

FEDERAL RESERVE SYSTEM

Dime Bancorp, Inc.
New York, New York

Order Approving Formation of a Bank Holding Company

Dime Bancorp, Inc. (“Dime”), a savings and loan holding company within the meaning of the Home Owners’ Loan Act (12 U.S.C. § 1461 *et seq.*),¹ has requested the Board’s approval under section 3(a)(1) of the Bank Holding Company Act (“BHC Act”) (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring all the voting shares of Hudson United Bancorp, Mahwah, New Jersey (“Hudson”), and thereby acquire its subsidiary, Hudson United Bank, Mahwah, New Jersey (“Hudson Bank”).²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (64 Federal Register 70,258 (1999)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Dime Savings is the 10th largest depository institution in New York, controlling total deposits of \$10.4 billion, representing approximately 2.5 percent

¹ Dime controls The Dime Savings Bank of New York, FSB, New York, New York (“Dime Savings”).

² Dime proposes to merge Dime Savings with and into Hudson Bank simultaneously with Dime’s merger with Hudson, which would be renamed “DimeBank.” Dime received approval for the proposed merger from the Federal Deposit Insurance Corporation (“FDIC”) under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)) (“Bank Merger Act”) on April 5, 2000.

of total deposits in insured depository institutions in the state (“state deposits”).³ In New Jersey, Dime Savings is the 14th largest depository institution, controlling deposits of \$2.3 billion, representing approximately 1.6 percent of state deposits. Hudson operates in New Jersey, New York, Connecticut, and Pennsylvania. Hudson Bank is the 12th largest depository institution in New Jersey, controlling total deposits of \$2.4 billion, representing approximately 1.7 percent of state deposits. Hudson Bank also is the 46th largest depository institution in New York, controlling deposits of \$968 million, representing less than 1 percent of state deposits. After consummation of the proposal, DimeBank would be the 10th largest depository institution in New York, controlling deposits of approximately \$11.4 billion, representing approximately 2.7 percent of state deposits. DimeBank also would be the eighth largest institution in New Jersey, controlling deposits of \$4.7 billion, representing approximately 3.3 percent of state deposits.

Competitive Considerations

The BHC Act prohibits the Board from approving an application under section 3 of the BHC Act if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking. The BHC Act also prohibits the Board from approving a proposed combination that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effects of the proposal in meeting the convenience and needs of the community to be served.⁴

³ Deposit and ranking data are as of June 30, 1999. In this context, depository institutions include commercial banks, savings banks, and savings associations.

⁴ 12 U.S.C. § 1842(c).

Dime and Hudson compete directly in the New York/New Jersey Metropolitan banking market (“New York banking market”)⁵ and in the Philadelphia banking market. On consummation of the proposal, Dime would become the seventh largest depository institution in the New York banking market, controlling deposits of \$17.1 billion, representing approximately 4 percent of total deposits in depository institutions in the New York banking market (“market deposits”).⁶ Because Dime controls a savings association that would become a bank on consummation of this transaction, the Herfindahl-Hirschman Index (“HHI”) would decrease by 12 points to 774. Numerous competitors would remain in the market.⁷ In the Philadelphia banking market Dime would become the sixth

⁵ The New York banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren, and a portion of Mercer Counties in New Jersey; Pike County in Pennsylvania; and portions of Fairfield and Litchfield Counties in Connecticut.

⁶ Market share data are as of March 31, 2000 and are based on calculations in which the deposits of thrift institutions, other than Dime Savings, are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See WM Bancorp, 76 Federal Reserve Bulletin 788 (1990); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Because the Board has analyzed the competitive factors in this case as if Dime Savings and Hudson Bank were a combined entity, the deposits of Dime Savings are included at 100 percent in the calculation of pro forma market share. See Norwest Corporation, 78 Federal Reserve Bulletin 452 (1992); First Banks, Inc., 76 Federal Reserve Bulletin 669 (1990).

⁷ Under the revised Department of Justice Merger Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger HHI is less than 1000 points is considered to be unconcentrated. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by

largest depository institution in the market, controlling deposits of \$2.1 billion, representing approximately 3.2 percent of market deposits. The HHI in the Philadelphia banking market would decrease by one point to 1542, and numerous competitors would remain in the market.

