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Comptroller of the Currency  
Administrator of National Banks

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Licensing Department  
250 E Street, S.W.  
Washington, D.C. 20219

**Conditional Approval #964  
August 2010**

July 23, 2010

John R. Opperman, Esq.  
Executive Vice President & General Counsel  
TD Bank, National Association  
75 John Roberts Road, Bldg. A  
South Portland, Maine 04106

Re: Application to merge Carolina First Bank, Greenville, South Carolina into TD Bank,  
National Association, Wilmington, Delaware, under the charter and title of the latter  
CAIS Control #: 2010-NE-02-0016 Charter #: 24096

Dear Mr. Opperman:

The Office of the Comptroller of the Currency (“OCC”) hereby conditionally approves the application to merge Carolina First Bank, Greenville, South Carolina (“CFB” or “Target Bank”) into TD Bank, National Association, Wilmington, Delaware (“TDNA” or “Applicant”), for the reasons and subject to the 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. This approval is also subject to the condition set out herein.

## **I. INTRODUCTION**

The South Financial Group, Inc., Greenville, South Carolina (“TSFG”) is the parent holding company of, and wholly owns, CFB, a state bank chartered by South Carolina. The Toronto-Dominion Bank, Toronto, Canada (“TD”), is TDNA’s ultimate parent. CFB and TDNA are insured by the Federal Deposit Insurance Corporation (“FDIC”). On July 22, 2010, the Board of Governors of the Federal Reserve System<sup>1</sup> approved the acquisition by TD of TSFG, and TDNA has represented that its acquisition of CFB will be consummated only after the acquisition of TSFG by TD is consummated. As a result, TDNA and the Target Bank will be affiliates at the time of the consummation of their merger.

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<sup>1</sup> Federal Reserve Board, The Toronto-Dominion Bank, Toronto, Canada, Order Approving the Acquisition of a Bank Holding Company (July 22, 2010).

TDNA has its main office in Wilmington, Delaware, and branches in Connecticut, the District of Columbia, Florida, Massachusetts, Maine, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Virginia, and Vermont. The Target Bank has its main office in South Carolina and branches in North Carolina and Florida. Following consummation of the merger, TDNA will retain as branches the main office and the other branches of CFB and the branches of TDNA, and will retain its main office in Delaware.

## **II. INTERSTATE MERGERS UNDER THE RIEGLE-NEAL ACT**

TDNA, Wilmington, Delaware, applied to the OCC for approval to merge CFB, Greenville, South Carolina, with and into TDNA, under the charter and title of the latter, under 12 U.S.C. § 215a-1, 1828(c) and 1831u (the “merger” or the “interstate merger”). The home state of TDNA is Delaware; the home state of CFB is South Carolina.<sup>2</sup> As a result, the merger is an interstate merger of two FDIC-insured banks with different home states under the Riegle-Neal Act.<sup>3</sup> 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)(state “opt-out” laws). Neither South Carolina nor Delaware enacted an opt-out law.

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 they are applicable. The OCC hereby determines that these requirements, as applicable, are met. These requirements are: (1) compliance with state-imposed age limits, if any;<sup>4</sup> (2) compliance with federal filing requirements and certain state filing requirements imposed by any host state that will result from the transaction;<sup>5</sup> (3) compliance with nationwide and state concentration limits; (4) community

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<sup>2</sup> 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). A “host state” is a state other than the home state of a bank in which the bank maintains or seeks to establish and maintain a branch. 12 U.S.C. 1831u(g)(5).

<sup>3</sup> 12 U.S.C. 1831u(a)(1).

<sup>4</sup> 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. In this situation, TDNA is the acquiring bank and CFB is being acquired. Consequently, the relevant host state for these purposes is South Carolina, the main office state of the Target Bank. South Carolina law provides that an interstate merger transaction resulting in the acquisition by an out-of-state bank of a South Carolina bank shall not be permitted unless such South Carolina bank has been in continuous operation, on the date of such acquisition, for a period of at least five years. S.C. Code Ann. § 34-25-240. CFB has been in existence for more than five years.

