

FEDERAL RESERVE SYSTEM

North Fork Bancorporation, Inc.
Melville, New York

Order Approving the Acquisition of a Savings Association

North Fork Bancorporation, Inc., Melville, New York ("North Fork"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 4(c)(8) of the BHC Act (12 U.S.C. § 1843(c)(8)) and section 225.24 of the Board's Regulation Y (12 C.F.R. 225.24) to acquire all the voting shares of JSB Financial, Inc. ("JSB") and thereby acquire JSB's wholly owned subsidiary, Jamaica Savings Bank FSB ("Jamaica Savings"), both of Lynbrook, New York.¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (64 Federal Register 56,791 (1999)). The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4(c)(8) of the BHC Act.

North Fork, with total consolidated assets of \$11.5 billion, is the 15th largest depository institution in New York, controlling deposits of approximately \$6.3 billion, representing 1.5 percent of total deposits in depository institutions in the state ("state deposits").² JSB is the 39th largest depository

¹ North Fork's wholly owned subsidiary bank, North Fork Bank, Mattituck, New York, would merge with Jamaica Savings, and North Fork Bank would be the surviving institution. The merger is 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"). In addition, North Fork has filed a separate notice with the Board to merge with Reliance Bancorp, Inc. ("Reliance") and thereby acquire Reliance Federal Savings Bank ("Reliance Savings"), both of Garden City, New York ("the Reliance transaction").

² Asset data are as of June 30, 1999, and state deposit data are as of June 30, 1998. In this context, depository institutions include commercial banks,

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institution in New York, controlling deposits of \$1.2 billion, representing less than 1 percent of state deposits. On consummation of the proposal and the Reliance transaction, North Fork would become the 11th largest depository institution in New York, controlling deposits of approximately \$9.1 billion, representing approximately 2.2 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.³ 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. North Fork has committed to conform all the activities of Jamaica Savings to those permissible under section 4(c)(8) of the BHC Act and Regulation Y.

Competitive Considerations

In order to approve the proposal, the Board also is required by section 4(c)(8) of the BHC Act to determine that that the acquisition of JSB by North Fork “can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.”⁴ As part of its consideration of these factors, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record.⁵

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savings banks, and savings associations.

³ 12 C.F.R. 225.28(b)(4).

⁴ 12 U.S.C. § 1843(c)(8).

⁵ See First Hawaiian, Inc., 79 Federal Reserve Bulletin 966 (1993).

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North Fork and JSB compete directly in the Metropolitan New York/New Jersey banking market.⁶ On consummation of the proposal and the Reliance transaction, North Fork would be the 10th largest depository institution in the Metropolitan New York/New Jersey banking market, controlling deposits of \$9.3 billion, representing approximately 2.2 percent of market deposits.⁷ The Herfindahl-Hirschman Index ("HHI") would increase by 2 points to 788, and numerous competitors would remain in the market.⁸ Based on these and all other

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⁶ The Metropolitan New York/New Jersey 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.

⁷ Market share data are as of June 30, 1998, and are based on calculations in which the deposits of thrift institutions, other than Jamaica Savings and Reliance 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 North Fork Bank, Jamaica Savings, and Reliance Savings were a combined entity, the deposits of Jamaica Savings and Reliance 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).

⁸ 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 is considered to be unconcentrated. The Department of Justice has informed the Board that, as a general matter, a bank merger or acquisition 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 or acquisition increases the HHI by 200 points. The Department of Justice has stated that the higher than

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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 banking market or any other relevant banking market.

Record 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 Community Reinvestment Act (12 U.S.C. § 2901 et seq.) ("CRA").⁹ The Board has reviewed the record of performance of North Fork Bank in light of all the facts of record, including comments received from Inner City Press/Community on the Move ("ICP"). ICP contends that the number and volume of small business loans made by North Fork Bank in the Bronx and in predominantly minority and low- and moderate-income ("LMI") areas of New York City are inadequate in comparison to North Fork Bank's market share of deposits in these areas and in comparison to North Fork Bank's lending record in other parts of its assessment area. ICP also maintains, based primarily on data filed under the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) ("HMDA"), that North Fork Bank's record of home mortgage lending indicates disparities in the bank's treatment of minorities in New York City and in Nassau and Suffolk Counties.

