

FEDERAL RESERVE SYSTEM

North Fork Bancorporation, Inc.
Melville, New York

Order Approving the Acquisition of a Bank

North Fork Bancorporation, Inc. (“North Fork”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act, 12 U.S.C. § 1842, to acquire all the voting shares of Commercial Bank of New York, New York, New York (“Commercial Bank”).¹

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (66 Federal Register 35,639, and 38,279 (2001)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

North Fork, with total consolidated assets of approximately \$15 billion, operates subsidiary banks in New York and Connecticut. North Fork is the 13th largest depository organization in New York, controlling deposits of approximately \$8.8 billion, representing 2 percent of total deposits in depository

¹ Immediately after North Fork’s acquisition of Commercial Bank, North Fork’s lead subsidiary bank, North Fork Bank, Melville, New York, a state-chartered nonmember bank, would acquire substantially all Commercial Bank’s assets and assume substantially all Commercial Bank’s liabilities. Thereafter, Commercial Bank would be a wholly owned subsidiary of North Fork, would not engage in the business of banking or in any other business, and would engage only in concluding up its business. On October 11, 2001, the Federal Deposit Insurance Corporation (“FDIC”) and the New York State Banking Department (“NYSBD”) approved applications by North Fork Bank in connection with this transaction.

institutions in the state (“state deposits”).² North Fork also is the 45th largest depository organization in Connecticut, controlling deposits of approximately \$147 million, representing less than 1 percent of state deposits. Commercial Bank, with total assets of approximately \$1.46 billion, is the 44th largest depository organization in New York, controlling total deposits of \$975 million, representing less than 1 percent of state deposits. On consummation of the proposal, North Fork would remain the 13th largest depository organization in New York, controlling deposits of approximately \$9.8 billion, representing 2.2 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 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.³

North Fork and Commercial Bank compete directly in the Metropolitan New York/New Jersey banking market (“New York banking market”).⁴ On consummation of the proposal, North Fork would become the

² Asset data are as of March 31, 2001, and state deposit and ranking data are as of June 30, 2000. In this context, depository institutions include commercial banks, savings banks, and savings associations.

³ 12 U.S.C. § 1842(c)(1).

⁴ The New York banking market is defined as Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex, Hudson,

eighth largest depository organization in the New York banking market, controlling deposits of \$9.8 billion, representing approximately 5.4 percent of market deposits.⁵ The Herfindahl-Hirschman Index (“HHI”) would increase by 1 point to 715, the market would remain unconcentrated, and numerous competitors would remain in the market.⁶ Based on these and all other facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in the New York banking market or any other relevant banking market.

Convenience and Needs Considerations

In acting on proposals 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 take into account the records of the relevant

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.

⁵ Market share data are as of June 30, 2000, updated for transactions through October 5, 2001, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See WM Bancorp, 76 Federal Reserve Bulletin 788 (1990); National City Corporation, 70 Federal Reserve Bulletin 743 (1984).

⁶ Under the revised Department of Justice Merger Guidelines, 49 Federal Register 26,823 (June 29, 1984), a market in which the post-merger HHI is less than 1000 points is considered to be unconcentrated. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

depository institutions under the Community Reinvestment Act (“CRA”).⁷ 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 safe and sound operation, and requires the appropriate federal 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 expansion proposals. The Board has carefully considered the convenience and needs factor and the CRA performance records of North Fork’s subsidiary depository institutions and of Commercial Bank in light of all the facts of record, including a public comment received on the effect the proposal would have on the communities to be served by the combined organization.

A. CRA Performance Examinations

As provided in the CRA, the Board evaluates an institution’s record of performance under the CRA in light of examinations conducted by the appropriate federal supervisory agency. An institution’s most recent CRA performance evaluation is a particularly important consideration in the application process, because it represents a detailed on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.⁸

North Fork’s lead subsidiary bank, North Fork Bank, received an overall rating of “outstanding” at its most recent CRA performance evaluation by the FDIC, as of September 1999 (“1999 Evaluation”).⁹ Commercial Bank received

⁷ 12 U.S.C. § 2901 et seq.

