FRB Order No. 2017-23
September 13, 2017

FEDERAL RESERVE SYSTEM

The Toronto-Dominion Bank
Toronto, Canada

TD Group US Holdings LLC
Wilmington, Delaware

TD Bank US Holding Company
Cherry Hill, New Jersey

Order Approving the Acquisition of a Savings and Loan Holding Company and Shares in Certain Nonbanking Subsidiaries

The Toronto-Dominion Bank ("Toronto-Dominion"), Toronto, Canada, and its subsidiaries, TD Group US Holdings LLC, Wilmington, Delaware, and TD Bank US Holding Company (collectively and together with Toronto-Dominion, "TD"), Cherry Hill, New Jersey, all financial holding companies within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"), have requested the Board's approval under sections 4(c)(8) and (j) of the BHC Act and section 225.24 of the Board's Regulation Y[1] to acquire Scottrade Financial Services, Inc. ("Scottrade Financial"), Town and Country, Missouri, and to merge Scottrade Financial's wholly owned subsidiary, Scottrade Bank, Town and Country, Missouri, a savings association, into TD's wholly owned subsidiary, TD Bank, National Association ("TD Bank"), Wilmington, Delaware.[2] In addition, Toronto-Dominion and TD Group US Holdings LLC have requested the Board's approval under section 163(b) of the Dodd-Frank Wall Street Reform and Consumer

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[1] 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

[2] The merger of Scottrade Bank into TD Bank is subject to approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on May 18, 2017.

Protection Act of 2010 ("Dodd-Frank Act")[3] to acquire additional shares of its subsidiary, TD Ameritrade Holding Corporation ("Ameritrade HC"), Omaha, Nebraska, which is engaged in activities described in section 4(k) of the BHC Act.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 Federal Register 11221-11222 (February 21, 2017)).[4] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 4 of the BHC Act.

Toronto-Dominion, with consolidated assets of approximately $923.3 billion, is the second largest bank in Canada by asset size.[5] Toronto-Dominion provides retail and commercial banking, wealth management, insurance, and investment banking products and services, and operates in North America (including the United States), Europe, and Asia. In the United States, Toronto-Dominion controls TD Bank, with total assets of $268.2 billion, and TD Bank USA, National Association ("TD Bank USA"), Wilmington, Delaware, with total assets of $22.2 billion. Together, the banks have retail banking operations in fifteen states and the District of Columbia.[6]

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[3] Pub. L. No. 111-203, 124 Stat. 1376 (2010). This acquisition is part of a related transaction by Ameritrade HC to acquire Scottrade Financial's broker-dealer subsidiary, Scottrade, Inc., Town and Country, Missouri, under section 4(k) of the BHC Act. 12 U.S.C. § 1843(k).

[4] 12 CFR 262.3(b).

[5] Asset data are as of June 30, 2017, and nationwide deposit-ranking data are as of March 31, 2017, unless otherwise noted. Asset and ranking data for Toronto-Dominion on a consolidated basis are as of April 30, 2017, and are based on the exchange rate as of that date.

[6] TD's subsidiary banks have retail banking operations in Connecticut, Delaware, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and the District of Columbia. In addition, Toronto-Dominion operates a federal branch in New York and a state-licensed agency in Texas.

Scottrade Financial, with consolidated assets of approximately $24.4 billion, is the 71st largest insured depository organization in the United States. Scottrade Financial controls deposits of approximately $15.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Scottrade Financial controls Scottrade Bank, with total assets of $17 billion, which operates in Missouri. Scottrade Financial is the third largest insured depository organization in Missouri, with approximately $14.7 billion in deposits, which represent 8.84 percent of the total deposits of insured depository institutions in that state.[7]

On consummation of the proposal, TD's U.S. operations would have approximately $391.8 billion in consolidated assets, which represent 1.8 percent of the total assets of insured depository organizations in the United States.[8] TD would control total U.S. deposits of approximately $265.6 billion, which represent 2.1 percent of the total deposits of insured depository institutions in the United States. TD would become the third largest insured depository organization in Missouri with approximately $14.7 billion in deposits, which represent 8.84 percent of the total deposits of insured depository institutions in that state.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[9] The Board requires that a savings association acquired by a bank holding company conform its direct and indirect activities to those permissible for a bank holding company under section 4 of the BHC Act. TD has

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[7] State deposit and ranking data are as of June 30, 2016, unless otherwise noted.

