



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 14, 1996

Mr. Matthew Lee
Inner City Press/Community on the Move
1919 Washington Avenue
Bronx, New York 10457

Dear Mr. Lee:

This is in response to your request that the Board reconsider its approval of the application and notices filed by Toronto-Dominion Bank, Toronto, Canada ("TDB"), to acquire all the voting shares of Waterhouse Investor Services, Inc., New York, New York ("Waterhouse"), and thereby to acquire its bank and nonbank subsidiaries, including Waterhouse National Bank, White Plains, New York ("WNB").^{1/}

The Board's Rules of Procedure require that a request for reconsideration present relevant facts that, for good cause shown, were not previously presented to the Board. 12 C.F.R. 262.3(k). For the reasons discussed below, a number of your objections to the Board's action present no new relevant facts regarding these matters. Rather, your request generally disputes the weight that the Board accorded to, and the conclusions that the Board drew from, all the facts of record.^{2/}

^{1/} The Toronto-Dominion Bank, 82 Federal Reserve Bulletin 1052 (Order dated September 30, 1996) ("TDB Order").

^{2/} You also contend that the TDB Order improperly relied on information from Canadian banking authorities that you had requested under the Freedom of Information Act ("FOIA") during the processing of the application. In the Board's response to that FOIA request, you were told that no responsive documents were found. When your FOIA request was answered, information from Canadian authorities had not yet been received. You have made an

Your request reiterates a number of matters relating to WNB's record of performance under the Community Reinvestment Act ("CRA") that you previously presented to support a denial of the proposal. You maintain in your request that your contentions were misrepresented or ignored by the Board. The record considered by the Board included all the comments that you submitted regarding the CRA record of WNB. Specifically, the Board considered your contentions that WNB had an inadequate record of performance under the CRA and that TDB lacked the ability to improve that record. This consideration encompassed a review of the criticisms you offered with respect to WNB's CRA efforts, including your allegation that WNB failed to implement the CRA initiatives described by Waterhouse in its 1994 application to become a bank holding company. The Board also took note of your extensive comments regarding WNB's designation as a "limited purpose bank" under the new CRA regulations promulgated by the federal financial supervisory agencies. This designation was made by WNB's primary federal supervisor, the Office of the Comptroller of Currency ("OCC"), and, as noted in the TDB Order, was not reviewable by the Board. Moreover, in considering WNB's record, the Board viewed as a "qualified" community development investment only a single bond purchase made by WNB and did not rely on those bond purchases questioned in your comments. On the basis of all the facts of record, including your comments on these matters, the Board concluded that convenience and needs considerations, including WNB's CRA record, were consistent with approval of the proposal for the reasons discussed in detail in the TDB Order.

You also contend that the Board failed to address underlying policy issues raised by the possibility that "virtual" or "affinity" banks, or wholesale or other limited purpose institutions, might locate their offices in affluent or less predominantly-minority communities and focus their CRA efforts in those areas. WNB, as a "limited purpose bank" under the new CRA regulations, will be evaluated under a separate community development test. This test evaluates the institution on its record of providing community development services and making community development investments and loans. The primary purpose of any service, investment, or loan considered under the test must be "community development", which is defined in terms of specific categories of

additional FOIA request after the TDB Order for all information relating to the proposal, and this request is currently under review.

activities that benefit low- and moderate-income ("LMI") individuals, LMI areas, or small businesses. In addition, community development activities evaluated under the test, as a general matter, must benefit areas within an institution's assessment area or a broader statewide or regional area that includes the institution's assessment area.^{3/}

You further argue that, in determining that TDB's financial and managerial resources were consistent with approval of the application and notices, the Board failed to consider a number of issues you raised. Based on all the facts of record, including assessments of TDB's managerial resources by Canadian banking authorities, the Board concluded that the financial and managerial resources and future prospects of TDB and Waterhouse were consistent with approval. The record reviewed by the Board included your contentions regarding (1) TDB's failure to acknowledge promptly its ownership of a depository institution in California in the 1980s, (2) TDB's failure to disclose properly its entry into a consent decree with the Securities and Exchange Commission, and (3) TDB's possible involvement in certain alleged improper actions involving the acquisition of the Maple Leaf Gardens sports arena in Toronto, Canada.

Your request also notes that WNB has proposed to market mortgages for PHH Mortgage Services Corporation, a company that has been the subject of a claim filed with the Pennsylvania human relations department that alleges illegal discrimination by PHH in making home mortgages. PHH has denied the allegations in the pending claim, and no finding of improper actions by PHH has been made by the Pennsylvania agency. In addition, TDB stated that it intended to work closely with the OCC and the communities

^{3/} See, e.g., 12 C.F.R. 25.12(h); 25.12(o); 25.21(b)(4); and 25.25. You also criticize the TDB Order for failing to provide general guidance regarding the nature of qualified community development investments ("QCDIs"). The Federal Financial Institutions Examination Council recently published general guidance concerning the new CRA regulations, including specific guidance with respect to QCDIs, in the form of Interagency Questions and Answers. See 61 Federal Register 54,647, 54,653 (October 21, 1996).

involved, and to make adjustments in WNB's CRA programs as appropriate.^{4/} Moreover, the TDB Order noted a number of commitments made by TDB to ensure that WNB performed satisfactorily or better under the CRA, and the Board concluded that TDB's record of operating in the United States and its dealings with federal banking supervisors indicated that TDB could be relied on to implement fully its commitments.

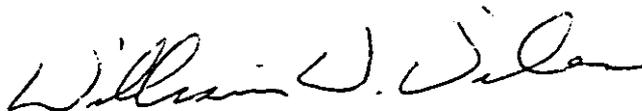
In addition, you cite press reports that quote a TDB official as stating that during the processing of the application, Federal Reserve System personnel advised TDB that no additional information would be required to complete the application and requested WNB and TDB to withdraw other pending notices to engage in nonbanking activities in order to expedite the processing of the application. You contend that these statements show either improper ex parte communications with the applicant or untruthful statements by the TDB official. The Board's ex parte rules restrict the ability of System personnel to discuss issues raised by a protest directly with an applicant or protestant without first notifying the other party so that all parties may have the opportunity to participate in the discussion. The rules, by their terms, permit discussions with one party on matters that are unrelated to the protest or that concern procedural matters. The statements by the TDB official relate solely to processing issues and procedural matters, such as whether any additional information requests were outstanding and whether TDB and Waterhouse wished at that time to continue the processing of requests to engage in additional nonbanking activities in light of TDB's pending application to acquire Waterhouse.

Your request for reconsideration of the TDB Order has been presented to the members of the Board to give them an opportunity to determine whether your request warrants reconsideration or modification of the order or a different finding under the statutory factors that the Board is required to consider under the Bank Holding Company Act. For all the reasons discussed above and in the TDB Order, and based on all the facts of record, no

^{4/} WNB's proposed marketing activities on behalf of PHH were part of the record considered by the OCC in designating WNB as a "limited purpose bank" under the new CRA regulations.

member of the Board has requested that the TDB Order be reconsidered or modified in any manner. Accordingly, your request is hereby denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "William W. Wiles". The signature is written in a cursive style with a large, prominent initial "W".

William W. Wiles
Secretary of the Board