

FEDERAL RESERVE SYSTEM

North Fork Bancorporation, Inc.
Melville, New York

Order Approving the Acquisition of a Bank Holding Company

North Fork Bancorporation (“North Fork”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act to acquire GreenPoint Financial Corp. (“GreenPoint”) and its subsidiary bank, GreenPoint Bank, both in New York, New York.¹ North Fork also has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.28(b)(12) of the Board’s Regulation Y to acquire a nonbanking subsidiary of GreenPoint and thereby engage in permissible community development activities.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 Federal Register 21,833 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments in light of the factors set forth in sections 3 and 4 of the BHC Act.

North Fork, with total consolidated assets of approximately \$25.6 billion, operates insured depository institutions³ in New York, Connecticut, and New Jersey that control deposits totaling approximately \$18 billion, which represents less than 1 percent of total deposits in insured depository institutions in

¹ 12 U.S.C. § 1842.

² 12 U.S.C. §§ 1843(c)(8) and 1843(j); 12 C.F.R. 225.28(b)(12).

³ In this context, the term “insured depository institution” includes insured commercial banks, savings associations, and savings banks.

the United States.⁴ North Fork is the seventh largest depository organization in New York, controlling deposits of \$14 billion, which represents approximately 2.4 percent of total deposits in depository institutions in the state (“state deposits”).⁵ GreenPoint, with total consolidated assets of approximately \$23.8 billion, is the eighth largest insured depository organization in New York, controlling deposits of \$12.6 billion, which represents approximately 2.2 percent of state deposits.

On consummation of the proposal, North Fork, with total consolidated assets of \$54.1 billion,⁶ would control deposits of approximately \$31.6 billion, which represents less than 1 percent of total deposits in insured depository institutions nationwide. North Fork would become the fifth largest depository organization in New York, controlling deposits in the state of \$26.6 billion, which represents approximately 4.5 percent of state deposits.

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 any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the

⁴ Asset and national deposit data are as of March 31, 2004, and have been adjusted to account for the merger of The Trust Company of New Jersey, Jersey City, New Jersey (“TCNJ”), into North Fork’s lead subsidiary bank, North Fork Bank, Mattituck, New York (“North Fork Bank”), on May 15, 2004.

⁵ Statewide deposit and ranking data are as of June 30, 2003.

⁶ This amount includes approximately \$5.4 billion in one-time balance sheet adjustments.

Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁷

North Fork and GreenPoint compete directly in the Metropolitan New York/New Jersey banking market (“New York banking market”).⁸ The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by North Fork and GreenPoint, the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),⁹ and other characteristics of the market.

⁷ 12 U.S.C. § 1842(c)(1).

⁸ The New York banking market is defined as the counties of Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester in New York; the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.

⁹ Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is below 1000. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the New York banking market. On consummation of the proposal, North Fork would become the fifth largest depository organization in this market, controlling \$30 billion in deposits, which represents approximately 4.7 percent of market deposits.¹⁰ The HHI would increase by only 11 points to 982, the market would remain unconcentrated, and numerous competitors would remain in the market.

The Department of Justice also has conducted a review of the competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in the New York banking market or any other relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

¹⁰ Market share data are as of June 30, 2003, adjusted to include North Fork's acquisition of TCNJ, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including reports of examination, other confidential supervisory information received from the primary federal supervisors for the subsidiary depository institutions of North Fork and GreenPoint, information provided by North Fork, and public comment on the proposal. In addition, the Board has consulted with the Federal Deposit Insurance Corporation (“FDIC”), the primary federal supervisor of North Fork’s subsidiary banks, concerning the proposal.

North Fork is well capitalized and will remain so on consummation of the proposal. Moreover, the proposal is structured as a share exchange and involves no acquisition debt.