[8] Asset data and nationwide deposit-ranking data for the combined organization are as of March 31, 2017.

[9] 12 CFR 225.28(b)(4)(ii).

committed that all the activities of Scottrade Financial and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.[10]

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Scottrade Financial "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[11] As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.[12] In acting on a notice to acquire a savings association, the Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[13]

Section 163(b) of the Dodd-Frank Act requires prior Board approval of an acquisition by a bank holding company with assets of $50 billion or more of shares of any company with assets of at least $10 billion that is engaged in activities described in section 4(k) of the BHC Act. Toronto-Dominion, TD Group US Holdings LLC, and

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[10] In this instance, TD will immediately merge Scottrade Bank into TD Bank and will not operate the savings association independently.

[11] 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects.

[12] See 12 CFR 225.26. See e.g., M&T Bank Corporation, FRB Order 2015-27 (September 30, 2015); Southside Bancshares, Inc., FRB Order 2014-21 (December 10, 2014); Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012); Bank of America Corporation/Countrywide, 94 Federal Reserve Bulletin C81 (2008); Wachovia Corporation, 92 Federal Reserve Bulletin C138 (2006); and BancOne Corporation, 83 Federal Reserve Bulletin 602 (1997).

[13] 12 U.S.C. § 2901 et seq.; 12 CFR 225.13(b)(3).

Ameritrade HC exceed these respective asset thresholds, and Ameritrade HC engages in activities under section 4(k) of the BHC Act. Accordingly, the proposed acquisition of shares of Ameritrade HC by Toronto-Dominion and TD Group US Holdings LLC requires the Board's prior approval under section 163(b) of the Dodd-Frank Act. In reviewing a notice under section 163(b) of the Dodd-Frank Act, the Board is required to consider the standards listed in section 4(j)(2) of the BHC Act.[14] In addition, section 163(b) requires the Board to consider "the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy."[15]

Interstate and Deposit Cap Analyses

The Dodd-Frank Act amended section 4 of the BHC Act[16] to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States. For purposes of the BHC Act, the home state of TD is Delaware and the home state of Scottrade Bank is Missouri.[17] Consummation of the proposal would result in TD controlling 2.1 percent of the total amount of deposits of insured depository institutions in

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[14] Dodd-Frank Act § 163(b)(4), codified at 12 U.S.C. § 5363(b). See Mitsubishi UFJ Financial Group, Inc. (Board Order dated June 14, 2011).

[15] Dodd-Frank Act § 163(b)(4), codified at 12 U.S.C. § 5363(b).

[16] Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8).

[17] A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on the later of July 1, 1966, or the date on which the company became a bank holding company.
12 U.S.C. § 1841(o)(4)(C). A federal savings association's home state is the state in which the home office of the savings association is located.
12 U.S.C. §§ 1828(c)(13)(C)(ii)(III) and 1841(o)(4)(E).

the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 4(i) of the BHC Act.

Competitive Considerations

As part of the Board's consideration of the factors under section 4(j)(2) of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of the record.

TD, through its U.S. bank subsidiaries, operates approximately 1,300 retail branch locations in fifteen states and the District of Columbia and also has online operations. Scottrade Bank does not operate any physical retail branches; rather, it offers banking services exclusively through an internet platform, consisting primarily of sweep accounts to customers of Scottrade, Inc. TD Bank, TD Bank USA, and Scottrade Bank control a relatively small amount of internet deposits when compared to the amount of deposits taken over the internet as a whole. TD Bank and TD Bank USA, on the one hand, and Scottrade Bank, on the other, compete in local banking markets in which TD Bank and TD Bank USA offer retail banking services through their branch locations and throughout the United States through their internet platforms. However, because Scottrade Bank solicits deposits from across the country online, it is unlikely that Scottrade Bank holds a high concentration of internet deposits in any local market, including those in which TD Bank and TD Bank USA have retail branches and internet operations. Based on the size of Scottrade Bank, the large number of internet-based competitors, and the diffuse geographic nature of Scottrade Bank's internet deposits, the proposed transaction would not result in a material increase in concentration in any single market, including any in which TD Bank and TD Bank USA have a physical location. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the Department of Justice ("DOJ") Bank Merger Competitive Review guidelines.