<sup>5</sup> 12 U.S.C. § 1831u(b). The states that will become host states of TDNA upon consummation of the mergers are those in which it currently has no branches but in which it will acquire branches: South and North Carolina. The applicant has represented it is in the process of complying with applicable host state filing requirements in those states and has provided copies of this application to those states as required by § 1831u(b)(1)(A)(ii).

reinvestment compliance;<sup>6</sup> and (5) adequacy of capital and management skills.<sup>7</sup> The OCC hereby determines that the application satisfies these conditions to the extent applicable, and the merger of CFB with and into TDNA is legally authorized as an interstate merger transaction under the Riegle-Neal Act.

### **III. BANK MERGER ACT**

The OCC reviewed the proposed merger 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 transactions would not have any anticompetitive effects because, as previously noted, the banks will be affiliated at the time of the merger.<sup>8</sup> 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.<sup>9</sup> 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...”<sup>10</sup> We considered these factors and found them to be consistent with approval under the statutory provisions.

### **IV. COMMUNITY REINVESTMENT ACT**

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the records of the institutions proposing to merge in helping to meet the credit needs of the community,

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<sup>6</sup> 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. *See* 12 C.F.R. § 1831(u)(2)(E)(concentration limits inapplicable to affiliated banks); § 1831u(b)(3)(expanded community reinvestment analysis applies only where the resulting bank would have a branch or bank affiliate in any state in which it had no branch or bank affiliate immediately prior to the transaction; as previously noted, TDNA and CFB will be affiliated immediately prior to their merger).

We note also that concentration limits applicable to interstate merger transactions adopted in § 623(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”)(to be codified at 12 U.S.C. § 1828(c)(13)(A) and (B)) do not apply to mergers between affiliates.

<sup>7</sup> Consistent with 12 U.S.C. § 1831u(b)(4), the OCC finds that each bank was at least adequately capitalized as of the date the application was filed and that TDNA will continue to be adequately capitalized and adequately managed upon consummation of the mergers. Changes to these standards included in § 607 of Dodd-Frank with regard to the acquiring bank do not become effective until the “transfer date” as defined in that legislation.

<sup>8</sup> The Federal Reserve Board (“FRB”) reviewed the competitive effects of the merger of the banks’ parent holding companies in each of the banking markets in which TDNA and CFB directly compete. As a result, the FRB and TD entered into an agreement whereby TD committed to divest branches with no less than \$59 million in deposits in the Palatka banking market in Florida to an out-of-market insured depository institution to reduce potential adverse effects on competition in that market. The OCC expects TDNA to take the steps necessary to satisfy the terms of this agreement.

<sup>9</sup> 12 U.S.C. § 1828(c)(5).

<sup>10</sup> 12 U.S.C. § 1828(c)(11).

including low- and moderate-income (“LMI”) neighborhoods when evaluating merger applications.<sup>11</sup> 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 and consistent with approval of this application.

#### **A. TDNA**

TDNA’s latest PE, dated December 08, 2008, and issued by the OCC, assigned the bank an “Outstanding” rating.<sup>12</sup> Among the major factors supporting TDNA’s rating were: (i) an excellent geographic distribution of home loans in most assessment areas; (ii) a very strong community development strategy linking financing and services to identified community needs; (iii) establishment of effective public/private partnerships expanding credit availability to small businesses; and (iv) extensive development and delivery of home ownership education programs. No evidence of illegal or discriminatory lending practices was noted in the PE.

#### **B. CFB**

CFB’s latest PE, dated September 5, 2006, and issued by the FDIC, assigned the bank an “Outstanding” rating.<sup>13</sup> Among the major factors supporting CFB’s rating were: (i) excellent level of community development lending and support of community development endeavors through its qualified community development investments, commitments, grants, and donations; (ii) excellent level of community development services; and (iii) good distribution of loans by geography and income levels.

### **V. PUBLIC COMMENTS**

The OCC did not receive any comment letters from the public on the bank merger application, but did receive a copy of a letter to the Board of Governors of the Federal Reserve System expressing concerns about the related bank holding company merger application. While the OCC did not receive the comment directly, we have carefully considered the concerns raised.

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<sup>11</sup> 12 U.S.C. §§ 2903(a)(2) and 2902(3)(E); 12 C.F.R. § 25.29(a)(3).

