



Comptroller of the Currency
Administrator of National Banks

Northeastern District
340 Madison Avenue, 5th Floor
New York, New York 10017-2613

CRA Decision #131
January 2006

December 22, 2005

Ms. Patricia J. Wheeler
Senior Vice President & Senior Attorney
TD Banknorth, National Association
Two Portland Square
Portland, ME 04101

Re: Application to merge Hudson United Bank, Mahwah, New Jersey, with and into TD Banknorth, National Association, Portland, Maine, under the charter and title of the latter.

Control Numbers: 2005 NE 02 032

Charter Number: 24096

Dear Ms. Wheeler:

On December 22, 2005, the Comptroller of the Currency (OCC) approved your proposal to merge Hudson United Bank (Hudson) into TD Banknorth, National Association, (TD Banknorth). This approval is granted based on a thorough review of all information available, including commitments and representations made in the application, merger agreement, and those of your representatives.

Review of Statutory Factors

The merger of Hudson into TD Banknorth is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 and 1831u. The OCC reviewed the proposed transaction under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. Among other matters, we found that the proposed transaction would not have anticompetitive effects. The OCC also considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served.¹ In addition, the Bank

¹ One commenter expressed concerns with a pending lawsuit in Illinois in which The Toronto-Dominion Bank ("TDBank"), the Canadian parent company of TD Banknorth, is among a group of defendants. This

Merger Act requires the OCC to consider “. . . the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, including in overseas branches,” 12 U.S.C. § 1828 (c) (11).² We considered these factors and found them consistent with approval under the statutory provisions.

In addition, the Community Reinvestment Act (“CRA”) requires the OCC to take into account the applicants’ record of helping to meet the credit needs of the community, including low- and moderate-income (“LMI”) neighborhoods, when evaluating certain applications, including merger transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considers the CRA performance evaluation of each institution involved in the transaction. A review of the record of these applicants and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants’ records of helping to meet the credit needs of their communities, including LMI neighborhoods, is less than satisfactory.

TD Banknorth’s latest CRA public Performance Evaluation (“PE”), dated July 9, 2001 and issued by the OCC, assigned an “Outstanding” rating.³ The PE disclosed an excellent responsiveness to the credit needs of its assessment areas; an excellent distribution of home mortgage loans to borrowers of different incomes; an excellent service delivery system that is very accessible to geographies and individuals of different income levels in its assessment area; and an excellent record of providing community development services. With respect to fair lending, the PE indicated that an analysis of most recent Home Mortgage Disclose Act (“HMDA”), Small Business, and Small Farm lending data, public comments and consumer complaint information revealed no fair lending risk factors requiring further investigation.⁴ The OCC is currently conducting a CRA examination of TD Banknorth. While the results of that examination have not been completed, the OCC is unaware of any substantive deficiencies with the bank’s CRA performance.

lawsuit does not involve TD Banknorth nor does it impact TD Banknorth’s financial or managerial resources.

² One commenter expressed concerns with recent anti-money laundering issues at Hudson, which were the subject of a Cease and Desist Order issued by the Federal Deposit Insurance Corporation (“FDIC”) on May 24, 2004. The OCC notes that the anti-money laundering issues identified by the FDIC have been resolved. The FDIC lifted Hudson’s Cease and Desist Order on September 9, 2005 after the FDIC found the bank to be in full compliance with the remedial provisions of the Order and the relevant laws and regulations.

³ The PE was issued under the name Peoples Heritage Bank, NA. Since that PE was issued, Peoples Heritage Bank, NA has undergone numerous mergers and acquisitions. In each of those transactions, the OCC considered the CRA records of the banks involved and found approval under the CRA consistent with approval.

⁴ Prior to the bank’s conversion to a national bank in June 2000, the FDIC examiners performed a comprehensive fair lending examination and found no violations of the substantive provisions of the anti-discrimination laws and regulations.

