FEDERAL RESERVE SYSTEM

FleetBoston Financial Corporation
Boston, Massachusetts

Order Approving the Acquisition of Shares
of a Bank Holding Company

FleetBoston Financial Corporation ("Fleet"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under the BHC Act (12 U.S.C. § 1841 et seq.) to acquire up to 9 percent of the voting shares of North Fork Bancorporation, Inc., Melville ("North Fork"), a registered bank holding company, and thereby acquire North Fork Bank, Mattituck ("NFB"), both in New York, and Superior Savings of New England, N.A., Branford, Connecticut. North Fork has applied 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 Dime Bancorp, Inc. ("Dime"), and thereby acquire Dime's wholly owned subsidiary, The Dime Savings Bank of New York, FSB, both in New York, New York ("Dime Savings"), a savings association.[1]

[1] This proposal is discussed in detail in a Board order issued with this order. See North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin ___ (Order dated September 27, 2000) ("North Fork Order"). North Fork plans 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").

Accordingly, Fleet also has filed for approval under section 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 to acquire an ownership interest in a company that engages in the operation of a savings association. The ownership, control, or operation of a savings association is a permissible activity for a bank holding company, pursuant to section 225.28(b)(4) of Regulation Y.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 16,919 and 49,574 (2000)), and the time for filing comments has expired. The Board has received substantial comments on the proposal from Dime and Dime Savings (collectively "Dime") and Inner City Press/Community on the Move ("ICP"). The Board has considered the application and notice, the comments submitted, and all the other facts of record in light of the factors set forth in sections 3 and 4 of the BHC Act.

Fleet, with total consolidated assets of $181.3 billion, operates depository institutions in Connecticut, Florida, Maine, Massachusetts, New Hampshire, New Jersey, New York, and Rhode Island. Fleet operates the fifth largest commercial banking organization in New York, controlling deposits of $17.6 billion, representing approximately 4.2 percent of total deposits in insured depository institutions in the state ("state deposits").[2] Fleet operates the largest depository institution in Connecticut, controlling deposits of $14.9 billion, representing 25.4 percent of state deposits. In New Jersey, Fleet operates the

[2] Deposit and ranking data are as of June 30, 1999, and reflect acquisitions as of April 20, 2000, for Connecticut and as of March 3, 2000, for New York. Asset data are as of December 31, 1999. In this context, depository institutions include commercial banks, savings banks, and savings associations.

fourth largest depository institution, controlling deposits of $8.8 billion, representing 6.3 percent of state deposits.

On consummation of its proposal to acquire Dime, North Fork would become the fifth largest commercial banking organization in New York, controlling total deposits of approximately $19.5 billion, representing approximately 4.6 percent of state deposits. North Fork would remain the twenty-fourth largest commercial banking organization in Connecticut, controlling deposits of $363.3 million, representing less than 1 percent of state deposits. North Fork would be the fourteenth largest commercial banking organization in New Jersey, controlling deposits of $2.3 billion, representing approximately 1.6 percent of state deposits.

As noted above, the Board has received comments from Dime objecting to the proposed acquisition. Dime asserts that Fleet presently exercises a controlling influence over North Fork and would continue to do so. Dime also argues that Fleet's investment would have an adverse effect on competition in Suffolk County, New York, where Fleet and North Fork operate. In addition, Dime challenges Fleet's record under considerations relating to the convenience and needs of the communities it serves. Dime requests that the Board convene a public hearing on the proposal and the related North Fork/Dime notice, and Dime claims that Fleet has compromised the integrity of the regulatory process by withholding documents from the Board, providing false or misleading information to the Board, and making improper confidentiality requests in connection with submissions to the Board. Dime contends that these issues reflect adversely on the managerial factors that the Board must consider when reviewing proposals under sections 3 and 4 of the BHC Act. The Board has also received comments from ICP that oppose the proposal for similar reasons, and that argue, in particular, that

Fleet's and North Fork's records of performance under the Community Reinvestment Act are inadequate.

The Board has considered these comments and the responses submitted by Fleet carefully, and has reviewed the proposal in light of all the information presented and otherwise available to the Board. Based on this consideration and subject to Fleet's commitments and the conditions established by the Board, as described below, the Board has concluded that the proposal satisfies the criteria set out in the BHC Act. Accordingly, the Board has determined to approve the application and notice subject to Fleet's commitments and the conditions established herein by the Board.

Board Policy on Evaluating Contested Proposals and Minority Investments

Section 3(c) of the BHC Act requires the Board to review each application in light of the Act's competitive standards, the financial and managerial resources and future prospects of the companies and depository institutions concerned, and the convenience and needs of the communities to be served. Section 4 of the BHC Act requires the Board to consider whether the nonbanking aspects of the transaction can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

Although Fleet's acquisition of the North Fork shares is a negotiated transaction, its investment in North Fork is directly related to a proposal by North Fork to acquire Dime, a transaction that Dime's management opposes. 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 on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired.[3] Consequently, the Board has consistently applied the statutory criteria equally to cases supported by the management of the company to be acquired and to cases that are opposed by management of an institution affected by the proposal.

This case involves a proposal to acquire approximately 9 percent of the voting shares of a bank holding company. The Board previously has indicated that the acquisition of less than a controlling interest in a bank or bank holding company is not an ordinary acquisition for a bank holding company.[4] Nonetheless, the requirement in section 3(a)(3) of the BHC Act that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 and 25 percent of the voting shares of a bank or a bank holding company.[5] Nothing in the BHC Act, moreover, requires denial of an application solely because a bank holding company proposes to acquire less than a controlling interest in a bank or a bank holding company. On this basis, the Board has on numerous occasions approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company.[6]

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[3] See, e.g., The Bank of New York Company, Inc., 74 Federal Reserve Bulletin 257, 259 (1988).

[4] See, e.g., North Fork Bancorporation, Inc., 81 Federal Reserve Bulletin 734 (1995) ("North Fork Bancorporation"); State Street Boston Corporation, 67 Federal Reserve Bulletin 862, 863 (1981).

[5] 12 U.S.C. § 1842(a)(3); 12 C.F.R. 225.11(c).

[6] See, e.g., North Fork Bancorporation (acquisition of up to 19.9 percent of the voting shares of a bank holding company); Mansura Bancshares, Inc., 79 Federal Reserve Bulletin 37 (1993) ("Mansura") (acquisition of 9.7 percent of the voting shares of a bank holding company); SunTrust Banks, Inc., 76 Federal Reserve

Control of North Fork

Under section 2 of the BHC Act, a bank holding company controls a bank or company if (1) the bank holding company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting shares of the bank or company; (2) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or (3) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.[7]

Dime and ICP contend that a number of circumstances indicate that Fleet has already exercised control over North Fork in connection with the proposed acquisition of Dime without the prior approval of the Board. Dime and ICP also argue that, after Fleet's proposed investment in North Fork, Fleet would control a merged North Fork/Dime for purposes of the BHC Act.

Fleet has applied to acquire only 9 percent of North Fork shares, and would not have any representation of the board of directors of North Fork or the right to control in any manner the selection of the majority of the board of directors of North Fork.[8] Fleet has stated that it does not intend to exercise a controlling

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Bulletin 542 (1990) (acquisition of up to 24.9 percent of the voting shares of a bank) ("SunTrust"); and First State Corporation, 76 Federal Reserve Bulletin 376 (1990) (acquisition of 24.9 percent of the voting shares of a bank).

[7] 12 U.S.C. § 1841(a)(2).

[8] Fleet would receive 250,000 shares of convertible, non cumulative North Fork preferred stock, rights to acquire 7.5 million shares of North Fork common stock, and certain contingent additional rights to purchase North Fork common stock, in exchange for $250 million. Under the terms of the investment, Fleet may convert its preferred shares and exercise its rights at any time. North Fork also has agreed

influence over the management or policies of North Fork, Dime, or any of either organization's subsidiaries, and Fleet has provided commitments designed to ensure that its proposed investment is noncontrolling. If Fleet were found to control North Fork, then North Fork would become a subsidiary of Fleet and would be treated as part of the Fleet organization for supervisory purposes.

A. Pre-consummation Control Analysis

Dime and ICP have questioned whether several recent events, in particular various remarks by management of North Fork, indicate that Fleet has already exercised a controlling influence over North Fork in connection with North Fork's bid to acquire Dime and would have a strong influence over a merged North Fork/Dime. Dime also contends that Fleet was selected to participate in this transaction because North Fork allegedly lacks experience in operating a large mortgage company, and Fleet intends to operate Dime's subsidiary mortgage company subsidiary, the North American Mortgage Company, Santa Rosa, California ("NAMCO").[9]

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to sell 17 Dime Savings branches to Fleet at an 8 percent premium to deposits if North Fork successfully acquires Dime. Fleet has stated that it proposes to acquire the shares of North Fork as a passive investment, and that Fleet would not control North Fork or Dime after this investment.

[9] Dime and ICP cite as evidence of Fleet's controlling influence over Dime the fact that Fleet assisted North Fork in analyzing and planning for the future of NAMCO before North Fork made its tender offer for Dime. The record indicates that Fleet provided general advice to North Fork regarding NAMCO. However, North Fork also had other independent advisors for this transaction, and North Fork retained and exercised full authority to make its own decisions on the transaction. There is no evidence in the record to demonstrate that discussions with Fleet resulted in Fleet's determining or controlling North Fork's investment decisions and there is no evidence of a formal or informal agreement between the parties that involves Fleet in the operation of NAMCO.

