



Comptroller of the Currency
Administrator of National Banks

Licensing Activities
Washington, DC 20219

May 19, 2008

**CRA Decision #142
June 2008**

Gary Rice, Esquire
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017

Re: Application to merge Commerce Bank, National Association, Philadelphia, Pennsylvania, and Commerce Bank/North, Ramsey, New Jersey into TD Banknorth, National Association, Portland, Maine, under the charter of the latter and title of TD Bank, National Association.
CAIS Control #: 2008-NE-02-003 Charter #: 24096

Dear Mr. Rice:

I conditionally approve the Application to merge Commerce Bank, National Association, Philadelphia, Pennsylvania (“CBNA”), and Commerce Bank/North, Ramsey, New Jersey (“CNNJ”), hereinafter the “Target Banks,” with and into TD Banknorth, National Association, Portland, Maine (“TDNA” or “Applicant”), for the reasons and subject to the condition and requirements set forth herein. This approval is granted after a thorough evaluation of the application, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the application and by the Applicant’s representatives during the application process and a determination that the proposal meets certain regulatory and policy requirements.

Commerce Bancorp, Inc. is the parent holding company of, and wholly owns, CBNA and CNNJ, a state bank chartered by New Jersey. The Toronto-Dominion Bank is TDNA’s ultimate parent. On March 13, 2008, the Board of Governors of the Federal Reserve System approved the acquisition by TDNA’s parent, The Toronto-Dominion Bank, of Commerce Bancorp, Inc.,¹ and this transaction has been consummated. As a result, TDNA and the Target Banks are affiliates.

TDNA has its main office in Maine, and branches in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont. The Target Banks have main offices in Pennsylvania and New Jersey, and have branches in Connecticut, Delaware, District of

¹ Federal Reserve Board, The Toronto-Dominion Bank, Toronto, Canada, *Order Approving the Acquisition of a Bank Holding Company* (March 13, 2008).

Columbia, Florida, Maryland, New Jersey, New York, Pennsylvania, and Virginia. The resulting bank will be named TD Bank, National Association (the “Resulting Bank”)² and will designate a Wilmington, Delaware, branch office of CBNA as its main office. It will retain as branches the main offices and the other branches of CBNA, CNNJ and TDNA.

Interstate Mergers under the Riegle-Neal Act

The home states of TDNA, CBNA, and CNNJ are Maine, Pennsylvania, and New Jersey, respectively.³ As a result, the mergers are interstate mergers under the Riegle-Neal Act. The OCC may not approve an interstate merger if the transaction involves a bank whose home state has enacted a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. *See* 12 U.S.C. § 1831u(a)(2). All three states have laws permitting interstate mergers.⁴

Approval of an interstate merger transaction is also subject to certain requirements set forth in sections 1831u(a)(5) and 1831u(b), to the extent applicable. The OCC determined that these applicable requirements are met. These requirements are: (1) compliance with state-imposed age limits, if any;⁵ (2) compliance with federal filing requirements and certain state filing requirements imposed by any host state that will result from the transaction;⁶ (3) compliance with

² The use of different terms to refer to the acquiring bank, TDNA, is meant only to distinguish between actions of the acquiring bank before and after consummation of the mergers.

³ The “home state” of a national bank is the state where its main office is located. The “home state” of a state bank is the state that chartered the bank. 12 U.S.C. § 1831u(g)(4)(A).

⁴ *See* Me. Rev. Stat. Ann. § 373 (1997 & Supp. 2007); 7 Pa. Stat. Ann. § 1602 (1995 & Supp. 2007); and N.J. Stat. Ann. § 17:9A-133.1 (2000 & Supp. 2007).

