

FEDERAL RESERVE SYSTEM

North Fork Bancorporation, Inc.
Melville, New York

Order Approving the Acquisition of a Savings Association

North Fork Bancorporation, Inc. (“North Fork”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act (12 U.S.C. §§ 1843(c)(8) and (j)) and section 225.24 of the Board’s Regulation Y (12 C.F.R. 225.24) to acquire at least 50.1 percent of the voting shares of and to exercise control over Dime Bancorp, Inc. (“Dime”), and thereby acquire Dime’s wholly owned subsidiary, The Dime Savings Bank of New York, FSB (“Dime Savings”), both of New York, New York.¹ North Fork also has requested the Board’s approval to acquire all Dime’s and Dime Savings’ nonbanking subsidiaries.²

¹ North Fork intends to merge its wholly owned subsidiary bank, North Fork Bank, Mattituck, New York, with Dime Savings, and North Fork Bank would be the surviving institution. The merger would be subject to approval by 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”) and by the New York State Banking Department (“NYSBD”).

² Dime has filed comments with the Board objecting to this proposal. Among other contentions, Dime asserts that North Fork’s previous solicitation of proxies from Dime’s stockholders in opposition to a proposed merger of Dime and Hudson United Bancorp and its concurrent tender offer for a majority of Dime’s shares constituted an acquisition of control of Dime by North Fork without prior Board approval in violation of section 4 of the BHC Act. Based on a review of the facts and circumstances, including the fact that the proxies solicited by North Fork were of limited duration and scope and that North Fork owned a small percentage of Dime’s shares at the time, the Board has determined that North Fork’s participation

In addition, FleetBoston Financial Corporation, Boston, Massachusetts (“Fleet”) has entered into an agreement with North Fork to purchase up to 9 percent of the voting shares of North Fork in the form of convertible preferred stock and rights to acquire North Fork common stock, if certain conditions related to the North Fork/Dime proposal are met. The proceeds of the sale of stock and rights to Fleet would be used to fund the cash portion of North Fork’s acquisition of Dime. The Fleet proposal is discussed in a separate order issued today.³

Notice of the North Fork proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 17,657 (2000)), and the time for filing comments has expired. The Board has considered the proposal and all comments received in light of the factors set forth in section 4 of the BHC Act. Dime has submitted extensive comments and information regarding the proposal. In addition, the Board received comments from several organizations, including Inner City Press/Community on the Move (“ICP”), the Association for Neighborhood & Housing Development Inc. (“ANHD”), and the Northwest Bronx Community and Clergy Coalition (“NWBCCC”).

North Fork, with total consolidated assets of \$14.7 billion, operates depository institutions in New York and Connecticut. North Fork is the 12th largest depository organization in New York, controlling deposits of \$9.1 billion,

in the proxy solicitation was not prohibited by the BHC Act. See 12 C.F.R. 225.2(c)(1)(iii).

Dime also expresses concerns that North Fork might commence another proxy solicitation to elect five individuals selected by North Fork to Dime’s board of directors, and contends that any such proxy solicitation would require prior Board approval. Such approval is included in this Board action.

³ See FleetBoston Financial Corporation, 86 Federal Reserve Bulletin ____ (2000) (Order dated September 27, 2000) (“Fleet Order”).

representing 2.2 percent of total deposits in depository institutions in the state (“state deposits”).⁴ North Fork also is the 24th largest depository organization in Connecticut, controlling deposits of \$363.3 million, representing less than 1 percent of state deposits. Dime, with total consolidated assets of \$25.3 billion, is the tenth largest depository organization in New York, controlling total deposits of \$11.5 billion, representing approximately 2.8 percent of state deposits. Dime also is the 14th largest depository organization in New Jersey, controlling deposits of \$2.3 billion, representing approximately 1.6 percent of state deposits. On consummation of the proposal, North Fork would become the fifth largest depository organization in New York, controlling deposits of approximately \$20.7 billion, representing approximately 4.9 percent of state deposits.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.⁵ The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act. Dime engages in mortgage lending and related activities, which the Board also has determined to be closely related to banking. North Fork has committed to conform all the activities of Dime Savings to those permissible under section 4(c)(8) of the BHC Act and Regulation Y.

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the acquisition of Dime by North Fork “can reasonably be expected to produce benefits to the public . . . that outweigh possible

⁴ Asset data are as of June 30, 2000, and state deposit and ranking data are as of June 30, 1999. In this context, depository institutions include commercial banks, savings banks, and savings associations.

⁵ 12 C.F.R. 225.28(b)(4).

adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”⁶ As part of its evaluation of a proposal under these public interest factors, the Board reviews the financial and managerial resources of the companies involved as well as the effect of the proposal on competition in the relevant markets.

The Board has previously stated that in evaluating acquisition proposals, the Board must apply the criteria in the BHC Act to proposals that are opposed by the management of the target institution in the same manner as proposals that are supported by the target’s management. The Board has long held that, where the statutory criteria are met, the Board would be acting outside its discretion under the BHC Act to withhold approval based upon other factors, such as whether the proposal is acceptable to the management of the organization to be acquired.⁷ The Board also is mindful of the potential adverse effects that contested acquisitions may have on the financial and managerial resources of the company to be acquired and the acquiring organization. In addition, the Board takes into account the potential for adverse effects on safety and soundness if a contested proposal is prolonged.