A. CRA Performance Examinations

As provided in the CRA, the Board evaluates an institution's record of performance in light of examinations for CRA performance conducted by the

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average HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

⁹ See, e.g., Banc One Corporation, 83 Federal Reserve Bulletin 602 (1997).

appropriate federal supervisors. 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.¹⁰

North Fork Bank received an overall rating of "satisfactory" from its primary federal supervisor, the FDIC, at its most recent evaluation for CRA performance, as of March 1997 ("1997 Examination"). As of the same date, the NYSBD rated as "satisfactory" North Fork Bank's performance in helping to meet the credit needs of its entire community pursuant to New York law ("State Examination").¹¹ Jamaica Savings also received an overall rating of "satisfactory" from its primary federal supervisor, the Office of Thrift Supervision, at its most recent evaluation for CRA performance, as of August, 1996.

B. Lending Record of North Fork Bank

During 1998, the Board twice reviewed North Fork's record of CRA performance in light of comments submitted by ICP.¹² For reasons set forth in detail in those orders, the Board concluded that the CRA performance record of North Fork was consistent with approval under the BHC Act.¹³

¹⁰ Interagency Questions and Answers Regarding Community Reinvestment, 64 Federal Register 23,618 and 23,641 (1999) ("Interagency Questions and Answers").

¹¹ N.Y. Banking Law § 28-b.

¹² See North Fork Bancorporation, Inc., 84 Federal Reserve Bulletin 290 (1998) ("New York Bancorp Order"); North Fork Bancorporation, Inc., 84 Federal Reserve Bulletin 477 (1998) (acquisition of up to 9.9 percent of the voting shares of Long Island Bancorp, Inc.).

¹³ In the New York Bancorp Order, the Board stated that it expected North Fork to address the lending areas criticized by the NYSBD in the State Examination, and that the Board would consider North Fork's progress in this regard when considering future applications by North Fork. The Board has

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The 1997 Examination commended North Fork Bank for its record of lending in LMI areas and to LMI individuals, based on HMDA data for 1995 and 1996. In 1997 and 1998, North Fork Bank continued to make a higher percentage of HMDA-related loans¹⁴ in LMI census tracts than did lenders in the aggregate.¹⁵ In 1998, North Fork Bank made 30.9 percent of its HMDA-related loans in LMI census tracts, compared with 14.1 percent by lenders in the aggregate.¹⁶ North Fork Bank also increased the percentage of its HMDA-related loans that it made to LMI individuals from 17 percent in 1995 to 22 percent in each of 1997 and 1998.¹⁷

Mortgage loans on multifamily rental dwellings (“multifamily loans”) constituted a primary credit product offered by North Fork Bank to address housing-related credit needs in its assessment area. The State Examination of North Fork Bank found that multifamily loans represented 71 percent by dollar volume of all

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reviewed information received from other supervisory agencies on North Fork Bank’s efforts in these areas, including North Fork Bank’s progress in fulfilling its commitments to the NYSBD. Based on all the facts of record, the Board concludes that North Fork Bank’s progress in the lending areas noted in the New York Bancorp Order is consistent with approval of this notice.

¹⁴ HMDA-related loans include loans reported under HMDA as well as modification, extension, and consolidation agreements (“MECA loans”) for HMDA-reported loans. MECA loans are not reported under HMDA, but may be considered in evaluating an institution’s CRA performance. See Interagency Questions and Answers, 64 Federal Register at 23,634.

¹⁵ The aggregate represents the cumulative lending for all institutions that have reported HMDA data in a given market.

¹⁶ LMI census tracts comprise approximately 28 percent of the total number of census tracts in North Fork Bank’s current assessment area.

¹⁷ Lenders in the aggregate in North Fork Bank’s assessment area made 16.2 percent of their HMDA-related loans to LMI individuals in 1998.

HMDA-related loans made by the bank in 1996. In 1998, North Fork Bank originated \$293 million in multifamily loans, which accounted for 49.3 percent by dollar volume of all North Fork Bank's HMDA-related loans for the year.¹⁸ Also in 1998, North Fork Bank originated 48 percent of its multifamily loans in LMI census tracts, and 43 percent of its multifamily loans in minority census tracts.