The DOJ has conducted a review of the potential 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 of 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 any relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing proposals under section 4(j)(2) of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information about the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the public comment on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

TD and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. As part of the transaction, Scottrade Bank would merge with and into TD Bank, and a merger subsidiary of Ameritrade HC would merge with and into Scottrade Financial. The holding company merger would be structured as a cash and share exchange.[18] In addition, TD would exercise preemptive rights to purchase additional shares of Ameritrade HC in order to maintain its current level of ownership interest in Ameritrade HC. The asset quality, earnings, and liquidity of TD are consistent with approval. TD appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization.[19] The Board has reviewed the examination records of TD's U.S. operations, Scottrade Financial, and Scottrade Bank, including assessments of their management, risk-management programs, and operations. In addition, the Board has considered information provided by TD, the supervisory experiences that the Board and other relevant bank supervisory agencies have had with the organizations, and the organizations' records of compliance with applicable banking, consumer, and anti-money-laundering laws, as well as information provided by the commenter.

TD and its subsidiary depository institutions are each considered to be well managed. TD's existing risk-management program and its directors and senior management are considered to be satisfactory. TD's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors. TD has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions.

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[18] As part of the transaction, all of the outstanding shares of Scottrade Financial would be exchanged for no more than 4.95 percent of Ameritrade HC's pro forma outstanding shares and $3.0 billion in cash. TD has the financial resources to effect the proposed transaction.

[19] The Board has previously determined that Toronto-Dominion is subject to comprehensive consolidated supervision by the Office of the Superintendent of Financial Institutions in Canada. See The Toronto-Dominion Bank (Board Order dated July 22, 2010).

The Board also has considered TD's plans for implementing the proposal. TD has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. TD would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, TD's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all the facts of record, including TD's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of TD and Scottrade Financial in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

As part of weighing the possible adverse effects of a transaction against its public benefits as required by section 4(j)(2) of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[20] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and

[20] 12 U.S.C. § 1843(j)(2).

sound operation,[21] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods in evaluating bank expansionary proposals.[22]

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of TD Bank, TD Bank USA, and Scottrade Bank; the fair lending and compliance records of each bank; the supervisory views of the OCC and Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by TD; and the public comment received on the proposal.

Public Comment Regarding the Proposal

A commenter objected to the proposal, asserting that TD Bank has made inadequate home purchase and refinance loans to LMI and minority borrowers. Based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA")[23], the commenter argued that TD Bank did not adequately serve minority or LMI borrowers in New York City. The commenter also argued that TD Bank has made inadequate

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[21] 12 U.S.C. § 2901(b).

[22] 12 U.S.C. § 2903.

[23] 12 U.S.C. § 2801 et seq.

investments in multifamily residential real estate, community development loans and investments, and charitable gifts to neighborhood-based organizations. The commenter asserted that TD Bank should make investments in residential real estate other than through low-income housing tax credits. The commenter also alleged that TD Bank does not offer products that are affordable for LMI borrowers because its low-cost checking account product has a fee that cannot be waived, and another checking account product has a fee that can only be waived if a customer maintains a minimum balance that the commenter believes is too high. Finally, the commenter stated that TD Bank should accept New York City's municipal ID as a primary form of identification for customers seeking to obtain banking products.[24]

Business of the Involved Institutions and Response to the Comment

TD, TD Bank, and TD Bank USA offer a broad range of financial services to consumers and businesses. Through their branch network, TD Bank and TD Bank USA offer a variety of banking products to their customers, including real-estate, commercial and consumer loans, and deposit products and services. In addition to traditional deposit and loan products, TD Bank also offers trust and financial advisory services to personal, business, corporate, and institutional clients.

Scottrade Bank offers online retail banking products and services, as well as commercial lending and commercial equipment financing. Scottrade Bank primarily

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[24] The commenter also stated that the Board should not approve the proposal until TD Bank submits a CRA plan with prospective commitments for community investments and lending activity. The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. See, e.g., United Bancshares, Inc., FRB Order No. 2017-10 at 12 fn. 28 (April 6, 2017); Huntington Bancshares Inc., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); CIT Group, Inc., FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

provides deposit account products and services to customers of Scottrade Inc., including sweep accounts.