⁸ Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,640 (2001).

⁹ North Fork also owns Superior Savings of New England National Association, Branford, Connecticut (“Superior”). As of March 31, 2001, Superior reported

an overall rating of “satisfactory” at its most recent CRA performance evaluation by the FDIC, as of April 2000 (“2000 Evaluation”).

B. North Fork Bank’s CRA Performance Record

Lending. As part of the 1999 Evaluation, examiners rated the lending activities of North Fork Bank “outstanding.” Examiners described North Fork Bank’s record of lending in its assessment area as very strong, noting that 85 percent of the HMDA-related loans the bank originated during the evaluation period were in the bank’s assessment area.¹⁰

Examiners characterized North Fork Bank’s record of lending in LMI census tracts in its assessment area as excellent, and described the bank’s record of lending to borrowers of different income levels as satisfactory. During the evaluation period, 29.8 percent of North Fork Bank’s 1-4 family HMDA-related loans were made in LMI census tracts. By comparison, lenders in the aggregate made 13.5 percent of their HMDA-related loans in LMI census tracts in 1997 and 12.5 percent in 1998.¹¹ Approximately 22.6 percent of North Fork Bank’s

assets of \$280 million, accounting for approximately 1.9 percent of North Fork’s total assets. Superior received a “satisfactory” CRA performance rating from the FDIC, as of May 1996, when Superior was doing business as Branford Savings Bank (“1996 Evaluation”). North Fork acquired Superior in December 1997, and Superior converted to a national charter, as of July 2000. The Office of the Comptroller of the Currency designated Superior as a wholesale bank in June 2000. Superior has not been examined for CRA performance since the 1996 Evaluation.

¹⁰ The 1999 Examination covered the evaluation period of June 1, 1997 to June 30, 1999. In this context, “HMDA-related loans” refers to loans reportable under the Home Mortgage Disclosure Act, 12 U.S.C. § 2801 *et seq.*, and includes home purchase mortgage loans, home improvement loans, and refinancings of such loans.

¹¹ In this context, loans made by lenders in the aggregate refers to all HMDA-related loans, except multifamily loans, made in North Fork Bank’s assessment area by all lenders required to report under HMDA.

1-4 family HMDA-related loans during the evaluation period were made to LMI borrowers, compared with 12.4 percent for lenders in the aggregate in 1997 and 12.7 percent in 1998.

Examiners reported that North Fork Bank's level of multifamily lending activity steadily increased during the evaluation period, and totaled more than \$759 million. More than 97 percent of the 616 multifamily loans the bank originated during the evaluation period were in the bank's assessment area. Although 40.1 percent of all multifamily housing properties in North Fork Bank's assessment area were in LMI census tracts, 52.8 percent of the multifamily loans the bank originated in its assessment area during the evaluation period were in LMI census tracts.¹²

¹² The commenter asserted that North Fork Bank failed to originate adequate numbers of 1-4 family 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 and services in its assessment area. Data from the 2000 Census show that 72.9 percent of all occupied housing units in Brooklyn are renter-occupied, as are 80.4 percent of such housing units in the Bronx, and 79.9 percent of such housing units in Manhattan. In 2000, North Fork Bank made 23 HMDA-reportable multifamily loans in Brooklyn, totaling \$15.1 million, and 19 MECA loans, totaling \$21 million. The bank made 7 HMDA-reportable multifamily loans in the Bronx in 2000, totaling \$8.2 million, and 16 MECA loans, totaling \$44.9 million. In Manhattan in 2000, North Fork Bank made 26 HMDA-reportable multifamily loans, totaling \$33.5 million, and 26 MECA loans, totaling \$42.9 million. In this context, a MECA loan is a Modification, Extension, and Consolidation 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. 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 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).