North Fork Bank engages in a significant amount of small business lending. In 1998, North Fork Bank made 2,075 loans to small businesses.¹⁹ Of those loans, 23 percent were made in LMI census tracts in North Fork Bank's assessment area, compared with 17 percent for lenders in the aggregate. In 1998, North Fork Bank also increased its loans to small businesses in minority census tracts in its assessment area, to 136, from 104 in 1997.²⁰

¹⁸ In 1998, North Fork Bank originated \$76 million of multifamily loans in the Bronx, accounting for 26 percent of all multifamily loans made by North Fork Bank in its assessment area.

¹⁹ For purposes of this order, a loan to a small business means a loan made to a business with gross annual revenues of \$1 million or less.

²⁰ 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. In ICP's view, North Fork Bank should be required to increase its small business lending in the Bronx and similar areas to 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. While North Fork Bank's lending to small businesses in specific segments of its assessment area may not closely correspond to the bank's market share of deposits in those segments at a particular point in time, small business lending is not the only use made of deposits. As explained above, the Board also has considered that North Fork Bank provides significant multifamily housing credit and provides other types of credit, including consumer loans and single family housing loans, throughout North Fork Bank's assessment area.

ICP alleges that HMDA data from North Fork Bank indicate that the bank discriminates against minorities in violation of fair lending laws. North Fork denies these allegations and has provided HMDA data and other information on its lending programs designed to serve minority and LMI communities. In 1998 in North Fork Bank's assessment area in the New York City Metropolitan Statistical Area, for example, North Fork Bank's denial disparity ratio for African Americans was 1.32:1, compared with 1.69:1 for lenders in the aggregate, and North Fork Bank's denial disparity ratio for Hispanics was 0.9:1, compared with 1.52:1 for lenders in the aggregate.²¹ In the Nassau-Suffolk Metropolitan Statistical Area, however, North Fork Bank's denial disparity ratios in 1998 were 2.27:1 for African Americans and 2.92:1 for Hispanics, compared with denial disparity ratios of 1.82:1 and 1.48:1, respectively, for lenders in the aggregate. For its assessment area overall, North Fork Bank's 1998 denial disparity ratios were 1.70:1 for African Americans and 1.81:1 for Hispanics, compared with 1.74:1 and 1.52:1 for lenders in the aggregate.²²

²¹ North Fork Bank's assessment area in the New York City Metropolitan Statistical Area is composed of the entire metropolitan statistical area except for Putnam County, New York.

²² The record also reflects 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 that the bank made a correspondingly smaller percentage of its HMDA-related loans to minority and LMI borrowers. For example, in 1998, North Fork Bank made 3.3 percent of its HMDA-related loans to African Americans and 2.6 percent of such loans to Hispanics, compared with rates of 10 percent and 5.8 percent, respectively, for lenders in the aggregate. As discussed in this order, however, in 1998 North Fork Bank made approximately half of its HMDA-related loans by dollar volume as multifamily loans rather than as 1- to 4- family home mortgage loans, and 43 percent of its multifamily loans were made in minority census tracts.

The Board is concerned when an institution's record indicates any such disparities 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 race. 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 engaged in illegal discrimination in making lending decisions.²³

Because of the limitations of HMDA data, the Board has carefully reviewed other information concerning North Fork Bank's record of lending to minority and LMI individuals. In particular, the Board has carefully reviewed examination reports, which provide on-site evaluations of compliance by North Fork Bank with the fair lending laws. In the 1997 Examination, FDIC examiners found no evidence of prohibited discriminatory practices or of any practices intended to discourage applications for the types of credit set forth in the bank's CRA statement.²⁴ NYSBD examiners also found no evidence of any prohibited discriminatory or illegal credit practices in their 1997 evaluation of North Fork Bank. In addition, FDIC examiners concluded that North Fork Bank's management had demonstrated a commitment to making loans in LMI census tracts and to LMI

²³ 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.

²⁴ As noted in the New York Bancorp Order, FDIC examiners identified certain technical violations of the fair lending laws during the 1997 Examination, but stated that these matters were addressed by the bank's management during that examination.

individuals and favorably noted that the bank had a formal “second review” process for all residential mortgage loan applications before issuing an adverse action letter.