Dime further asserts that the purchase price to be paid by Fleet for the preferred shares and various rights to shares of North Fork and for 17 Dime Savings branches reflects below-market terms and indicates that Fleet exerts a controlling influence over North Fork.

The Board has compiled and carefully reviewed a significant record to understand the relationship between Fleet and North Fork and the involvement of Fleet in the proposed acquisition of Dime. This record includes copies of all documents, correspondence, and records of conversations between officials and representatives of Fleet and North Fork that relate to Fleet's investment in North Fork or the acquisition of Dime by North Fork, and depositions and other information provided by Dime from litigation arising out of North Fork's proposal to acquire Dime. In addition, the Board has reviewed the terms of the agreements between Fleet and North Fork that provide for Fleet's proposed investment in North Fork, Fleet's proposed acquisition of 17 Dime Savings branches, and the pricing of Fleet's proposed investment in North Fork.

After review of the information in the record, the Board does not believe that Fleet exercised or attempted to exercise a controlling influence over North Fork within the meaning of the BHC Act over North Fork before or in connection with the proposal by North Fork to acquire Dime. Although the investment by Fleet in North Fork is essential to North Fork's proposal to acquire

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Dime also alleges that North Fork would need Fleet's assistance to integrate Dime into the North Fork's operations because Dime is significantly larger than North Fork. Dime Savings is a savings association and its consumer-oriented operations are similar to North Fork's operations. The record indicates that North Fork has integrated other savings associations into its operations successfully. In addition, North Fork has developed a plan for ensuring the successful integration of Dime into North Fork's operations.

Dime, neither the available documents concerning the negotiations between Fleet and North Fork nor the record of previous business relationships between Fleet and North Fork indicate that Fleet has exercised a controlling influence over the management or policies of North Fork. North Fork's proposal to acquire Dime was initiated by management for North Fork before Fleet's proposed involvement. When it became apparent that North Fork would benefit from additional capital in its effort to acquire Dime, North Fork approached Fleet with a proposed sale of its shares. There also is nothing in the record to indicate that North Fork could not have acquired financing from another source.

The terms of Fleet's investment in North Fork appear to be within the range of other proposals. The terms of the investment also might be viewed in light of the short time period available to North Fork to raise capital when North Fork initially made its bid for Dime, and the fact that the investment represents a private placement, which generally results in the buyer's ability to negotiate better-than-market terms because of the seller's unwillingness or inablility to obtain numerous offers. In addition, Fleet proposes to acquire a minority investment (less than 10 percent of the voting shares of North Fork) in a relatively large banking organization – an investment that is somewhat unusual because it is a significant investment without the attributes of control. The price to be paid for the 17 branches also reflects the fact that Fleet did not have an opportunity to perform "due diligence" on the branches before it negotiated the premium.

Fleet and North Fork currently do not have any significant business arrangements with each other that would indicate that the two institutions usually work together in the normal course of business, or that Fleet has, through its business relationships, pressured North Fork to take or refrain from taking any action in connection with North Fork's bid to acquire Dime. North Fork has a history of making investments opposed by management, is an aggressive acquirer, and previously has demonstrated its ability to successfully integrate other financial institutions into its own operations.[10] In light of North Fork's past performance integrating institutions and its plans for the integration of Dime in this case, North Fork appears capable of integrating Dime without assistance from Fleet. For these reasons, the Board concludes that Fleet has not exercised or attempted to exercise a controlling influence over North Fork or Dime in connection with the proposal by North Fork to acquire Dime.

B. Post-consummation Control Analysis

In order to avoid a determination that Fleet would have a controlling influence over North Fork in the future, Fleet has made commitments similar to those made by other companies with minority investments[11] and commitments that have been accepted by the Board to mitigate the potential for a controlling influence.[12] These commitments prohibit Fleet from having any director, officer,

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[10] Since 1995, North Fork received Board approval to acquire seven institutions and received Board approval to make minority investments. North Fork Bancorporation, 84 Federal Reserve Bulletin 477 (1998) (9.9 percent investment in Long Island Bancorp); North Fork Bancorporation (19.9 percent investment in Suffolk Bancorp); North Fork Bancorporation, 81 Federal Reserve Bulletin 509 (1995) (9.9 percent interest in Sunrise Bancorp). All of the minority investments were opposed by the target institution.

[11] The commitments are set forth in the Appendix. Dime has questioned whether Fleet's commitments can eliminate the impact of a controlling influence that was previously exercised and believes that Fleet should be limited to a 4.9 percent investment in North Fork. As noted above, the Board does not find that Fleet has exercised a controlling influence over North Fork or that the proposal by Fleet, in the context of the commitments and conditions discussed in this order, to acquire approximately 9 percent of the voting shares of North Fork would, by itself, result in Fleet controlling North Fork for purposes of the BHC Act.

[12] See, e.g., National Bancshares Corporation of Texas, 82 Federal Reserve Bulletin 565, 568 (1996) ("National Bancshares"); First Southern Bancorp, Inc., 82

or employee interlocks with North Fork; proposing directors in opposition to North Fork's management; influencing the dividends, policies or credit decisions of North Fork; or, in general, exercising or attempting to exercise a controlling influence over North Fork.[13]

Fleet has requested that it be permitted to engage in certain business transactions with North Fork after the acquisition of shares of North Fork by Fleet. The Board has monitored and at times limited business relationships between companies in the context of minority investments to mitigate the ability of one party to exercise a controlling influence over another through business transactions

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Federal Reserve Bulletin 424, 426 (1996) ("First Southern"); FCFT, Inc., 80 Federal Reserve Bulletin 1000, 1002 (1994) ("FCFT").

[13] Commenters allege that Fleet, by virtue of the terms of and contractual rights secured under the stock purchase agreement governing Fleet's investment in North Fork, has already violated the passivity commitments provided to the Board in connection with this application or contractually has the right to do so in the future. Specifically, commenters note Fleet's right to inspect the books of and have access to the management of a combined North Fork/Dime.

Fleet has made passivity commitments to the Board irrespective of any contractual rights it may have under the stock purchase agreement and the order is conditioned on Fleet's compliance with the commitments made to or conditions imposed by the Board. Fleet has represented to the Board and the Department of Justice ("DOJ") that it will not, without prior Board approval, seek to obtain or review any competitively sensitive information about North Fork or any of its subsidiaries, other than information relating to Fleet's planned purchase of 17 Dime Savings branches from North Fork and copies of North Fork's consolidated financial statements. Fleet may not seek or obtain copies of North Fork's consolidated financial statements if they contain any projections, forward-looking statements, or information relating to prices or the business and strategic plans of North Fork or its subsidiaries.

This additional passivity commitment and a clarification of the scope of the passivity commitments discussed above that were provided by Fleet at the request of the DOJ also are set forth in the Appendix.

and relationships.[14] As noted above, Fleet and North Fork have reported that the companies currently have limited transactions with each other. Fleet contends that because Fleet and North Fork are both large banking organizations with increasing presences in the mortgage banking area, in particular, the two companies would inevitably have business opportunities that are not influenced by Fleet's ownership relationship and that can be documented to be on terms identical to transactions with third parties, such as large loan participations and purchases and sales in the secondary mortgage market. Fleet has committed that these limited relationships would always be on market terms.

Permitting limited business relationships in this case would not appear to allow Fleet to control North Fork for purposes of the BHC Act.[15] As proposed,

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[14] See, e.g., National Bancshares; First Southern; FCFT.

[15] Dime contends that Fleet's status as the largest shareholder of a widely held company such as North Fork, along with the additional rights, the branch sale and any other business transactions the parties might be permitted to enter in the future, support a finding that a controlling influence would exist in this case.

Dime cites the order in the Amboy Bancorporation application as support for its contention that a minority investment, even when subject to passivity commitments, can result in a control relationship if a significant business relationship between the parties would exist in the future. Amboy Bancorporation, 83 Federal Reserve Bulletin 507 (1997) ("Amboy"). In Amboy, however, Amboy Bancorporation, proposed to underwrite and originate real estate and construction loans in the community of the bank in which it was investing, The Community Bank of New Jersey, Freehold, New Jersey ("CBNJ"). CBNJ, a de novo bank with no record of independent operations, would have participated in these loans under the proposal. This proposed business relationship did not limit the amount of CBNJ's assets that would represent loans originated or underwritten by Amboy Bancorporation, and the amount of such participation could have represented most or all of the loan portfolio of CBNJ.

In this case, nothing in the Fleet/North Fork proposal or record suggests that it is possible that North Fork would rely on Fleet for most or all of its assets. Although Dime has inferred an intimate and continuous working relationship

Fleet's investment in North Fork represents less than 10 percent of North Fork's voting shares, and the passivity commitments made by Fleet diminish Fleet's ability to exercise control over North Fork by reducing the means for Fleet to exercise control. In addition, the amount of business transactions proposed would not appear to be significant to either organization and would not be on terms that would allow one company to force changes in the management or policies of the other company. Moreover, Fleet may not increase its ownership interest in North Fork without further review and approval by the Board.

