FEDERAL RESERVE BOARD

The Toronto-Dominion Bank
Toronto, Canada

Order Approving the Acquisition of a Bank Holding Company

The Toronto-Dominion Bank ("TD") and its subsidiary bank holding companies, including TD US P&C Holdings ULC ("TD ULC"), Calgary, Canada, and TD BankNorth, Inc. ("TD Banknorth"), Portland, Maine (collectively, "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire Commerce Bancorp, Inc. ("Commerce"), Cherry Hill, New Jersey, and its two subsidiary banks, Commerce Bank/North ("CB North"), Ramsey, New Jersey, and Commerce Bank, National Association ("CB NA"), Philadelphia, Pennsylvania.[2] In addition, Applicants have applied to acquire Commerce's minority interest in Pennsylvania Commerce Bancorp, Inc. ("PCB"), Harrisburg, a bank holding company that controls

[1] 12 U.S.C. § 1842.

[2] Applicants also include the following intermediate holding companies formed by TD to facilitate the Commerce acquisition: Cardinal Top Co., Cardinal Intermediate Co., and Cardinal Merger Co., all of New York, New York (collectively, "HCs"). HCs have requested the Board's approval under Section 3 of the BHC Act to become bank holding companies and to acquire or merge with Commerce. TD, TD ULC, and TD Banknorth are all financial holding companies within the meaning of the BHC Act. TD filed applications with the Office of the Comptroller of the Currency ("OCC") on January 25, 2008, for approval, under the Bank Merger Act (12 U.S.C. § 1828(c)), to merge CB NA and CB North into TD's indirect subsidiary bank, TD BankNorth, National Association, ("TD Bank NA"), Portland.

Commerce Bank/Harrisburg National Association ("PCB Bank"), Lemoyne, both of Pennsylvania.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (73 Federal Register 2,255 (2008)). 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 the BHC Act.

TD, with total consolidated assets equivalent to $434.3 billion, is the second largest depository organization in Canada.[4] TD operates a branch in New York City and an agency in Houston and through TD Banknorth, controls TD Bank NA and TD Bank USA, National Association ("TD Bank USA"), New York, New York. TD Banknorth, with total consolidated assets of $63.5 billion, is the 25th largest depository organization in the United States, controlling $43.9 billion in deposits.[5] TD Banknorth's subsidiary banks operate in eight states.[6] TD Banknorth is the eighth largest depository organization in New York, controlling deposits of approximately $18.2 billion, and in Connecticut TD Banknorth is the sixth largest depository organization, controlling deposits of approximately $3.9 billion. In New Jersey, TD Banknorth is the 11th largest depository organization, controlling deposits of approximately $3.9 billion, and

---

[3] Commerce holds voting securities and warrants that collectively represent 14.6 percent of PCB's voting shares.

[4] Canadian asset and ranking data are as of January 31, 2008, and are based on the exchange rate as of that date.

[5] Asset data and nationwide deposit ranking data are as of December 31, 2007. Statewide deposit and ranking data are as of June 30, 2007, and reflect merger activity as of February 26, 2008.

[6] TD Bank NA operates in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont. TD Bank USA operates only in New York.

in Pennsylvania, TD Banknorth is the 45th largest depository organization, controlling deposits of approximately $575 million.

Commerce has total consolidated assets of approximately $49.4 billion, and its subsidiary banks operate in eight states, including New York, Connecticut, New Jersey and Pennsylvania, and the District of Columbia. In New York, Commerce is the 13th largest depository organization, controlling deposits of $12.0 billion, and in Connecticut, Commerce is the 43rd largest depository organization, controlling deposits of approximately $125.6 million. Commerce is the third largest depository organization in New Jersey, controlling deposits of $22.3 billion, and in Pennsylvania, Commerce is the fifth largest depository organization, controlling deposits of $8.4 billion.