⁵ 12 U.S.C. § 1831u(a)(5)(A). This provision states that an interstate merger may not “have the effect of permitting an out-of-state bank . . . to acquire a bank in a host state that has not been in existence for the minimum period of time” specified by state law in accordance with the Riegle-Neal Act. The relevant host states for these purposes are Pennsylvania and New Jersey, the main office states of the target banks. *Cf.* OCC Corporate Decision 2000-09 (June 20, 2000) (Decision of the Office of the Comptroller of the Currency on the Application to Merge First National Bank and Trust Company, Parsons, Kansas, and TeamBank, National Association, Freeman, Missouri), *aff’d*, *TeamBank N.A. v. McClure*, 279 F.3d 614, 618-619 (8th Cir. 2002) (in Riegle-Neal merger where main office of resulting bank will be in the state of the main office of the target bank, main office state of target bank is the host state for purposes of determining compliance with age requirement). Pennsylvania and New Jersey do not impose age requirements. *See* 7 Pa. Cons. Stat. Ann. § 1602 (1995 & Supp. 2007) and N.J. Stat. Ann. § 17:9A-133.1 (2000 & Supp. 2007). In any event, CBNA and CNNJ have been in existence for more than five years, the maximum age requirement that the Riegle-Neal Act permits. Even if Maine were also to be considered to be a host state for purposes of determining compliance with age requirements, that requirement would be satisfied. Maine imposes no age requirement, Me. Rev. Stat. Ann. tit 9-6, § 373 (2007), and, at any rate, TDNA has been in existence for more than five years.

⁶ The states that will become host states of the Resulting Bank upon consummation of the mergers are those in which TDNA currently has no branches but in which it will acquire branches: the District of Columbia, Florida, Maryland and Virginia. In addition, because the Resulting Bank will designate as its main office a branch of CBNA in Delaware, Maine also becomes a host state for purposes of compliance with applicable filing requirements. The Applicant has represented it is in the process of complying with applicable host state filing requirements and has

nationwide and state concentration limits; (4) community reinvestment compliance;⁷ and (5) adequacy of capital and management skills.⁸ The OCC determined that the application satisfies these conditions, and the mergers of CBNA and CNNJ with and into TDNA are legally authorized as interstate merger transactions under the Riegle-Neal Act.⁹

Branch Retention

The Resulting Bank will designate the Limestone branch of CBNA, located in Wilmington, Delaware, as its main office. The Applicant also has requested OCC approval for the Resulting Bank to retain as branches the main office and all other branches of each bank involved in the mergers. The Resulting Bank's designation of the Limestone branch of CBNA and the Resulting Bank's retention and operation as branches of the main offices and branches of each of the banks involved in the mergers are authorized under 12 U.S.C. §§ 36(d) and 1831u(d)(1), and I approve the Resulting Bank's main office designation and the retention of the other branches and main offices.¹⁰

Retention of subsidiaries

The Applicant has requested that the Resulting Bank be permitted to retain certain subsidiaries of CNNJ¹¹ as financial and operating subsidiaries.¹²

provided copies of this Application to these host states, including Maine. The Applicant also has provided a copy to Delaware, which will become the home state of the Resulting Bank.

⁷ The requirements of 12 U.S.C. § 1831u(b)(2), with respect to concentration limits, and § 1831u(b)(3), with respect to the special CRA provisions, are not applicable to mergers, such as these, between affiliated banks.

⁸ Consistent with 12 U.S.C. § 1831u(b)(4), the OCC finds that each bank is adequately capitalized as of the date the application was filed and the Resulting Bank will continue to be adequately capitalized and adequately managed upon consummation of the mergers.

⁹ 12 U.S.C. §§ 215a-1 and 1831u(a). In addition, each bank, other than the acquiring bank, is required to surrender its bank charter to the relevant supervisory agency. 12 U.S.C. § 1831u(b)(5).

¹⁰ This approval also permits the Resulting Bank, following consummation of the mergers, to open any of the three branches, located at sites where a national bank can permissibly branch, that have been approved for CNNJ by the State of New Jersey State Department of Banking and Insurance and the FDIC, that might not be open prior to consummation of the merger. This approval also permits retention by the Resulting Bank of any branch of CBNA and TDNA that has been approved by the OCC but which might not be open prior to consummation of the mergers, provided that, with respect to any CBNA branch, CBNA has advised the OCC in connection with the merger application that it continues to intend to open the branch, and provided that, within 90 days of consummation of the merger, the Resulting Bank, where appropriate, seeks an extension of the time period granted by the OCC to open the branch. Approval of this application, however, does not extend to branches that are the subject of branching applications by TDNA or CBNA that will not have been approved by the OCC prior to consummation of their merger. The OCC will continue to process those applications following the merger.

