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Comptroller of the Currency  
Administrator of National Banks

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250 E Street SW  
Washington, D.C. 20219-0001

October 22, 2009

**Corporate Decision #2009-19**  
**November 2009**

Regina Nappi  
SVP, Senior Counsel  
TD Bank, NA  
2035 Limestone Road  
Wilmington, DE 19808

Re: Application by TD Bank, Wilmington, DE, to establish a branch at 231 County Road, Barrington, Rhode Island.  
CAIS Control Number: 2009-NE-05-0125

Dear Ms. Nappi:

The Office of the Comptroller of the Currency (“OCC”) hereby approves your application to establish a branch at 231 County Road, Barrington, Rhode Island. This approval is granted after a thorough review of the application, materials you have supplied, and other information available to the OCC, including commitments and representations made by the applicant’s representatives during the application process. This approval is consistent with the relevant statutory factors set forth in 12 U.S.C. §§ 36(g) and 1831u(b), applicable state interstate branching law, and the applicant’s record of compliance with the Community Reinvestment Act. If the branch is not opened within 18 months from the approval date, the approval automatically terminates unless the OCC grants an extension.

On July 31, 2009 the OCC received an application from TD Bank, National Association (“TDNA” or “Applicant”) to establish a *de novo* branch at 231 County Road, Barrington, Rhode Island. TDNA has its main office in Wilmington, Delaware, and branches in Connecticut, Delaware, the District of Columbia, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and Virginia. TDNA is owned by TDNA US P&C Holdings ULC, a bank holding company that is a wholly-owned subsidiary of The Toronto-Dominion Bank. TDNA is the resulting bank from the merger in which TDNA Banknorth, National Association (“Banknorth-Maine”), a national bank with its main office in Maine, acquired Commerce Bank, National Association, a national bank with its main office in

Pennsylvania (“Commerce-PA”); and Commerce Bank/North, a state bank with its main office in New Jersey (“Commerce-NJ”).

**The Establishment of a *De Novo* Branch is Authorized under 12 U.S.C. §§ 36(g) and 1831u(d)(2)**

TDNA has applied for approval to establish an initial interstate *de novo* branch in Rhode Island, a state other than its main office state and in which it does not already operate branches. As stated, TDNA resulted from the interstate merger under 12 U.S.C. § 1831u(a)(1), adopted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,<sup>1</sup> of Banknorth-Maine, Commerce-PA, and Commerce-NJ.<sup>2</sup> Riegle-Neal provides that a bank that results from the interstate merger of two or more banks undertaken pursuant to the terms of the Act retains the branching rights of each bank that was a party to the merger as if the merger had never occurred. Riegle-Neal, in relevant part, provides:

Following consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches *at any location* where any bank involved in the transaction could have established, acquired or operated a branch under applicable Federal or State law if such bank had not been a party to the merger.<sup>3</sup>

In other words, Riegle-Neal provides that the resulting bank of such a merger may establish additional branches based on the branching rights of any bank that was a party to the merger. Thus, TDNA following the merger, retained the branching rights that Banknorth-Maine, Commerce-PA, and Commerce-NJ had prior to the merger.

Prior to the merger, the branching rights of these three banks were provided for in 12 U.S.C. § 36(c) with respect to intrastate *de novo* branching, and 12 U.S.C. § 36(g) (also adopted as part of Riegle-Neal) with respect to interstate *de novo* branching. Under § 36(g), an out-of-state national bank may establish an initial interstate *de novo* branch in a state other than its main office state or a state in which it already has branches (referred to as a “host state”) if the host state has a law that meets the provisions of section 36(g)(1) and the bank meets the conditions of section 36(g)(2). Section 36(g)(1) provides:

Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national bank to establish and operate a *de novo* branch in a State (other than the bank's home State) in which the bank does not maintain a branch if --

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<sup>1</sup> Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (“Riegle-Neal” or the “Act”).

<sup>2</sup> This merger was approved by the OCC last year. *See* OCC CRA Decision 142 (May 19, 2008) (“OCC Decision 142”). The merger was consummated on May 31, 2008.

<sup>3</sup> 12 U.S.C. § 1831u(d)(2) (emphasis added).

- (A) there is in effect in the host State a law that --
  - (i) applies equally to all banks; and
  - (ii) expressly permits all out-of-State banks to establish *de novo* branches in such State; and
- (B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.

The availability of the authority for a national bank to establish an initial *de novo* branch in a host state under section 36(g) therefore is triggered by a host state law that meets the requirements set forth in § 36(g)(1)(A)(i) and (ii). Rhode Island has authorized out-of-state banks to establish interstate *de novo* branches in Rhode Island provided the laws of the bank's home state provide reciprocal interstate branching rights in that state to Rhode Island banks.<sup>4</sup>