Data show a substantial increase over the past two years in the number and total dollar amount of the bank's small business loans (loans in amount of \$1 million or less) in the Bronx.¹³ In 1999, the bank made 42 such loans, totaling more than \$6.3 million, and in 2000, the bank made 125 such loans, totaling more than \$12.3 million. North Fork Bank has represented that in the first six months of 2001, it made 160 such loans, totaling \$9.1 million. The Board also has considered that North Fork Bank provides significant multifamily housing credit and other types of credit throughout its assessment area.

Examiners stated that North Fork Bank had developed credit products and practices to meet community credit needs and had focused its efforts on increasing homeownership opportunities for LMI individuals. Examiners reported that the bank's Affordable Housing Program II was limited to applicants with incomes of 80 percent or less of the area median family income and featured down payments as low as 3 percent, below-market interest rates, and no points, application or underwriting fees, or private mortgage insurance reserves.¹⁴ The bank also offered affordable mortgage products to LMI borrowers through programs of the Federal National Mortgage Association ("Fannie Mae") and the State of New York Mortgage Association.

The 1999 Evaluation found that North Fork Bank's community development lending during the evaluation period totaled approximately \$400 million, which constituted 7 percent of the bank's outstanding loans. This lending included renewal of a \$1.8 million line of credit to rehabilitate more than

¹³ The commenter asserted that North Fork Bank's level of small business lending in the Bronx is inadequate and should correspond more closely to the bank's level of deposits in that area.

¹⁴ The Affordable Housing Program II is restricted to properties in New York City and Rockland and Westchester Counties.

70 housing units in an LMI section of Harlem, origination of an \$800,000 mortgage to develop 12 housing units in an LMI area in Brooklyn, and a number of other projects in Brooklyn and the Bronx.

Investment. Examiners rated North Fork Bank “high satisfactory” under the investment test. Examiners reported that the bank’s community development investments in its assessment area totaled more than \$31 million from March 1997 through September 1999. The bank’s community development activities included investments of more than \$17 million in two Fannie Mae mortgage-backed securities collateralized by a multifamily property in Manhattan where more than 90 percent of the tenants receive section 8 housing assistance.¹⁵ The bank also invested more than \$12 million in a trust backed by pool of second mortgages to low-income borrowers throughout New York City. The bank provided more than \$280,000 in grants to community development organizations during the evaluation period.

Service. Examiners rated North Fork Bank “high satisfactory” under the service test. Examiners characterized the bank’s branch distribution among LMI census tracts as reasonable, reporting that 20 percent of the bank’s 110 branches were in LMI areas. During the evaluation period, the bank opened three branches, including one in a low-income census tract, and closed nine branches, including two in moderate-income tracts. Examiners stated that the bank actively provided financial literacy programs to school children, senior citizens, and LMI adults. The bank also developed and implemented a program to provide financial literacy and job training to students at Bushwick High School in

¹⁵ 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 United States Department of Housing and Urban Development.

Brooklyn and sponsored more than 35 homebuying fairs during the evaluation period.

C. Commercial Bank's CRA Performance Record

Lending. As part of the 2000 Evaluation, examiners rated Commercial Bank's lending activities "low satisfactory". Examiners reported that 99 percent by number and dollar amount of the bank's small business loans were made to entities in the bank's assessment area.¹⁶ During the evaluation period, Commercial Bank originated 45.9 percent of its small business loans to firms in LMI census tracts, compared with 14.7 percent for lenders in the aggregate in both 1997 and 1998.¹⁷ However, the bank made 11.6 percent of its small business loans in its assessment area to businesses with gross annual revenues of \$1 million or less, which examiners characterized as less than satisfactory.

Investment. Examiners rated Commercial Bank "high satisfactory" under the investment test. The bank's qualified community development investments during the evaluation period totaled more than \$3.5 million, which included an investment of more than \$3 million in mortgage-backed securities collateralized by mortgages to LMI borrowers. Commercial Bank also made \$56,250 in grants during the evaluation period to community development organizations in its assessment area.

Service. Examiners rated Commercial Bank "low satisfactory" under the service test. As of the date of the examination, 28.6 percent of the bank's branches were in LMI census tracts, a distribution examiners characterized as

¹⁶ The 2000 Examination covered the evaluation period of June 10, 1998, through April 10, 2000, but considered Commercial Bank's record of small business lending in 1997, 1998, and 1999.