The Board also has considered the managerial resources and the examination records of North Fork, GreenPoint, and GreenPoint Bank, including their risk management systems and other policies; North Fork’s record of integrating past merger proposals; and the proposed management after consummation, including management of each of its current and proposed subsidiaries.¹¹ Based on all the facts of record, the Board has concluded that

¹¹ A commenter criticized North Fork’s management of its mortgage operations by referencing an administrative action brought by the New York Attorney General’s Office (“NYAG’s Office”) against North Fork that involved escrow fees improperly charged to 30 accounts. The NYAG’s Office confirmed that this matter was resolved in May 2003, when North Fork corrected the alleged errors, reimbursed the escrow fees it charged the customers involved, and paid a small fine.

considerations relating to the financial and managerial resources and future prospects of North Fork, GreenPoint, and GreenPoint Bank are consistent with approval, as are the other supervisory factors under the BHC Act.¹²

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹³ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the

¹² The commenter also expressed concern that GreenPoint Bank’s subsidiary, GreenPoint Mortgage Funding, Inc. (“GPMF”), might be outsourcing certain back-office services to vendors in foreign countries and questioned whether customers’ financial information was being properly safeguarded. Many U.S. financial institutions use service providers to perform various functions, such as data processing. The use of service providers, whether domestic or foreign-based, is a common business practice and is not prohibited by federal banking laws. The Board expects U.S. financial institutions to manage effectively the risks associated with their outsourcing arrangements and to comply with all applicable legal and regulatory requirements, regardless of whether these arrangements are with domestic or foreign firms. U.S. financial institutions have various obligations under federal law to protect the privacy and security of information about their customers, including information transferred or transmitted to a foreign-based service provider. In supervising financial institutions with outsourcing arrangements, the federal financial supervisory agencies focus on the ability and obligation of the financial institutions to maintain controls over the privacy and security practices of their service providers that have custody or access to customer information. The Board has consulted with the FDIC and reviewed information submitted by North Fork and GreenPoint about the banks’ controls over service providers.

¹³ 12 U.S.C. § 2901 et seq.

appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary banks of North Fork and GreenPoint in light of all the facts of record, including public comment on the proposal. A commenter opposing the proposal asserted, based on data reported under the Home Mortgage Disclosure Act ("HMDA"),¹⁴ that North Fork and GreenPoint engage in discriminatory treatment of African-American and Hispanic individuals in their home mortgage lending operations. The commenter also contended that the banks do not make their products and services available in low-income and predominantly minority areas, particularly in the Bronx, and instead provide financial support to "fringe banking" businesses, such as check cashers and pawn shops, in those areas. In addition, the commenter expressed concern about potential branch closures resulting from this proposal.¹⁵

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the

¹⁴ 12 U.S.C. § 2801 et seq.

¹⁵ The commenter also expressed concern about possible job losses resulting from this proposal. The effect of a proposed acquisition on employment in a community is not among the factors included in the BHC Act, and the convenience and needs factor has been interpreted consistently by the federal banking agencies, the courts, and the Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. See Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 457 (1996).

CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁶

North Fork Bank received an "outstanding" rating at its most recent CRA evaluation by the FDIC, as of August 19, 2002.¹⁷ GreenPoint Bank also received an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of January 28, 2002. North Fork has indicated that GreenPoint Bank would be merged into North Fork Bank after consummation of the proposal.¹⁸ North Fork stated that it would identify the best products and services currently offered by both institutions and endeavor to make them available to all customers.

B. CRA Performance of North Fork Bank

North Fork Bank's most recent CRA evaluation characterized its overall record of home mortgage and small business lending as excellent and praised the bank's level of community development lending. Examiners noted favorably the use of several flexible lending products designed to address

¹⁶ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

¹⁷ North Fork's other subsidiary depository institution, Superior Savings of New England, National Association, Branford, Connecticut ("Superior"), received a "satisfactory" CRA performance rating from the Office of the Comptroller of the Currency ("OCC"), as of September 30, 2002. The OCC has designated Superior as a wholesale bank. As of March 31, 2004, Superior reported assets of \$462 million, representing approximately 2.1 percent of North Fork's total assets.

