

FEDERAL RESERVE SYSTEM

The Bank of Nova Scotia  
Toronto, Canada

Order Approving Establishment of a Branch

The Bank of Nova Scotia (“Bank”), Toronto, Canada, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA<sup>1</sup> to establish a branch in Houston, Texas. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Houston (*The Houston Chronicle*, November 20, 2006). The time for filing comments has expired, and all comments received have been considered.

Bank, with total assets of \$338 billion, is the third largest commercial bank in Canada.<sup>2</sup> It provides a variety of banking services to retail and corporate customers through more than 950 branches in Canada. It also provides stock brokerage, insurance brokerage, fund management, and financial advisory services through subsidiaries.

In the United States, Bank operates branches in Portland, Oregon, and New York, New York; and agencies in Atlanta, Georgia, and

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<sup>1</sup> 12 U.S.C. § 3105(d).

<sup>2</sup> Asset data are as of October 31, 2006.

San Francisco, California.<sup>3</sup> Bank also engages in financing, investment advisory, securities, fiduciary and custody, and money transmission activities through subsidiaries.

The proposed branch would replace Bank's existing representative office in Houston. It would engage in a wholesale banking business, offering corporate investment, lending, and cash management services to existing and prospective customers. Bank is a qualifying foreign banking organization under Regulation K.<sup>4</sup>

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisor.<sup>5</sup> The

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<sup>3</sup> In connection with this proposal, Bank has filed notice under section 211.22(b)(1) of Regulation K (12 CFR 211.22(b)(1)) to change its home state from New York to Texas. Bank's branch in Portland was established before the enactment of the IBA in 1978. See 12 U.S.C. § 3103(b). Bank's New York office is currently licensed as an agency by the State of New York. Because the office accepts large-denomination deposits from U.S. residents, it is treated as a branch for purposes of the IBA. As a consequence of Bank's change of home state, Bank's branch in New York, must limit its deposit taking to that permitted to an agency under the IBA and Regulation K.

<sup>4</sup> 12 CFR 211.23(b).

<sup>5</sup> 12 U.S.C. § 3105(d)(2); 12 CFR 211.24(c)(1). In assessing this standard, the Board considers, among other factors, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on

Board also may consider additional standards set forth in the IBA and Regulation K.<sup>6</sup>

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board previously has determined, in connection with applications involving other banks in Canada, that those banks were subject to home country supervision on a consolidated basis by their home country supervisor, the Office of the Superintendent of Financial Institutions (“OSFI”).<sup>7</sup> Bank is supervised by the OSFI on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

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the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board’s determination.

<sup>6</sup> 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3).

<sup>7</sup> See Toronto-Dominion Bank, 92 Federal Reserve Bulletin C100 (2006); Bank of Montreal, 92 Federal Reserve Bulletin C14 (2006). See also Toronto-Dominion Bank, 82 Federal Reserve Bulletin 1052 (1996); Bank of Montreal, 80 Federal Reserve Bulletin 925 (1994).

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account.<sup>8</sup> The OSFI has no objection to the establishment of the proposed branch.

Canada's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Accord"). Bank's capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Bank also are considered consistent with approval, and Bank appears to have the experience and capacity to support the proposed branch. Bank has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

Canada is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and terrorist financing. In accordance with those recommendations, Canada has enacted laws and adopted regulations to deter money laundering and terrorist financing. Money laundering is a criminal offense in Canada, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering and

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<sup>8</sup> See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3). These standards include (i) whether the bank's home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; (v) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vi) the needs of the community; and (vii) the bank's record of operation.

terrorist financing throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations, and its compliance with applicable laws and regulations is monitored by the bank's auditors and the OSFI.

With respect to access to information about Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the OSFI may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Based on the foregoing and all the facts of record, Bank's application to establish a branch is hereby approved.<sup>9</sup> Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information

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<sup>9</sup> Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.<sup>10</sup> For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective March 13, 2007.

*(signed)*

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Robert deV. Frierson  
Deputy Secretary of the Board

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<sup>10</sup> The Board's authority to approve the establishment of the proposed branch parallels the continuing authority of the State of Texas to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Texas to license the proposed office of Bank in accordance with any terms or conditions that it may impose.