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in the New York or Philadelphia banking markets or any other relevant banking market.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effect of the proposal on the convenience and needs of the community to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act (“CRA”).⁸ The Board has carefully considered the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including comments submitted by two community groups in New York and New Jersey, and one comment from two elected Freeholders of Hudson County, New Jersey (“Protestants”). Protestants expressed concern, based primarily on their analyses of data filed under the Home Mortgage Disclosure Act (“HMDA”),⁹ that Hudson Bank’s record of home mortgage and home improvement lending indicates disparities in Hudson Bank’s treatment of minorities. One Protestant also argued

more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

⁸ 12 U.S.C. § 2901 et seq.

⁹ 12 U.S.C. § 2801 et seq.

that the HMDA data for Dime Savings and its subsidiary mortgage company, North American Mortgage Company (“NAM”), indicate disparate treatment in NAM’s lending to minorities.

A. CRA Performance Examinations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations of the CRA performance records of the relevant institutions conducted by the appropriate federal supervisory agency.¹⁰ Dime Savings received an overall rating of “outstanding” from its primary federal supervisor, the Office of Thrift Supervision (“OTS”), at its most recent evaluation for CRA performance, as of November 1999. Hudson Bank received an overall rating of “satisfactory” from its primary federal supervisor, the FDIC, at its most recent evaluation for CRA performance, as of February 1999.

B. Dime Savings’ CRA Performance Record

In the most recent CRA performance examination (the “1999 examination”) of Dime Savings, examiners found that Dime Savings performed at a high level in meeting the credit needs of its assessment area, including substantial growth in lending in low- and -moderate income (“LMI”) areas and to LMI individuals. In particular, Dime Savings had increased the number and volume of its consumer loans in LMI areas since its previous performance examination, to a total of 10,209 loans in the amount of \$142.9 million in LMI areas in its assessment area. Although small business lending did not comprise a large portion of Dime Savings’ portfolio, more than 80 percent of the loans were in amounts of

¹⁰ The Interagency Questions and Answers Regarding Community Reinvestment provide that an institution’s most recent CRA performance evaluation is a particularly important consideration in the application process, because it represents a detailed on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor. 64 Federal Register 23,618 and 23,641 (1999) (“Interagency Questions and Answers”).

less than \$100,000, which the examiners concluded had a positive impact on serving the credit needs of the community. Overall, the geographic distribution of Dime Savings' lending, including housing, consumer, and small business loans, was found to reflect a good penetration throughout the assessment area, including LMI areas. Dime Savings also offered a number of affordable loan programs for LMI borrowers, that feature lower interest rates, reduced closing costs, and more lenient debt-to-income ratios.

Dime Savings also is active in community development lending. Between the 1999 examination and the prior CRA performance examination, Dime Savings made almost \$500 million in community development loans that were secured by more than 11,000 housing units that were affordable to LMI residents of the assessment area. Examiners in particular noted Dime Savings' use of multifamily housing lending, totaling \$513.7 million in 1998, to meet the credit needs of LMI areas. Forty-four percent of the properties for which Dime Savings made multifamily loans in 1998 were in LMI areas.

Dime Savings was rated "outstanding" for its community development investment and grant activity, based on the complexity of its qualified community development investments, and excellent levels of activity and responsiveness. In the period between the 1999 examination and its prior CRA performance examination, Dime Savings had a total of \$41.2 million of qualified investments, including \$14.7 million in low-income housing tax credits and \$21.4 million invested with the Community Preservation Corporation, which finances the upgrading and construction of LMI housing in the New York City area. Dime also made \$1.6 million in grants and donations during this period to organizations supporting community development projects and programs, including affordable housing development and rehabilitation, homeownership services, economic development, youth centers, and homeless services.

Examiners found Dime Savings' community development services to include Community Partnership Accounts ("CPAs"), in which deposits by corporations earned below-market interest rates. The difference between the market rate and the interest paid creates funds that are used by Dime Savings to provide closing cost assistance to LMI borrowers and other community development projects. At the time of the examination, there were more than 30,000 CPAs, with outstanding balances totaling \$23.4 million. Examiners also commended Dime Savings' efforts to ascertain the credit needs of its community through its outreach efforts.