As noted above, the Board has received comments from Dime objecting to the proposal. Dime has provided comments and information on, among other things, North Fork’s relationship with Fleet; the intended sale of 17 Dime Savings branches by North Fork to Fleet; the competitive impact of the proposal, including the impact of Fleet’s proposed investment in North Fork; the accuracy of the financial projections provided by North Fork; the managerial

⁶ 12 U.S.C. § 1843(j)(2)(A).

⁷ See The Bank of New York Company, Inc., 74 Federal Reserve Bulletin 257, 259 (1988) (“BONY Order”).

resources of North Fork; the ability of North Fork to consummate the proposed merger in light of Dime's corporate defenses and opposition; and the effect of the proposed acquisition on the convenience and needs of the communities served by Dime Savings. In addition to Dime's comments, the Board also received comments from the three organizations previously noted regarding the impact of the proposal on the convenience and needs of the communities served by Dime and North Fork, and on the performance records of North Fork Bank and Dime Savings under the Community Reinvestment Act ("CRA") (12 U.S.C. § 2901 et seq.), and certain other matters.

The Board has considered these comments, and the responses submitted by North Fork carefully, and has reviewed the notice in light of all the information presented and otherwise available to the Board. Based on this review and subject to North Fork's commitments and the conditions set forth below, the Board has concluded that North Fork's proposal satisfies the criteria in the BHC Act. Accordingly, the Board has determined to approve the notice subject to compliance with the commitments and conditions referenced or described in this order. The Board's review as expressed in this order is limited to applying the statutory factors set out in the BHC Act to the proposal as currently constituted and presented to the Board and the Board expresses no view on any matter regarding this transaction other than those statutory factors.

Financial and Managerial Considerations

In connection with its review of the public interest factors under section 4 of the BHC Act, the Board has carefully reviewed the financial and managerial resources of North Fork and Dime and their respective subsidiaries and the effect the transaction would have on such resources in light of all the facts of

record.⁸ The Board has considered, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations involved, and the Federal Reserve System's confidential supervisory information. The Board also has considered publicly available financial and other information on the organizations and their subsidiaries, and all the information submitted on the financial and managerial aspects of the proposal by North Fork and the commenters, including Dime. As part of this review, the Board has considered concerns expressed by commenters about the financial and managerial resources of North Fork. Dime, in particular, has expressed concerns about the integration of the organizations' operations, North Fork's estimates of the cost savings that might result from the proposed merger, North Fork's managerial depth and experience, and the credibility of North Fork's senior management.⁹

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important.¹⁰ The Board expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum

⁸ See 12 C.F.R. 225.26.

⁹ Dime alleges that integrating the organizations would be especially difficult for North Fork. Dime also alleges that North Fork's cost savings estimates are unrealistically high, thereby making its financial projections for the combined North Fork/Dime organization overly optimistic. In addition, Dime argues that the information provided by North Fork to the Board and to the public is insufficient to allow adequate analysis of the financial and managerial aspects of the proposal. After receiving North Fork's initial notice, the Board requested additional information on all aspects of the proposal and received substantial information, including confidential and nonconfidential information that has been included in the record of this case.

¹⁰ See, e.g., Banc One Corporation, 84 Federal Reserve Bulletin 961 (1998).

levels specified in the Board's Capital Adequacy Guidelines. Strong capital is particularly important in proposals that involve higher transaction costs or risks, such as proposals that are opposed by the management of the target institution. North Fork proposes to finance a portion of the transaction with \$250 million in capital raised through the purchase of preferred shares by Fleet. North Fork has stated that it will not incur debt in connection with this proposal. North Fork and Dime and each of their subsidiary depository institutions are well capitalized, and North Fork has stated that these companies would continue to be well capitalized on consummation of the proposal. In the Board's view, North Fork's ability to raise capital to finance its proposed acquisition of Dime, through the issuance of preferred shares to Fleet or otherwise, is an essential element of the proposal. The Board's action in this case is conditioned on North Fork's successfully raising \$250 million before consummation of the proposal.¹¹

¹¹ North Fork has requested that the preferred stock and associated rights that it proposes to sell to Fleet be treated as tier 1 capital. The Board has determined that the preferred stock would qualify as tier 2 capital under the Board's risk-based capital guidelines. The preferred stock qualifies for treatment as regulatory capital because it has no maturity date, cannot be redeemed at the option of the holder, and has no other provisions that would require future redemption. The preferred stock does not qualify as tier 1 capital under the Board's guidelines and supervisory guidance for holding companies, however, because the instrument provides for the granting of additional stock purchase rights after a designated period (i.e., three years) if the instrument is not called by the issuer. The granting of additional rights in this circumstance creates incentives for the instrument's early redemption that are economically similar to those that result from an increase in an instrument's dividend rate if it is not redeemed. Instruments that include incentives for early redemption are generally not accorded treatment as tier 1 capital, although they may, as in this case, qualify for treatment as tier 2 capital. 12 C.F.R. 225 App. A (II)(A)(1)(b) and (A)(2)(b); see also Bank Holding Company Supervision Manual § 4060.3.2.1.1.2.