¹¹ All of the subsidiaries are wholly-owned by CNNJ.

¹² This is in addition to retaining the subsidiaries that are already held by TDNA and CBNA under applicable authority governing national bank subsidiaries.

The Resulting Bank may retain the following operating subsidiaries that engage in permissible activities for national bank operating subsidiaries: Independence RDA, Inc., which holds assets acquired through foreclosure as permitted by 12 U.S.C. § 29 and 12 C.F.R. § 5.34(e)(5)(v)(A); and North Asset Management, which holds investments in debt securities that are permissible for a national bank and its operating subsidiaries under 12 U.S.C. § 24(Seventh), 12 C.F.R. Part 1 and §§ 5.34(e)(5)(v)(A). TDNA represents that these subsidiaries will be operated in compliance with OCC regulations and policies contained in guidance issued by the OCC.¹³

In addition, Applicant also seeks approval for the Resulting Bank to retain as an operating subsidiary eMoney Advisor (“Advisor”). Advisor develops and sells software that enables financial planners and their clients to create and use wealth management plans by establishing financial goals, monitoring progress toward those goals, analyzing investment portfolios, aggregating clients’ financial information and electronically storing financial records such as tax returns, insurance policies and estate documents. Advisor also trains and provides support for customers in the use of the software. These activities are part of the business of banking and, as a result, national banks and their operating subsidiaries are authorized to develop such software and sell or license such software and provide such services to third parties.¹⁴ Moreover, where the distribution of software is part of the business of banking, the subsidiary is not limited to selling the software and providing the services only to banking customers of the parent bank or subsidiary, but may sell the software to others who do not have a banking relationship with the bank or the subsidiary.¹⁵

¹³ 12 C.F.R. §5.34(e)(5)(iv).

¹⁴ Title 12 C.F.R. § 7.5006(a) provides:

It is part of the business of banking under 12 U.S.C. § 24(Seventh) for a national bank to provide data processing, and data transmission services, facilities (including equipment, technology and personnel), data bases, advice and access to such services, facilities, data bases, and advice, for itself and for others, where the data is banking, financial, or economic data, and other types of data if the derivative or resultant product is banking, financial, or economic data. For this purpose, economic data includes anything of value in banking and financial decisions.

See also, e.g., OCC Corporate Decision 2003-6 (March 17, 2003) (sale of financial services software is permissible where the software essentially performs a function or service that banks have performed through electronic or non-electronic means including software with banking, tax estimate, financial planning and investment analysis components); OCC Interpretive Letter 1077, January 11, 2007, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) para. 81-609 (authority to store banking, financial and economic data as part of the business of banking); OCC Interpretive Letter 986, February 24, 2003, *reprinted in* [2003-2004 Transfer Binder] Fed. Banking L. Rep. (CCH) para. 81-512 (provision of advice and consulting services with regard to use of software where software is limited to the type of banking, financial and economic data that the bank would be permitted to process on behalf of its own customers).

¹⁵ *See, e.g.,* Corporate Decision 2003-6.