Hudson's latest CRA PE, dated February 10, 2005 and prepared by the Federal Deposit Insurance Corporation, assigned a "Satisfactory" rating. With respect to lending, the PE disclosed a good responsiveness to the credit needs of the assessment area; good penetration throughout the assessment area; and excellent penetration among retail customers of different income levels and business customers of different sizes. With respect to investments, the PE indicated the significant volume of investments purchased represented a very good responsiveness to the affordable housing and small business needs of individuals and businesses. The PE also noted that Hudson provided a relatively high level of community development services throughout the assessment area.

In sum, the applicants' records of CRA performance are consistent with approval of the proposed transaction.

Review of Comments

The OCC received comments from two community organizations opposing the merger.⁵ One commenter expressed concerns that TD Banknorth has not reinvested in lower income and minority communities, possessed no experience in the urban inner city, and has not developed working relationships with community-based organizations. TD Banknorth disputed those concerns, indicating that it had worked with community-based organizations to meet local needs and is an active community development lender and investor. The bank referenced its latest CRA PE for the details of such activities. As noted earlier, TD Banknorth recently underwent a CRA examination in which the OCC found no substantive deficiencies with the bank's CRA performance. TD Banknorth's application also noted that it participated in a number of affordable housing initiatives since its last CRA PE. These included participation in programs for first time home buyers that provide below market interest rates and other flexible underwriting criteria and community development lending to rehabilitate or construct affordable housing. TD Banknorth further indicated it was planning to increase lending opportunities in neighborhoods. TD Banknorth believes the acquisition of Hudson will help to advance penetration into LMI neighborhoods.

TD Banknorth indicated it is already working to assess community development and reinvestment needs in Hudson's market area. TD Banknorth agreed with the commenter that a strong community development program is needed in the urban metropolitan areas served by Hudson and is committed to developing a greater understanding of those new markets. TD Banknorth's proposed CEO for the New Jersey, Pennsylvania, and New York area, is committed to hiring a Community Development manager to focus on developing and implementing community development plans and initiatives. In Connecticut, TD Banknorth's state president will also meet with community leaders and develop plans and initiatives for that area. In addition, TD Banknorth represented that it

⁵ While the comments were received after the close of the public comment period, the OCC considered the comments in evaluating this application.

would offer direct mortgage lending in these areas, thus re-establishing a channel for originating loans that Hudson had eliminated.

Using 2004 data, the commenter expressed concerns with TD Banknorth's allegedly low level of lending to minorities as well as its denial rates for minorities when compared to the denial rates for whites.⁶ TD Banknorth responded that when compared to peer banks, its overall denial rates to minorities were comparable. In two Metropolitan Statistical Areas ("MSAs"), TD Banknorth acknowledged that its number of applications from certain minorities was low and of concern.⁷ However, TD Banknorth noted that for the first six month of 2005, its lending to minorities had improved. TD Banknorth mentioned that many of the communities are newer markets that were entered through acquisitions. TD Banknorth also indicated it maintains a strong fair lending training, review, and monitoring program to ensure that its lending practices result in neither discrimination nor disparate impact on protected minority applicants and borrowers.⁸

One of the commenters expressed concerns with potential branch closings in lower income communities resulting from the merger. TD Banknorth indicated that four branches will be consolidated with nearby existing branches. Only one of these branches is located in an LMI area, and will be consolidated with a branch less than 700 yards away.⁹

Request for Public Hearing

⁶ 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 in indicating whether its level of lending is sufficient. HMDA data do not take into consideration borrower creditworthiness, housing prices, and other factors relevant in each of the individual markets, nor do they fully reflect the range of a bank's lending activities or efforts. Nevertheless, denial and pricing disparities are of concern to the OCC and are evaluated in fair lending examinations. The OCC has carefully examined the 2004 HMDA data for national banks and their subsidiaries, including TD Banknorth, and has incorporated the results of the analysis into the OCC's supervisory strategy for upcoming fair lending examinations.

⁷ TD Banknorth noted that in the New Haven and Hartford MSAs, the bank's overall volume of business was too low to be statistically valid. TD Banknorth disputed the figures cited by the commenter in the Boston MSA and indicated its denial ratio for Latinos was less than the standard industry ratio.