In addition, the Board has given special consideration to the financial projections submitted by North Fork, including, in particular, the levels of capital projected by North Fork on consummation of the acquisition of Dime and on the expected merger of Dime Savings with North Fork Bank and the completion of the branch sales in connection with that merger. These projections indicate that North Fork and its depository institutions expect to maintain capital levels that include a cushion above the minimum levels necessary to meet the regulatory definition of well capitalized. The ability to meet these projections is particularly important in light of the proposed acquisition of a larger organization by a smaller organization, the challenges that arise in connection with integrating the operations of two different types of organizations, and the transactional risks and costs associated with consummation of an acquisition that is opposed by the management of the target organization. Accordingly, the Board conditions its action in this case on North Fork's achieving at least the capital levels indicated in its commitments and its projections for the transaction without completion of the branch sales based on pro forma capital information provided by North Fork, as of June 30, 2000.

The Board also has considered the managerial resources of the entities involved and of the proposed combined organization. Dime argues that a number of matters reflect negatively on the managerial resources of the combined organization. Dime alleges that, because Dime is substantially larger than North Fork, the combination of Dime and North Fork would put severe strain on the management of North Fork, especially if North Fork does not retain the senior management of Dime.¹² Dime also alleges that there are inconsistencies between certain public statements by North Fork's chairman and chief executive officer

¹² In particular, Dime argues that North Fork does not have the managerial expertise or experience to operate a large mortgage company like Dime Savings' subsidiary, the North American Mortgage Company ("NAMCO").

(“CEO”) and documents filed by North Fork with the Securities and Exchange Commission (“SEC”), that reflect poorly on the quality of North Fork’s management.¹³

The Board has carefully reviewed all available information on the management of North Fork, including confidential reports of examination, information submitted by North Fork and the commenters, and other publicly available information. In particular, the Board has reviewed all the information submitted by North Fork regarding its plans for integrating and managing the North Fork and Dime organizations, including confidential information. The Board also has reviewed the public statements of North Fork’s management in light of all the information submitted by North Fork as part of the notice, including North Fork’s relevant SEC filings. North Fork, Dime, and their subsidiary depository institutions currently are well managed, with appropriate risk management processes in place, and both organizations have management resources that have established records of positive earnings and operations. As mentioned above, North Fork and its subsidiary depository institutions currently are well capitalized, with a record of positive earnings.¹⁴ North Fork has

¹³ In addition, Dime alleges that other public remarks critical of Dime’s management by North Fork’s CEO were “intemperate” and justify denial of North Fork’s notice on managerial grounds. Dime and ICP also criticize the credibility of North Fork’s CEO based on his testimony in a 1997 lawsuit.

¹⁴ Dime requests that the Board examine the recent decline in the assets of North Fork’s subsidiary, Superior Savings of New England, National Association, Branford, Connecticut (“Superior Savings”), arguing that this decline reflects poorly on North Fork’s management. The Board has considered the matter, taking into account that Superior Savings’ business plan continues to change significantly, and has concluded that the asset decline does not indicate improper management by North Fork. Moreover, on June 6, 2000, Superior Savings received approval from the Office of the Comptroller of the Currency to convert from a state to a national bank charter.

maintained this record over the last several years while growing substantially through the acquisition of other depository organizations, including several thrift organizations.¹⁵ North Fork's plan for integrating Dime and its subsidiaries into North Fork appears adequate. The Board also has reviewed the evaluations of North Fork's management in examinations that cover an extended period, considered the expertise and experience of North Fork's management, and taken into account the context of the remarks by North Fork's management cited by Dime. Based on these and all the facts of record, the Board concludes that the financial and managerial resources of the organizations involved in the proposal are consistent with approval.

Competitive Considerations

As part of its consideration of the public interest factors under section 4 of the BHC Act, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record.¹⁶ North Fork and Dime compete directly in the Metropolitan New York/New Jersey banking market

¹⁵ See, e.g., North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 226 (2000); North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 230 (2000).

¹⁶ See First Hawaiian, Inc., 79 Federal Reserve Bulletin 966 (1993). Dime argues that North Fork's bid is anticompetitive because it eliminated a competitor by preventing the merger of Dime and Hudson United Bancorp. Dime also contends that the involvement of Fleet and Salomon Smith Barney ("Salomon"), initially retained by North Fork as one of its investment bankers for the proposed transaction, has allowed North Fork to improperly eliminate Fleet and Salomon's affiliate, Citigroup Inc., as potential bidders for Dime. The Board has considered these allegations in light of the Williams Act, which explicitly contemplates that multiple persons may join together to make a tender offer. See 12 U.S.C. § 78n(d)(2). Furthermore, the involvement Fleet and Citigroup in North Fork's bid does not prevent either organization from bidding for Dime. North Fork released Fleet on May 17, 2000, from the restriction in the Fleet-North Fork stock purchase agreement that prevented Fleet from acquiring Dime, and Salomon no longer acts as North Fork's investment banker for the proposal.

(“New York banking market”).¹⁷ On consummation of the proposal, North Fork would become the sixth largest depository organization in the New York banking market, controlling deposits of \$22.9 billion, representing approximately 5.3 percent of market deposits.¹⁸ The Herfindahl-Hirschman Index (“HHI”) would not increase, the market would remain unconcentrated, and numerous competitors would remain in the market.¹⁹ Based on these and all other facts of record, the

¹⁷ 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. In the Fleet Order issued today the Board has affirmed the definition of the New York banking market. See 86 Federal Reserve Bulletin ____, ____ (2000) and the discussion of the New York banking market therein.