¹⁸ The FDIC has approved the Bank Merger Act (12 U.S.C. § 1828(c)) application related to this transaction.

affordable housing needs of LMI individuals and commended the bank's level of qualified investments. In addition, examiners commended North Fork Bank's community development services and the distribution of the bank's branches.

North Fork Bank also received an "outstanding" rating under the lending test at its most recent CRA performance evaluation.¹⁹ Examiners commended North Fork Bank for its responsiveness to the assessment areas' credit needs and excellent level of lending activity.

Examiners also commended North Fork Bank for the excellent overall geographic distribution of its lending and good distribution of its home mortgage loans to borrowers throughout the assessment areas and noted North Fork's use of Modification, Extension, and Consolidation Agreements ("MECAs") in addition to HMDA-reportable loans.²⁰ Examiners found that North Fork Bank's home purchase lending in LMI census tracts exceeded the percentage of owner-occupied housing units and the aggregate lending data. For example, examiners noted that North Fork Bank made approximately 24 percent of its total home purchase loan originations during the assessment period to borrowers in LMI census tracts, which was more than double the percentage of owner-occupied housing units in LMI

¹⁹ The evaluation period for the lending test was January 1, 2000, through June 30, 2002; the evaluation period for the investment test and service test was October 1, 1999, through June 30, 2002.

²⁰ A MECA is an agreement under which a lender and a borrower agree to modify the terms of an existing loan by, for example, extending the final repayment date. MECAs do not involve lending additional money and are not reported under HMDA, but achieve the same results as a loan purchase or loan refinancing and may be considered in evaluating an institution's CRA performance. See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register at 36,632 (2001).

census tracts in the bank's assessment areas.²¹ Examiners also noted that approximately 29 percent of North Fork Bank's 2000 home purchase loans were made to borrowers in LMI census tracts, compared with the approximately 16 percent originated by the lenders in the aggregate ("aggregate lenders").²²

Examiners commended North Fork Bank for developing flexible lending products and programs, such as the North Fork Subsidy Program, which provides borrowers who meet certain income guidelines and purchase homes in predominantly minority communities with closing-cost grants of up to \$3,000; and the North Fork Bank Affordable Housing Program, which combines low

²¹ The commenter asserted that North Fork Bank failed to originate adequate numbers of mortgage loans in LMI areas of Brooklyn, the Bronx, and Manhattan. Although the Board has recognized that banks help serve the banking needs of communities by making a variety of products and services available, the CRA does not require an institution to participate in any specific loan programs or provide any specific types of products or services in its assessment area. Examiners noted that data from the 2000 Census show that a majority of the housing units in the bank's assessment areas are renter-occupied. In light of these demographic data, examiners praised North Fork Bank's lending in LMI communities and noted North Fork's leadership in responding to the credit needs of economically disadvantaged areas, in part through the bank's multifamily lending activities. Examiners found that during the evaluation period, North Fork Bank originated or purchased 265 multifamily loans (including MECAs) on properties in LMI census tracts, totaling approximately \$345 million, which represented approximately 47 percent of the number and 41 percent of the dollar amount of North Fork Bank's total multifamily lending activities in its assessment areas during the evaluation period. Examiners stated that the majority of the bank's LMI multifamily loans were originated in the counties of Kings (Brooklyn), Bronx, and New York (Manhattan). Examiners also determined, after a sampling of the rent rolls for these properties, that all the bank's LMI multifamily loans involve affordable housing and meet the definition of community development lending.

²² The lending data of the lenders in the aggregate represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area.

down-payment requirements, below market interest rates, and reduced loan costs for applicants with total household income of \$65,000 or less. In addition, examiners reported that North Fork Bank participated in several government-sponsored programs that offered flexible underwriting for home mortgages through secondary market providers, such as Fannie Mae, and worked with the State of New York Mortgage Association to offer loan programs focused on first-time homebuyers or LMI borrowers. North Fork also provides loan products with special terms to promote cooperative housing opportunities for LMI borrowers.