On consummation of the proposal, TD Banknorth would become the 19th largest depository organization in the United States, with total consolidated assets of approximately $115 billion. TD Banknorth would control deposits of approximately $90.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, TD Banknorth would become the sixth largest depository organization, controlling deposits of approximately $30.2 billion, which represent approximately 4.4 percent of the total amount of deposits of insured depository institutions in the state ("state deposits"). In Connecticut, TD Banknorth would remain the sixth largest depository organization, controlling deposits of approximately $4.1 billion, which represent approximately 5.9 percent of state deposits. In New Jersey, TD Banknorth would become the third largest depository organization, controlling deposits of approximately $26.2 billion, which represent approximately 13.5 percent of state deposits. In Pennsylvania, TD Banknorth would become the fifth largest depository organization, controlling deposits of approximately $9 billion, which represent approximately 3.8 percent of state deposits.

PCB has consolidated assets of approximately $2 billion, and PCB Bank operates only in Pennsylvania. PCB is the 23rd largest insured depository institution in Pennsylvania, controlling deposits of approximately $1.5 billion, which represent less than 1 percent of state deposits. If TD Banknorth were deemed to control PCB on consummation of the proposal, TD Banknorth would become the fifth largest banking organization in Pennsylvania, controlling approximately $11.1 billion in deposits, which would represent less than 5 percent of state deposits.

TD has stated that it does not propose to control or exercise a controlling influence over PCB or PCB Bank and has made certain commitments to the Board designed to limit the influence TD may exercise. [7]

---

[7] See, e.g., Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996); First Community Bancshares, Inc., 77 Federal Reserve Bulletin 50 (1991). Although the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company, the requirement in section 3(a)(3) of the BHC Act that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 and 25 percent of the voting shares of banks. See 12 U.S.C. § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. See, e.g., Brookline Bancorp, MCH, 86 Federal Reserve Bulletin 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company). The BHC Act would require TD to file an application and receive the Board's approval before the company could directly or indirectly acquire additional shares of PCB or attempt to exercise a controlling influence over PCB.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of TD is New York,[8] and Commerce is located in Connecticut, Delaware, the District of Columbia, Florida, Maryland, New Jersey, New York, Pennsylvania, and Virginia.[9]

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[10] In light of

---

[8] See 12 U.S.C. § 1842(d). 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 July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

[9] For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

[10] 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)-(3). TD is adequately capitalized and adequately managed, as defined by applicable law. Both of Commerce's subsidiary banks have been in existence and operated for the minimum period of time required by applicable state laws and for more than five years. See 12 U.S.C. § 1842(d)(1)(B)(i)-(ii). On consummation of the proposal, Applicants would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1842(d)(2)(A). Applicants would control less than 30 percent, or a greater percentage established under applicable state law, of the state deposits in Connecticut, New Jersey, New York, and Pennsylvania. 12 U.S.C. § 1842(d)(2)(B)-(D). In addition, Applicants would not hold deposits in excess of an applicable deposit cap under the law of any other states where Commerce is located. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

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 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.[11]

Applicants and Commerce have subsidiary depository institutions that compete directly in four banking markets: Atlantic City, New Jersey; Metropolitan New York-New Jersey-Connecticut-Pennsylvania; New Haven, Connecticut; and Philadelphia/South Jersey, in New Jersey and Pennsylvania.[12] The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record and public comment received on the proposal.[13] In particular, the Board has considered the number

---

[11] 12 U.S.C. § 1842(c)(1).

[12] Applicants and PCB do not have subsidiary depository institutions that compete directly in any banking market.

[13] Several commenters asserted that the proposal would result in an undue concentration of resources in Camden, New Jersey, which is part of the Philadelphia/South Jersey banking market, as defined by the Federal Reserve Bank of Philadelphia ("Reserve Bank"). The Reserve Bank's definition of this market is set forth in the appendix. In reviewing this proposal and the comments received, the Board has considered whether to include Camden in this banking market. Camden is directly across the Delaware River from Philadelphia and has been included in the Reserve Bank's definition of the Philadelphia/South Jersey banking

of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions ("market deposits") controlled by Applicants and Commerce in the markets,[14] the concentration levels of market deposits and the increases in those levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[15] and other characteristics of the markets.

---

market for over a decade. According to data from the 2000 census, more than 65 percent of the labor force residing in Camden commutes to other counties in the Philadelphia/South Jersey banking market. These and other factors indicate that the Philadelphia/South Jersey banking market, including Camden, is the appropriate local geographic market for purposes of analyzing the competitive effects of this proposal.