Because of the unusual circumstances of this investment, the Board concludes that it is appropriate to require Fleet to provide the Board with advance notice of any joint ventures or other investments it may undertake with North Fork, and of any proposal by Fleet to purchase substantially all the assets of North Fork or any of its subsidiaries. This requirement will allow the Board to monitor other types of investments by Fleet in North Fork that might indicate or involve a control relationship and, in particular, will allow the Board to monitor the relationship between Fleet and NAMCO.

The Board has adequate supervisory authority to monitor and enforce Fleet's compliance with its commitments, including the authority to initiate control proceedings against Fleet if facts come to the Board's attention that indicate that Fleet controls North Fork or Dime for purposes of the BHC Act. The Board believes that the commitments provided by Fleet and the condition imposed by the Board substantially mitigate the potential that consummation of the proposal would

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between Fleet and North Fork based on statements by the management of North Fork, these statements cannot support the conclusion that the future business relationship contemplated under this proposal is comparable to the relationship proposed in Amboy.

result in Fleet's ability to exercise a controlling influence over North Fork or Dime. Based on these commitments, conditions, and all other facts of record, it is the Board's judgement that the record does not support a finding that Fleet would acquire control of North Fork, Dime, or any of North Fork's or Dime's subsidiaries, for purposes of the BHC Act through consummation of the proposal.[16]

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any part of the United States. Section 3 also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal in that banking market are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[17]

The question of whether the acquisition of a minority interest in a competing bank or bank holding company would result in a substantial lessening of competition must be answered in light of the specific facts of record of each

[16] Because of the above control determination, the Board also finds that Fleet is not required to obtain Board approval under section 3 of the BHC Act to acquire North Fork as a subsidiary as a result of this proposal. Dime has asserted that Fleet's proposal to purchase branches from North Fork must comply with sections 23A and 23B of the Federal Reserve Act because, in Dime's view, North Fork would be a subsidiary of Fleet and the branch purchases would be covered transactions between two affiliated companies. 12 U.S.C. § 371c. For the reasons discussed above, the Board has not found that North Fork would become an affiliate of Fleet for purposes of sections 23A and B of the Federal Reserve Act on the acquisition of Dime by North Fork.

[17] See 12 U.S.C. § 1842(c) (1) and (2).

case.[18] The Board continues to believe that noncontrolling interests in directly competing banks or bank holding companies under the BHC Act require careful review of the effects of the proposal on competition in the relevant banking markets. The Board previously has noted that one company need not acquire control of another company to substantially lessen competition between them.[19] Based on a close review of the facts in this case, the Board has concluded that, even if the Board were to determine that Fleet would control the merged North Fork/Dime on consummation of the proposal, the elimination of competition between Fleet and merged the North Fork/Dime would not be so substantial as to warrant denial of the application.

A. Definition of the Relevant Geographic Banking Market

The Board has considered carefully the comments and information provided by the commenters in support of an analysis of the competitive effects of the proposal in New York that considers Suffolk County as a separate geographic banking market. They state that consummation of the proposal would substantially lessen competition for banking services in Suffolk County. Dime contends that

[18] See, e.g., North Fork Order; Mansura; SunTrust.

[19] It is possible, for example, that the acquisition of a substantial ownership interest in a competitor or a potential competitor of the acquiring firm may alter the market behavior of both firms in such a way as to weaken or eliminate independence of action between the organizations and increase the likelihood of cooperative operations. See The Summit Bancorporation, 75 Federal Reserve Bulletin 712 (1989); Mansura at 38. Dime contends that Fleet's proposal is an example of one company (North Fork), paying off another company (Fleet), to prevent it from bidding on a third company (Dime), and, therefore, presents the possibility of the cooperative operation of two commercial banking organizations in the same market. Fleet has been able to bid on Dime since May 17, 2000, however, and the analysis of the competitive effects discussed above reviewed Fleet's proposal as if Fleet would control the merged North Fork/Dime.

local customers have no reasonable alternatives for banking services except depository institutions in Suffolk County, and that Fleet, assuming that it would control North Fork, would be able to raise prices or reduce service in Suffolk County without concern about competition from outside this area.

To determine the effect of a particular transaction on competition, it is necessary to designate the area of effective competition between the parties, which the courts have held is decided by reference to the relevant "line of commerce" or a product market and a geographic market. The Board and the courts consistently have recognized that the appropriate product market for analyzing the competitive effects of bank mergers and acquisitions is the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) offered by banking institutions.[20] In defining the relevant geographic market, the Board consistently has sought to identify the area in which the cluster of products and services is provided by competing institutions and in which purchasers of the products and services seek to obtain these products and services.[21] In applying these standards to bank acquisition proposals, the Board and the courts repeatedly

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[20] See Chemical Banking Corporation, 82 Federal Reserve Bulletin 239 (1996) ("Chemical"), and the cases and studies cited therein. The Supreme Court has emphasized that it is the cluster of products and services that, as a matter of trade reality, makes banking a distinct line of commerce. See United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963) ("Philadelphia National"); accord United States v. Connecticut National Bank, 418 U.S. 656 (1974); United States v. Phillipsburg National Bank, 399 U.S. 350 (1969) ("Phillipsburg National").

[21] See, e.g., Sunwest Financial Services, Inc., 73 Federal Reserve Bulletin 463 (1987); Pikeville National Corporation, 71 Federal Reserve Bulletin 240 (1985); Wyoming Bancorporation, 68 Federal Reserve Bulletin 313 (1982), aff'd 729 F.2d 687 (10th Cir. 1984).

have held that the geographic market for the cluster of banking products and services is local in nature.[22] In delineating the relevant geographic market in which to assess the competitive effects of a banking merger or acquisition, the Board reviews population density; worker commuting patterns; advertising patterns of financial institutions; the presence of shopping, employment, healthcare, and other necessities; and other indicia of economic integration and the transmission of competitive forces among banks.[23] In this case, the Board has defined the retail banking market first by identifying a market core, and then by including within the retail banking market those cities or counties that contain substantial patterns of commuting to the market core and that contain other indicia of economic integration with the market core.

Suffolk County occupies the eastern third of Long Island and has a population of approximately 1.3 million. An extensive network of highways, roads, railways and buses connects Suffolk County to its neighboring county, Nassau County, as well as to Queens and New York City, providing access to the rest of Long Island and New York City. The 1990 Census data indicated extensive commuting between Suffolk County and the rest of the New York Metropolitan area.[24] For example, 28.9 percent of the labor force residing in Suffolk County

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[22] See Philadelphia National; Phillipsburg National; First Union Corporation, 84 Federal Reserve Bulletin 489 (1998); Chemical; St. Joseph Valley Bank, 68 Federal Reserve Bulletin 673 (1982) ("St. Joseph").

[23] See Crestar Bank, 81 Federal Reserve Bulletin 200, 201 n.5 (1995) ("Crestar"); Pennbancorp, 69 Federal Reserve Bulletin 548 (1983); St. Joseph; Chemical.

[24] The Board has previously recognized that commuting patterns are a significant factor in the determination of a relevant geographic banking market. See Crestar; St. Joseph; U.S. Bancorp, 67 Federal Reserve Bulletin 60, 61 fn. 2 (1981).

commuted to work elsewhere in the New York Metropolitan area, including 12.2 percent who commuted to New York City.[25]

To confirm that Suffolk County has not become less integrated with the rest of the market since 1990, the Board has reviewed additional commuting data compiled by an outside consultant.[26] This research suggests no substantial change in commuting rates between Suffolk County and the rest of the Metropolitan New York-New Jersey banking market ("New York banking market") from 1996 through 2000.[27] For example, the average estimated commuting rate between Suffolk County and New York City over that five-year period was 12.4 percent, almost identical to the 1990 Census data. The percentage of Suffolk County residents working elsewhere in the New York Metropolitan area also remained steady over the decade at an average of 29.6 percent for the same period. The high level of commuting between Suffolk County and the rest of the

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[25] Dime argues that Suffolk County should not be included in the New York banking market because of the long commute to New York City. Despite the length of the commute, a substantial number of people commute from Suffolk County to New York City and an even greater numbers commute to the market areas outside the central city.

[26] The relevant surveys and data compilation were conducted by Scarborough Research.

[27] The New York banking market is defined as New York City; Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan 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.

New York Metropolitan area indicates substantial economic integration between the two areas, including access to alternative providers of financial services.[28]

Dime asserts that the distance between Manhattan and Riverhead, the county seat of Suffolk County, is greater than the distances between other cities that the Board has found to be in distinct markets. In particular, Dime cites the Board's decision in First Security Corporation, in which the Board concluded that long distances separating cities and the lack of continuous economic development between cities were factors that indicated separate banking markets.[29] In this case, however, the analysis of the market indicates that, in addition to the commuting data discussed above, there is continuous development from Manhattan along Long Island that helps to transmit competitive forces from New York City to eastern Long Island.

In addition to commuting data, the Board has reviewed other data to confirm its determination that Suffolk County is part of the New York banking market. For example, the deposit and loan rates in New York City and Long Island are almost identical, indicating the integration of the market and the ability of

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[28] Dime also argues that because the New York Ranally Metropolitan Area ("RMA") does not include all of Suffolk County, neither should the New York banking market. An RMA generally consists of a defined geographical area with a relatively high population density that is demographically and commercially integrated by commuting, retail, and wholesale trade patterns. The Board has found an RMA definition to be a useful guideline in defining a relevant geographic banking market, but not a proxy for the banking market definition. The Board frequently defines a relevant geographic banking market differently from a related RMA after considering where consumers may practicably turn to obtain banking services.