As stated, pursuant to the plain and unambiguous language of 12 U.S.C. § 1831u(d)(2) previously set forth, we may look to the branching rights of each bank that was a party to a Riegle-Neal merger resulting in a bank that seeks to establish an interstate *de novo* branch. In this case, TDNA is the bank that resulted from the merger of Banknorth-Maine, Commerce-PA, and Commerce-NJ (the "Commerce Merger"). The branching law of Maine, the home state of Banknorth-Maine, provides for reciprocal interstate *de novo* branching.<sup>5</sup> Consequently, had Banknorth-Maine not entered into the Commerce Merger and remained a bank with its main office in Maine, it could have established an interstate *de novo* branch in Rhode Island under 12 U.S.C. § 36(g)(1). As a result, TDNA, the resulting bank in the Commerce Merger, may now establish such branch under 12 U.S.C. § 1831u(d)(2), § 36(g)(1), and applicable state law meeting the requirements of § 36(g)(1)(A), if the other Riegle-Neal requirements are satisfied.<sup>6</sup>

### **Compliance with requirements imposed under Riegle-Neal**

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<sup>4</sup> R.I. Gen. Laws at § 19-7-9. The OCC has recognized that statutes such as this with reciprocity requirements constitute an effective opt in to interstate *de novo* branching under 12 U.S.C. § 36(g)(1)(A). *See, e.g.*, OCC Corporate Decision 97-110, *Decision on the Applications of Great Lakes National Bank Michigan, Ann Arbor, Michigan*, pp. 3-4 (December 24, 1997); OCC Corporate Decision 97-86, *Decision on the Applications of Matewan National Bank, Matewan, West Virginia*, pp. 6-10 (September 12, 1997). While the Rhode Island state statute refers to the state where the bank is "principally located," a national bank's home state, as provided for in Riegle-Neal, is the state where its main office is located. 12 U.S.C. § 36(g)(3)(B). Consequently, we conclude that for these purposes a national bank is "principally located" in its home state, the state in which its main office is located.

<sup>5</sup> Me. Rev. Stat. Ann. tit. 9-B, § 373.1(1997 & Supp. 2008).

<sup>6</sup> TDNA also could base its interstate *de novo* branching rights on the laws of Pennsylvania, the home state of Commerce-PA, which also permits interstate *de novo* branching with reciprocity. 7 Pa. Stat. Ann. § 904(b). It could not, however, base its interstate *de novo* branching rights on the laws of Delaware or New Jersey. Delaware affirmatively prohibits interstate *de novo* branching. *See* Del. Code Ann. tit. 5, § 795B(c)(2001 & Supp. 2008). New Jersey has not adopted a law permitting it.

A bank applying for an initial interstate *de novo* branch in a state also must comply with certain requirements imposed by Riegle-Neal relating to filing with the host state, CRA compliance, and management and capital standards.

### **State Filing Requirements**

Riegle-Neal requires that a bank seeking to establish an interstate *de novo* branch must: (1) comply with the filing requirements of the host state as long as the filing requirements do not discriminate against out-of-state banks and are similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state.<sup>7</sup> Rhode Island law does not require any filing by an out-of-state national bank that is branching *de novo* into Rhode Island. However, TDNA has represented that it has provided a copy of the branch application to the Rhode Island regulator. Thus, this application satisfies the Riegle-Neal Act's filing requirements.

### **CRA Requirements**

In determining whether to approve an application under section 36(g), Riegle-Neal requires that the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), (2) take into account the written CRA evaluations of any banks affiliated with the applicant bank, and (3) take into account the applicant's record of compliance with applicable state community reinvestment laws.<sup>8</sup> In addition, the CRA requires the OCC to take into account TDNA's record of compliance with CRA.<sup>9</sup> The OCC has reviewed the CRA record of TDNA and its affiliates and determined their record of compliance with CRA, including the review required by Riegle-Neal of applicable state community reinvestment laws, is consistent with approval of this application.

### **Adequacy of capital and management skills**

The OCC may approve an application for a *de novo* branch under section 36(g) only if the bank is adequately capitalized and managed as of the date the application is filed and will continue to be adequately capitalized and adequately managed after the transaction.<sup>10</sup> As of the date the application was filed, TDNA satisfied all regulatory and supervisory requirements relating to adequate capitalization. The OCC also has determined that, following the transaction, TDNA will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

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<sup>7</sup> See 12 U.S.C. § 36(g)(2)(A)(incorporating § 1831u(b)(1)).

<sup>8</sup> *Id.* (incorporating § 1831u(b)(3)).

<sup>9</sup> See 12 U.S.C. §§ 2903(a)(2), 2902(3)(C); 12 C.F.R. § 25.29(a)(1).

<sup>10</sup> See 12 U.S.C. § 36(g)(2)(A)(incorporating § 1831u(b)(4)).

## **Conclusion**

Within 10 days after opening, TDNA must advise the OCC's Northeastern District office of the branch's opening date, so the OCC may complete its records.

If this branch is closed, a 90-day advance notice of proposed branch closing must be submitted to the OCC pursuant to 12 U.S.C. § 1831r-1. Following the closing of the branch office, a final closing notice should be submitted to this office.

This approval and the activities and communications by OCC employees in connection with this filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our approval is based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence regarding this application should reference the application control number. We have enclosed a letter requesting your feedback on how we handled your application. We would appreciate your response to improve our service.

If you have any questions, please contact John Aponte at (202) 874-5409 or email him at [john.aponte@occ.treas.gov](mailto:john.aponte@occ.treas.gov). In any correspondence regarding this application, please reference the application control number.

Sincerely,

*signed*

Lawrence E. Beard  
Deputy Comptroller, Licensing