[14] Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2007, adjusted to reflect mergers and acquisitions as of February 26, 2008, 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).

[15] 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 within the thresholds in the DOJ Guidelines in all four banking markets.[16] On consummation, each of the banking markets would remain moderately concentrated as measured by the HHI, and the HHI changes would increase by less than 200 points in each market. In addition, numerous competitors would remain in all the banking markets.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition in any relevant baking 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 any of the four banking markets where Applicants and Commerce compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

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 carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the U.S. banking supervisors of the institutions involved, publicly reported and other

---

[16] Definitions of the other three banking markets and the effects of the proposal on concentrations of banking resources in all the markets are described in the appendix.

financial information, information provided by Applicants, and public comment received on the proposal.[17] The Board also has consulted with the Office of the Superintendent of Financial Institutions ("OSFI"), the agency with primary responsibility for the supervision and regulation of Canadian banks, including TD.

In evaluating the financial resources 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 insured depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, 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.

---

[17] Several commenters expressed concern about pending and prospective litigation in Canada and the United States involving TD and the effect of such litigation on TD's managerial and financial resources. The Canadian litigation involves a class action lawsuit against TD based on allegations that credit card holders were overcharged on foreign currency conversions and a lawsuit for allegedly improperly withholding deposited funds. These pending cases will be resolved by a Canadian court with jurisdiction to adjudicate such matters.

The U.S. lawsuits include a discrimination case that has been settled. Another lawsuit involving the amount of consideration TD offered to shareholders in connection with a previous acquisition is currently under review by a court of competent jurisdiction. The Board does not have authority to resolve the shareholders' dispute. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

Board action on this proposal would not interfere with Canadian or U.S. courts' ability to resolve the pending lawsuits. Moreover, the Board has taken these comments into account in its assessment of the financial resources and future prospects of the companies and depository institutions involved in the proposal.

The Board has carefully considered the financial resources of the organizations involved in the proposal. The capital levels of TD exceed the minimum levels that would be required under the Basel Capital Accord and are therefore considered to be equivalent to the capital levels that would be required of a U.S. banking organization. In addition, the subsidiary depository institutions involved in the proposal are well capitalized and would remain so on consummation. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase of shares. Applicants will use existing resources to fund the cash purchase of shares.[18]

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants, Commerce, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations.[19] In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the OCC and the Federal

---

[18] One commenter claimed that the amount of consideration TD is offering in connection with the proposal is excessive. The amount of consideration offered is a matter decided by the parties involved, and the Board has reviewed this aspect of the proposal in its assessment of the financial resources of the resulting organization.

[19] Several commenters expressed concern about TD Banknorth's relationships with unaffiliated pawnshops and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenters are permissible, and the businesses are licensed by the states where they operate. TD noted that it has established a detailed review program for pawnshops and other money-service businesses ("MSBs"), including reviews for compliance with anti-money laundering, Bank Secrecy Act, fair lending, and consumer protection requirements. Furthermore, TD stated that TD Banknorth does not have any role in the lending practices, credit review, or other business practices of MSBs and does not purchase any loans originated by MSBs.

Deposit Insurance Corporation ("FDIC"), with the organizations and their records of compliance with applicable banking law and with anti-money laundering laws. Applicants, Commerce, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Applicants' plans for implementing the acquisition, including the proposed management after consummation.[20]

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 other supervisory factors.[21]

---

[20] Several commenters expressed concern that the proposal would jeopardize the combined organization's ability to serve as the designated bonding authority ("DBA") for the Department of Education's ("DOE's") Historically Black Colleges and Universities Capital Financing Program ("CFP"). A Commerce subsidiary serves as the DBA and administers the CFP. Several commenters asserted that Commerce had performed poorly as the DBA, had insufficient managerial controls over the CFP, and had mismanaged the program. In addition, several commenters alleged that Commerce, through its insistence on certain loan payment terms, had risked violating fair lending laws and that certain terms and conditions of loans under the CFP were abusive.