¹⁷ In this context, loans made by lenders in the aggregate refers to all small business loans made in Commercial Bank's assessment area by lenders required to report small business loan data under the CRA.

reasonable. Examiners stated that Commercial Bank's products and services were reasonably available to all segments of the bank's assessment area, including LMI areas. Examiners characterized the bank's level of community development services as relatively low, considering Commercial Bank's size and resources.

D. Conclusion on Convenience and Needs Considerations

The Board has carefully considered all the facts of record, including reports of examination of CRA performance of the institutions involved, other information provided by North Fork and Commercial Bank, and all comments received and responses to the comments. As part of the proposal, North Fork Bank would acquire substantially all the assets of Commercial Bank, and North Fork Bank would apply its CRA program to the operations it would acquire from Commercial Bank. North Fork also has represented that North Fork Bank offers a broader array of products and services than Commercial Bank does, and that the transaction would enable North Fork Bank to offer these products and services to Commercial Bank's domestic customers. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that the CRA performance records of the institutions involved are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Factors

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 considered these factors carefully in light of all the facts of record, including reports of examination and other confidential supervisory information assessing the financial and managerial resources of the organizations and other information provided by North Fork and Commercial Bank.

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important.¹⁸ The Board notes that North Fork, its subsidiary depository institutions, and Commercial Bank are, and on consummation of the proposal would remain, well capitalized under the relevant regulations of the banking agencies. North Fork would not incur any debt as a result of the transaction.

The Board also has considered the managerial resources of North Fork and Commercial Bank and the examination reports of the federal banking agencies that supervise these organizations, including their subsidiary depository institutions. The Board notes that Commercial Bank recently entered into cease and desist orders with the NYSBD and the FDIC and agreed to pay the NYSBD a penalty of \$4.25 million because of the bank's failure to maintain processes and procedures to ensure detection and reporting of suspicious activities. Commercial Bank also entered into a similar agreement with the Attorney General of the State of New York and agreed to pay the Attorney General \$750,000 to cover costs of the investigation.

North Fork has represented that substantially all Commercial Bank's business attributable to the bank's International Private Banking Group would be discontinued before consummation of the proposal. North Fork has stated that any of Commercial Bank's international deposit accounts that are not closed before consummation would be terminated at consummation or shortly thereafter.

The Board also has reviewed North Fork's policies and procedures for compliance with the requirements of the Bank Secrecy Act ("BSA")¹⁹ and has received extensive information from North Fork about its plans for ensuring its

¹⁸ See, e.g., Chemical Banking Corporation, 82 Federal Reserve Bulletin 239 (1996).

¹⁹ 31 U.S.C. § 5311 et seq.

future compliance with BSA requirements with respect to deposit accounts and other business acquired from Commercial Bank. North Fork has indicated that it will implement its BSA compliance policies and procedures at Commercial Bank's offices. The Board notes that the FDIC and the NYBSD have evaluated North Fork Bank's policies and procedures, and the Board has consulted with the FDIC and the NYSBD about the adequacy of these policies and procedures.

Based on the foregoing and all the facts of record, including confidential reports of examination and other supervisory information, the Board has concluded that considerations relating to the financial and managerial resources of North Fork and Commercial Bank are consistent with approval, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.²⁰ 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.

The Board's approval is specifically conditioned on compliance by North Fork with all the commitments made in connection with the application. These commitments and conditions are deemed to be conditions imposed in

²⁰ The commenter requested that the Board extend the comment period on the proposal. The Board has accumulated a significant record in this case, including reports of examination, supervisory information, public reports and information, and public comment. In the Board's view, the public has had ample opportunity to submit comments on the proposal and, in fact, the commenter has submitted extensive written comments that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time, and that an extension of the comment period is not warranted.

writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

This transaction shall not be consummated 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,²¹ effective October 24, 2001.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²¹ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley, Meyer, and Gramlich.