<sup>12</sup> TDNA was examined using the Large Bank examination procedures and received an “Outstanding” rating on the lending test and “High Satisfactory” for the investment and service tests. The overall evaluation period for the 2008 PE was January 1, 2004, through December 31, 2007, with the exception of community development loans and investments. For community development loans, the evaluation period was January 1, 2005, through December 31, 2007 and for community development investments and services, the period of review was from January 1, 2005 through December 31, 2008.

<sup>13</sup> CFB was examined using the Large Bank examination procedures and received a “High Satisfactory” rating on the lending test and “Outstanding” for the investment and service tests. The overall evaluation period for the 2006 PE was January 1, 2004, through June 30, 2006.

## **A. Mortgage Lending**

Based on an analysis of 2009 HMDA-LAR data, the commenter expressed concerns about TDNA's denial rates for conventional home purchase loans to African Americans, Latinos, and Native Americans. Additionally, the commenter expressed concern that African Americans are more likely to receive higher cost rate spread and subprime loans.<sup>14</sup>

As represented in the related holding company merger application, TDNA performs ongoing internal fair lending review, which includes HMDA data analysis and loan file review. The HMDA analysis includes a review of denial ratios, demographic penetration of applications, and rate spreads by race/ethnicity. A second level review process is in place to identify potential fair lending issues. TDNA also separately tracks and monitors consumer complaints that raise fair lending issues.

TDNA has been subject to ongoing fair lending supervisory oversight by the OCC, including ongoing monitoring of HMDA data to detect potential disparities that may be of concern. Upon consummation of the merger, the combined entity is subject to the OCC's fair lending supervisory oversight.

Additionally, TDNA offers flexible and affordable mortgage loan products, such as its Helping Hands Home Improvement Loan product for LMI individuals and families. Upon consummation of the merger the combined entity will follow, in large part, the consumer compliance, fair lending compliance, and CRA programs used by TDNA. TDNA plans to continue to offer flexible and affordable mortgage products to meet the needs of its communities.

## **B. Conclusion**

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

## **VI. BRANCH RETENTION**

Following the merger, TDNA has requested OCC approval to retain as branches the main office and all branches of CFB and all of TDNA's own branches, and to retain as its main office its current main office. The OCC hereby approves the retention, following consummation of the merger, of the branches and main office of CFB and the branches of TDNA as branches of TDNA, and the retention by TDNA of its main office.<sup>15</sup>

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<sup>14</sup> Denial and pricing disparities are of concern to the OCC and are evaluated in fair lending examinations. However, 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 borrow 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.

<sup>15</sup> 12 U.S.C. § 1831u(d)(1). CFB does not have any approved but unopened branches.

## VII. SUBSIDIARIES AND INVESTMENTS

TDNA will retain several entities that CFB currently owns.<sup>16</sup> TDNA represents that these subsidiaries will be operated in compliance with OCC regulations and policies contained in guidance issued by the OCC<sup>17</sup> and that TDNA will control each operating subsidiary as required by 12 C.F.R. § 5.34(e)(5)(v)(i).<sup>18</sup>

The following operating subsidiaries to be acquired by TDNA engage in bank permissible activities and may be retained: CNB Properties, Inc., Foster New Bern, Inc., and Fontana Holdings, Inc., each which hold bank permissible assets including properties acquired through foreclosure as authorized by 12 C.F.R. § 5.34(e)(5)(v)(A); Carolina First Mortgage Loan Trust, a South Carolina real estate investment trust, which holds assets permissible under 12 C.F.R. 5.34(e)(5)(v)(A), (C) and (D); CFC & Co., which provides services to the trust department of CFB by holding title to mutual fund accounts held by trust customers, an activity permitted under 12 C.F.R. § 5.34(e)(5)(v)(B); and Mtnbk, Ltd., which holds deeds of trust on behalf of CFB's trust department and with respect to properties foreclosed on by CFB, activities permissible under 12 C.F.R. § 5.34(e)(5)(v)(A) and (B).<sup>19</sup>

TDNA also seeks to temporarily retain Bowditch Insurance Corporation and Carolina First Insurance Services Inc., which are engaged in insurance brokerage activities. TDNA has represented that these entities will be merged in TDNA's existing insurance subsidiary, TD Insurance Inc., a financial subsidiary, approximately six months after consummation of the merger of CFB and TDNA.<sup>20</sup>

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<sup>16</sup> All of the subsidiaries are wholly-owned by CFB and will continue to be wholly-owned by TDNA. TDNA will retain its existing subsidiaries.

