

United States Senate

WASHINGTON, DC 20510

April 15, 2024

Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th St SW
Washington, DC 20219

Dear Acting Comptroller Hsu:

We write to you today regarding our ongoing concern about circumstances surrounding the Office of the Comptroller of the Currency's (OCC) December 2022 approval of the merger between New York Community Bank (NYCB), and Flagstar Bancorp (Flagstar), and the role that merger is playing in NYCB's financial spiral.

Flagstar had a history of bad behavior prior to the merger. In 2012, the bank reached a settlement with the U.S. Attorney for the Southern District of New York on charges that it improperly approved residential home mortgage loans.¹ In its settlement, Flagstar "admitted, acknowledged, and accepted responsibility" for its actions.² Two years later, Flagstar was fined \$37.5 million by the Consumer Financial Protection Bureau (CFPB) for blocking customers' ability to receive foreclosure relief, including delaying application reviews and illegally denying loan modifications.³

Despite Flagstar's history of violations, NYCB announced its intent to merge with Flagstar and submitted an application to the Federal Deposit Insurance Corporation (FDIC) in May 2021.⁴ The FDIC reviewed the application and raised concerns about Flagstar's fair lending practices and NYCB's exposure to multifamily loans.⁵ An anonymous source at the FDIC went so far as saying, "No one at the FDIC was comfortable recommending a merger approval for [NYCB and Flagstar]."⁶

¹ U.S. Department of Justice, "Manhattan U.S. Attorney Sues Flagstar Bank for Fraudulent Mortgage Lending Practices and Settles for \$132.8 Million and Other Concessions," press release, February 24, 2012, <https://www.justice.gov/archive/usao/nys/pressreleases/February12/flagstarbanksettlement.html>.

² *Id.*

³ U.S. Consumer Financial Protection Bureau, "CFPB Takes Action Against Flagstar Bank for Violation New Mortgage Servicing Rules," press release, September 29, 2014, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-flagstar-bank-for-violating-new-mortgage-servicing-rules/>.

⁴ Bank Reg Blog, "A Little More Regulatory Context on NYCB," February 11, 2024, <https://bankregblog.substack.com/p/a-little-more-regulatory-context>.

⁵ Reuters, "The NYCB-Flagstar deal had issues from the start," Pete Schroeder et. al, March 7, 2024, <https://www.fastcompany.com/91050004/nycb-flagstar-deal-fail>.

⁶ The Capitol Forum, "Flagstar Bancorp/New York Community Bancorp: When FDIC Rebuffed Merger Bid, Banks Restructured Deal So OCC Would Review It," October 18, 2022, <https://thecapitolforum.com/flagstar-bancorp-new->

After a year had passed without FDIC movement, NYCB and Flagstar schemed to restructure their merger so it no longer needed FDIC approval. Flagstar converted from a federal savings bank, under FDIC oversight, to a national bank under OCC's authority, cutting FDIC out of the process and allowing the banks to merge after OCC approval.⁷ In October 2022, the OCC approved the merger, without addressing the risks raised in the initial FDIC review. In the OCC's approval order, Flagstar defended their decision to re-charter as "business decision" and indicated that "preference of charters does not constitute a statutorily relevant consideration under the [*Bank Merger Act*]."⁸

Six months after the Flagstar merger, NYCB took over Signature Bank, receiving FDIC and OCC approval during that bank's March 2023 meltdown.⁹ This increased NYCB's total deposits above the \$100 billion threshold that triggers enhanced oversight and stronger capital reserve requirements.¹⁰ Ultimately, these two rushed, rubber-stamped mergers created grave risks for NYCB. NYCB's Chief Risk Officer and Chief Audit Executive left their posts soon after the Signature acquisition, foreshadowing the incoming storm.¹¹ In January 2024, NYCB slashed its quarterly dividend by 70 percent and increased its capital provision related to crossing the \$100 billion threshold.¹² This drastic change took many by surprise, considering NYCB had nine months prior to January to prepare for the new capital requirements. Moody's subsequently downgraded NYCB's credit rating to junk status, throwing NYCB's ability to meet its contractual loan obligations in doubt.¹³ Less than a month later, NYCB delayed its 10-K filing due to "material weaknesses."¹⁴ After a 70 percent drop in stock price, NYCB accepted a capital

[york-community-bancorp-when-fdic-rebuffed-merger-bid-banks-restructured-deal-so-occ-would-review-it/](#)

⁷ Bank Reg Blog, "A Little More Regulatory Context on NYCB," February 11, 2024, <https://bankregblog.substack.com/p/a-little-more-regulatory-context>.

⁸ U.S. Comptroller of the Currency, "Conditional Approval #1299," November 2022, p. 7, <https://occ.treas.gov/topics/charters-and-licensing/interpretations-and-actions/2022/ca1299.pdf>.

⁹ Yahoo Finance, "New York Community (NYCB) Buys \$38B Signature Bank's Assets," Zacks Equity Research, March 21, 2023, <https://finance.yahoo.com/news/york-community-nycb-buys-38b-112711703.html>.

¹⁰ Bloomberg, "NYCB Ballooned Despite Real Estate Warnings in Years Before Fall," Max Abelson, March 4, 2024, <https://www.bloomberg.com/news/articles/2024-03-05/nycb-stock-dive-bank-ballooned-despite-real-estate-market-warnings>.

¹¹ Bloomberg, "NYCB's Talks With Watchdog led to Moved That Rocked Market," Hannah Levitt et al., February 4, 2024, <https://www.bloomberg.com/news/articles/2024-02-05/nycb-s-tense-talks-with-watchdog-led-to-moves-that-rocked-market>.

