholders, including but not limited to trustees under a liquidating trust agreement and transferring to them (A) any assets the retention of which may be advisable to meet claims or expenses, and (B) any assets held on behalf of Stockholders who cannot be located; and

(iv) adopt all resolutions, execute all documents, file all papers and take all other actions deemed necessary or appropriate to effect the dissolution of the Corporation and the complete liquidation of its business, assets and affairs; it being understood that nothing contained in this Section 7 shall be construed to permit the officers or directors of the Corporation to take any action which is inconsistent with the requirements of the DGCL or with Sections 332 or 337 of the Code.

8. Authority of the Board. Pursuant to the authority granted to the Board by Section 275(e) of the DGCL, notwithstanding the authorization or consent of the Stockholders to the Plan (or the authorization and approval of the Plan by Stockholders), the Board may abandon this Plan and the proposed dissolution of the Corporation at any time prior to the Effective Date without further action by the Stockholders.

9. Completion of Dissolution and Liquidation. It is intended that the implementation of this Plan be completed within three (3) years of the Effective Date.