In response to the comment, TD asserts that the records of TD Bank and TD Bank USA in meeting the convenience and needs of the communities they serve are consistent with approval.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[25]

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[26] An institution's most recent CRA performance evaluation is a particularly important consideration in the notice process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the

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[25] See Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48506, 48548 (July 25, 2016).

[26] 12 U.S.C. § 2906.

lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the company's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[27] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The CRA permits a bank to apply to its primary federal regulator to be designated as a wholesale or a limited-purpose bank.[28] The CRA performance of a wholesale or limited-purpose bank is assessed by evaluating the bank's community development activities.[29] This evaluation involves an assessment of (1) the number and amounts of community development loans (including originations and purchases of loans, and other community development loan data provided by the bank, such as data on

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[27] Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

[28] 12 CFR 228.25. A wholesale bank is one that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers.

[29] 12 CFR 228.25(c).

loans outstanding, commitments, and letters of credit), qualified investments, or community development services; (2) the use of innovative or complex qualified investments, community development loans, or community development services, and the extent to which the investments are not routinely provided by private investors; and (3) the bank's responsiveness to credit and community development needs.[30] Based on its activities, Scottrade Bank is considered to be a wholesale bank.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[31] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of TD Bank

TD Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of December 31, 2013 ("TD Bank Evaluation").[32] TD Bank received "High Satisfactory" ratings for the Lending and

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[30] Id.

[31] Other data relevant to credit decisions could include credit histories, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners may analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[32] The TD Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and the CRA from January 1, 2011, through December 31, 2013. The evaluation period for community development loans, investments, and services was from January 1, 2012, through December 31, 2013. The TD Bank Evaluation covered TD Bank's 72 AAs located in fifteen states and six multistate metropolitan areas ("MMAs"). A full-scope review was conducted in one office of each state and MMA. A limited-scope review was conducted in the remaining AAs.

Service tests and an “Outstanding” rating for the Investment Test. Examiners found that TD Bank provided a relatively high level of community development services.

Examiners found that TD Bank’s overall lending activity was excellent. Examiners noted that the distribution by TD Bank of loans to geographies and borrowers of different income levels was adequate. Examiners found that TD Bank had a good level of community development lending that had a positive impact on TD Bank’s overall lending.

TD Bank received a “High Satisfactory” rating for the Lending Test in the New York-Northern New Jersey-Long Island MMA (“New York MMA”), an area of concern for the commenter. Examiners conducted a full-scope review in the New York MMA and noted that TD Bank had adequate distribution of loans to individuals and businesses of different income levels. Examiners noted that TD Bank had good performance for small loans to businesses of different sizes, but poor performance for home mortgage loans by income level of the borrower. Examiners found that TD Bank’s level of community development lending in the New York MMA was excellent and flexible, which positively impacted the bank’s Lending Test performance.

Examiners found that TD Bank had an excellent level of qualified investments that was responsive to the needs of its communities. In the New York MMA, TD Bank received an “Outstanding” rating for the Investment Test. Examiners found that TD Bank made extensive use of innovative or complex investments to support community development initiatives, particularly for affordable housing development. Examiners also noted that TD Bank’s responsiveness to the investment needs of the communities in the New York MMA was excellent. Examiners found that a substantial majority of TD Bank’s investments were in low-income housing tax credit projects, which examiners stated were a primary need in the bank’s AAs.

Examiners found that TD Bank had accessible office locations and a relatively high level of community development services. In the New York MMA, examiners assigned TD Bank a “High Satisfactory” rating for the Service Test. Examiners noted that TD Bank provided a good level of community development services, including first-time homebuyer seminars and financial literacy classes for students in community schools and economic and affordable housing organizations. Examiners found that TD Bank’s delivery systems were accessible to all geographies, all census tracks, and individuals of different income levels. While examiners noted that the distribution of branches and full-service ATMs in LMI geographies was below what would be consistent with the number of LMI borrowers in the New York MMA, examiners found that TD Bank’s 79 branches provided good access to LMI individuals. Examiners also found that TD Bank made adequate use of alternative delivery systems, including ATMs, online banking, and free telephone banking. Examiners found that TD Bank’s record of opening and closing branch offices did not adversely affect, but instead significantly improved, the accessibility of its delivery systems to LMI individuals.