Examiners characterized North Fork Bank's willingness to serve the credit needs of small- and medium-sized businesses as impressive particularly given the size of the bank. During the evaluation period, North Fork Bank originated more than 15,000 small loans to businesses in its assessment areas,²³ totaling more than \$1.4 billion.²⁴ Examiners reported that the bank exhibited

²³ Small loans to business are loans that are originated in amounts of \$1 million or less and are either secured by nonfarm, nonresidential properties or are classified as commercial and industrial loans.

²⁴ The commenter expressed concern that some of North Fork's small business lending financed retail check cashers or other nontraditional providers of financial services. According to information provided by North Fork, North Fork Bank has depository and lending relationships with entities engaged in retail check-cashing and money-transmittal activities. North Fork takes steps to ensure that such companies are appropriately licensed and supervised and that their principals meet background requirements. North Fork stated that it has no role in the implementation of the policies or procedures of its retail check-cashing customers and that it has refused to lend to, or terminated relationships with, nontraditional product providers that North Fork believed were engaged in questionable practices. The Board notes that North Fork Bank owns a check-cashing affiliate, CBMC, Inc., that it acquired as part of a prior bank merger. This affiliate is licensed and supervised by the New York State Banking Department ("NYSBD") and examined by the FDIC. The Board has consulted with the FDIC and the NYSBD regarding their most recent reviews of the company's activities.

excellent geographic distribution of small loans to businesses in its assessment areas compared with the aggregate lenders.²⁵ North Fork stated that North Fork Bank made almost \$800 million in small loans to businesses in 2002, including 280 small loans to businesses totaling more than \$21 million in the Bronx, which made North Fork Bank the fourth largest small business lender in the Bronx in that year.²⁶ North Fork also stated that, in 2003, North Fork Bank substantially increased the number of small loans to businesses and loans to small businesses in the Bronx.

Examiners commended North Fork Bank for its leadership in making community development loans and in responding to the credit needs of economically disadvantaged areas, individuals, and small businesses. During the evaluation period, North Fork Bank originated more than 30 community development loans totaling more than \$83 million in its assessment areas. These loans included \$4 million in credit for a retail development in an LMI neighborhood in Bronx County, a \$14 million loan for renovations and a permanent mortgage for an industrial warehouse in an LMI area in the Hunts Point section of Bronx County, more than \$5 million in credit to fund the rehabilitation of a 48-unit apartment building in an LMI neighborhood in Harlem, and loans to improve healthcare facilities for low-income individuals and families. In 2003,

²⁵ Examiners noted that, in 2000, North Fork Bank originated 25 percent of its small loans to businesses in LMI census tracts, comparing favorably with the aggregate lenders, which originated approximately 17 percent of their small loans to businesses in LMI census tracts. During the evaluation period, North Fork Bank also originated 24 percent of its small loans to businesses in LMI census tracts, which compared favorably to the fact that approximately 21 percent of the businesses were in LMI census tracts.

²⁶ The commenter asserted that North Fork Bank's level of small business lending in the Bronx was inadequate.

North Fork Bank originated 23 new community development loans totaling more than \$76 million.

North Fork Bank received an “outstanding” rating under the investment test at its most recent CRA performance evaluation. Examiners commended North Fork Bank for its excellent commitment to the community development organizations in its assessment areas and noted the bank’s leadership in investing in innovative and complex qualified investments. During the evaluation period, North Fork Bank made 100 community development investments totaling more than \$34 million in its assessment areas. North Fork Bank’s total community development investments in its assessment areas, including grants, totaled more than \$66 million. These investments included a \$5 million investment in multifamily housing revenue bonds issued by the New York City Housing Development Corporation, a \$15 million investment in an industrial revenue bond supporting the creation of a 147-unit rental facility for low-income senior citizens in Central Islip, and a \$2.3 million investment through the CRA Fund in securities financing the mortgage of a Section 8 housing project in the Bronx.²⁷ Since the evaluation period, North Fork Bank’s level of qualified community development investments has increased to \$89.5 million.