¹⁸ Market share data are as of June 30, 1999, and are based on calculations in which the deposits of thrift institutions 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 North Fork Bank and Dime Savings 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).

¹⁹ 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 more than 200 points. The DOJ 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

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 banking market or any other relevant banking market.²⁰

Records of Performance Under the Community Reinvestment Act

In acting on notices to acquire a savings association, the Board reviews the records of performance of the relevant depository institutions under the CRA.²¹ The Board has reviewed the records of performance of North Fork Bank and Dime Savings in light of all the facts of record, including comments received from ICP, ANHD, NWBCCC, and Dime.

ICP and ANHD criticize North Fork Bank's level of lending to minority and low- and moderate-income ("LMI") borrowers, and LMI census tracts and census tracts with predominantly minority populations ("minority tracts"), based primarily on their analyses of data filed under the Home Mortgage Disclosure Act (12 U.S.C. § 2801 *et seq.*) ("HMDA"). They express concern that the contested nature of the proposal could create confusion that might negatively affect the ability of the combined North Fork/Dime organization to meet the needs

nondepository financial institutions. The post-merger HHI in this case would be 782.

²⁰ Dime has raised objections to the individuals proposed by North Fork as potential candidates for election to Dime's board of directors. Dime contends that service on Dime's board by some of the individuals would be in violation of the Depository Institutions Management Interlocks Act (12 U.S.C. § 3201 *et seq.*) ("Interlocks Act") and the Board's Regulation L (12 C.F.R. Part 212). The Board expects all directors or management officials of Dime and North Fork to be in compliance with the Interlocks Act and Regulation L. In light of the uncertainty about when or whether any of these individuals might serve on the Dime board, a determination under Regulation L regarding such service is premature. In addition, the appropriate federal supervisor may grant an exemption for any prohibited interlock.

²¹ See, e.g., Banc One Corporation, 83 Federal Reserve Bulletin 602 (1997).

of its communities. ICP also contends that the number and volume of small business loans made by North Fork Bank in the Bronx are inadequate compared with North Fork Bank's market share of deposits in the Bronx and North Fork Bank's lending record in other parts of its assessment area. NWBCCC alleges that North Fork Bank is not as diligent or responsive to community concerns as it could be in monitoring the physical condition of apartment buildings in the Northwest Bronx on which North Fork Bank holds the mortgages. Dime contends generally that an acquisition by North Fork would negatively affect the CRA performance of Dime Savings, and views the proposal as raising a policy issue of whether a smaller institution with a "satisfactory" rating for CRA performance should be permitted to acquire a larger institution with a CRA rating of "outstanding" without first submitting a plan for the merged institution to achieve the higher rating.

A. CRA Performance Examinations

As provided in the CRA, the Board evaluates an institution's record of performance in light of examinations of the CRA performance records of the institution conducted by the appropriate federal supervisory agency. 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.²²

North Fork Bank received an overall rating of "outstanding" from its primary federal supervisor, the FDIC, at its most recent evaluation for CRA performance, as of September 1999 ("1999 Examination"). As of June 1999, the

²² Interagency Questions and Answers Regarding Community Reinvestment, 64 Federal Register 23,618 and 23,641 (1999) ("Interagency Questions and Answers").

NYSBD rated North Fork Bank's performance "outstanding" in helping to meet the credit needs of its entire community pursuant to New York law ("State Examination").²³ Dime Savings also received an overall rating of "outstanding" from its primary federal supervisor, the Office of Thrift Supervision, at its most recent evaluation for CRA performance, as of November 1999.

B. North Fork Bank's CRA Performance Record

In the 1999 Examination, examiners found that North Fork Bank demonstrated an excellent responsiveness and willingness to meet the credit needs of its community, including its overall level of lending (North Fork Bank's net-loan-to-deposit ratio was 93.4 percent, as of June 30, 1999) and a very strong record of lending in its assessment area. In particular, examiners found that North Fork Bank displayed an excellent, and increasing, level of lending to LMI geographies in its assessment area, and that it had a good record of lending to LMI borrowers. North Fork Bank's penetration levels in moderate-income tracts for 1-4 family loans reported under HMDA significantly exceeded the market's performance in number of loans and dollar amount, and surpassed the composition of the area's housing stock.²⁴ In concluding that North Fork Bank had a satisfactory record of lending to borrowers of different income levels, the 1999 Examination found that the bank's number of loans to LMI borrowers exceeded

²³ North Fork also owns Superior Savings, which received an overall rating of "satisfactory" from its primary federal supervisor, the FDIC, at its most recent evaluation for CRA performance, as of May 1996 (doing business as Branford Savings Bank).