TD Bank’s Activities since the TD Bank Evaluation

TD states that, since the TD Bank Evaluation, TD Bank has taken significant steps to continue and improve its CRA performance. Specifically, TD Bank has initiated two mortgage lending programs, the TD Right Step affordable mortgage loan product and the FannieMae HomeReady affordable mortgage program. The TD Right Step mortgage product provides borrowers with flexible financing options, including down payments as low as 3 percent without a requirement to purchase private mortgage insurance. This mortgage product also has simplified underwriting and appraisal processes that are more consumer friendly than traditional processes. Since beginning the program in 2014, TD Bank has closed over 3,100 loans through the TD Right Step program. TD Bank also began participating in Fannie Mae’s HomeReady affordable mortgage program, which provides flexible financing options to LMI borrowers. Since joining the program in late 2016, TD Bank has closed 113 HomeReady loans.

CRA Performance of TD Bank USA

TD Bank USA was assigned an overall CRA rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of March 31, 2014 (“TD Bank USA Evaluation”). The TD Bank USA Evaluation was conducted pursuant to an OCC-approved CRA strategic plan, which specified measurable goals for meeting the lending, investment, and service needs of the bank's assessment area.[33] The TD Bank USA Evaluation included a review of the bank's performance toward meeting the strategic plan goals in the defined assessment area of the Portland-South Portland-Biddeford, Maine, MSA for 2011 and 2012.[34]

Examiners found that TD Bank USA substantially met or exceeded all of its strategic plan goals in its AA. In addition, examiners noted that the bank supported community-based organizations in New York City with capital lines of credit. Examiners noted that the bank invested in low-income housing tax credits to construct low-income housing for the elderly, and made deposits or donated certificates of deposits to low-income and minority-owned credit unions. Examiners also noted that TD Bank USA provided grants and donations to organizations dedicated to providing affordable housing, services for LMI individuals, and local economic development.

CRA Performance of Scottrade Bank

Scottrade Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of April 1, 2013 ("Scottrade Bank Evaluation").[35]

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[33] Under the federal banking agencies' CRA regulations, the appropriate federal banking agency will assess a bank's record of meeting the credit needs of its assessment areas under a strategic plan if, among other things, the bank invites public comment on the plan and the plan is approved by such agency. See 12 CFR 25.27. The OCC approved TD Bank USA's strategic plan in August 2010.

[34] The bank's strategic plan also permits the bank to respond to the needs of communities in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, and New York.

[35] The Scottrade Bank Evaluation was conducted using Wholesale or Limited Purpose Bank Examination Procedures. Examiners reviewed Scottrade Bank's community development activities both inside and outside of its sole AA from July 8, 2008, through April 1, 2013. The bank's sole AA includes St. Louis County and St. Louis City County, both in Missouri.

Examiners found that Scottrade Bank's lending levels were adequate in light of the bank's capacity and the lending opportunities available to it. Examiners noted that Scottrade Bank made complex community development loans, which aided in the development of affordable housing. Examiners also noted that Scottrade Bank made additional community development loans outside of its AA, which favorably impacted its CRA evaluation.

Examiners found that Scottrade Bank provided an adequate level of investments to meet community needs, most of which helped to provide affordable housing and neighborhood revitalization. Examiners noted that Scottrade Bank also invested in a mortgage loan pool that only lent to LMI borrowers. Examiners found that Scottrade Bank made charitable donations that promoted affordable housing and provided other services to LMI individuals. Examiners also noted that Scottrade Bank made investments outside of its AA to promote affordable housing, which favorably impacted its CRA evaluation.

Examiners found that Scottrade Bank provided an adequate level of services in its AA. Examiners noted that the bank's employees volunteered with several organizations that provided services to LMI individuals.

Views of the OCC and CFPB

In its review of the proposal, the Board consulted with the OCC regarding TD Bank's CRA, consumer compliance, and fair lending records, as well as with the CFPB regarding TD Bank's record of consumer compliance. The OCC reviewed the bank merger underlying this proposal, including the comment received by the Board.