North Fork Bank also received an “outstanding” rating under the service test. Examiners reported that North Fork Bank offered an excellent level of support to its community and commended North Fork Bank for offering community development services not provided by other area financial institutions,

²⁷ The Section 8 program provides rent subsidies directly to landlords on behalf of very low-income families, the elderly, and the disabled. The program is administered by local public housing agencies using funds from the Department of Housing and Urban Development.

such as the bank's financial literacy programs. Examiners stated that North Fork Bank offered a full range of banking services at its branches and that its branches and delivery systems provided access to financial products and services for consumers of different income levels and in LMI geographies, noting that North Fork Bank had increased the accessibility of its products and services.²⁸ In addition, examiners reported that the bank's distribution of 28 branches and 49 automated teller machines ("ATMs") among LMI census tracts was reasonable. They also noted that 42 additional branches were adjacent to LMI census tracts, increasing the combined percentage of branches in or nearby LMI census tracts from approximately 17 percent to 42 percent of the bank's total number of branches.

C. CRA Performance of GreenPoint Bank

As previously noted, GreenPoint Bank received an overall "outstanding" rating for CRA performance from the FDIC, as of January 28, 2002.²⁹ GreenPoint Bank also received an "outstanding" rating under the lending test.³⁰ Examiners commended GreenPoint Bank for its excellent responsiveness

²⁸ The commenter expressed concerns about North Fork Bank's branch distribution in LMI and minority areas in Bronx County. North Fork has five branches and six free-standing ATMs in LMI and predominantly minority census tracts in the Bronx.

²⁹ The evaluation period was January 1, 1999, through December 30, 2001; the community development activities were considered from May 24, 1999, through January 28, 2002.

³⁰ In evaluating GreenPoint Bank's record of performance under the CRA, examiners considered home mortgage loans by GPMF, the bank's subsidiary mortgage lender. The commenter expressed concern that GPMF engaged in subprime lending, but provided no evidence that it had originated or purchased "predatory" loans or otherwise engaged in abusive lending practices. North Fork stated that neither North Fork nor GreenPoint offers subprime mortgage products.

to the credit needs of the assessment area and its excellent level of lending activity. They noted that GreenPoint Bank ranks among the top 1 percent of all HMDA lenders that reported loans in LMI census tracts in its assessment area. In addition, examiners commended GreenPoint Bank for its innovative and flexible mortgage loan products and for its high level of community development loans, which totaled almost \$100 million during the assessment period.

GreenPoint Bank received a “high satisfactory” under the investment test and examiners reported that GreenPoint Bank had a significant level of qualified community development investments and grants. During the evaluation period, the bank made new qualified investments and grants totaling almost \$12 million. GreenPoint Bank also added \$25 million in funding to the bank’s charitable foundation, which provides college tuition scholarships and grants to organizations that provide affordable housing, health, senior citizen, and other community development services. Examiners reported that GreenPoint Bank’s investments and grants reflected a good responsiveness to the community’s economic needs, often through the use of innovative or complex investment vehicles.

GreenPoint Bank also received a “high satisfactory” rating under the service test. Examiners characterized GreenPoint Bank’s branch distribution among LMI census tracts as reasonable, reporting that more than 21 percent of the bank’s 74 branches were in LMI areas. The commenter expressed concern that GreenPoint Bank’s lack of branches in the Bronx limited its ability to provide basic banking services to the area’s LMI individuals. Examiners reported, however, that GreenPoint Bank provided meaningful community development investments, loans, and services in the Bronx even though it did not maintain a branch there.

GreenPoint Bank has opened three branches in the Bronx since its 2002 CRA performance evaluation.

Examiners reported that GreenPoint Bank continued to be innovative and proactive in responding to its communities' needs and opportunities for community development services. In addition, examiners noted that the bank offered many home ownership seminars, mortgage fairs, and home-buying counseling sessions, and noted its participation in various community development services, such as Habitat for Humanity.