The Resulting Bank also seeks to retain as financial subsidiaries, under 12 C.F.R. § 5.39(e)(1)(ii), Commerce Brokerage Insurance Services Inc. and Commerce Insurance Brokerage Services/New York, Inc., which are engaged in insurance brokerage activities. Each will be wholly owned by the Resulting Bank. The applicant has provided notice and certification as required by 12 C.F.R. § 5.39.¹⁶

Bank Merger Act

The OCC reviewed the proposed mergers under the criteria of the Bank Merger Act (“BMA”), 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. Among other matters, we found that the proposed transaction would not have any anticompetitive effects. The OCC considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the BMA requires the OCC to consider “. . . the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities . . .”¹⁷ We found these factors to be consistent with approval under the statutory provisions and that approval of the Application is consistent with the requirements of the BMA.¹⁸

Community Reinvestment Act

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the records of the institutions proposing to engage in a merger in helping to meet the credit needs of the community, including low-and moderate-income (“LMI”) neighborhoods.¹⁹ The OCC considered the CRA Performance Evaluation (“PE”) of each institution involved in the transaction. A review of the records of these banks, and other information available to the OCC as a result of its regulatory responsibilities, revealed the banks’ records of helping to meet the credit needs of their communities, including LMI neighborhoods, are satisfactory.

¹⁶ CNNJ also owns North Investment Company, which at the time the application was filed held a single investment in ActivFinancial Fund I, LP, an investment that was impermissible for a national bank. This fund, however, closed on December 21, 2007, and CNNJ received its final distribution on December 27, 2007, leaving no investment balance in 2008. Applicant has represented that the Resulting Bank will evaluate all subsidiaries, including investment subsidiaries such as this one, after the merger and likely eliminate through merger or dissolution any unused and unnecessary subsidiaries. If any such subsidiaries are not eliminated, and the Resulting Bank subsequently decides to engage in activities or hold assets or liabilities through such subsidiaries, it must follow applicable approval or notice procedures set forth in OCC regulations with respect to the performance of new activities in existing subsidiaries.

¹⁷ 12 U.S.C. § 1828(c)(11).

¹⁸ 12 U.S.C. § 1828(c).

¹⁹ 12 U.S.C. §§ 2903(a)(2) and 2902(3)(E); 12 C.F.R. § 25.29(a)(3).

TDNA

TDNA's latest PE, dated December 30, 2004, and issued by the OCC, assigned the bank a "Satisfactory" rating.²⁰ Among the major factors supporting TDNA's rating were: (i) good lending volume and level of qualified investments; (ii) good distribution of loans by geography and an excellent distribution of loans by borrower income; (iii) community development lending activity which had a positive impact on the lending test rating; and (iv) a branch and delivery system that is accessible to geographies and individuals of different income levels. No evidence of illegal or discriminatory lending practices was noted in the PE.

CBNA

CBNA's latest PE, dated October 2, 2006, and issued by the OCC, assigned the bank an "Outstanding" rating.²¹ Among the major factors supporting CBNA's rating were: (i) good lending volume and geographic distribution of loans; (ii) excellent level of qualified investments and distribution of loans by borrower income; (iii) excellent level of community development service activities; (iv) community development loans and flexible loan products that had a positive impact on the lending test rating; and (v) a branch and delivery system that is accessible to geographies and individuals of different income levels. No evidence of illegal or discriminatory lending practices was noted in the PE.

CNNJ

CNNJ's latest PE, dated May 15, 2006, and issued by the FDIC, assigned the bank an "Outstanding" rating.²² Among the major factors supporting CNNJ's rating were: (i) an adequate geographic distribution of the bank's Home Mortgage Disclosure Act ("HMDA") reportable loans and an excellent distribution of these loans among LMI borrowers; (ii) an outstanding record of community development lending; (iii) a substantial level and diverse mix of qualified community development investments and an adequate volume and amount of qualified donations; (iv) use of a variety of loan products to serve the credit needs of the assessment area, particularly

²⁰ TDNA was examined using the Large Bank examination procedures and received a "High Satisfactory" rating on the lending, investment, and service tests. The overall evaluation period for the 2004 PE was January 1, 2001, through December 31, 2003, with the exception of community development loans and investments. For community development loans and investments, the evaluation period was July 1, 2001, through December 31, 2004.

²¹ CBNA was examined using the Large Bank examination procedures and received an "Outstanding" on the lending and investment tests and a "High Satisfactory" rating on the service test. The evaluation period for the 2006 PE was January 1, 2003, through December 31, 2005, with respect to Home Mortgage Disclosure Act reportable loans and small business loans. The evaluation period for community development loans, investments, and services was from March 31, 2003, through October 2, 2006.