TD represented that key elements of the CFP, including pricing and repayment, were established by a division of the Department of the Treasury, and not by the DBA. Final determinations on credit approvals and denials are determined by the DOE. Moreover, TD stated that the DBA has an extremely diligent loan review process and that no loan has defaulted under the CFP while the Commerce subsidiary has served as the DBA. The Board expects all banking organizations to conduct their operations in a safe and sound manner with adequate systems to manage operational, compliance, and reputational risks and will take appropriate supervisory actions to prevent and address abusive lending practices.

[21] Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act. 12 U.S.C. § 1842(c)(3)(A). The Board has

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[22] As noted, the OSFI is the primary supervisor of Canadian banks, including TD. The Board previously has determined that TD is subject to comprehensive supervision on a consolidated basis by its home country supervisor.[23] Based on this finding and all the facts of record, the Board has concluded that TD continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

---

reviewed the restrictions on disclosure in the relevant jurisdictions in which TD operates and has communicated with relevant government authorities concerning access to information. In addition, TD previously has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. TD also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make such information available to the Board. Based on all facts of record, the Board has concluded that TD has provided adequate assurances of access to any appropriate information the Board may request.

[22] 12 U.S.C. § 1843(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. See 12 CFR 211.24(c)(1).

[23] See The Toronto-Dominion Bank, 92 Federal Reserve Bulletin C100 (2006); The Toronto-Dominion Bank, 91 Federal Reserve Bulletin 277 (2005).

Convenience and Needs Considerations

In acting on a proposal 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 to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[24] 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 sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.[25]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of the subsidiary banks of TD Banknorth and Commerce, data reported by TD Banknorth and Commerce under the Home Mortgage Disclosure Act ("HMDA"),[26] other information provided by Applicants, confidential supervisory information, and public comments received on the proposal. Two commenters alleged, based on HMDA data reported in 2006, that TD Banknorth had engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has reviewed the convenience and needs factor in light of the evaluations by the appropriate federal supervisors

---

[24] 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

[25] 12 U.S.C. § 2903.

[26] 12 U.S.C. § 2801 et seq.

of the relevant insured depository institutions' CRA performance records. 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.[27]

TD Banknorth's subsidiary banks each received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC.[28] Both of Commerce's subsidiary banks received "outstanding" CRA performance ratings at their most recent evaluations by the relevant federal supervisors.[29] PCB's subsidiary bank, PCB Bank, received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of January 3, 2005. Applicants have represented that no significant changes to the CRA programs at any subsidiary bank will take place until CB NA and CB North are merged into TD Bank NA, at which time the banks will adopt the CRA program of TD Bank, as modified to address issues specific to the banks' markets.[30]

---

[27] See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

[28] The most recent CRA performance evaluations were as of December 30, 2004, for TD Bank NA and as of January 16, 2007, for TD Bank USA.

[29] The most recent CRA performance evaluation for CB NA by the OCC was as of October 2, 2006. The most recent CRA performance evaluation for CB North by the FDIC was as of May 15, 2006.

[30] Two commenters expressed concern regarding the impact of the acquisition on the types of loans, investments, and services provided by the subsidiary banks of TD Banknorth and Commerce. One commenter also requested that Applicants make specific commitments with regard to the products and services offered in the New York City Metropolitan Statistical Area ("MSA"). The Board has stated that the CRA neither requires a depository institution to provide any specific types of products or services nor prescribes the fees charged for them. See Bank of America Corporation, 90 Federal Reserve Bulletin 217, 226 n. 49 (2004). The

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of TD Banknorth in light of the public comments received on the proposal. Two commenters alleged, based on HMDA data, that TD Banknorth denied the home mortgage refinance and home improvement loan applications of African American borrowers more frequently than those of nonminority applicants. The Board has focused its analysis on the 2006 HMDA data reported by TD Banknorth NA.[31]

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not TD Banknorth is excluding or imposing higher costs on any group 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.[32] HMDA data,

---

Board also has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to enter into pledges, commitments, or agreements with any organization and that the enforceability of any such third-party pledges, initiatives, and agreements are matters outside the CRA. See Bank of America Corporation, 93 Federal Reserve Bulletin C109, C112 n. 28 (2007); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

[31] The Board reviewed HMDA data for TD Bank NA's assessment areas in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and the MSAs noted in the comments.

