

FEDERAL RESERVE SYSTEM

The Toronto-Dominion Bank
Toronto, Canada

Order Approving the Acquisition of a Bank Holding Company

The Toronto-Dominion Bank (“TD”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire 51 percent of the voting shares of Banknorth Group, Inc. (“Banknorth”) and its wholly owned subsidiary, Banknorth, National Association (“Banknorth Bank”), both in Portland, Maine.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 Federal Register 68,147 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

TD, with total consolidated assets of approximately \$202 billion, is the fifth largest banking organization in Canada.³ TD is the 82nd largest depository organization in the United States, controlling \$8.5 billion of deposits through its only U.S. subsidiary insured depository institution, TD Waterhouse Bank, National Association, Jersey City, New Jersey (“TDW Bank”). TD also operates a branch in New York City and an agency in Houston. Banknorth, with total consolidated assets of approximately \$29 billion, is the 47th largest depository organization in the United States, controlling deposits of \$19.6 billion, representing less than 1 percent of total deposits of insured

¹ 12 U.S.C. § 1842.

² Applicants propose to acquire the nonbanking subsidiaries of Banknorth in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures in section 225.87 of Regulation Y. 12 U.S.C. § 1843(k); 12 C.F.R 225.87.

³ Asset data are as of October 31, 2004, and rankings are as of June 30, 2004. Both are based on the exchange rate then available.

depository institutions in the United States.⁴ On consummation of this proposal, TD would become the 29th largest depository organization in the United States, controlling deposits of approximately \$28.1 billion, which represent less than 1 percent of total deposits of insured depository institutions in the United States.⁵

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 home state of the bank holding company if certain conditions are met.⁶ For purposes of the BHC Act, the home state of TD is New York, and Banknorth Bank is located in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont.⁷

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.⁸ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

⁴ Asset data and rankings are as of June 30, 2004.

⁵ On consummation of the proposal, Banknorth will be renamed TD Banknorth, Inc.

⁶ Under section 3(d) of the BHC Act, a bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on the later of July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C). New York is the home state of TD for purposes of the International Banking Act and Regulation K. 12 U.S.C. § 3103; 12 C.F.R. 211.22.

⁷ 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. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

⁸ See 12 U.S.C. §§ 1842(d)(1)(A) & (B), 1842(d)(2)(A) & (B). TD is well capitalized and well managed, as defined by applicable law. Banknorth Bank has been in existence and operated for the minimum period of time required by applicable state law. See Conn. Gen. Stats. Ann. Ch. 666 § 36a-411 (five years); Mass. Gen. Laws Ann. Ch. 167A § 2 (three years). On consummation of the proposal, TD would control less than 10 percent of the total amount of deposits of insured depository institutions in the

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.⁹

TD and Banknorth compete directly in the Metro New York banking market.¹⁰ The Board has reviewed carefully the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by TD and Banknorth,¹¹ the concentration level of market deposits and the

United States and less than 30 percent, or the appropriate percentage established by applicable state law, of deposits in Connecticut, Maine, Massachusetts, and New Hampshire. See Conn. Gen. Stats. Ann. Ch. 666 § 36a-411; Maine Rev. Stat. Ann. Tit. 9-B § 1013(3)(C); Mass. Gen. Laws Ann. Ch. 167A § 2; N.H. Rev. Stat. Ann. § 384-B3. All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

⁹ 12 U.S.C. § 1842(c)(1).

¹⁰ The Metro New York banking market is defined as the counties of Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester in New York; the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.

¹¹ Market share data are based on Summary of Deposits reports filed as of June 30, 2004, and on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions

increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹² and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in this banking market.¹³ After consummation, the Metro New York banking market would remain moderately concentrated as measured by the HHI. The increase in concentration would be small and numerous competitors would remain.

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in this market or in any

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 Board 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).