²⁴ For example, although only 9.5 percent of the owner-occupied units in the assessment area were in moderate-income tracts, 28.1 percent of North Fork Bank's 1-4 family HMDA-reportable loans, and 17.8 percent of the dollar amount of those loans, were on properties in moderate-income tracts.

the aggregate, and that the dollar amount of such loans was comparable with the aggregate.²⁵

Examiners separately assessed North Fork Bank's multifamily lending, which accounted for 13 percent of the number and 49 percent of the dollar amount of all lending by North Fork Bank in its assessment area. Although some of this lending was reported under HMDA, much of it was not, in particular Modification, Extension, and Consolidation Agreements ("MECAs").²⁶ From January 1998 through June 1999, North Fork Bank originated almost \$315 million in multifamily residential loan refinances that were not reportable under HMDA. With regard to HMDA-reportable multifamily lending, examiners found that North Fork Bank exceeded the aggregate in 1997 and 1998 in both number and dollar amount of loans, and that the level of lending in 1999, if sustained, would exceed 1998 LMI penetration levels. North Fork Bank's 1998 MECA activity was found to be consistent with housing stock composition and distribution, and year-to-date 1999 data indicated substantial percentage increases in the number and dollar amount of MECAs in LMI tracts. Examiners noted that 45 percent of the number and 50 percent of the dollar amount of North Fork Bank's LMI MECA activity was in Bronx County, which had the highest percentage of LMI tracts in the assessment area, and stated that this activity was indicative of North Fork Bank's

²⁵ The aggregate represents the cumulative lending for all institutions that have reported HMDA data in a particular market. North Fork Bank's assessment area consists of Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester Counties in New York.

²⁶ A MECA is an agreement by a lender with a borrower that modifies the terms of an existing loan by, for example, extending the final repayment date. MECAs do not involve lending additional money and are not reported under HMDA, but are regarded as loans and may be considered in evaluating an institution's CRA performance. See Interagency Questions and Answers, 64 Federal Register at 23,634.

responsiveness to the credit needs of the LMI neighborhoods in its assessment area.²⁷

The State Examination found that North Fork Bank made 3423 small business loans in 1998, totaling \$368.3 million, which represented an increase over the bank's 1997 totals of 2627 loans, totaling \$291.7 million. The geographic distribution of North Fork Bank's small business loans was viewed as excellent, exceeding the aggregate in 1997 and 1998 in terms of the percentage of small business loans and percentage of dollar amount of such loans, extended in LMI areas. North Fork Bank's market share of small business lending was found to be higher in LMI areas than in non-LMI areas. Data for the first six months of 1999 continued to show good performance, with North Fork Bank originating 446 small business loans, totaling \$46.8 million, in LMI areas. This represented 21.7 percent of the bank's small business loans, and 23 percent of the dollar amount of its small business loans.²⁸

²⁷ As mentioned above, NWBCCC's comments concern primarily North Fork Bank's oversight of the physical condition of apartment buildings in the Bronx mortgaged to the bank. NWBCCC indicates that North Fork Bank previously had been responsive to its concerns about particular buildings. NWBCCC has made specific recommendations for ways that North Fork Bank might improve its oversight of all buildings and has requested that the Board require North Fork to meet with NWBCCC to discuss these issues. The Board previously has noted that, although communications by depository institutions with community groups provide a valuable method of assessing and determining how an institution may best address the credit needs of the community, the CRA, the CRA regulations of the federal financial supervisory agencies, or the BHC Act do not require depository institutions to have meetings or enter into agreements with any organization. See Fifth Third Bancorp, 80 Federal Reserve Bulletin 838 (1994).

²⁸ ICP contends that North Fork Bank gathers deposits in less affluent and predominantly minority areas, such as the Bronx, and concentrates its loans and investments in more affluent and nonminority areas, such as Nassau and Suffolk Counties. In ICP's view, North Fork Bank's small business lending in the Bronx

The 1999 Examination found that North Fork Bank had originated numerous community development loans during the examination period totaling \$400 million, or approximately 7 percent of outstanding loans. This lending included \$316 million for multifamily properties in LMI tracts in the bank's assessment area, and more than \$13 million for the construction of affordable housing for LMI senior citizens in eastern Suffolk County. North Fork Bank also provided financial support to a not-for-profit organization supporting the development of affordable housing in troubled neighborhoods in New York City, and renewed a \$1.8 million letter of credit to help fund the rehabilitation of more than 70 housing units in an LMI neighborhood in Harlem.

Examiners also found that North Fork Bank's financial commitment to the community development organizations supporting its assessment area was strong, and that it had demonstrated its awareness of and responsiveness to community development needs by investing more than \$31 million in local and regional organizations. This amount included investments of more than \$17 million in two Fannie Mae mortgage-backed securities involving an affordable housing property in New York County, and a purchase of over \$12 million of the New York City Mortgage Loan Trust, a pool of second-lien mortgages to low-income borrowers. North Fork Bank also made more than \$280,000 in grants to

and similar areas should reflect more closely its level of deposits in those areas. The Board has reviewed North Fork Bank's record of lending to small businesses throughout its assessment area, including minority and LMI census tracts in all portions of its assessment area. Although North Fork Bank's lending to small businesses in specific segments of its assessment area might not closely correspond to the bank's market share of deposits in those segments at any particular time, deposits are used to fund other lending activities. As noted above, the Board also has considered that North Fork Bank provides significant multifamily housing credit and other types of credit, including consumer loans and single family

community development organizations during the examination period, including grants to support affordable housing, social services for residents of LMI areas of the Bronx, and care and services for the developmentally disabled in eastern Long Island.