[32] 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

therefore, have limitations 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 lending institutions 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 or ethnicity. 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 with fair lending laws by TD Banknorth and its subsidiaries. The Board also has consulted with the OCC about the fair-lending compliance record of TD Bank NA, TD Bank USA, and CB NA and with the FDIC about the fair-lending compliance record of CB North.

The record of these applications, including confidential supervisory information, indicates that TD Banknorth has taken steps to ensure compliance with fair lending and other consumer protection laws. TD Banknorth's board of directors annually approves a fair-lending policy statement, which serves as a reference document for all employees. TD Banknorth's compliance program includes risk assessments, annual monitoring, monthly business line self-monitoring, complaint tracking, and reviews by regulatory compliance and fair lending committees. The program includes statistical data analysis quarterly and annually to identify trends and fair lending concerns. In addition, TD Banknorth

---

assessment of whether an applicant who was denied credit was, 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.

provides annual training covering compliance-related regulations to all employees based on job function. Applicants stated that they would not change the fair-lending compliance programs of TD Banknorth's and Commerce's subsidiary banks until consummation of the proposed merger of those banks, at which time the banks will adopt the fair-lending compliance programs of TD Banknorth, as modified to address issues specific to each bank's markets.

The Board also has considered the HMDA data in light of other information, including the overall performance records of the subsidiary banks of Applicants and Commerce under the CRA. These established efforts and records of performance 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

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, comment received on the proposal, and confidential supervisory information. Applicants represented that the proposal would result in increased credit availability and access to a broader array of financial products and services for customers of TD Banknorth and Commerce. 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 insured depository institutions are consistent with approval of the proposal.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications should be, and hereby are, approved.[33]

---

[33] Several commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a

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 Applicants with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this transaction, these 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.

The proposal may 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

---

public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. 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), 262.25(d). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,[34] effective March 13, 2008.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

[34] Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Mishkin.

Appendix

Banking Markets Consistent with Board Precedent and DOJ Guidelines

Deposit data are as of June 30, 2007, and include mergers as of February 26, 2008. Deposit amounts are unweighted. Rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

Atlantic City – Atlantic and Cape May Counties in New Jersey.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
TD Banknorth Pre-Consummation	17	$48 mil.	0.8			
Commerce	2	$1.3 bil.	20.5	1325	+ 33	21
TD Banknorth Post-Consummation	2	$1.3 bil.	21.3			

Metropolitan New York-New Jersey-Pennsylvania-Connecticut – Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties and the northern portions of Mercer County in New Jersey; Monroe and Pike Counties in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
TD Banknorth Pre-Consummation	9	$20.8 bil.	2.6			
Commerce	8	$26.1 bil.	3.3	1118	+ 17	272
TD Banknorth Post-Consummation	4	$46.9 bil.	5.9			

New Haven – Clinton, Killingworth, and Westbrook townships in Middlesex County; and Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven, and Woodbridge townships in New Haven County, all in Connecticut.						
	Rank	**Amount of Deposits**	**Market Deposit Shares (%)**	**Resulting HHI**	**Change in HHI**	**Remaining Number of Competitors**
TD Banknorth Pre-Consummation	8	$772 mil.	0.1	1290	+ 2	20
Commerce	19	$14 mil.	7.3			
TD Banknorth Post-Consummation	8	$786 mil.	7.5			

Philadelphia/South Jersey – Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania; Burlington, Camden, Gloucester, and Salem Counties in New Jersey; and the City of Trenton and Ewing, Hamilton, and Lawrence townships in Mercer County, New Jersey.						
	Rank	**Amount of Deposits**	**Market Deposit Shares (%)**	**Resulting HHI**	**Change in HHI**	**Remaining Number of Competitors**
TD Banknorth Pre-Consummation	13	$1.2 bil.	1.4	1032	+ 39	118
Commerce	2	$13.7 bil.	14			
TD Banknorth Post-Consummation	2	$14.9 bil.	15.4			