<sup>17</sup> 12 U.S.C. § 5.34(e)(5)(i)(B).

<sup>18</sup> With respect to each of the operating subsidiaries, TDNA represents that, in accordance with § 5.34(e)(5)(i)(A)(3), it will have the ability to control the management and operations of each operating subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and, directly or through each subsidiary's board, the ability to select and terminate senior management, and that the financial statements of each operating subsidiary will be consolidated with that of TDNA under generally accepted accounting principles. 12 C.F.R. § 5.34(e)(5)(i)(A).

<sup>19</sup> CFB also owns Carolina First Securities, Inc., which was established to engage in securities brokerage activities. This is an inactive subsidiary and has no assets or activities. TDNA represents that it has no plans to activate this subsidiary. TDNA would need to follow applicable operating subsidiary application or notice procedures if it seeks to engage in any activities or acquire any assets or assume any liabilities through this subsidiary.

<sup>20</sup> TDNA has further represented that in the event these mergers do not occur in a timely manner, it will take all necessary steps to conform these entities with applicable law within the time period specified by the OCC. Generally, the OCC requires national banks that acquire nonconforming assets or activities as a result of a merger to conform or divest those assets or activities within two years following the consummation of the merger. TDNA also has represented that one other insurance subsidiary, Summit Title, LLC will be closed prior to the consummation of the merger.

TDNA also will acquire the First Carolina Community Development Corporation (the “FCCDC”) and certain CFB community development investments that it desires to retain under the investment authority of 12 U.S.C. § 24 (Eleventh) and 12 C.F.R. § 24 concerning national bank investments in community and economic development entities, community development projects, and other public welfare investments. After the merger has been consummated, TDNA shall provide notification of those investments to the Community Affairs Department, Office of the Comptroller of the Currency, Washington DC, 20219. The notification also may be emailed to [CommunityAffairs@occ.treas.gov](mailto:CommunityAffairs@occ.treas.gov), faxed 874-4652, or provided electronically via National BankNet at <http://www.occ.treas.gov>

TDNA’s notification must include a description of the FCCDC as well as each investment, including how each complies with the public welfare requirements of §§ 24.3 and 24.4; the dollar amount of each investment; the percentage of the TDNA’s capital and surplus that is represented by the investments that are the subject of the notification; and the percentage of TDNA’s capital and surplus that is represented by the bank’s aggregate outstanding public welfare investments and commitments, including the investments that are the subject of the notification. TDNA may satisfy these requirements by completing and submitting the form *Part 24 - CD-1 - National Bank Community Development (Part 24) Investments*, which can be accessed from <http://www.occ.treas.gov/cdd/pt24toppage.htm>.

#### **VIII. SECTION 1818 CONDITION**

This approval is subject to the following condition:

TDNA’s Board of Directors and Management shall take all steps necessary to ensure that the commitments set forth in a letter dated July 23, 2010, from TDNA President and CEO Bharat B. Masrani to OCC National Bank Examiner Maryann Kennedy, are fully adopted, timely implemented and adhered to thereafter.

This condition of approval is a condition “imposed in writing by the Federal 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.

#### **IX. CONSUMMATION GUIDANCE**

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

This conditional approval is granted based on our understanding that prior to the merger of CFB and TDNA all other applicable regulatory approvals, non-objections or waivers with respect to the proposed transaction will have been received, all related pre-consummation waiting periods have elapsed, and the merger of TSFG into TD has been consummated.

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

With respect to the merger application, please ensure that you have submitted the following prior to your desired consummation date:

1. An executed merger agreement and the Amended Articles of Association for TDNA.
2. A Secretary's Certificate from each institution certifying that shareholder approvals required under applicable federal or state law have been obtained.
3. A Secretary's Certificate from each institution certifying that the percentage of directors required under applicable federal or state law have approved the merger.

If the transaction has 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 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 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.

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 me at (202) 874-5060 or Senior Licensing Analyst Sandya Reddy at (212)790-4055. Please reference the application control number in any correspondence.

Sincerely,

*Stephen A. Lybarger*

Stephen A. Lybarger  
Acting Deputy Comptroller for Licensing