Examiners also noted that North Fork Bank made its retail banking services available to all segments of its assessment area, including LMI geographies. Twenty percent of the 110 branches and 18 percent of the 113 automated teller machines (“ATMs”) North Fork Bank maintained at the time of the 1999 Examination were in LMI tracts. Examiners considered this distribution to be reasonable, particularly in light of the fact that the counties in which North Fork Bank had the greatest presence also had relatively few LMI tracts. In addition, North Fork Bank offered 24-hour telephone account access and branch opening hours (with extended weekday and weekend hours) that were found to be convenient and comparable with other local financial institutions.²⁹

Finally, examiners found no violations of the substantive provisions of the antidiscrimination laws and regulations.

C. Dime Savings’ CRA Performance Record

The Board recently has reviewed the CRA performance of Dime Savings in the context of Dime’s application to merge with Hudson United

housing loans, throughout North Fork Bank’s assessment area, includes minority and LMI areas.

²⁹ The 1999 Examination found that North Fork Bank provided a range of community development services, including actively participating in several financial literacy programs; providing information and assistance to job seekers, such as help in completing applications and interviewing; participating in homebuying counseling seminars; and working with local groups to share bank staff’s expertise in small business lending with local small businesses.

Bancorp.³⁰ The Board noted that in the most recent CRA performance examination of Dime Savings (the “1999 Dime Examination”), examiners found that Dime Savings performed at a high level in meeting the credit needs of its assessment area, including substantial increases in lending in 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, and Dime Savings’ small business lending was regarded as having had a positive impact on serving the credit needs of the community. 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 featured lower interest rates, reduced closing costs, and more flexible debt-to-income ratios.

Dime Savings was found to be active in community development lending, particularly through its substantial multifamily housing lending. Examiners noted that 44 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 Dime Examination and its previous CRA performance examination, Dime Savings made 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

³⁰ Dime Bancorp, Inc., 86 Federal Reserve Bulletin 413 (2000).

New York City area. Dime made \$1.6 million in grants and donations during this period to organizations supporting community development projects and programs. 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 227 ATMs.

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

D. HMDA Data

The Board has also carefully considered the lending records of North Fork and Dime in light of comments on their 1998 HMDA data.³¹ The Board has recently reviewed North Fork Bank's 1998 HMDA data in the context of North Fork's applications to acquire JSB Financial, Inc. and Reliance Bancorp, Inc.,³² and reviewed Dime Savings' 1998 HMDA data in approving Dime's application to

³¹ ICP was generally critical of North Fork Bank's record of HMDA-related lending to minority and LMI borrowers. ANHD criticized the percentage of single-family mortgage loans that North Fork Bank and Dime Savings make to minorities or in predominantly minority or LMI census tracts. ANHD also was critical of the percentage of such loans that Dime Savings makes to LMI borrowers and of the multifamily HMDA-related lending records of both institutions.

³² North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 226 (2000); North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 230 (2000).

merge with Hudson United Bancorp. In reviewing the 1998 data, the Board found that although North Fork Bank's denial disparity ratios for African Americans and Hispanics were lower than those reported by lenders in the aggregate in parts of North Fork Bank's New York assessment area,³³ including the New York City Metropolitan Statistical Area ("MSA") portion, these ratios were higher than the aggregate in other areas, such as the Nassau-Suffolk MSA, and comparable with the aggregate for the entire assessment area.³⁴ Concerning Dime Savings, the Board found that its denial disparity ratio in 1998 for African Americans was more favorable than the aggregate in all its assessment areas. In addition, 43 percent of Dime's multifamily loans, which constituted a substantial portion of its HMDA-reportable lending, were for properties in minority tracts in its New York assessment area in 1998.

The 1999 data indicate that North Fork Bank outperformed the aggregate in certain areas, such as the percentage of its HMDA-related loans in LMI tracts (19.9 percent for North Fork Bank, compared with 15 percent for the aggregate), although its denial disparity ratios for minorities in its New York assessment area had increased. North Fork Bank continued to engage in substantial multifamily lending, representing 28.5 percent of the dollar volume of

³³ The denial disparity ratio compares the denial rate for minority loan applicants with that for white applicants. North Fork's assessment areas are the New York City MSA and the Nassau-Suffolk MSA; Dime Savings' assessment areas include those MSAs, as well as New York State and New Jersey.

³⁴ The 1998 data also showed that North Fork Bank received a significantly smaller percentage of HMDA-related loan applications from minority and LMI individuals than did lenders in the aggregate, and made a correspondingly smaller percentage of its HMDA-related loans to minority and LMI borrowers. The Board noted, however, that approximately one-half of the dollar volume of North Fork Bank's HMDA-related lending was through multifamily loans, and that 43 percent of these loans were made in minority census tracts.

its HMDA-reportable lending in 1999, and a significant percentage of those loans were made in minority tracts (44.5 percent) and LMI tracts (52.7 percent), which represented increases over 1998 data for minority and LMI tracts. In 1999, Dime Savings' percentage of loan originations in its New York assessment area to African Americans, Hispanics, LMI individuals, and in minority and LMI tracts, were all higher than in 1998.