¹² Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

¹³ TD operates the 15th largest depository institution in the Metro New York banking market, controlling \$5.7 billion in deposits, which represents less than 1 percent of market deposits. Banknorth operates the 224th largest depository institution in the market, controlling \$38.4 million in deposits. On consummation of the proposal, TD would remain the 15th largest depository institution in the market, controlling deposits of approximately of \$5.7 billion. The HHI would remain at 1017, and 257 bank and thrift competitors would remain in the market.

other 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 these and all other 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 banking resources in any relevant banking market and 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 banks 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 various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by the applicant, and public comment on the proposal.¹⁴ The Board also has consulted with the Office of the Superintendent of Financial Institutions (“OSFI”), which is responsible for the supervision and regulation of Canadian banks.

In evaluating financial factors 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 subsidiary depository institutions and significant nonbanking operations. In this evaluation, the

¹⁴ A commenter expressed concerns about: (1) the amount of consideration Banknorth shareholders might receive in the future if TD seeks to acquire the remaining Banknorth shares; (2) projects financed by TD in North and South America that the commenter asserted are having negative environmental consequences; and (3) press reports about a dispute in Canada between TD and one of its retail customers. These matters are not within the Board’s jurisdiction to adjudicate or within the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See, e.g., Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization on consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that TD has sufficient financial resources to effect the proposal. The capital levels of TD would continue to exceed the minimum levels that would be required under the Basel Capital Accord and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. Furthermore, the subsidiary depository institutions of TD and Banknorth are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured in part as a share purchase, and TD has indicated that it would fund the cash portion of the consideration to be received by Banknorth shareholders from general corporate sources.

The Board also has evaluated the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of TD's U.S. operations, Banknorth, and Banknorth Bank, including assessments of their management, risk management systems, and operations. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. TD, Banknorth, and their U.S. subsidiary banks are considered well managed. The Board also has considered TD's plans to consummate the proposal.

Based on these and all other facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.¹⁵

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.¹⁶ The home country supervisor of TD is the OSFI.

In approving applications under the BHC Act and the International Banking Act (“IBA”),¹⁷ the Board previously has determined that various Canadian banks, including TD, were subject to home country supervision on a consolidated basis by the

¹⁵ A commenter expressed concern about a press report of anomalies with respect to trading of Banknorth shares before the proposal was publicly announced. The Securities and Exchange Commission (“SEC”), and self-regulatory organizations (“SROs”) acting under authority delegated by the SEC, have the authority to investigate trading activity and to take action if there are violations of the federal securities laws or SRO rules. The commenter also expressed concern about allegations that TD assisted Enron in preparing false financial statements. The SEC has the authority to investigate and adjudicate if any violations of federal securities laws have occurred. The Board has consulted with the SEC and the relevant SRO about these matters.

¹⁶ 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. See 12 C.F.R. 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 to any affiliates, to assess the bank’s overall financial condition and its compliance with laws and regulations. See 12 C.F.R. 211.24(c)(1).

¹⁷ 12 U.S.C. § 3101 et seq.

OSFI.¹⁸ In this case, the Board has determined that the OSFI continues to supervise TD in substantially the same manner as it supervised Canadian banks at the time of those determinations. 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.

In addition, section 3 of the BHC Act 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.¹⁹ The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which TD operates and has communicated with relevant government authorities concerning access to information. In addition, TD previously has committed to make available to the Board such information on the operations of it and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, 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 TD and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that TD has provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

¹⁸ See, e.g., The Toronto-Dominion Bank, 82 Federal Reserve Bulletin 1052 (1996); see also Royal Bank of Canada, 89 Federal Reserve Bulletin 139 (2003); Canadian Imperial Bank of Commerce, 87 Federal Reserve Bulletin 678 (2001).

¹⁹ See 12 U.S.C. § 1842(c)(3)(A).

Convenience and Needs Considerations

In acting on this proposal, 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”).²⁰ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of TD’s subsidiary insured depository institutions and Banknorth Bank in light of all the facts of record, including public comment on the proposal. Two commenters opposed the proposal and alleged, based on data reported under the Home Mortgage Disclosure Act (“HMDA”),²¹ that Banknorth Bank provided a low level of home mortgage lending to LMI borrowers or in LMI communities and engaged in disparate treatment of minority individuals in home mortgage lending in the banks’ assessment areas.²²

²⁰ 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

²¹ 12 U.S.C. § 2801 et seq.