[29] See First Security Corporation, 86 Federal Reserve Bulletin 122, 125 (2000) (Ogden and Provo-Orem RMAs, both in Utah).

competitive forces to be transmitted throughout the region. A number of major New York City banks advertise in the telephone book and through newspapers, radio, and television that serve eastern Suffolk County. The loan and deposit rates of many New York City banks are published in the local Long Island newspaper.[30]

After review of these data and other facts of record, including Dime's comments,[31] the Board concludes the record indicates that customers in Suffolk

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[30] Dime also argues that Suffolk is a self-sufficient county and its residents do not need to travel for basic goods and services. Although Suffolk County provides many basic services, the commuting data indicate that a substantial number of residents, in fact, do travel outside the county for jobs and have easy access to the rest of the market.

[31] Dime also identifies the following as indicia that Suffolk County is a separate banking market from the New York banking market: (1) the fact that only 6.5 percent of all commercial banks and thrifts with a presence in the non-Suffolk County portion of the New York banking market also have a presence in Suffolk County; (2) the lack of penetration in Suffolk County by New York's three largest daily newspapers; and (3) the notion that Suffolk County is its own economic "hub." Dime also cites other cases where the courts have found Suffolk County to be a distinct market. These cases, however, do not involve the geographic market for banking services. See United States v. Long Island Jewish Med. Ctr., 983 F. Supp. 121, 141-42 (E.D.N.Y. 1997) (involving hospital services); Competitive Impact Statement, 64 Federal Register 18214, 18222 (Department of Justice 1998) (in the United States v. Hicks, Muse, Tate & Furst Inc. litigation) (involving radio advertising time).

The Board also notes that 85 percent of the banks in Suffolk County also have branches in other parts of the New York banking market, and that the circulation rates of The New York Times and The Sunday Times in Suffolk County are equal to or higher than their circulation rates in some of New York City's boroughs. In addition, Suffolk County is not a "Basic Trading Center" (a city which serves as a center for shopping goods purchases for the surrounding area and serves its surroundings with various specialized services, such as medical care, entertainment, higher education, and a daily newspaper), a "Basic Trading Area" (an area surrounding at least one Basic Trading Centers), or a "Principal Business Center" (a city of major economic importance, including, but not limited

County can practically turn to providers of banking services in the broader New York area. Based on all the facts of record, including Dime's comments and studies conducted by the New York Reserve Bank, the Board reaffirms that Suffolk County should be included in the New York banking market for purposes of analyzing the competitive effects of this proposal.

On consummation of the acquisition of Dime by North Fork, Fleet and North Fork would continue to compete directly in the New York and New Haven banking markets.[32] In the New York banking market, assuming the fullest effects on competition through a combination of Fleet and the merged North Fork/Dime, the combined organization would control deposits of $45.9 billion, representing 10.5 percent of total deposits in banking or thrift organizations ("depository institutions") in the market ("market deposits").[33] The Herfindahl-Hirschman Index ("HHI") would increase by 51 points to 837.[34]

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to Basic Trading Centers), as defined by Rand McNally. Rand McNally Commercial Atlas, 1998. Suffolk County is considered a part of the New York Basic Trading Area.

[32] The New Haven banking market includes the New Haven RMA.

[33] Market share data for all banking markets are as of June 30, 1999. These data are based on calculations that include the deposits of thrift institutions 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, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board has regularly included thrift deposits in the calculation of market share on a 50-percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991). Because the deposits of Dime Savings would be acquired by a commercial banking organization under the proposal, those deposits are included at 100 percent in the calculation of Fleet's pro forma market share. See Norwest Corporation, 78 Federal Reserve Bulletin 452 (1992); First Banks, Inc., 76 Federal Reserve Bulletin 669, 670 n.9 (1990).

In the New Haven banking market, assuming the fullest effects on competition through a combination of Fleet and the merged North Fork/Dime, the combined organization would control deposits of $1.8 billion, representing 29 percent of total deposits in depository institutions in the market. The HHI would increase by 274 points to 1684.[35]

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[34] Under the DOJ Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market is considered unconcentrated when the post-merger HHI is less than 1000 points, and moderately concentrated when the post-merger HHI is between 1000 and 1800. The DOJ 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 nondepository financial institutions.

[35] Dime contends that deposits controlled by North Fork in the New Haven banking market decreased from $363 million, as of June 30, 1999, to approximately $152 million, as of December 31, 1999. Dime believes it likely that Fleet acquired these deposits, but provides no evidence to support this allegation. The Board has calculated the existing and pro forma HHI levels in the affected banking markets based on the most recently available (June 30, 1999) summary of deposits data to allow accurate comparisons. Because the Board analyzed deposit data as of June 30, the analysis of the New Haven banking market evaluated the competitive effects of this proposal before the decrease in North Fork's market share.

Dime also argues that Sovereign Bancorp, Inc. ("Sovereign") is not an effective competitor in this market, and, therefore, the HHI data do not reflect competitive realities in New Haven. Sovereign recently entered the New Haven banking market by acquiring branches from Fleet. As previously discussed, thrift institutions have become or have the potential to become significant competitors of commercial banks and their deposits are included in market share calculations on a 50-percent weighted basis. Nothing in the record suggests that its activities are so limited as to justify weighting the deposits held by Sovereign's savings association at less than 50 percent.

The DOJ has reviewed the record of Fleet's application and notice in its entirety and Fleet's initial passivity commitments to the Board. After requiring that Fleet provide an additional passivity commitment and clarify the scope of its initial passivity commitments, the DOJ has advised the Board that consummation of the proposal is not likely to have a significantly adverse effect on competition in any relevant banking market. The Office of the Comptroller of the Currency ("OCC"), FDIC, the NYSBD, and the Connecticut Banking Commissioner have been afforded an opportunity to comment and have not objected to consummation of the proposal.[36]

After carefully reviewing all the 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 banking markets in which Fleet, North Fork, and Dime directly compete or in any other relevant banking market.[37]

Managerial and Financial Considerations and Future Prospects

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[36] Dime contends that Fleet, in connection with this proposal, must file applications with New York and Connecticut under applicable state banking law. Fleet maintains that its proposal does not require the approval of the state banking regulator under the laws of New York and Connecticut. See N.Y. BANKING § 143-b (2000); CONN. GEN. STAT. § 36a-411 (2000). Neither New York nor Connecticut has required an application, and approval of this proposal is conditioned on Fleet receiving any required state regulatory approval.

[37] In analyzing the competitive effects of this transaction, the Board has considered claims by commenters that Fleet has, on occasion, been able to increase fees in certain New England communities where it has few competitors with minimal or no corresponding loss of customers.

In acting on an application, section 3(c) of the BHC Act[38] requires the Board, in acting on an application, to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in a proposal, and certain other supervisory factors. The Board has carefully considered the financial and managerial resources[39] and future prospects[40]

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[38] See 12 U.S.C. § 1842(c).

[39] Dime has questioned North Fork's ability to integrate Dime's operations into its banking organization and North Fork's ability to operate a mortgage company in light of its lack of experience in this area. These matters are discussed in the North Fork Order.

Dime and ICP have also claimed that statements made or submitted to various regulatory agencies by the management of Fleet and North Fork are false or misleading and indicate that management of Fleet and North Fork are not credible. The record does not indicate that either Fleet or North Fork has intentionally, willfully, or recklessly misled the Board. Subsequent submissions by both parties have clarified or corrected the record on a number of matters that have been raised.

On several occasions, Dime and ICP have criticized Fleet's requests for confidential treatment of material submitted in connection with this application as vague, over-inclusive, and made in bad faith in a manner calculated to cause the public portion of the various submissions to be misleading, and they alleged that Fleet and North Fork have shared confidential information and thereby waived any right to confidential treatment of that information. These concerns are properly raised and resolved in the context of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Board's Rules Regarding Availability of Information, 12 C.F.R. 261.

[40] Dime argues that Fleet should be required to discuss the possible effects of various contractual conditions on the proposals by Fleet and North Fork. Fleet would only make its investment in North Fork if North Fork could acquire Dime, and 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 Dime's shareholders' rights plan apply. 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 Fleet.

of Fleet, North Fork, 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.

Based on these and other facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Fleet, North Fork, and their respective subsidiaries are consistent with approval of the proposal, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.[41]

Record of Performance Under the Community Reinvestment Act

Section 3 of the BHC Act also requires the Board, in every case involving the acquisition by a bank holding company of an interest in a bank or bank holding company, to consider the effects of the proposal on the convenience and needs of the communities to be served. The Board has long held that this analysis includes a review of the performance under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) ("CRA"). The CRA requires federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate consistent with the safe and sound operation of such institutions. To accomplish this end, the CRA requires the appropriate supervisory authority to "assess the institution's record of meeting the

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[41] Dime claims that Fleet has not demonstrated the managerial resources necessary to finance North Fork's bid to acquire Dime or to make and monitor a minority investment. The Board has taken into account all the facts of record in evaluating Fleet's managerial resources in the context of this proposal, including examination reports, the nature of the investment, Fleet's past experience in making and monitoring minority investments, and the limited role that Fleet's management may permissibly play in the operation or policies of North Fork.

credit needs of its entire community, including low- and moderate- income neighborhoods, consistent with the safe and sound operations of such institution," and to take this record into account in its evaluation of bank holding company applications.[42]

The Board has reviewed the record of performance of Fleet's subsidiary banks and NFB in light of all the facts of record, including comments received from Dime and ICP. Dime and ICP criticize Fleet's record, based, in part, on their analyses of data filed under the Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) ("HMDA"). Dime and ICP are concerned about Fleet's record of serving minorities and low- and moderate-income ("LMI") communities and LMI individuals. Specifically, the commenters criticize Fleet for increasing its fees for products used by, and reducing the basic banking services provided to, LMI individuals, especially former LMI customers of BankBoston Corporation, Boston, Massachusetts ("BankBoston");[43] the decline in customer service provided to

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[42] 12 U.S.C. § 2903.