D. HMDA Data and Fair Lending Record

The Board also has carefully considered the lending records of North Fork and GreenPoint in light of comments on the HMDA data reported by their subsidiaries.³¹ The commenter alleged that 2002 HMDA data indicated that North Fork Bank disproportionately denied home mortgage loan applications from African Americans and Hispanics as compared with applications from nonminorities in the New York City Metropolitan Statistical Area ("MSA"), and that GreenPoint disproportionately denied home mortgage loan applications from African Americans and Hispanics relative to applications from nonminorities in certain other markets where it operates.

The 2002 HMDA data indicate that North Fork's percentage of total HMDA-reportable loan originations, which include home purchase, refinance, home improvement, and multifamily loans, to borrowers in predominantly

³¹ The Board analyzed HMDA data from 2001 through 2003 for North Fork and GreenPoint and HMDA data for 2001 and 2002 for the aggregate lenders in the New York City and Nassau-Suffolk MSAs. The 2003 HMDA data are preliminary, and 2003 data for the aggregate lenders are not yet available.

minority census tracts³² generally was comparable with or lagged the percentage for the aggregate lenders in the areas reviewed. However, North Fork Bank's percentage of home purchase loans, a subcategory of its total HMDA-reportable lending, to borrowers in predominantly minority census tracts exceeded the percentage for the aggregate lenders. North Fork's denial disparity ratios³³ for African-American and Hispanic applicants for total HMDA-reportable loans generally were comparable with or higher than those ratios for the aggregate lenders in the areas reviewed. However, a significant volume of North Fork Bank's HMDA-reportable multifamily loans and MECAs, which are not reported under HMDA, were for properties in predominantly minority census tracts.³⁴ North Fork Bank also has purchased a number of home mortgage loans to minority individuals and for properties in predominantly minority census tracts.³⁵

³² For purposes of this HMDA analysis, a predominantly minority census tract means a census tract with a minority population of 80 percent or more.

³³ The denial disparity ratio equals the denial rate of a particular racial category (e.g., African Americans) divided by the denial rate for whites.

³⁴ As noted above, a MECA loan does not involve lending additional money and is not reported under HMDA, but achieves the same results as a loan purchase or loan refinancing. In 2002, North Fork Bank originated 175 total multifamily loans and MECAs, including 65 in predominantly minority census tracts totaling \$143.4 million. In addition, almost all the multifamily loans and MECAs originated by the bank from 2001 to 2003 were in Bronx, Kings, and New York Counties, the three counties with the highest percentage of minority residents in the bank's assessment areas.

³⁵ In 2002, North Fork Bank purchased 330 HMDA-reportable loans in its New York City MSA assessment area. More than 125 of these loans were to African-American borrowers. The commenter criticized North Fork Bank's practice of purchasing rather than originating a substantial number of home mortgage loans to LMI and minority borrowers. The commenter argued that North Fork Bank should not receive CRA credit for loan purchases and urged

The 2001 and 2002 HMDA data indicate that GreenPoint's percentage of total HMDA-reportable loan originations to borrowers in minority census tracts in its assessment area generally exceeded or was comparable with the percentage for the aggregate lenders. In addition, the bank's denial disparity ratios for African-American and Hispanic applicants for HMDA-reportable loans in the markets reviewed generally were comparable with or lower than those ratios for the aggregate lenders.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups and persons at different income levels in certain local areas, the HMDA data generally do not indicate that North Fork or GreenPoint is excluding any race or income segment of the population or geographic areas on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate 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 lending, 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 these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.³⁶ HMDA data,

North Fork to increase its loan originations to LMI and minority borrowers. The federal regulatory agencies' regulations implementing the CRA do not differentiate between loan originations and purchases for purposes of evaluating an institution's CRA lending performance because both involve funding the purchase of housing. See, e.g., 12 C.F.R. 228.22.

³⁶ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants

therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide on-site evaluations of compliance by the subsidiary depository institutions of North Fork and GreenPoint with fair lending laws. The Board has reviewed carefully the examination data and findings of the NYSBD and FDIC. Examiners noted no fair-lending-law issues or concerns in the CRA performance evaluations of the depository institutions controlled by North Fork or GreenPoint.