²² One commenter also expressed concern about Banknorth Bank’s relationships with unaffiliated retail check cashers, pawn shops, and other unaffiliated nontraditional providers of financial services. TD has indicated that Banknorth had reviewed its relationships with these types of businesses and has opted to continue relationships with those firms willing to meet certain conditions. These conditions include provisions in each loan agreement with Banknorth Bank of representations and warranties that the firm will comply with all applicable laws, including any applicable fair lending and consumer protections laws, and follow the bank’s program requirements to ensure

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. 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.²³

TDW Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of March 10, 2003.²⁴ Banknorth Bank was formed on January 1, 2002, by the consolidation of nine subsidiary banks of Banknorth (the "Consolidation"), all of which had "satisfactory" or "outstanding" CRA performance ratings at that time.²⁵ Peoples

compliance with anti-money-laundering laws and regulations. TD has represented that neither Banknorth Bank nor any of its affiliates play any role in the lending practices, credit review, or other business practices of these firms, nor does the bank or any of its affiliates purchase any loans originated by these firms.

²³ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

²⁴ TD dissolved its other U.S. subsidiary insured depository institution, TD Bank USA, FSB, Jersey City, New Jersey ("FSB"), as of December 31, 2004. When dissolved, FSB was rated "satisfactory" for CRA performance by the Office of Thrift Supervision in its most recent examination as of October 1999.

²⁵ The banks that were parties to the Consolidation and their CRA ratings at that time are listed in Appendix A. Banknorth Investment Management Group, N.A., Burlington, Vermont, a nondeposit trust company, was also part of the Consolidation. Since the Consolidation, Banknorth has acquired eight additional banks and has merged them into Banknorth Bank. These banks, the date on which they were merged into Banknorth Bank, and their CRA ratings at the time of their mergers are listed in Appendix B. In addition, Banknorth Bank's acquisition of a savings association has been approved by the OCC, but the acquisition has not been consummated.

Heritage Bank, NA, Portland, Maine (“Peoples Heritage”), the surviving bank of the Consolidation, received an “outstanding” CRA performance rating by the OCC as of July 2001, and First Massachusetts Bank, N.A., Worcester, Massachusetts (“First Massachusetts”), Banknorth’s largest subsidiary bank immediately before the Consolidation, received a “satisfactory” CRA performance rating by the OCC as of April 2001.²⁶ TD has indicated that Banknorth’s management team would remain intact after consummation of the proposal and that no new products or services are expected to be offered by Banknorth Bank as a result of the proposal.

B. CRA Performance of TDW Bank

As noted, TDW Bank received a “satisfactory” rating in its March 2003 evaluation.²⁷ Examiners reported that the bank originated or purchased almost \$16.8 million in community development loans during the evaluation period and had met its annual goals for community development lending each year. These loans funded affordable housing for LMI individuals in the bank’s assessment areas.

The bank’s community development investments totaled almost \$77 million at the end of the evaluation period and included investments in community development financial institutions, low-income housing tax credit projects, and affordable housing bonds issued by the New Jersey and New York state housing authorities. The bank met

²⁶ On consummation of the Consolidation, Peoples Heritage changed its name to Banknorth, National Association.

²⁷ TDW Bank has elected to be evaluated for CRA performance under the strategic plan alternative. Under this alternative, the bank submits a plan, subject to the OCC’s approval, specifying measurable goals for meeting the lending, investment, and service needs of the bank’s assessment area, and the OCC evaluates the bank on its fulfillment of the goals in the approved plan. See 12 C.F.R. 25.27. The March 2003 evaluation covered the evaluation period beginning January 1, 2000, through December 31, 2003, and reviewed the bank’s CRA performance under strategic plans approved by the OCC in March 1998 (with respect to the year 2000) and November 2000 (with respect to the years 2001 and 2002). In February 2004, the OCC approved the bank’s strategic plan for the years 2004 through 2006.

its goals for community development investments in 2000 and 2002 and substantially met its goal for 2001. Examiners also reported that TDW Bank made \$1.04 million in qualified community development grants during the evaluation period and met its annual grants goals in each of the three years. The bank also met its goals for each year in the evaluation period for membership in community development organizations, including organizations involved in providing affordable LMI housing and supporting community development corporations.