Examiners noted with approval Dime Savings' use of a wide range of delivery systems for its products and services, its accessibility to all segments of the community, and its leadership in providing community development services. Examiners found that the bank's services were available in all portions of its assessment area and noted that 16 percent of Dime Savings' 127 branches were in LMI areas, as were 16 percent of its automatic teller machines ("ATMs"). Examiners found that Dime Savings had begun to use automatic loan machines ("ALMs"), installing them in 17 of its branches.¹¹ Dime Savings has also opened several 24-hour automated banking centers, which use ATMs and telephone connections to Dime Savings' call center to provide customers with 24-hour services, including account opening and loan applications. Dime Savings provided bilingual and multilingual publications and forms, and had bilingual and multilingual customer service staff in almost all its branches and in its telephone banking call center.

¹¹ ALMs allow a customer to apply for a credit line or personal loan of up to \$7500 in minutes.

Finally, examiners identified no substantive violations of antidiscrimination laws and regulations and found that Dime Savings had implemented extensive fair lending policies, procedures, training programs, and internal assessment efforts.

C. Hudson Bank's CRA Performance Record

In the most recent CRA performance examination of Hudson Bank, examiners found that the bank's lending performance represented good responsiveness to the credit needs of individuals and businesses in its assessment area.¹² Because 76 percent of the loans made by Hudson Bank during the period covered by the examination were consumer loans, examiners concluded that the best way to evaluate the bank's compliance with the CRA was through an analysis of its consumer lending. Using that data, as well as HMDA and other loan data, examiners found that Hudson Bank made a high percentage of its loans in its assessment area, and that its loan distribution by borrower income was excellent. Hudson Bank's distribution of consumer loans in its assessment area exceeded the distribution of LMI households in the area; for example, in 1998 Hudson Bank made 41 percent of its consumer loans to low-income households, while only 25 percent of area households were low-income. Examiners found that Hudson

¹² The examination, dated February 17, 1999, did not include a review of the CRA performance of Hudson's other subsidiary banks, Bank of the Hudson, Poughkeepsie, New York, and Lafayette American Bank, Bridgeport, Connecticut, which have since been merged into Hudson Bank. Bank of the Hudson received a rating of "outstanding" from the OTS at its last CRA performance examination, dated February 17, 1998. The examiners noted Bank of the Hudson's special programs for LMI borrowers and the introductory loans for the purchase of mobile homes. Lafayette American Bank received a rating of "satisfactory" from the FDIC at its last CRA performance examination, dated March 23, 1998. Examiners considered the distribution of loans to borrowers at various income levels to be reasonable and noted a positive trend in the percentage of HMDA-reportable loans in LMI areas and to LMI borrowers.

Bank's distribution of small business loans reflected a willingness to make small commercial loans and to address the credit needs of small businesses, and that the bank had an adequate level of community development loans.

The CRA performance exam found Hudson Bank to have an excellent level of qualified investments and excellent responsiveness to credit and community development needs. Examiners particularly noted that Hudson Bank had increased its qualified investments from \$200,000 at the time of the prior CRA examination to over \$7 million. Hudson Bank purchased four mortgage-backed securities that are backed by mortgages to LMI individuals in the bank's assessment area.

Examiners found that Hudson Bank provided delivery services that were accessible to geographies and individuals of different income levels, and that it had a relatively high level of community development services. The distribution of Hudson Bank branches by census tract income level was found to be very reasonable, and examiners noted that Hudson Bank also operated a 24-hour telephone banking system. Hudson Bank's community development services included providing technical services to educational organizations, affordable housing groups, and a local credit union. Hudson Bank also assisted affordable housing organizations in procuring project loans from the Federal Home Loan Bank and at the time of the examination was setting up a consumer credit counseling service in Newark, New Jersey.