²² CNNJ was examined using the Large Bank examination procedures and received an "Outstanding" rating on the investment and service tests and a "High Satisfactory" rating on the lending test. The evaluation period for the 2006 PE was January 2004 to December 2005 with respect to Home Mortgage Disclosure Act reportable loans and small business loans. The evaluation period for community development loans, investments, and services was from March 5, 2003, through May 15, 2006.

LMI borrowers; (v) a retail delivery system that is accessible to nearly all portions of the assessment area, including LMI geographies; and (vi) leadership in providing community development services within its assessment area. The FDIC stated that the bank's records of complying with anti-discrimination laws were satisfactory and that no substantive violations were identified.

Public Comments

The OCC received one comment letter on the Application and received copies of several letters to the Board of Governors of the Federal Reserve System ("Federal Reserve") concerning the related holding company application.²³ While not all the comments were directed to the OCC, we have carefully considered the concerns raised and have summarized and addressed them below.

Fair Lending and HMDA Data

Two commenters alleged, based on an analysis of 2006 HMDA data, that TDNA fell short in lending to African Americans and denied the applications of African American borrowers more frequently than those of White applicants in certain Metropolitan Statistical Areas.²⁴ TDNA and CBNA have been subject to comprehensive fair lending supervisory oversight by the OCC, and this oversight will continue with respect to the Resulting Bank. TDNA represented that it maintains a strong fair lending training, review and monitoring program to ensure that its

²³ The OCC has carefully reviewed the comment it received directly from a private litigant and has determined that it does not reflect adversely on approval of the Application.

Two comment letters to the Federal Reserve expressed concern about private civil litigation in Canada and the United States involving TDNA, and its parent, The Toronto-Dominion Bank, and the effect of such litigation on TDNA's managerial and financial resources. TDNA responded that such litigation is typical for a financial services entity of its size. The commenters' concerns regarding this litigation are not inconsistent with approval of the Application.

Several commenters raised issues concerning CBNA's record as the designated bonding authority ("DBA") for the Department of Education's Historically Black Colleges and Universities Capital Financing Program ("CFP"). A CBNA subsidiary serves as the DBA and administers the CFP. The commenters asserted that CBNA has mismanaged the program. They expressed concern that certain loans made under the program risked violating fair lending laws or were made on terms and conditions that could be considered abusive. TDNA represented that CBNA's subsidiary was selected as the DBA through a competitive process that established the origination and administrative fees for the program. Key elements of the program, such as pricing and repayment, are established by the Department of Treasury. Final determinations regarding approval are made by the Department of Education. If a subsidiary of the Resulting Bank continues to serve as the DBA for the program, its lending activities will be subject to the supervisory oversight of the OCC.

²⁴ Denial and pricing disparities are of concern to the OCC and are evaluated in fair lending examinations. However, it is important to note that HMDA data alone are not adequate to provide a basis for concluding that a bank is engaged in lending discrimination or to indicate whether its level of lending is sufficient. HMDA data do not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of a bank's lending activities or efforts.

lending practices result in neither actual discrimination nor disparate impact on protected minority applicants and borrowers and that its personnel comply with all the fair lending laws and practices. The Resulting Bank will continue to look for ways to increase the number of applications from minorities in its MSAs.

The CRA records of both TDNA and CBNA demonstrate a commitment to making mortgage products available to the communities they serve. TDNA's most recent CRA PE noted that TDNA had a good distribution of loans among LMI geographies and an excellent distribution of loans to borrowers of different income levels. TDNA consistently originated community development loans within its assessment area, which had a positive impact on the overall rating area performance. The Application details a number of community development loans, investments, grants and services, including affordable housing programs. These programs feature fixed-rate mortgages to LMI buyers with low or no down payment, reduced, or no closing costs, or flexible underwriting criteria. TDNA also participates in a number of state and federally sponsored home purchase programs.