C. CRA Performance of Banknorth Bank

1. Peoples Heritage. As noted, Peoples Heritage received an overall “outstanding” rating in its July 2001 evaluation.²⁸ The bank received a rating of “outstanding” under the lending test in this evaluation. Examiners reported that the bank’s overall distribution of home mortgage loans to LMI geographies and borrowers was excellent during the evaluation period. Examiners also noted that Peoples Heritage participated in mortgage programs sponsored by the State of Maine that offer flexible underwriting and documentation standards, below-market interest rates, and low down payments.

Examiners stated that Peoples Heritage’s record of making small loans to businesses in LMI census tracts was excellent.²⁹ The bank also made more than \$16 million in community development loans during the evaluation period, including \$11 million in loans to create more than 160 units of housing for LMI individuals and families.

²⁸ The evaluation period was from July 1, 1998, through December 31, 2000, except for community development loans, which were evaluated for the period beginning September 1, 1998, through July 9, 2001.

²⁹ In this context, “small loans to businesses” refers to loans with original amounts of \$1 million or less that are either secured by nonfarm or residential real estate or are classified as commercial and industrial loans.

Peoples Heritage received ratings of “high satisfactory” and “outstanding” on the investment and service tests respectively, in the July 2001 evaluation. During the evaluation period, Peoples Heritage made 80 qualified investments totaling \$3.6 million, a level examiners described as good. Examiners noted that the percentage of the bank’s branches in LMI census tracts generally equaled or exceeded the percentage of the population living in LMI census tracts in the bank’s assessment areas. They also reported that Peoples Heritage provided an excellent level of community development services.

2. First Massachusetts. As noted, First Massachusetts received an overall “satisfactory” rating in its April 2001 CRA evaluation. The bank received a rating of “high satisfactory” under the lending test in this evaluation. Examiners stated that the bank’s distribution of home mortgage loans to LMI geographies and borrowers was adequate or better in each of the bank’s assessment areas. They also noted that the bank participated in a number of state and federal affordable housing programs with flexible underwriting criteria and other features designed to promote homeownership among LMI individuals.

Examiners reported that First Massachusetts’s record of making small loans to businesses in LMI census tracts was adequate or better in each of the bank’s assessment areas. The bank also made more than \$23 million in community development loans during the period covered by the April 2001 evaluation, including two loans to the Massachusetts Housing Partnership Fund, which promotes affordable housing and neighborhood development throughout Massachusetts.³⁰

First Massachusetts received ratings of “low satisfactory” and “high satisfactory” on the investment and the services tests, respectively, in the

³⁰ The evaluation period was from July 1, 1997 through December 31, 2000, except for community development loans, which were evaluated for the period beginning August 1, 1997, through April 20, 2001.

April 2001 evaluation. During the evaluation period, the bank made almost \$11.3 million in qualified investments, a level examiners described as adequate. Examiners characterized the bank's distribution of branches as good or excellent in its assessment areas and stated that it provided an adequate level of community development services.

3. Recent CRA Activities of Banknorth Bank. During 2002 and 2003, Banknorth Bank originated or purchased more than 16,900 HMDA-reportable loans totaling approximately \$2.2 billion in Maine, Massachusetts, New Hampshire, and Vermont.³¹ In each of these states, Banknorth Bank made higher percentages of its HMDA-reportable loans to LMI borrowers and in LMI census tracts than did lenders in the aggregate ("aggregate lenders") in 2002 and 2003.³²

To assist first-time and LMI homebuyers, Banknorth Bank also offers loans insured by the Federal Housing Authority and loans guaranteed by the Department of Veteran Affairs and participates in state housing finance agency programs that offer below-market interest rates and lower down-payment requirements. In 2002 and 2003, the bank originated more than 1,700 loans totaling more than \$150 million through these programs.

In 2002 and 2003, Banknorth Bank's percentages of small business loans in LMI census tracts were higher than or comparable to the percentages for aggregate lenders in each of the following states: Maine, Massachusetts, New Hampshire, and Vermont. In all its assessment areas across six states, the bank continues to participate in Small Business Administration and state programs focused on lending to small businesses unable to secure conventional financing. From January 2001 through

³¹ Together, these four states accounted for more than 81 percent of Banknorth Bank's deposit base, as of June 30, 2004.

³² The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a given market.

October 2004, the bank made more than 1,500 of these loans totaling more than \$152 million.

During 2001 through 2003, Banknorth Bank made 227 community development loans totaling more than \$164 million. Community development lending included loan commitments of \$13.6 million to finance the construction, rehabilitation, or preservation of more than 180 units of affordable housing in New Hampshire and a \$7 million loan to a state housing fund to create and preserve affordable housing throughout Vermont. During this same period, the bank made loan commitments totaling almost \$3.2 million to three community mental health facilities in Massachusetts.

Banknorth Bank's community development investments from January 2001 through June 2004 totaled more than \$66 million. These investments included commitments of more than \$18 million to fund low-income housing tax credit projects in Maine, Massachusetts, New Hampshire, and New York. Banknorth Bank has indicated that its community development donations during the same period have totaled more than \$4 million, and recipients have included a wide range of community organizations throughout the bank's assessment area.

D. HMDA Data and Fair Lending Record

The Board has carefully considered Banknorth Bank's lending record in light of comments on the bank's HMDA data. Based on 2003 HMDA data, two commenters alleged that Banknorth Bank disproportionately excluded or denied African-American or Hispanic applicants for home mortgage loans in various Metropolitan Statistical Areas ("MSAs").³³ The Board reviewed HMDA data for 2002

³³ Specifically, the commenter cited HMDA data on Banknorth Bank's lending to African Americans or Hispanics in the Hartford and New Haven MSAs in Connecticut, in the Lowell and Springfield MSAs in Massachusetts, in the Boston MSA in Massachusetts and New Hampshire, and in the Albany MSA in New York.

and 2003 reported by the bank in the six states in its assessment areas, in the MSAs identified by the commenter, and in certain other MSAs.³⁴

The 2002 and 2003 HMDA data reported by BankNorth Bank indicate that its denial disparity ratios³⁵ for African-American and Hispanic applicants for total HMDA-reportable loans in Maine, Massachusetts, and New Hampshire, which together accounted for 80 percent of the bank's HMDA-reportable loans in 2002 and 2003, were not as favorable as those ratios for the aggregate lenders in those states. The data also indicate, however, that the bank's percentages of its total-HMDA-reportable loans to African Americans or Hispanics in each of these states in 2002 and 2003 were generally comparable to or more favorable than those ratios for the aggregate lenders.³⁶ Similarly, the bank's percentages of total HMDA-reportable loans to borrowers in predominantly minority census tracts in Massachusetts during 2002 and 2003 were more favorable than the percentages for the aggregate lenders in those areas.³⁷

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups, these data generally do not indicate that Banknorth Bank is excluding any race segment of the population or geographic area on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks 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

³⁴ The Board also reviewed HMDA data for the Portland, Maine, MSA, which is Banknorth Bank's home market, and the Glens Falls MSA in New York.

³⁵ The denial disparity ratio equals the denial rate of a particular racial category (e.g. African-American) divided by the denial rate for whites.

³⁶ The percentage of the bank's loans to Hispanics in New Hampshire in 2002 and 2003 were modestly less favorable than those ratios for lenders in the aggregate.

³⁷ For purposes of this HMDA analysis, a predominantly minority census tract means a census tract with a minority population of 80 percent or more.

creditworthy applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans.³⁸ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance with fair lending laws by the subsidiary banks of TD and Banknorth. Examiners noted no fair lending law issues or concerns in the March 2003 TDW Bank evaluation or in any of the most recent CRA evaluations of the banks that have been merged into Banknorth Bank. The Board also consulted with the OCC, which has responsibility for enforcing compliance with fair lending laws by TDW Bank and Banknorth Bank, about this proposal and the record of performance of these banks since their most recent CRA evaluations.

The record also indicates that Banknorth Bank has taken steps to ensure compliance with fair lending laws and other consumer protection laws. Among other things, the bank has implemented an annual compliance monitoring program that includes comparative file analysis and review of HMDA data, and it has developed a system for addressing fair lending complaints.

³⁸ 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 assessment of whether an applicant who was denied credit was, in fact, creditworthy. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

The Board has also considered the HMDA data in light of the programs described above and the overall performance records of the subsidiary banks of TDW Bank and Banknorth Bank under the CRA. These established efforts demonstrate that the banks are actively helping to meet the credit needs of their entire communities.

E. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record,³⁹ including reports of examination of the CRA records of the institutions involved, information provided by the applicant, public comments on the proposal, and confidential supervisory information. 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, including the CRA performance records of the relevant depository institutions, are consistent with approval.

³⁹ One commenter requested that the Board condition its approval of the proposal on TD's making certain community reinvestment and other commitments. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently stated 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 organization. See, e.g., J.P. Morgan Chase & Co., 90 Federal Reserve Bulletin 352 (2004); Wachovia Corporation, 91 Federal Reserve Bulletin ____ (Order dated October 15, 2004). In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas when the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by TD under this factor, the Board similarly will review TD's actual CRA performance record and the programs it has in place to meet the credit needs of its communities at that time.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application 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.⁴⁰ The Board's approval is specifically conditioned on compliance by TD with the condition imposed in this order, the commitments made to the Board in connection with the application, and the prior commitments to the Board referenced in this order. 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.

⁴⁰ Two commenters also 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 public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely 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 a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). 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, the commenters have submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why the written comments do not present their views adequately and fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. 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.

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

By order of the Board of Governors,⁴¹ effective January 18, 2005.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁴¹ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

Appendix A
Banks Consolidated to Form Banknorth Bank on January 1, 2002

Bank	CRA Rating	Date	Supervisor
Andover Bank, Andover, Massachusetts	Outstanding	October 1999	FDIC
Bank of New Hampshire, N.A., Farmington, New Hampshire	Satisfactory	September 2000	OCC
Evergreen Bank, National Association, Glen Falls, New York	Satisfactory	October 2000	OCC
First Massachusetts Bank, N.A., Worcester, Massachusetts	Satisfactory	April 2001	OCC
First Vermont Bank and Trust Company, Brattleboro, Vermont	Satisfactory	December 1997	FDIC
Franklin Lamoille Bank, St. Albans, Vermont	Outstanding	March 1999	OCC
Gloucester Bank & Trust Company, Gloucester, Massachusetts	Outstanding	July 1998	FDIC
The Howard Bank, N.A., Burlington, Vermont	Outstanding	December 1997	OCC
Peoples Heritage Bank, N.A., Portland, Maine	Outstanding	July 2001	OCC

Appendix B
Banks Merged Into Banknorth Bank Since January 1, 2002

Bank	Date of Acquisition	CRA Rating	Date	Supervisor
American Bank of Connecticut, Waterbury, Connecticut	January 22, 2002	Satisfactory	June 2001	FDIC
Ipswich Savings Bank, Ipswich, Massachusetts	July 27, 2002	Satisfactory	May 1999	FDIC
Southington Savings Bank, Southington, Connecticut	September 1, 2002	Satisfactory	June 2000	FDIC
Warren Five Cents Savings Bank, Peabody, Massachusetts	January 1, 2003	Satisfactory	October 2001	FDIC
American Savings Bank, New Britain, Connecticut	February 15, 2003	Outstanding	January 2001	FDIC
First & Ocean National Bank, Newburyport, Massachusetts	January 1, 2004	Outstanding	August 1999	OCC
Cape Cod Bank and Trust Company, Hyannis, Massachusetts	May 1, 2004	Satisfactory	March 2003	OCC
Foxborough Savings Bank, Foxborough, Massachusetts	May 1, 2004	Satisfactory	September 2002	FDIC
Boston Federal Savings Bank, Burlington, Massachusetts	Acquisition pending*	Outstanding	June 2001	OTS

* The OCC approved the proposed merger on November 15, 2004.