[43] Dime has requested that the Board suspend Fleet's ability to increase fees charged to, or change the products used by, the customers of the 17 Dime branches to be sold to Fleet under this proposal and require Fleet to provide the Board with information concerning the fee increases and balance requirements imposed on BankBoston customers, and updates on the progress of the divestitures required in connection with Fleet's acquisition of BankBoston.

The proposal by Fleet to acquire the Dime branches is subject to review by the OCC under the Bank Merger Act. Fleet has stated that all past fee increases were reviewed by senior management at Fleet to ensure that the changes were implemented fairly among all categories of Fleet customers and were not related to the present proposal. Although the Board has recognized that banks help to serve the banking needs of communities by making basic services available free of charge or for a nominal fee, the CRA does not require an institution to provide any specific types of products or services or limit the fees it charges for them. In customers of the branches Fleet divested in connection with the BankBoston merger;[44] Fleet's level of lending to LMI and minority individuals and in predominantly minority and LMI communities; and Fleet's small business lending record to minorities and LMI individuals. Commenters note that the contested nature of North Fork's proposed acquisition of Dime could create confusion that might negatively affect the provision of banking services to the relevant communities. Finally, Dime and ICP question whether it is in the public interest to allow Fleet to purchase 17 Dime Savings branches at some later date without knowing determining whether Fleet plans to close, consolidate, or sell the branches.[45]

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

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addition, the Board has received updates on the progress of Fleet's divestitures throughout the divestiture process.

[45] As noted above, any proposal by Fleet to acquire branches of Dime would be subject to review by the appropriate federal banking agency under the Bank Merger Act. ICP also claims that Fleet is reducing its investments in New York. ICP contends that Fleet, under the terms of the Community Investment Commitment ("CIC") it made in connection with the BankBoston merger, would expend only 20 to 30 percent of the resources devoted to the CIC in New York, even though 32 percent of Fleet's branches are in New York. The CIC does not require a direct correlation between the percentage of overall CRA-related expenditures going to a particular area and the percentage of overall Fleet branches in that area. Also, Fleet's CIC was not a commitment made to the Board and is not enforceable by the Board.

evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[46]

All Fleet's subsidiary banks examined pursuant to the CRA received "satisfactory" ratings at their most recent performance examinations, with the exception of one bank that received an "outstanding" rating.[47] In particular, Fleet National Bank, Providence ("Fleet Bank"), which represents approximately 79.2 percent of the assets controlled by Fleet, and Fleet Bank, N.A., Jersey City, New Jersey ("Fleet-NJ"), received "satisfactory" ratings from the OCC, as of February 1998. North Fork's lead subsidiary bank, NFB, received an overall rating of "outstanding" from its primary federal supervisor, the FDIC, at its most recent CRA performance evaluation, as of September 1999.

B. Fleet's CRA Performance Record

Fleet-NJ.[48] Fleet-NJ designated its assessment area as all of New Jersey, New York City, and Nassau, Suffolk, and Westchester Counties, all in New York. The New York portion of the service area and the 14 northernmost counties in New Jersey are part of the New York-New Jersey Consolidated Metropolitan

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

[47] BankBoston, N.A., Boston, Massachusetts, received an overall rating of "outstanding" from its primary federal supervisor, the OCC. Fleet Bank (RI), National Association, Providence, Rhode Island, a credit card bank, has been examined for CRA performance since its formation in November 1997.

[48] For reviews of the records of Fleet's other depository institutions under the CRA, which are based on the institutions' most recent performance examinations, see Fleet Financial Group, Inc., 85 Federal Reserve Bulletin 747 (1999) ("Fleet Order").

Statistical Areas ("MSA") ("New York City CMSA") and accounted for 91 percent of the bank's HMDA-reported and small business lending and 92 percent of the bank's consumer lending.

Examiners found that Fleet-NJ made loans throughout its assessment area, including LMI census tracts. During the examination period, Fleet-NJ made 13 percent of the total number of home mortgage loans made by all lenders in LMI census tracts in its assessment area, which represented more than twice the market share of any other lender. The bank also had a commendable record of lending to LMI borrowers and, despite competition from much larger financial institutions in the market, was among the five largest lenders to all borrowers in the New York City CMSA during 1996, and among the two largest home purchase mortgage lenders for LMI borrowers that year. Examiners also noted the bank's success in making consumer loans in LMI census tracts and to LMI borrowers.

Examiners reported that Fleet-NJ offered affordable home mortgage loans under proprietary and government-supported loan programs. For example, the bank's Home Mortgage Opportunity Loan program featured below-market interest rates, no points, a 5-percent downpayment requirement, and required private mortgage insurance for applicants with up to 100 percent of the area's median family income. In 1998, Fleet-NJ made 1,235 loans, totaling $86 million, under this program.[49] Another program featured a 5-percent downpayment requirement, of which up to 2.5 percent could be provided by grants of gifts.[50]

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[49] In late 1998, Fleet-NJ modified this program to focus on low-income borrowers. Between September 1998 and February 1999, the bank made 438 loans, totaling more than $50 million, under the modified program.

[50] In 1998, Fleet expanded its Down Payment Assistance Grant program to provide grants up to $4,000 to homebuyers who qualify for a Veterans Administration

Examiners considered Fleet-NJ to be very responsive to the credit needs of the communities it served in its small business lending, notwithstanding a decline in lending volume between 1996 and 1997. During this period, the bank made 12,975 small business loans, totaling $2 billion. Three percent of the bank's small business loans were in low-income census tracts, which corresponded to the percentage of small businesses in these areas and the percentage of small business loans by lenders in the aggregate.[51] Lending by Fleet-NJ to small businesses also was consistent with lenders in the aggregate, with 43 percent of the bank's small business loans made to firms with annual gross revenues of less than $1 million and in principal amounts of less than $100,000.[52] Through the Fleet INCITY program, the bank offered small business loans featuring reduced documentation, flexible underwriting criteria, and no minimum loan amount.[53]

Examiners characterized Fleet-NJ as an active community development lender, noting that during the examination period the bank made 30 qualified community development loans, totaling $129 million, which resulted

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("VA") loan or a loan eligible for purchase by the Federal National Mortgage Association ("Fannie Mae")

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

[52] During 1998, in New Jersey, small business loans (loans of less than $1 million) by Fleet-NJ increased 16 percent and loans to small businesses (businesses with annual revenues of less than $1 million) increased 39 percent. The percentage of these loans in low-income census tracts and moderate-income census tracts was comparable with the percentage made by lenders in the aggregate.

[53] In 1998 and early 1999, Fleet-NJ made $2 million of loans in New York's Chinatown to small businesses that did not satisfy automated lending guidelines.

in the construction or rehabilitation of 2,300 affordable housing units.[54] Examiners also commended Fleet-NJ for its community development investments. During the examination period, the bank made $41 million of qualified investments and grants and made commitments to provide an additional $74 million of qualified investments.[55]

Examiners found Fleet-NJ's branch network and alternative delivery systems, including proprietary automated teller machines ("ATMs"), telephone banking, and WorkPlace Banking, to be reasonably accessible throughout the bank's assessment area and to persons of all income levels. Eighteen percent of the bank's branches were located in LMI census tracts, compared with the percentage of LMI census tracts and LMI households (26 percent) in the bank's service area. WorkPlace Banking, which offered reduced costs on checking and savings accounts, direct payroll deposit, and reduced rates on loans and ATM-based transactions, was used by 286 companies and approximately 47,700 households throughout the assessment area. Fleet-NJ also offered basic checking and savings accounts and offered to cash U.S. government benefit checks for customers and noncustomers.

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[54] Included among these projects were a $13.1 million construction loan to renovate 12 apartment buildings in East Harlem, creating 133 affordable rental housing units; a $9.7 million construction loan to rehabilitate 29 vacant city-owned brownstone residences in New York; a $3 million construction loan to a nonprofit entity to build a 61-unit apartment complex for the elderly in northern New Jersey; and a $3.5 million construction loan to build 128 units of affordable housing for elderly or disabled LMI individuals in Burlington County in southern New Jersey.

[55] After the examination period, Fleet-NJ committed $50 million to fund the construction of affordable housing and $7.5 million for small business loans in the Harlem/South Bronx Empowerment Zone designated by the Department of Housing and Urban Development.

Fleet Bank. Fleet Bank operates in Massachusetts, Connecticut, portions of upstate New York, and Rhode Island.[56] During 1996 and 1997, the bank made 53,305 HMDA-reported loans, totaling $4.4 billion, and 27,827 loans to small businesses in amounts less than $1 million ("small business loans"), totaling $4.2 billion, in its assessment area.