With respect to CBNA, the most recent CRA PE noted a good geographic distribution of loans and an excellent distribution of loans among individuals of different income levels. The PE remarked favorably on the flexible loan products offered, including the First Step Mortgage program for LMI borrowers. This product features a discounted application fee, no additional bank fees, and for borrowers who complete approved homebuyer counseling, a discounted interest rate and low downpayment option. CNNJ's most recent CRA PE, prepared by the FDIC, noted an adequate geographic distribution of the bank's mortgage loans, an excellent distribution of these loans among LMI borrowers, and the use of a variety of loan products to serve the credit needs of the assessment area, especially LMI borrowers.²⁵

Relationships with Certain Other Third Parties

Two commenters expressed concern about TDNA's relationships with unaffiliated pawnshops. TDNA represented that it provides services to these businesses only if they meet its stringent standards. It has established a detailed review program for pawnshops and other money service businesses, including reviews for compliance with anti-money laundering and Bank Secrecy Act requirements. It requires these entities to warrant that their businesses comply with all applicable fair lending and consumer protection laws.

²⁵ One commenter requested that the Federal Reserve require Toronto-Dominion Bank to strengthen its CRA activities in New York City. The commenter expressed concerns about the impact of the merger on LMI people and communities of New York City and requested that the Resulting Bank adopt policies and goals concerning matters such as preserving and expanding the City's affordable housing stock, increasing the TDNA's branch presence in LMI areas, and other community development lending, investments, and services. TDNA responded that until the merger occurs, there will be no significant change in the bank's organizational structure or products and services and that TDNA will carefully consider the comments during the bank integration planning process. The CRA does not require banks to enter into commitments or agreements with any organization. 66 Fed. Reg. 36,620, 36,640 (2001) (Question and Answer No. 2, § 29(b)). Further, the CRA does not require a bank to engage in any particular type of lending or investment. CRA performance for large banks is based on an overall assessment under the lending, investment, and service tests. 12 C.F.R. §§ 25.21 to 25.24.

In sum, our review of the record of the Application, including the materials submitted with the Application, public comments, responses to the public comments, representations of the applicant, and our review of supervisory materials, has not revealed any information inconsistent with approval.

Consummation Guidance

Please refer to the Business Combination Booklet for steps to complete the merger.

These approvals are granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed transactions will have been received prior to the mergers, as appropriate.

These approvals are subject to the following condition:

1. The Resulting Bank and its subsidiaries shall take all steps necessary to ensure that the commitments set forth in the March 25, 2008, letter from Bharat B. Masrani, President & CEO, TD Banknorth, to Stephen N. Woodward, Examiner-in-Charge, OCC, are fully adopted, timely implemented and adhered to thereafter.

This condition of these approvals is a condition “imposed in writing by a Federal banking agency in connection with any action on any application, notice or other request” within the meaning of 12 U.S.C. § 1818. As such, the condition is enforceable under 12 U.S.C. § 1818.

As a reminder, the Northeastern District Licensing unit must be advised in writing 10 days in advance of the desired effective date for the mergers so that the OCC may issue the necessary merger certification letters.

With respect to the merger application, please ensure that all other required regulatory approvals, non-objections, or waivers have been received prior to the consummation of the mergers and that you have submitted the following prior to your desired consummation date:

1. Executed merger agreements and the Amended Articles of Association for the Resulting Bank.
2. A Secretary’s Certificate from each institution certifying that the shareholder approvals have been obtained.

If the mergers have not been consummated within one year from the approval date, the approvals will automatically terminate unless the OCC grants an extension of the time period.

This conditional approval and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the U.S., any agency or entity of the U.S., or any officer or

employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

A separate letter is enclosed requesting your feedback on how we handled your application. We would appreciate your response so we may improve our service. If you have questions regarding this letter, please contact Senior Licensing Analyst Sandya Reddy at (212) 790-4055. Please reference the application control number in any correspondence.

Sincerely,

/s/

Lawrence E. Beard
Deputy Comptroller for Licensing

Enclosure: Survey Letter