¹² Reuters, "Embattled lender NYCB secures \$1bn investment from cohort including Mnuchin's firm," Niket Nishant et al., March 6, 2024, <https://www.reuters.com/markets/us/embattled-lender-nycb-seeks-cash-infusion-wsj-reports-2024-03-06/>.

¹³ CNBC, "Some NYCB deposits may be a flight risk after Moody's downgrades ratings again," Hugh Son, March 4, 2024, <https://www.cnbc.com/2024/03/04/some-nycb-deposits-may-be-at-risk-after-another-moodys-downgrade.html>.

¹⁴ Bloomberg, "NYCB's Talks With Watchdog led to Moved That Rocked Market," Hannah Levitt et al., February 4, 2024, <https://www.bloomberg.com/news/articles/2024-02-05/nycb-s-tense-talks-with-watchdog-led-to-moves-that-rocked-market>; Reuters, "NYCB shares plummet as internal control issues hurt investor trust," Manya Saini, March 4, 2024, <https://www.reuters.com/business/finance/nycb-shares-eye-rebound-after-sell-off-material-weakness-disclosure-2024-03-04/>.

infusion from a group of private equity firms.¹⁵ This has appeared to, at least for now, stabilize the bank.

As NYCB was experiencing internal instability, the OCC appeared to be asleep at the wheel. As a part of the NYCB-Flagstar merger deal, the OCC stipulated that, for two years, each of NYCB's dividends must receive a prior determination of no objection from the OCC.¹⁶ The OCC reviewed NYCB's financials every quarter, yet allowed NYCB to pay consistent dividends, up until the most recent drastic cut.¹⁷ This is deeply troubling, especially since lax bank examiner oversight was a major factor of the March 2023 bank failures. Regulators promised to do better, but the near-collapse of NYCB in early 2024 indicated the OCC has once again abdicated its oversight responsibilities.¹⁸

Senator Warren's bill, the *Bank Merger Review Modernization Act*,¹⁹ would provide a backstop in the merger review process by requiring that CFPB review and approve all bank mergers that include consumer products, and require transparent disclosure of discussions between the institutions and regulators before the merger application is filed. This bill would have helped the public understand why the FDIC did not approve the initial merger, and why the OCC approved the merger without addressing FDIC concerns.

The current threats to NYCB's viability represent the culmination of a pattern of oversight failures by OCC. A former NYCB senior mortgage underwriter said, "It's like when you have a car that you love and you sell it to somebody, and you see them a year later and they've just torn it all up and not taken care of it."²⁰ In this case, the OCC allowed NYCB to engage in two risky mergers in a six month period, then neglected to address NYCB's risks until the walls were ready to crumble.

Given the OCC's failure to address the threats posed by the NYCB-Flagstar and NYCB-Signature mergers and the bank's activities in the year following this merger, we ask that you provide answers to the following questions by May 15, 2024:

1. Why did the OCC approve the Flagstar/NYCB merger?

¹⁵ Reuters, "NYCB closes \$1 bln capital infusion deal, announces reverse stock split," March 11, 2024, <https://www.reuters.com/business/finance/nycb-closes-1-billion-capital-infusion-deal-2024-03-12/>; Bloomberg, "NYCB Ballooned Despite Real Estate Warnings in Years Before Fall," Max Abelson, March 4, 2024, <https://www.bloomberg.com/news/articles/2024-03-05/nycb-stock-dive-bank-ballooned-despite-real-estate-market-warnings>.

¹⁶ *Id.*

¹⁷ Nasdaq, "NYCB Dividend History," <https://www.nasdaq.com/market-activity/stocks/nycb/dividend-history>.

¹⁸ U.S. Federal Reserve Board, "Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank," April 28, 2023, pp. 1, 7, <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf>.

¹⁹ Bank Merger Review Modernization Act, S. 2882, <https://www.congress.gov/bill/117th-congress/senate-bill/2882?q=%7B%22search%22%3A%22bank+merger+review+modernization%22%7D&s=3&r=2>.

²⁰ Bloomberg, "NYCB Ballooned Despite Real Estate Warnings in Years Before Fall," Max Abelson, March 4, 2024, <https://www.bloomberg.com/news/articles/2024-03-05/nycb-stock-dive-bank-ballooned-despite-real-estate-market-warnings>.

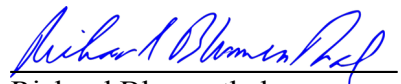
2. What risks did the OCC recognize when approving this merger, and how were they addressed?
3. Did the OCC consult with the FDIC before approving the Flagstar/NYCB merger?
4. At what point did the OCC notice NYCB's struggle to adjust to new capital standards, and when did the OCC vocalize their concerns to NYCB leadership?
5. Why did the OCC wait until the fourth quarter of 2024 to pressure NYCB to cut its dividend?
6. Was the OCC aware of NYCB's material weaknesses in its internal risk controls prior to the bank's March 2024 announcement?
 - a. If the OCC was aware, what steps did they take to remedy the material weaknesses? Did the OCC notify other relevant financial regulators, such as the Securities and Exchange Commission?
 - b. If the OCC was not aware of NYCB's material weaknesses, what changes will the OCC take to notice these weaknesses in the future?
7. When did the OCC start urging NYCB to cut their dividends and shore up their cash reserves?
8. What other actions did the OCC take to address capital reserves and other risks?
9. What changes has the OCC made to its supervisory and examination practices in response to the March 2023 bank failures?

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator