

FEDERAL RESERVE SYSTEM

New York Community Bancorp, Inc.  
Westbury, New York

Order Approving the Merger of Bank Holding Companies

New York Community Bancorp, Inc. (“NYCB”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval pursuant to section 3 of the BHC Act<sup>1</sup> to merge with Long Island Financial Corp. (“LIFC”), and thereby acquire its subsidiary bank, Long Island Commercial Bank (“LICB”), both of Islandia, New York.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 Federal Register 55,858 (2005)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

NYCB, with total consolidated assets of approximately \$25 billion, operates two depository institutions, New York Community Bank (“NY Community Bank”), with branches in New Jersey and New York, and New York Commercial Bank (“NY Commercial Bank”),<sup>2</sup> both of Flushing, New York.<sup>3</sup> NYCB is the 11<sup>th</sup> largest depository organization in New York,

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<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> NY Commercial Bank, a wholly owned subsidiary of NY Community Bank, is a limited-purpose bank that only accepts municipal deposits.

<sup>3</sup> Asset data are as of September 30, 2005, and statewide deposit and ranking data are as of June 30, 2005. Data reflect subsequent merger activity through December 13, 2005. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

controlling deposits of approximately \$11.2 billion, which represent less than 2 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).

LIFC, with total consolidated assets of approximately \$532 million, operates one depository institution, LICB, with branches only in New York. LIFC is the 80<sup>th</sup> largest insured depository institution in New York, controlling deposits of approximately \$420 million.

On consummation of the proposal, NYCB would have consolidated assets of approximately \$25.5 billion. NYCB would remain the 11<sup>th</sup> largest depository organization in New York, controlling deposits of approximately \$11.6 billion, which represent less than 2 percent of state deposits.

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition 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. In addition, section 3 prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.<sup>4</sup>

NYCB and LIFC compete directly in the Metro New York banking market (“New York banking market”).<sup>5</sup> The Board has carefully reviewed the

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<sup>4</sup> 12 U.S.C. § 1842(c)(1).

<sup>5</sup> The Metro New York banking market includes: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex,

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 banking market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by NYCB and LIFC,<sup>6</sup> 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”),<sup>7</sup> and other characteristics of the market.

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Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties 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.

<sup>6</sup> Deposit and market share data are as of June 30, 2005 (adjusted to reflect mergers and acquisitions through December 13, 2005), 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).

<sup>7</sup> Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice (“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 entities.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the New York banking market. After consummation of the proposal, the New York banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain in the market.<sup>8</sup>

The Department of Justice also has conducted a detailed review of the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, 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 resources in the banking market where NYCB and LIFC compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

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<sup>8</sup> After the proposed acquisition, the HHI would remain unchanged at 1069. NYCB operates the tenth largest depository institution in the market, controlling deposits of approximately \$11.8 billion, which represent less than 2 percent of market deposits. LIFC operates the 94<sup>th</sup> largest depository institution in the market, controlling deposits of approximately \$420 million, which represent less than 1 percent of market deposits. After the proposed acquisition, NYCB would continue to operate the tenth largest depository institution in the market, controlling deposits of approximately \$12.2 billion, which represent less than 2 percent of market deposits. Two hundred and eighty-two depository institutions would remain in the banking market.

### 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 depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by NYCB, and public comment on the proposal.<sup>9</sup>

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

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<sup>9</sup> A commenter criticized LIFC for having lending relationships with several check-cashing businesses. As a general matter, these types of businesses are licensed by the states where they operate and are regulated by state law. LIFC has entered into lending or other limited banking relationships with these companies but does not play any role in their lending and business practices or credit-review processes. LICB represented that it conducts a due diligence review before commencing a banking relationship with any check casher.

NYCB, LIFC, and their subsidiary depository institutions are well capitalized and the resulting organization and its subsidiary banks would remain so on consummation of the proposal. The proposed transaction is structured as a share exchange. Based on its review of the record in this case, the Board believes that NYCB has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of NYCB, LIFC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Moreover, the Board consulted with the Federal Deposit Insurance Corporation (“FDIC”), the primary federal banking supervisor of NYCB’s and LIFC’s subsidiary banks. The Board also has considered NYCB’s plans for implementing the proposal, including the proposed management after consummation. NYCB, LIFC, and their subsidiary depository institutions are considered to be well-managed.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the supervisory factors under the BHC Act.

#### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of a proposal on the convenience and needs of the

communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).<sup>10</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the 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 neighborhoods, in evaluating depository institutions’ expansionary proposals.<sup>11</sup>

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary depository institutions of NYCB and LIFC, data reported by NYCB under the Home Mortgage Disclosure Act (“HMDA”),<sup>12</sup> other information provided by NYCB, confidential supervisory information, and public comment received on the proposal. A commenter opposing the proposal asserted, based on 2004 HMDA data, that NYCB has engaged in discriminatory treatment of minority individuals in its home mortgage operations.<sup>13</sup>

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<sup>10</sup> 12 U.S.C. § 2901 et seq.

<sup>11</sup> 12 U.S.C. § 2903.