Examiners considered Fleet Bank's lending performance to be particularly strong in home purchase lending. In every state, and in most MSAs in its assessment area, the percentage of the bank's loans made in LMI census tracts was higher than the percentage of owner-occupied housing in these census tracts and higher than the percentage of such loans made by lenders in the aggregate. At the time of its most recent examination, the bank used several programs to provide affordable home mortgage loans, including (1) Fleet's proprietary Affordable Housing program, which featured reduced downpayment requirements, flexible underwriting standards, and no mortgage insurance requirement for borrowers unable to meet traditional secondary market credit standards; (2) local partnership programs offered in cooperation with organizations, such as the Association of Community Organization for Reform Now, Neighborhood Assistance Corporation of America, and Hartford Areas Rally Together, which were similar to Fleet's

[56] At the time of its most recent CRA performance examination, the bank owned several subsidiaries, and the most significant subsidiary for purposes of considering its CRA performance was Fleet Mortgage Group, Inc., Columbia, South Carolina ("Fleet Mortgage"). In addition, Fleet owned the Fleet Community Development Corporation, Providence ("Fleet CDC"), which engaged in community development lending and investments. Home mortgage loans by Fleet Mortgage and loans and investments by Fleet CDC and Fleet Bank's affiliated banks that were made in Fleet Bank's assessment area were included by Fleet Bank for CRA purposes, and thus were considered by the OCC in its examination of Fleet Bank's CRA performance.

proprietary programs, but offered more flexible underwriting standards and extensive financial and homebuyer counseling; (3) federal-government-sponsored secondary market programs, such as Federal Housing Administration and VA loans and the Fannie Mae Community Home Buyers program, which featured reduced downpayment requirements, flexible underwriting standards, and flexible financing of closing costs; and (4) state- and local-government-supported programs, such as the Jumpstart program in Massachusetts, New York, and Rhode Island, which combined a first mortgage loan from a state housing finance authority with an unsecured loan from Fleet Bank at the same rate to cover downpayment or closing costs.[57] The distribution of consumer lending by Fleet Bank also generally corresponded to the distribution of the population, including LMI borrowers, in the bank's service area.

For small business lending, examiners reported that Fleet Bank was particularly active in Massachusetts and Connecticut, where the percentage of the bank's small business loans in LMI census tracts was generally 3 to 4 percent higher than the comparable percentage for lenders in the aggregate. Through the Fleet INCITY Business and Entrepreneurial Services Group, established to support businesses in LMI areas, Fleet Bank offered small business loans featuring reduced documentation, flexible underwriting, and no minimum loan amount. Fleet CDC also supported small businesses through low-interest loans, longer-term loans, and equity investments in financial intermediaries and nonprofit organizations that focused their efforts on small businesses located in LMI areas. Fleet Bank was an active lender through Small Business Administration ("SBA") programs. Overall,

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[57] Under the Jumpstart program, Fleet Bank made 2,173 loans in 1998, totaling $254.1 million; 1,950 loans in 1997, totaling $202.7 million; and 3,338 loans in 1996, totaling $325.9 million.

Fleet was the largest SBA lender in New England in 1997 and the second largest in 1998. In the first six months of 1999, Fleet made more small business loans under a new Small Business Administration ("SBA") express approval program than it made in all of 1998, according to Fleet.

Examiners also judged Fleet Bank's performance in making community development investments to be particularly strong. In 1996 and 1997, the bank made $253 million of qualified investments and grants and committed to make an additional $269 million. The bank's two largest investments consisted of the purchase of $220 million of bond anticipation notes to assist state and local governments in funding efforts to revitalize and stabilize economically depressed areas and the purchase of $60 million of low-income housing tax credits. In 1997, Fleet Bank entered into an agreement with Neighborhood Housing Services of America ("NHSA") to purchase up to $10 million of affordable first and second mortgages and home improvement loans originated and underwritten by NHSA's local affiliates in Fleet's assessment area. Fleet also committed to make grants of $1.4 million of working capital over three years to NHSA's affiliated Neighbor Works Organizations to support neighborhood revitalization and affordable housing development. In addition, Fleet Bank made a grant of $200,000 in 1997, payable over three years to Local Initiatives Support Corporation to support the participation of seven rural New England community development corporations in Maine, Massachusetts, New Hampshire, and upstate New York in its programs.

According to examiners, Fleet Bank's branch network, ATMs, and its alternative delivery systems provided consistent service and reached consumers in all geographic areas, and its products and services were designed to serve all consumers, including LMI individuals. For example, the bank's Basic Checking program allowed up to eight transactions per month for a minimal opening deposit and small monthly fee. Approximately 600 companies participated in the bank's

WorkPlace Banking program, which provided basic banking services at reduced cost to approximately 53,000 households. The program was provided through branches, ATMs, and telephone banking system, thereby enhancing access to services for certain predominantly minority communities. The bank also offered seminars for first-time LMI homebuyers and small business owners.

C. Fleet's HMDA Data

The Board has carefully considered the lending records of Fleet and North Fork in light of comments on HMDA data reported by subsidiaries of the organizations. Comments by Dime and ICP express concern about Fleet's HMDA-reportable loans to minorities and LMI individuals. In addition, Dime alleges that Fleet's submission to the Board misrepresented Fleet's lending record relative to Dime's record by comparing HMDA data for the two companies throughout the New York banking market, instead of limiting the comparison to the New York Metropolitan Area where Dime has a strong presence.[58]

The Board has carefully considered the 1997, 1998, and 1999 HMDA data reported by Fleet. The data indicate that Fleet made a significant number and amount of housing-related loans in each of these years, including in LMI areas and to LMI individuals, and minorities. The data generally show that overall HMDA loan applications and lending activities by Fleet increased from 1998 to 1999. Fleet's HMDA lending increased in the New York, New York City MSA, and Nassau-Suffolk MSA assessment areas. Although the data revealed an overall decline in HMDA lending activity in the New Jersey assessment area in certain

[58] Fleet's analysis considered HMDA data for all Fleet subsidiaries that operate in the New York and New Jersey banking markets. The Board's review of Fleet's HMDA data has excluded BankBoston's HMDA data, because Fleet and BankBoston reported separately for 1999 and BankBoston does not serve the assessment areas under review.

categories, the decreases did not occur disproportionately across any particular racial or income-level categories.

The increase in the volume of Fleet's applications and originations benefited minorities and LMI areas and individuals, according to the 1999 HMDA data. African Americans, Hispanics, LMI areas and LMI individuals all shared in Fleet's increased lending activity in the New York, New York City MSA, and Nassau-Suffolk MSA assessment areas. The 1999 data also showed significant increases in Fleet's lending in predominantly minority census tracts in all four assessment areas reviewed in terms of number of applications and originations and percentage of total applications and originations in each assessment area. [59]

The data, however, reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups and persons at different income levels, both generally and in certain states and local areas. 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 ensure 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 because the data

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[59] In addition to playing a role in Fleet's increased lending in predominantly minority census tracts, in minority census tract lending, Fleet's HMDA lending in the New Jersey assessment area also demonstrated improvement in the following areas: number of originations to African Americans; number of applications from LMI areas; and number of applications from LMI individuals.

cover only a few categories of housing-related lending.[60] HMDA data, moreover, provide only limited information about the covered loans. HMDA data, therefore, have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has not adequately assisted in meeting its communities' credit needs or has engaged in illegal discrimination in making lending decisions.

Because of the limitations of HMDA data, the Board has carefully considered the data in light of other information, including examination reports that provide an on-site evaluation of compliance by the subsidiary banks of Fleet and North Fork with fair lending laws and the overall lending and community development activities of the banks, as well as fair lending examinations of Fleet Mortgage, which is a subsidiary of Fleet Bank. Examiners found no evidence of prohibited discrimination or illegal credit practices at the subsidiary banks of Fleet or at Fleet Mortgage. Fleet Mortgage's fair lending policies, procedures, training programs, and internal monitoring programs were considered to be satisfactory.[61]

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[60] 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.

[61] One commenter has alleged that Fleet made home purchase and home improvement loans to minority and LMI borrowers in the Boston area for more than the fair market value of the property, which resulted in excessive debt service and an increased risk of loan default and foreclosure. The Board previously has considered these allegations in connection with other applications by Fleet. See Fleet Order; Fleet Financial Group, Inc., 84 Federal Reserve Bulletin 227 (1998); Fleet Financial Group, Inc., 82 Federal Reserve Bulletin 558 (1996); Fleet Financial Group, Inc., 82 Federal Reserve Bulletin 50 (1995). Fleet continues to

The Board also considered the HMDA data in light of the overall lending record of Fleet, including the lending and other programs outlined above. As the discussion illustrates, Fleet has implemented a variety of programs that help to meet the credit needs of the community in areas other than home mortgage lending, including, in particular, small business loans and consumer credit.

D. Small Business Lending Data

Fleet reported an increase in its number and percentage of total loans made to small businesses in each market reviewed. Increases from 1998 to 1999 ranged from 17 percent in the Nassau-Suffolk MSA assessment area to 11 percent in the New Jersey assessment area. In the New York City MSA assessment area, Fleet increased its number of loan origination to small businesses by 16 percent from 1998 to 1999.