The record also indicates that North Fork has taken steps to ensure compliance with fair lending laws. North Fork has instituted corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Both North Fork's and GreenPoint's compliance programs include regular internal reviews and audits of HMDA data to ensure that all prospective loan applicants are treated fairly regardless of race, ethnicity, gender, or age. North Fork has stated that its policies and programs will generally apply to the combined organization, but that it would seek to integrate best business practices from GreenPoint, especially those pertaining to its mortgage lending activities.

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.

The Board also has considered the HMDA data in light of the programs described above, such as the banks' use of MECAs in their multifamily lending operations, and the overall performance record of the subsidiary banks of North Fork and GreenPoint under the CRA. These established efforts demonstrate that the banks are active in helping to meet the credit needs of their entire communities.

E. Branch Closings

The commenter expressed concern about the effect of potential branch closings that might result from this proposal. The Board has considered these comments in light of all the facts of record. North Fork has represented that it is in the process of determining whether it will close branches in markets where there is overlap and that it will close or consolidate any branches in accordance with North Fork's Branch Closing Policy and Procedures. Under these policies, North Fork must review a number of factors before closing or consolidating a branch, including an assessment of the branch, a profile of the community where the branch is located, and the effect of the proposed action on customers. In addition, examiners reviewed North Fork Bank's branch closing policy as part of its most recent CRA evaluation and found that it complied with federal law.

The Board also has considered that federal banking law provides a specific mechanism for addressing branch closings.³⁷ Federal law requires an

³⁷ Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency and customers of the branch with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the FDIC, as the appropriate federal supervisor of North Fork Bank, will continue to review its branch closing record in the course of conducting CRA performance evaluations.

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by North Fork, public comments on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability of banking products and services to the customers of North Fork and GreenPoint, drawing on North Fork's focus on commercial lending and GreenPoint's focus on mortgage lending. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Nonbanking Activities

North Fork also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire GreenPoint Community Development Corp., also in New York ("CDC"), which engages in community development activities. The Board has determined by regulation that this activity is permissible for bank holding companies under the Board's Regulation Y.³⁸

To approve the notice, the Board must determine that the acquisition of GreenPoint's nonbanking subsidiary and the performance of the proposed

³⁸ See 12 C.F.R. 225.28(b)(12).

activities by North Fork “can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”³⁹ As part of its evaluation of these factors, the Board has considered the financial and managerial resources of North Fork and its subsidiaries and the company 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 concludes that financial and managerial considerations are consistent with approval of the notice.

The Board also has considered the competitive effects of North Fork’s proposed acquisition of CDC in light of all the facts of record. North Fork and GreenPoint both engage in community development activities. The market for this activity is local in scope and unconcentrated, and there are no significant barriers to entry. The record also indicates that there are numerous providers of these services in the New York City area. Accordingly, the Board concludes that North Fork’s acquisition of CDC would not have a significantly adverse effect on competition in any relevant market.

In addition, the Board has reviewed the public benefits of the proposed acquisition of CDC. North Fork’s proposal to continue CDC’s community development activities would benefit the communities served by North Fork and GreenPoint by providing investments in corporations or projects designed to promote community welfare, such as economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

³⁹ See 12 U.S.C. § 1843(j)(2)(A).

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

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. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.⁴⁰ The Board's approval is specifically conditioned on compliance by

⁴⁰ The commenter also requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). Section 4 of the BHC Act and the Board's regulations provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner. 12 C.F.R. 225.25(a)(2). The Board has considered carefully the commenter's requests in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit its views and has submitted written comments that have been considered carefully by the Board in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present the evidence adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

North Fork with the conditions imposed in this order and the commitments made to the Board in connection with the application and notice. The Board's approval of the nonbanking aspects of the proposal also is subject to all the 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 issued thereunder. For purposes of these actions, the commitments and conditions noted above 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 of GreenPoint Bank may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,⁴¹ effective July 20, 2004.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁴¹ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.