<sup>12</sup> 12 U.S.C. § 2801 et seq.

<sup>13</sup> The commenter also alleged that NYCB lends to “slumlords.” NYCB represented that NY Community Bank’s primary lending focus is its multifamily loan program, which concentrates on loans for rent-controlled and rent-stabilized residential buildings in New York City. NYCB further stated that it engages in extensive due diligence in its lending to residential landlords, including conducting inspections of properties, assessing the real estate management experience of landlord/borrowers, and requiring

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 CRA performance records of the insured depository institutions of both organizations. 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.<sup>14</sup>

NY Community Bank received a "satisfactory" rating at its most recent performance evaluation from the FDIC, as of March 25, 2002.<sup>15</sup> LICB received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 15, 2004. NYCB has represented that it does not plan to implement major changes to programs for managing community reinvestment activities at LICB, which already has CRA programs similar to those of NYCB.

B. HMDA Data and Fair Lending Record

The Board has carefully considered NY Community Bank's lending record and HMDA data in light of public comment about its record of lending to minorities. The commenter expressed concern, based on 2004 HMDA data, that NY Community Bank denied or excluded the home

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remediation of building code violations. In addition, NYCB represented that it conducts inspections of the properties during the term of the mortgage loans.

<sup>14</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

<sup>15</sup> NY Commercial Bank is a special-purpose bank not subject to the CRA. See 12 CFR 345.11(c)(3).

mortgage and refinance applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in the New York, New York Metropolitan Statistical Area (“MSA”); the Nassau-Suffolk, New York MSA; and the Edison, New Jersey MSA.<sup>16</sup> The Board reviewed the HMDA data for 2004 reported by NY Community Bank in its assessment area.<sup>17</sup>

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to support a conclusion on whether or not NY Community Bank is excluding any racial or ethnic group or imposing higher credit costs on those groups on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.<sup>18</sup> HMDA data, therefore, have limitations

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<sup>16</sup> In 2004 the Nassau-Suffolk MSA was renamed the Nassau-Suffolk, New York Metropolitan Division by the Office of Management and Budget (“OMB”), and the New York, New York MSA is now encompassed within the New York-White Plains-Wayne, New York-New Jersey Metropolitan Division. The OMB also delineated the Edison, New Jersey Metropolitan Division. See OMB Bulletin No. 05-02 (2004).

<sup>17</sup> The Board reviewed 2004 HMDA data reported by NY Community Bank in portions of the following Metropolitan Divisions that comprise the bank’s assessment area: (1) Nassau-Suffolk, New York; (2) New York-White Plains-Wayne, New York-New Jersey; and (3) Newark-Union, New Jersey-Pennsylvania. The Edison, New Jersey Metropolitan Division is not within the bank’s assessment area.

<sup>18</sup> 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,

that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless 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. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by NY Community Bank with fair lending laws. In the fair lending review conducted in conjunction with the bank's CRA evaluation in 2002, examiners noted no violations of the substantive provisions of applicable fair lending laws. In addition, the Board has consulted with the FDIC, the primary federal supervisor of NY Community Bank, about the bank's record of compliance with fair lending laws and other consumer protection laws.

The record also indicates that NYCB has taken steps designed to ensure compliance with fair lending laws and other consumer protection laws. NYCB represented that it has implemented fair lending policies, procedures, and training programs at NY Community Bank and that all lending department personnel at the bank are required to take annual compliance training. NYCB further represented that the bank's fair lending policies and procedures are designed to help ensure that loan officers price loans uniformly, illegally discriminatory loan products are avoided, and current and proposed lending

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in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

activities and customer complaints are reviewed. NY Community Bank conducts independent audits of its lending activities, and audit results are provided to its Audit Committee of the Board of Directors, Compliance Department, and Legal Department. The bank also analyzes HMDA Loan Application Register data to help assess its lending activities for compliance with the CRA.

NYCB has represented that LICB maintains similar policies and programs designed to ensure compliance with applicable fair lending and consumer protection laws and that NYCB does not intend to make significant changes to LICB's policies and programs.

The Board also has considered the HMDA data in light of other information, including NY Community Bank's CRA lending programs and the overall performance records of NY Community Bank and LICB under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance Records

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 NYCB, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability and array of banking products and services to LIFC's customers, including access to expanded branch and ATM networks. 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 and the CRA performance records of the relevant depository institutions are consistent with approval.

## Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>19</sup> In reaching this conclusion, the Board has considered all the facts of record in light of the factors it is required to consider under the BHC Act and other applicable statutes.<sup>20</sup> The Board's approval is specifically conditioned on compliance by NYCB with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this action, the commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

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<sup>19</sup> The commenter also requested that the present proposal be consolidated with a separate application under the BHC Act that NYCB may file in connection with another acquisition that it recently announced. This potential application would be considered by the Board separately from the NYCB/LIFC proposal pursuant to standard procedures under section 3 of the BHC Act and Regulation Y.

<sup>20</sup> The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of

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

By order of the Board of Governors,<sup>21</sup> effective December 14, 2005.

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Robert deV. Frierson  
Deputy Secretary of the Board

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record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

<sup>21</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.