Fleet's volume of loans to small businesses in predominantly minority census tracts in 1999 remained relatively unchanged in all four markets. Specifically, slight increases were reported in three of the four markets reviewed, while a slight decrease was reported in the Nassau-Suffolk MSA assessment area. Similarly, its percentage of total originations in predominantly minority census tracts remained essentially unchanged from the 1998 levels. In 1998, the last year for which aggregate data are available, the volume of lending in the Nassau-Suffolk MSA, New Jersey, and New York City MSA assessment areas exceeded

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deny any complicity with redevelopers in these transactions and maintains that all loans were made on the basis of independent appraisals. The Board referred the commenter's complaints and evidence to the OCC. The OCC, the primary federal supervisor of Fleet Bank and its mortgage company subsidiary, has sufficient supervisory authority to address violations of law by Fleet involving its home mortgage lending programs if violations are found.

the aggregate percentage of lending to minority small businesses, while the volume in the New York assessment area slightly lagged the aggregate.

Fleet's volume of loans to small businesses in LMI census tracts in 1999 increased significantly from 1997 levels in all four markets under review and has increased, or remained at the higher 1998 levels, in three of the four markets, with the Nassau-Suffolk MSA assessment area as the exception. Volumes from 1997 to 1999 increased 28 percent in the Nassau-Suffolk MSA assessment area, 55 percent in the New York assessment area, 75 percent in the New York City MSA assessment area, and 91 percent in the New Jersey assessment area. From 1998 to 1999, Fleet's percentage of total loans made to small businesses in LMI census tracts declined slightly in all four assessment areas reviewed from 1998 to 1999, however, Fleet's percentage either approximated or exceeded the aggregate in all four assessment areas in 1998 and 1999.

Fleet's overall volume of originations of small loans to businesses increased from 1997 through 1999. The New York, New York City MSA, and Nassau-Suffolk MSA assessment areas experienced increases in volume each year from 1997 to 1999, while the volume in the New Jersey assessment area experienced a significant increase from 1997 to 1998, before the volume leveling off in 1999.

Fleet's volume of originations of small loans to businesses originated in predominantly minority census tracts in 1999 remained relatively unchanged in all four markets. Specifically, slight increases were reported in three of the four markets reviewed, while a slight decrease was reported in the New Jersey assessment area. Similarly, its percentage of total originations in predominantly minority census tracts remained essentially unchanged from the 1998 levels, except for the New York City MSA assessment area, where there was a slight decline. In 1998, the volume of lending in the Nassau-Suffolk MSA, New Jersey, and New

York City MSA assessment areas exceeded the aggregate percentage of lending to minority small businesses, while the volume in the New York assessment area slightly lagged the aggregate.

Fleet's volume and percentage of total small loans to businesses originated in LMI census tracts remained relatively unchanged from 1997 through 1999. Slight increases in volume were reported in the New Jersey and New York City MSA assessment areas, while slight declines were reported in the New York and Nassau-Suffolk MSA assessment areas. An analysis of its percentage of total small loans to businesses originated in LMI census tracts also demonstrates a relatively static pattern, with slight declines in the New York, Nassau-Suffolk MSA, and New York City MSA assessment areas, and a slight increase in the New Jersey assessment area. Fleet's 1997 and 1998 levels of small loans to businesses exceeded the aggregate level for originations in LMI census tracts, with the exception of the New Jersey assessment area, which slightly lagged aggregate levels.

E. North Fork's CRA Performance Record

Dime and ICP also have criticized the CRA performance record of North Fork in connection with Fleet's application. The Board carefully analyzed North Fork's CRA performance record and comments on its record in connection with North Fork's proposal to acquire Dime.[62]

NFB 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. As of June 1999, the NYSBD rated North Fork Bank's performance "outstanding" in helping to meet the credit needs of its entire

[62] See North Fork Order (for a detailed analysis of North Fork's CRA and HMDA performance record performance record).

community pursuant to New York law.[63] Because Fleet would not control North Fork as a result of this proposal, Fleet would not be able to influence the CRA policies of North Fork.

F. Closure and/or Consolidation of the Dime Branches

Commenters criticize Fleet for not indicating in its application or subsequent submissions whether it would consolidate, close, or sell any of the 17 Dime Savings branches it intends to purchase as a future date under the proposal. Fleet has indicated that, until Fleet or North Fork could perform due diligence on the branches, it will be unable to make a decision on such matters.

The acquisition of the Dime branches by Fleet is subject to review by the appropriate federal banking supervisor under the Bank Merger Act. 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.[64] The law does not authorize federal regulators to prevent

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[63] North Fork also owns Superior Savings of New England, Branford, Connecticut, 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 (when it was known as Branford Savings Bank). On June 6, 2000, Superior Savings received approval from the Office of the Comptroller of the Currency to convert to a national bank charter under the name Superior Savings of New England, National Association.

[64] 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 closing of any branch. In addition, any branch closings resulting from this proposal would be considered by the appropriate federal supervisor at the relevant institution's next CRA examination.

G. Conclusion on Convenience and Needs

As discussed, the record demonstrates that Fleet and North Fork have established records of performance in helping to meet the convenience and needs of the communities they serve. On balance, and based on a review of the entire record, the Board concludes that convenience and needs considerations, including the records of CRA performance by both organizations' subsidiary depository institutions, are consistent with approval of the proposal.

Nonbanking Activities

Fleet also has filed a notice under section 4 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 an ownership interest[65] in North Fork, a company that proposes to engage in the operation of a savings association, Dime Savings.[66]

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[65] Dime claims that Fleet and North Fork are acting in concert to acquire Dime and, consequently, that Fleet must provide the Board with notice to control Dime. As discussed above, the Board has found that Fleet has not exerted a controlling influence over North Fork or Dime, and that the passivity commitments provided by Fleet would prevent Fleet from controlling North Fork or Dime in the future. Accordingly, the notice filed by Fleet satisfies the requirements of section 4 with regard to Fleet's proposal to acquire 9 percent of North Fork. Fleet may be required to file an additional notice to acquire added shares of, or control over, North Fork.

[66] Dime asserts that Fleet's notice under section 4 is inadequate for several reasons, including the following: the notice is ambiguous because it does not clearly indicate under which subsection of Regulation Y it has been filed; the public notice provided by Fleet is ambiguous and published in an untimely fashion; the notice does not incorporate by reference the DOJ-requested letter by Fleet that clarifies

Section 4(j) of the BHC Act requires that, in reviewing a proposal to acquire an interest in a savings association, the Board must consider whether the acquisition "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 interests, or unsound banking practices."[67]

As part of its evaluation of these factors, the Board considers the financial and managerial resources of the notificant and its subsidiaries, including

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the scope of Fleet's passivity commitments to the Board; the notice fails to address any effects that Fleet's investment in North Fork would have on Dime Savings; the notice does not discuss the likely effects that North Fork's efforts to acquire Dime has had on Dime Saving's safety and soundness; and the notice does not address the effect that North Fork's efforts to acquire control of Dime, through Dime's board of directors rather than through North Fork's tender offer, would have on Fleet's role in the proposal or the effect that the March 31, 2000, bilateral discretionary termination date might have on Fleet's investment in North Fork and North Fork's attempt to acquire Dime. Dime also raises the question of whether the updated financial statements provided in connection with Fleet's notice were sufficiently current and whether the financial statements reflect different assumptions or information of importance to the Board. Dime requests that Fleet's notice be withdrawn until its alleged inadequacies are addressed, or, in the alternative, that Fleet's request that its notice be processed as quickly as possible be denied.

Fleet's public notice is sufficient to provide affected communities an opportunity to comment on Fleet's acquisition of an indirect interest in Dime Savings through North Fork's proposed acquisition of at least a majority of Dime's stock. In fact, the Board received comments from Dime and others on aspects of Fleet's proposal related to Dime in response to the public notice. Fleet's notice meets the filing requirements established and described in section 4 of the BHC Act and the Board's Regulation Y, and Fleet has provided all information required or requested by the Board in connection with the notice. 12 C.F.R. 225.24. Accordingly, the Board concludes that the record for Fleet's notice is complete and provides the Board with all the information necessary to approve Fleet's notice pursuant to section 4 of the BHC Act.

[67] 12 U.S.C. § 1843(j)(2)(A).

the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial factors are consistent with approval of the notice. As discussed above, the Board also has considered the competitive effects of Fleet's proposal to acquire an interest in a company that proposes to engage in the operation of a savings association in light of all the facts of record, including the public comments received.[68] Based on all the facts of record, the Board concludes that this proposal would not result in any significantly adverse effects on competition from the nonbanking acquisitions proposed in this transaction.

Fleet asserts that consummation of the proposal would result in the public benefits to be derived from permitting capital markets to operate so that bank holding companies can make potentially profitable investments in financial institutions and from permitting banking organizations to allocate their resources in the manner they consider to be most efficient when such investments are consistent with the relevant considerations under the BHC Act.[69] The Board also has

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[68] Because the section 4 notice filed by Fleet relates only to the operation by North Fork of Dime Savings, Dime asserts that Fleet has not adequately detailed how it may permissibly acquire interests in the various nonbanking subsidiaries of North Fork and Dime under the BHC Act. Fleet, as a financial holding company, may acquire interests in companies other than a bank (as defined in the BHC Act) or a savings association pursuant to section 4(k) of the BHC Act without prior Board approval. To the extent that Dime's subsidiaries may be engaged in activities that are impermissible for bank holding companies to conduct under the BHC Act, North Fork has committed to conform all these activities to the limitations of section 4(c)(8) of the BHC Act within two years of North Fork's acquisition of Dime. See North Fork Order.