The data, however, reflect certain other disparities in the rates of loan applications, originations, and denials by racial group and income level.³⁵ The Board is concerned when an institution's record indicates such 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 lending, but also equal access to credit by creditworthy applicants regardless of their race or income level. The Board recognizes that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.³⁶ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for

³⁵ For example, North Fork Bank's percentage of housing-related loans to minorities and LMI individuals lagged the aggregate in its New York assessment area in 1999, and Dime Savings' percentage of loan originations to Hispanics and in minority and LMI tracts lagged the aggregate in all its assessment areas in 1999.

³⁶ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

concluding that an institution has not adequately assisted in meeting its community's credit needs or has engaged in illegal lending discrimination.

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 North Fork and Dime 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 substantive violations of the fair lending laws at the most recent examinations of the subsidiary depository institutions of North Fork or Dime. The Board also has taken into account factors such as North Fork's focus on MECA lending, which is not reported under HMDA, in considering whether North Fork and Dime are meeting the credit needs of their communities.

E. Branch Closings

Dime and ICP each express concern that consummation of the proposal would result in branch closings.³⁷ North Fork indicates that it has made no determination on which, if any, North Fork Bank or Dime Savings branches it might close or consolidate as a result of the proposed transaction. North Fork has, however, preliminarily identified eight North Fork Bank branches that are within approximately one-half mile of Dime Savings branches.³⁸

³⁷ As part of its arrangement with Fleet, North Fork has agreed to sell to Fleet 17 Dime branches with deposits of approximately \$2 billion, if North Fork's bid for Dime is successful.

³⁸ Dime has argued that North Fork's cost savings estimates assume more branch closings than North Fork has indicated may occur as a result of the proposal. Dime alleges that these closings may cause significant customer disruption and employee layoffs. The effect of a proposed transaction on employment in a community is not among the factors included in the BHC Act,

The Board has carefully considered all the facts of record concerning branch closings, including the eight pairs of neighboring branches identified by North Fork, and North Fork's record in opening and closing branches. The Board notes that none of the eight branch pairs are in LMI areas. Furthermore, the 1999 Examination found that although North Fork Bank closed nine branches in 1997-1998, which included two branches in moderate-income census tracts, but none in low-income tracts, it gained 35 branches through a merger and opened three additional branches, including one branch in a low-income tract. The Board also has reviewed the branch closing policies of North Fork Bank and Dime Savings.³⁹ 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.⁴⁰ Any branch closings resulting from the proposal would be considered by the appropriate federal supervisor at the relevant institution's next CRA examination.

and the convenience and needs factor has been consistently interpreted by the federal banking agencies, the courts, and Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. See Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 457 (1996).

³⁹ The Board reviewed Dime Savings' branch closing policy in the context of Dime's application to merge with Hudson United Bancorp. See Dime Bancorp, Inc., 86 Federal Reserve Bulletin 413 (2000).

⁴⁰ 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 a 30 day notice and the appropriate federal supervisory agency with at least a 90 day notice before the date of the proposed branch closing. The bank also is required to 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.

F. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of CRA performance of the institutions involved, other information provided by North Fork and Dime, and all comments received and responses to the comments. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that the CRA performance records of the institutions involved are consistent with approval of the proposal.

Provisions of Delaware Law and Dime's Shareholders' Rights Plan

Dime is a Delaware corporation and Delaware law provides some protection for Delaware corporations that are the object of an unsolicited takeover offer.⁴¹ In addition, Dime's bylaws provide certain rights to shareholders that are intended to ward off bidders that are not approved by Dime's management. If the Dime rights plan is triggered, an acquisition of Dime by a bidder such as North Fork could become substantially more expensive. Dime argues that Delaware corporate law and Dime's shareholders' rights plan (the "Dime rights plan") present insurmountable barriers to North Fork's contested acquisition of Dime.

⁴¹ Under Delaware law (Del. Code Ann. tit. 8, § 203 (1999)), a Delaware corporation may not engage in a "business combination" (including a merger or consolidation) with an "interested stockholder" (in general, the beneficial owner of 15 percent or more of the corporation's voting stock) for a period of three years after that person becomes an interested stockholder. This prohibition does not apply if either (1) before the time a person becomes an interested stockholder, the corporation's board of directors approves either the business combination or the transaction that causes the interested stockholder to become an interested stockholder; (2) following the transaction that causes the interested stockholder to become an interested stockholder, the interested stockholder owns at least 85 percent of the corporation's voting stock (excluding certain shares); or (3) at or after the time a person becomes an interested stockholder, the business combination with the interested stockholder is approved by the corporation's board of directors and by a two-thirds vote of the stockholders other than the interested stockholder.

Dime's board has significant discretion in determining whether the Dime rights plan will become effective in a particular case, and whether it will have its full effect of making an acquisition of Dime prohibitively expensive for a potential acquirer. North Fork has conditioned its exchange offer for Dime on, among other things, the tender of at least a majority of Dime's shares and on North Fork's determination that neither Delaware law nor the Dime rights plan apply to North Fork's acquisition of Dime shares or to the proposed second-step merger of North Fork and Dime. North Fork has stated that it will comply with Delaware law in connection with its acquisition of Dime.