The Board has considered the results of the most recent consumer compliance examination of TD Bank conducted by OCC examiners. The Board also has considered the results of the OCC's most recent examination of TD Bank's compliance with the Equal Credit Opportunity Act[36] and the Fair Housing Act.[37] In addition, the

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[36] 15 U.S.C. § 1692 et seq.

[37] 42 U.S.C. § 3601 et seq.

Board has considered the results of the CFPB's consumer compliance examination of TD Bank.

The Board has taken the consultations with the OCC and the CFPB, as well as the information discussed above, into account in evaluating this proposal, including in considering whether TD has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. TD represents that, as a result of the proposal, existing customers of Scottrade Bank would have access to additional or expanded services, including access to retail branches and ATM locations in its market areas. Upon consummation of the bank merger, TD Bank would offer the former depositors of Scottrade Bank its products and services, including a debit card, free ATM withdrawals, free online bill payment, and a sweep deposit program comparable to that currently offered by Scottrade Bank. TD also represents that deposit customers of Scottrade Bank, many of whom use the brokerage and wealth management services of Scottrade Financial's other subsidiaries, would have access to the enhanced product selection and trading platform of Ameritrade HC and its subsidiaries, including investor education programs, mobile trading technology, more diverse investment products including derivatives and foreign exchange, and greater investment guidance and advice. TD represents that the combined company's larger capital and asset base would allow it to be a more effective competitor in the investment advisory and securities brokerage markets and to continue to offer competitive prices for its services. TD also represents that, on balance, no significant reductions in products or services would be expected as a result of the proposal.[38]

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by TD, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

The Board expects TD to ensure that its subsidiary banks implement effective consumer compliance and risk-management programs following consummation of the proposal that are commensurate with each bank's size, complexity, and nature and scope of operations. The Board will continue to monitor and evaluate these efforts through its ongoing supervision of TD Group U.S. Holdings LLC and TD Bank US Holding Company, as well as through consultations with the OCC and CFPB.

Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering a proposal under section 4(j) of the BHC Act and requires the Board to consider "the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States

[38] TD represents that Ameritrade HC and its subsidiaries would discontinue all but a few of the proprietary products currently offered by Scottrade Financial. However, TD represents that the products of Ameritrade HC and its subsidiaries would provide investors with improved quality and investment options.

financial stability or the United States economy" in considering a notice submitted pursuant to section 163(b) of the Dodd-Frank Act.[39]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system or the United States economy, or on global or United States financial stability, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[40] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[41]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system or the U.S economy and risks to global or United States financial stability. Both the acquirer and the target are engaged in retail banking, investment advisory, wealth management, and securities brokerage activities. TD has, and as a result of the proposal, would continue to have, small-to-moderate market shares in these products and services on a nationwide basis. The acquisition

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[39] Dodd-Frank Act §§ 163(b)(4), 604(e)(1) and (f), codified at 12 U.S.C. 5363(b)(4) and 12 U.S.C. §§1843(j)(2)(A) and 1828(c)(5), respectively.

[40] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[41] For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012).

would not have meaningful effects on the cross-border activities of the acquirer; would not lead to changes in the institution's organizational structure, complexity, or unique characteristics that would complicate its resolution; nor would it pose a significant risk to the banking or financial system, economy, or financial stability, in the event of financial distress. In addition, substitute providers would be readily available for the critical financial services provided by the *pro forma* institution, and the acquisition would not heighten its interconnectedness with other firms or markets in ways that would significantly raise risks to the financial system or economy or to financial stability in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system or the United States economy or to global or United States financial stability. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Additional Public Benefits of the Proposal

As noted, in connection with a notice under section 4(c)(8) of the BHC Act and notice under section 163(b) of the Dodd Frank Act, section 4(j)(2) of the BHC Act requires the Board to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[42] As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Scottrade Financial and its subsidiaries. In addition, the acquisitions would ensure continuity and strength of service to these customers.

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[42] 12 U.S.C. § 1843(j)(2)(A).

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, including conditions noted in this order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of the proposal. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, 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. The Board's approval is specifically conditioned on compliance by TD with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors,[43] effective September 13, 2017.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

[43] Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.