Examiners identified no violations by Hudson Bank of the substantive provisions of the antidiscrimination laws or regulations and found that its record of complying with those laws was satisfactory.¹³

¹³ Two of the Protestants also alleged that Hudson Bank has failed to fulfill lending and other commitments it made in an agreement with one of the Protestants and have criticized a publicly announced plan by Dime to address

D. Lending Records

The Board has also carefully considered the lending records of Dime Savings¹⁴ and Hudson Bank in light of comments on the 1998 HMDA data of the organizations' subsidiaries.¹⁵ The 1998 data indicate that Dime Savings' denial disparity ratio¹⁶ for African-Americans decreased since its last examination, and that the denial disparity ratio was more favorable than the ratio reported by lenders in the aggregate ("the aggregate") in all of Dime Savings' assessment areas.¹⁷ Dime Savings' denial disparity ratio for Hispanics was more favorable by half than

CRA-related issues after the merger. The Board notes that the CRA requires that, in considering an acquisition proposal, the Board carefully review the actual record of performance of the relevant depository institutions in helping to meet the credit needs of their communities. Neither the CRA nor the CRA regulations of the federal supervisory agencies, however, require depository institutions to enter into agreements with any organization. The Board, therefore, has viewed such agreements and their enforceability as private contractual matters between the parties and has focused on the existing record of performance by the applicant and the programs that the applicant has in place to serve the credit needs of its communities. Any future activities of DimeBank would be reviewed by the appropriate federal supervisors in future performance examinations.

¹⁴ The data include data for Dime Savings' subsidiaries, Dime Mortgage Inc. and North American Mortgage Company.

¹⁵ All three Protestants were critical of the lending record of Hudson's subsidiary banks (now merged into Hudson Bank) as reflected in their 1998 HMDA data. Protestants in particular criticized Hudson's banks for making too few HMDA-related loans to minority applicants, and for a large disparity between the denial rates for white and minority loan applicants. One Protestant also criticized Lafayette American Bank for having attracted too few minority loan applicants, and criticized Dime Savings and NAM for making too few HMDA-related loans to minority applicants.

¹⁶ The denial disparity ratio compares the denial rate for minority loan applicants with that for white applicants.

the aggregate in its New Jersey assessment area, and was similar to the rate for the aggregate in its New York City and New York State assessment areas. Dime Savings' substantial multifamily lending is also reflected in the 1998 data, which show that Dime Savings made 217 multifamily loans, 94 of which (43 percent) were for properties in LMI areas that were all in its New York City assessment area.

The Board has examined the preliminary 1999 HMDA data for Hudson,¹⁸ which show that in its New Jersey assessment areas, the number and percentage of Hudson's loan originations to African-Americans, Hispanics, and LMI individuals, and in predominately minority and LMI areas, all increased significantly from 1997 to 1999. Hudson's denial disparity ratio for African-Americans and Hispanics in New Jersey and New York also decreased during that time. In addition, Hudson's percentage of originations in LMI areas in New Jersey, and to LMI individuals in New Jersey, also increased in 1999. For example, in 1999, 23.6 percent of Hudson's loans in the Newark MSA were in LMI areas, and 38.4 percent of Hudson's loans in New Jersey were to LMI individuals.

In other respects, however, the HMDA data reflect disparities in the rates of loan applications, originations, and denials by racial group and income level.¹⁹ The Board is concerned when an institution's record indicates any such

¹⁷ The aggregate represents the cumulative lending for all institutions that have reported HMDA data in a given market. Dime Savings' assessment areas are New York State, New Jersey, New York City MSA, and Nassau-Suffolk (NY) MSA.

¹⁸ The 1999 HMDA data discussed here for Hudson are preliminary, and may differ from the final data, which are typically available in June of each year.

¹⁹ For instance, Dime Savings' percentage of loan originations in predominately minority and LMI tracts lagged the aggregate in all its assessment areas by almost 50 percent, and Hudson's percentage of loan originations to

disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that assure not only safe and sound banking, but also equal access to credit by creditworthy applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community and have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has not adequately assisted in meeting its community's credit needs or has engaged in illegal lending discrimination.²⁰

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including periodic and examination reports that provide an on-site evaluation of the compliance by the subsidiary banks of Dime and Hudson with fair lending laws and the overall lending and community development activities of the banks. In particular, the Board notes that examiners found no evidence of prohibited discriminatory practices or of substantive violations of the fair lending laws at the most recent examinations of the subsidiary depository institutions of Dime and Hudson.²¹ The

African-Americans lagged the aggregate in all but one of its assessment areas in New Jersey and New York State. In Connecticut, Hudson received too few applications in 1998 from African-Americans, Hispanics, and applicants in predominately minority tracts to be statistically relevant.

