



## Mutual Alert

### **New York Supreme Court Affirms Discretion of Board to Remain in Mutual Holding Company Form: Finds No Director Conflict So Long as Consequences to Minority Stockholders were Fully Disclosed**

The Supreme Court of the State of New York (Appellate Division) ruled in favor of the MHC and its board of directors in a case brought by Stilwell Value Partners IV, L.P. alleging that the directors of NorthEast Community Bancorp, Inc., a majority owned subsidiary of NorthEast Community Bancorp, MHC (MHC), had breached their fiduciary duties by not voting to authorize a second step conversion of the MHC.

The lower court had previously denied NorthEast's motion for summary judgment in its entirety, while granting Stilwell's motion for summary judgment in part, to the limited extent of determining that the "entire fairness standard" applies to the decision by the directors not to undertake a second step conversion. The legal significance of this ruling would have disturbed long standing legal precedent governing the liability of MHC directors and mutual directors. Instead the court deferred to the discretion of the Board based on the fully disclosed commitment to remaining in the mutual holding company form.

Yesterday the Appellate Division unanimously reversed the lower court's decision with costs; granted NorthEast's motion for summary judgment; and denied Stilwell's cross motion for summary judgment. The Appellate Division found that because Stilwell bought shares of common stock of the Company pursuant to the prospectus issued in connection with its mutual holding company reorganization and minority stock issuance, he was estopped from complaining about the facts that the prospectus disclosed: (i) that the Company and the MHC had the same board; (ii) that the MHC could control the affairs of the Company; (iii) that the MHC's control could prevent a second-step conversion; (iv) that could be contrary to the interests of the Company's minority stockholders; and (v) the MHC's control could result in the perpetuation of

management and directors. The Appellate Division's ruling granted summary judgment ending the case, but it is subject to a motion by Stilwell for appeal to the New York Court of Appeals for discretionary review of the decision. The Courts reasoning did not reach the question of what it might have ruled had Stilwell purchased his stock in the open market.