Other Considerations

As a part of its evaluation of the public interest factors, the Board also has carefully reviewed the other public benefits and possible adverse effects of the proposal. The record indicates that consummation of the proposal would result in benefits to consumers and businesses.⁴² The proposal would enable North Fork to provide customers of Dime Savings with access to a broader array of products and services, including commercial bank products, in an expanded service area. Among the North Fork products that would become available to customers of Dime Savings are a range of products specifically intended for small- and medium-size businesses, commercial cash management and deposit products, and trust and asset management services. North Fork customers, in turn, would have access to Dime Savings' residential mortgage products, and would also be able to take advantage of an expanded branch network, particularly in New Jersey, where

⁴² Dime asserts that North Fork has not provided sufficient information in discussing the public benefits of the proposal, and disputes North Fork's description of those public benefits. The Board has, as discussed below and elsewhere in this order, fully evaluated the public benefits of the proposal in light of all the facts of record, and has concluded that they outweigh any possible adverse effects such as decreased competition or undue concentration of resources.

North Fork Bank currently has no branches. Additionally, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies may make potentially profitable investments in nonbanking companies and from permitting banking organizations to allocate their resources in the manner they believe is most efficient when, as in this case, those investments are consistent with the relevant considerations under the BHC Act.⁴³

Dime has argued that the Board should deny North Fork's application to acquire Dime because North Fork has no realistic plan to consummate the acquisition within a short period of time. Dime contends that prolonging the contest is costly to Dime and North Fork and creates a significant diversion of the time and resources of the management of the institutions involved, thereby eroding any public benefits of the proposal.

Dime is particularly concerned that North Fork has publicly announced its intention to pursue the takeover until the next Dime shareholders' meeting, which will not occur for another year. Dime contends that this strategy would increase costs for North Fork and Dime and cause further diversion of resources. Dime also argues that, unlike other contested takeovers approved by the Board, North Fork does not have a short-term plan to address the continued objection of Dime's board.⁴⁴ North Fork responds that if the Board limits the consummation period, Dime's management would be able to delay beyond the Board-imposed limit and North Fork would not have been afforded a fair opportunity to acquire Dime.

⁴³ In evaluating the public benefits and potential adverse effects of the proposal, the Board has taken into account the additional costs to all parties resulting from the contested nature of the proposal.

⁴⁴ See the BONY Order.

The BHC Act does not require that consummation of a transaction occur within a certain period of time. Generally, the Board requires an applicant to consummate an approved transaction within three months from the date of the Board's approval to ensure that there are not substantial changes in an applicant's condition that might require the Board to reconsider its approval. When ownership of an institution is in doubt over a prolonged period of time, the personnel and financial resources of both the offeror and the target are subject to strain. In previous cases, the Board has stated that it was concerned that the extension of the post-approval consummation period over a prolonged period of time in a contested situation might result in adverse effects on the financial and managerial resources of the organizations in a variety of different areas.

In this case, although prolonged delay may have a negative impact on Dime and North Fork, a short delay should not impact the financial or managerial resources of either organization so severely as to warrant denial of the proposal. Accordingly, the Board has followed its standard practice and provided a three-month period for North Fork to consummate the transaction. If North Fork requests an extension of the consummation period, the Board will examine carefully all relevant circumstances surrounding the proposal, and may require North Fork to provide supplemental information necessary to allow the Board to evaluate the managerial and financial resources of North Fork and Dime at the time any extension is requested, as well as the impact of any extension on those financial and managerial resources and on the other statutory factors that the Board must consider under the BHC Act. In the event of any material change in the transaction, such as a material change in the price, financing, or structure of the transaction, North Fork must consult with the Board to determine whether the change is consistent with the Board's action in this case or whether further Board action is necessary. The Board reserves the right in the event of significant

changes in the terms or circumstances of the proposal to require a new application from North Fork.

Based on the foregoing and all the facts of record, the Board has determined that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects under the standard of review set forth in section 4(j)(2) of the BHC Act.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.⁴⁵ The Board's approval of the proposal is specifically conditioned on compliance by North Fork with the conditions imposed and commitments made in connection with this notice and the conditions described or referenced in this order. The Board's

⁴⁵ Dime and NWBCCC each requested that the Board hold a public meeting or hearing on the proposal. The BHC Act does not require that the Board hold public hearings on applications or notices, although the Board may do so when appropriate. The Board's rules allow for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner. 12 C.F.R. 225.25(a)(2). The Board has considered carefully these commenters' requests in light of all the facts of record. The Board has accumulated a substantial record in this case that includes examination information, supervisory information, public records, and information submitted by North Fork. Commenters also have had ample opportunity to present their views, and have submitted written comments that have been considered carefully by the Board in acting on the proposal. The commenters' requests for a hearing or meeting fail to demonstrate why their written comments do not present their evidence, allegations, and views on this proposal. Moreover, the Board does not believe that a public meeting or hearing would clarify or enhance the record as it relates to the limited factors that the Board is required by statute to review in this case. 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 in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

determination is also subject to all the conditions in Regulation Y, including those in sections 225.7 and 225.25(c) (12 C.F.R. 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The commitments and conditions relied on by the Board in reaching this decision shall be 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.

This transaction shall not be consummated later than three months after the effective date of this order, unless such period is extended by the Board.

By order of the Board of Governors,⁴⁶ effective September 27, 2000.

(signed)

Jennifer J. Johnson
Secretary of the Board

⁴⁶ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Meyer and Gramlich. Absent and not voting: Governor Kelley.