²⁰ The data, for example, do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. Information about credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

²¹ One Protestant questioned Hudson's practice of referring certain loan applicants to third-party lenders and suggested, without providing evidence, that minority applicants may be referred disproportionately to such lenders. Hudson has indicated that its practice is to advise loan applicants who do not qualify for its residential mortgage products of the availability of programs at other lenders. If

Board also has taken into account factors such as Hudson's focus on consumer lending, which is not reported under HMDA, in considering whether Dime and Hudson are meeting the credit needs of their communities.

E. Branch Closings

One Protestant expressed concern that consummation of the proposal would result in branch closings. Dime has indicated that it is considering the potential consolidation of several pairs of Dime Savings and Hudson Bank branches after consummation of the proposed transaction. Dime has preliminarily identified seven pairs of Dime Savings and Hudson Bank branches in which the banks in each pair are within approximately one-half mile of each other for possible consolidation, although Dime has not made any final consolidation determinations.

The Board has carefully considered all the facts of record concerning branch closings, including the preliminary branch consolidation information submitted by Dime and Dime's record in opening and closing branches. The Board also has reviewed the branch closing policies of Dime Savings and Hudson Bank. The policies are consistent with federal law, which requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.²² Any branch closings resulting from

the applicant consents, his or her application is then referred to one of two third-party lenders for their consideration. Such referral programs are permissible if all relevant fair lending laws are adhered to and, as noted, the most recent examinations found no evidence of illegal discrimination or credit practices at Hudson's subsidiary depository institutions.

²² Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999)), requires that a bank provide the public with at least 30 days notice and the appropriate federal supervisory agency with at least 90 days notice before the date of the proposed branch closing. The bank also is required to

the proposal would be considered by the appropriate federal supervisor at the next CRA examination of the relevant subsidiary depository institution.

F. Conclusion on Convenience and Needs

The Board has carefully considered all facts of record, including the public comments received, responses to the comments, and reports of examinations of the CRA performance of the institutions involved, in reviewing the proposal's effect on the convenience and needs of the communities to be served by the combined organization. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that convenience and needs considerations, including the CRA performance records of the subsidiary depository institutions of Dime and Hudson, are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

The BHC Act also requires the Board, in acting on an application, to consider the financial and managerial resources and future prospects of the companies and banks involved in a proposal, and certain other supervisory factors. The Board has carefully considered the financial and managerial resources and future prospects of Dime and Hudson and their respective subsidiary depository institutions, and other supervisory factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations. In evaluating the financial factors in expansion proposals by bank holding companies, the Board consistently has considered capital adequacy to be an especially important factor.²³

provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings. The law does not authorize federal regulators to prevent the closing of any branch.

²³ See, e.g., Banc One Corporation, 84 Federal Reserve Bulletin 961 (1998); see also, Norwest Corporation, 84 Federal Reserve Bulletin 1088 (1998).

In this case, Dime will be adequately capitalized at consummation of this proposal and has committed to the Board that it will meet the well-capitalized standards of the Board's Capital Adequacy Guidelines no later than June 30, 2000.

Based on these and other facts of record, including Dime's commitment to increase its capital, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Dime, Hudson, and their respective subsidiaries are consistent with approval of the proposal, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

Conclusion

Based on the foregoing, the Board has determined that the application should be, and hereby is, approved.²⁴ The Board's approval of the proposal is specifically conditioned on compliance by Dime with all the commitments made in

²⁴ The Protestants requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities.

Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). The Board has considered carefully the Protestants' requests in light of all the facts of record. In the Board's view, Protestants have had ample opportunity to submit their views, and did submit written comments that have been considered carefully by the Board in acting on the proposal. The Protestants' requests fail to demonstrate why their written comments do not present their views adequately and fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted

connection with the proposal. These commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,²⁵ effective April 12, 2000.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

²⁵ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley and Gramlich. Absent and not voting: Governor Meyer.