The Board also has considered the quarterly reports concerning the lending activity of North Fork Bank during 1998 and the first quarter of 1999 that were submitted by North Fork to the Federal Reserve Bank of New York as required in the New York Bancorp Order, and confidential information provided by the FDIC and the NYSBD concerning North Fork Bank’s lending activities. These reports and information also indicate in general that North Fork Bank continues to address the disparities in its lending record.

North Fork Bank also is involved in several initiatives to assist in meeting the credit needs of LMI communities and individuals. North Fork Bank continues to offer mortgage loans through State of New York Mortgage Agency programs, originating a total of 48 such loans in 1998 and the first three quarters of 1999. North Fork Bank also originated 171 loans during the first three quarters of 1999 through its proprietary Affordable Housing Programs, which provide below market interest rate loans to LMI borrowers, and reduced private mortgage insurance requirements. North Fork Bank also has invested \$4.2 million in the Community Preservation Corporation, a private, nonprofit lender focusing on financing LMI housing, and has outstanding commitments of \$800,000 to Neighborhood Housing Services of New York City, which assists in creating and preserving affordable housing in New York City neighborhoods.

C. Branch Closings

ICP also expresses concern that consummation of the proposal would result in branch closings. North Fork has stated that the proposal is likely to result in some consolidation involving pairs of newly acquired and existing North Fork Bank branches. North Fork has submitted preliminary and confidential information

identifying these branches and has indicated that it has not made a final determination on the consolidation of any branch.²⁵

The Board has carefully considered all the facts of record concerning branch closings, including the preliminary branch consolidation information submitted by North Fork and North Fork's record in opening and closing branches. The Board notes that only one pair of branches under consideration for consolidation is in an LMI area. Furthermore, examiners at the most recent CRA examination of North Fork Bank reviewed its record of opening and closing branches and found that none of the branches closed from 1995 to 1997 were in an LMI census tract. Examiners also found that in all instances of branch closings, North Fork Bank had an existing branch near the closed branch. The Board notes that any branches closed would be closed pursuant to North Fork Bank's branch closing policy, which requires consideration of the community's needs and the impact of the closing on the neighborhood. The FDIC has reviewed North Fork Bank's branch closing policy and found it satisfactory.

The Board also has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.²⁶ The law does not authorize federal

²⁵ ICP asserts that North Fork should make public a list of branches under consideration for consolidation or closure. The release of preliminary branch closing data may cause competitive harm to North Fork, and such data is exempt from public disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)(4)) and the Board's Rules Regarding Availability of Information (12 C.F.R. 261.14(a)(4)).

²⁶ 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

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regulators to prevent the closing of any branch. Any branch closings resulting from the proposal will be considered by the appropriate federal supervisor at the next CRA examination of the relevant subsidiary depository institution.

D. Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including ICP's comments, in reviewing the CRA performance records of the institutions involved. 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, including North Fork Bank, are consistent with approval of the proposal.

Other Considerations

In connection with its review of the public interest factors under section 4 of the BHC Act, the Board also has carefully reviewed the financial and managerial resources of North Fork and JSB and their respective subsidiaries and the effect the transaction would have on such resources in light of all the facts of record.²⁷ The Board has reviewed, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations. Based on 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.

The record indicates that consummation of the proposal would result in benefits to consumers and businesses. The proposal would enable North Fork to

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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 provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

²⁷ See 12 C.F.R. 225.26.

provide Jamaica Savings' customers with access to a broad array of products and services, including commercial bank products, throughout an expanded service area. 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. Based on all the facts of record, the Board has determined that consummation of this proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects under the proper incident to banking standard of section 4(c)(8) of the BHC Act.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the notice should be, and hereby is, approved. The Board's approval of the proposal is specifically conditioned on compliance by North Fork with the commitments made in connection with this notice. The Board's determination also is 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 for good cause by the

Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,²⁸ effective January 10, 2000.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

²⁸ Voting for this action: Chairman Greenspan and Governors Kelley, Meyer, and Gramlich. Absent and not voting: Vice Chairman Ferguson.