[69] See, e.g., North Fork Bancorporation, Inc., 84 Federal Reserve Bulletin 477, 480 (1998); Mercantile Bancorporation, Inc., 83 Federal Reserve Bulletin 683, 688

carefully considered Dime's contention that Fleet and North Fork have disrupted the operation of the capital markets and interfered with a proposal by Dime to acquire Hudson United Bancorp, Mahwah, New Jersey.[70] Dime's contentions in this area are misplaced. The information provided and offers made by Fleet and North Fork can be and are being evaluated by the market. Although there are certainly extra costs to the organizations associated with an offer to acquire an organization with management that has not consented to be acquired, broader public benefits result from allowing shareholders to make their own determination on the desirability of these transactions. In addition, the public benefits to be derived from the North Fork/Dime proposal would be facilitated by Fleet's financing of that proposal.

Moreover, the record does not indicate that consummation of the proposal is likely to result in any significantly adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices that would not be outweighed by its likely public benefits. Accordingly, the Board has determined that the balance of public interest factors it must consider under section 4(j)(2)(A) of the BHC Act is favorable and

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(1997); South Central Texas Bancshares, Inc., 83 Federal Reserve Bulletin 47, 51 n. 20 (1997).

[70] Dime claims that the Fleet/North Fork proposal might result in Fleet's earning profits at the expense of remaining shareholders. However, Dime provides no evidence to substantiate its claim, this assertion, and the record does not otherwise support the assertion.

Dime also argues that there are numerous negative effects of the contest for control of Dime. Dime states that its management has spent a considerable amount of time and resources defending against North Fork's efforts to acquire Dime to the detriment of the communities served by Dime Savings.

consistent with approval of Fleet's notice to acquire an interest in the merged North Fork/Dime.

<u>Other Issues</u>

Dime has argued that the Board should deny the related applications by Fleet and North Fork in connection with North Fork's attempt to acquire Dime on the basis that it is unlikely that North Fork and, therefore, Fleet, would be able to consummate its proposal within the three-month period normally provided by the Board.

The BHC Act does not require that consummation of a transaction occur within a specified period of time. Generally, the Board requires an applicant to consummate an approved transaction within three months from the date of the Board's action to ensure that there are not substantial changes in an applicant's condition that might require the Board to reconsider its approval.

Although the Board has a policy against intervening in contests for corporate control, it recognizes that when the 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. The Board has considered the effects of the contest for control of Dime on the safety and soundness of all the institutions involved in the proposal, as well as on the other statutory factors the Board is required to consider under the BHC Act, and has determined that these considerations are consistent with approval of Fleet's application and notice. If Fleet requests an extension of the three-month period provided to consummate the proposal, the Board will examine carefully all relevant circumstances surrounding the proposal, and may require Fleet to provide supplemental information necessary to allow the Board to evaluate the financial and managerial resources of Fleet and North Fork 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. 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 Fleet.[71]

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved.[72]

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[71] See also the discussion on the consummation period in the North Fork Order.

[72] Dime has requested a hearing on the proposal. The BHC Act does not require that the Board hold a public hearing on applications or notices, although the Board may do so when appropriate. Section 4 of the BHC Act and the Board's rules thereunder provide for a hearing on an application to acquire a savings association if there are disputed issues of material fact that cannot be resolved in some other manner. See 12 C.F.R. 225.25(a)(2). In addition, under its rules, the Board may, in its discretion, hold a public hearing or meeting on an application or notice to clarify factual issues related to the application and notice and to provide an opportunity for testimony, if appropriate. See 12 C.F.R. 262.3(e) and 262.25(d). Dime requests a hearing for two reasons: (1) to determine whether Fleet would control North Fork; and (2) to determine whether alleged credibility questions about the management of Fleet and North Fork preclude the approval of the application and notice on managerial grounds.

The Board has carefully considered Dime's request for a hearing 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 Fleet and North Fork. Dime also has had ample opportunity to present its views, and has submitted substantial written comments that have been carefully considered by the Board in acting on the proposal. Dime's request for a hearing or meeting fails to demonstrate why Dime's numerous written presentations do not adequately present its 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 hearing or meeting is not required or warranted to clarify the factual record for the proposal, or otherwise

The Board's approval is specifically conditioned on compliance by Fleet with all the commitments made in connection with this application and notice and with the conditions in this order. In addition, the Board's approval is conditioned on Fleet's investment in North Fork not exceeding $250 million as proposed in the application and notice by Fleet. The Board's determination on the nonbanking activity also is subject to all the terms and conditions set forth 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 bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders thereunder. For purposes of this action, the commitments and conditions relied on by the Board in reaching its decision 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 shall not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal shall not

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warranted in this case. Accordingly, the request for a hearing or meeting on the proposal is hereby denied.

In addition, Dime has alleged that the Board's ex parte communication policies have not been complied with in this case. The Board conducted an internal investigation of this matter and has determined that Board and Reserve Bank staff have followed all applicable policies.

be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board.

By order of the Board of Governors,[73] effective September 27, 2000.

(signed)

Jennifer J. Johnson
Secretary of the Board

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

APPENDIX

Fleet hereby commits that it will not, without the prior approval of the Board or its staff, directly or indirectly:

(1) Exercise or attempt to exercise a controlling influence over the management or policies of North Fork or any of its subsidiaries;[74]

(2) Seek or accept representation on the board of directors of North Fork or any of its subsidiaries;

(3) Have or seek to have any employee or representative serve as an officer, agent, or employee of North Fork or any of its subsidiaries;

(4) Take any action that would cause North Fork or any of its subsidiaries to become a subsidiary of Fleet, or any of its subsidiaries;

(5) Acquire or retain shares that would cause the combined interests of Fleet and its subsidiaries, and their respective officers, directors, and affiliates, to equal or exceed 9.0% of the outstanding voting shares of North Fork Common Stock (it being understood that, in making such calculation, Fleet shall include (a) such shares of North Fork Common Stock as may be acquired by conversion of the North Fork Preferred or the exercise of the Rights, regardless of whether such North Fork Preferred or Rights are immediately convertible into shares of North

[74] For the purposes of the Appendix, "North Fork or any of its subsidiaries" refers to North Fork, Dime, and the subsidiaries of either company.

Fork Common Stock as an economic matter, and (b) such shares of North Fork Common Stock as may be held in a fiduciary capacity by Fleet subsidiaries and are not exempt under 12 C.F.R. § 225.12(a) due to the fact that they are held with sole voting power);

(6) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or the board of directors of North Fork or any of its subsidiaries;

(7) Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of North Fork or any of its subsidiaries;

(8) Attempt to influence the dividend policies or practices of North Fork or any of its subsidiaries (other than with respect to Fleet's right to obtain payment of dividends under the terms of the North Fork Preferred);

(9) Attempt to influence the investment, loan or credit decisions or policies, pricing of services, personnel decisions, operational activities (including the location of any offices or branches or their hours of operation, etc.), or any similar activities or decisions of North Fork or any of its subsidiaries;

(10) Dispose or threaten to dispose of shares of North Fork or any of its subsidiaries as a condition of specific action or non-action by North Fork or any of its subsidiaries; or

(11) Enter into any banking or nonbanking transactions with North Fork or any of its subsidiaries,[75] except for the anticipated Branch Sale Transaction or Ordinary Course Transactions.

Fleet provided an additional passivity commitment and clarified the scope of the above passivity commitments, at the request of the DOJ as follows:

(i) Fleet represents that it will not, without prior approval of the Board, seek to obtain competitively sensitive information from North Fork or its subsidiaries, other than information appropriate to engage in the process of acquiring the 17 retail branches of Dime that Fleet would acquire under this proposal and North Fork's consolidated financial statements so long as the financial statements do not contain projections or forward-looking statements, or information relating to prices or the business and strategic plans of North Fork or its subsidiaries;[76]

(ii) Fleet will not, without prior approval of the Board, provide any competitively sensitive information to North Fork; and

(iii) Fleet reaffirms, consistent with the commitments provided to the Board, that it will not, without prior approval of the Board, directly or indirectly attempt to seek to affect or influence the board of directors or the business, operations, affairs, financial matters or policies of North Fork or any of its subsidiaries; nominate,

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[75] This commitment does not preclude the branch sale transaction and additional rights offerings contemplated by the proposal.

appoint or otherwise designate the officers or directors of North Fork or any of its subsidiaries; or acquire or exercise veto power or approval rights with respect to the business of North Fork or any of its subsidiaries, beyond those specified in Fleet's stock purchase agreement with North Fork, including acquiring or exercising veto power or approval rights over (a) changes in control of North Fork or any of its subsidiaries; (b) asset purchases or sales by North Fork; (c) change in majority ownership of North Fork or any of its subsidiaries; (d) mergers or acquisitions by North Fork or any of its subsidiaries; or (e) actions by North Fork or any of its subsidiaries to raise equity or capital, including actions to authorize, create or increase the authorized amount of or issue any class or series of any debt or equity securities of North Fork or any of its subsidiaries, or any warrants, options or other rights convertible or exchangeable into any class or series of any debt or equity securities of North Fork or any of its subsidiaries.

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[76] Fleet, without prior consultation with North Fork, has waived any rights it may have under its stock purchase agreement with North Fork to obtain other competitively sensitive information.