⁸ The commenter also raised a concern that TD Banknorth was enabling "fringe finance" companies due to the fact that the bank had made a loan to a pawn shop. TD Banknorth indicated that it has performed a review of these types of businesses, determined that many of them are locally-owned businesses serving their communities, and has opted to serve these types of businesses provided they meet TD Banknorth's stringent standards. TD Banknorth obtains representation and warranties from these businesses that they are properly licensed and operate in compliance with applicable laws, including applicable fair lending and consumer protection laws.

⁹ TD Banknorth is required to adhere to the Federal Deposit Insurance Act and the agencies' Joint Policy Statement Regarding Branch Closings. See 12 U.S.C. § 1831r-1, 64 Fed. Reg. 34,844(1999). Any branch closings resulting from this merger will be considered in the bank's next CRA examination.

One of the commenters also requested that the OCC conduct a public hearing. After careful consideration, the OCC has determined not to conduct a hearing on this merger application.¹⁰

The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. § 5.11(b), which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

The commenter requested a public hearing in order to discuss Hudson's record with respect to money laundering, subprime lending, and branch closings. However, the commenter did not indicate why written submissions would be insufficient to make an adequate presentation of the issues or facts to the OCC. The OCC determined that the proposed testimony would not provide the OCC with relevant information on the pending application.

Conclusion Regarding Statutory Factors

Based on the reasons set forth above, the OCC has determined that approval of the application is consistent under the Bank Merger Act, 12 U.S.C. § 1828(c), and the CRA.

Subsidiaries and Non-conforming Assets

Hudson has a number of subsidiaries that will become subsidiaries of the Resulting Bank. TD Banknorth requests OCC approval for the Resulting Bank to retain these subsidiaries. Except for one group of related subsidiaries (discussed below), all of the subsidiaries conduct activities that are permissible for national banks by statute, regulations, and prior OCC precedent.

Hudson has three subsidiaries that were acquired through foreclosure in satisfaction of debts previously contracted. These subsidiaries engage in activities that are impermissible for national banks. TD Banknorth requested a divestiture period of two years to divest these non-conforming subsidiaries:

¹⁰ The same commenter requested an extension of the comment period. However, the OCC determined not to grant an extension of the comment period, because the commenter did not demonstrate that additional time was necessary to develop factual information, and no extenuating circumstances were present. *See* 12 C.F.R. § 5.10(b)(2)(ii), (iii). While the OCC did not extend the public comment period, the OCC considered all comments received after the close of the comment period.

- United Cogen Fuels LLC, a Delaware limited liability company, was formed to acquire through foreclosure, the real property and personal property assets of a biomass cogeneration facility located in North Carolina.
- United Gasco LLC and UC Investments, Inc., New Jersey limited liability corporations, are engaged in the extraction and conversion of landfill gas into electricity, which is sold to utilities.

The Resulting Bank may retain these subsidiaries up to two years, consistent with OCC policy to permit national banks resulting from a merger to have a reasonable period of time to divest any nonconforming activities. Accordingly, the Resulting Bank must divest these entities within two years from the date of the merger.

TD Banknorth has also requested permission for the Resulting Bank to retain certain assets of Hudson that do not conform to the requirements for assets acquired and held by national banks. These non-conforming assets are real estate properties that Hudson acquired in satisfaction of debts previously contracted in loan workouts. The OCC will permit TD Banknorth to retain these DPC assets subject to the requirements applicable to national banks.

Consummation Procedures

The district office must be advised in writing in advance of the desired effective date for the merger so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other required regulatory approval.

The OCC will issue a letter certifying consummation of the transaction when we receive:

- An executed merger agreement with Articles of Association for the resulting bank attached.
- A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.

Please refer to the "Business Combinations" booklet for the required steps to complete the merger. If the merger is not consummated within one year from the approval date, the approval shall 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

Ms. Patricia J. Wheeler

December 22, 2005

Page 7

regulations. 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 control number. If you have any questions, contact me at (212) 790-4055 or e-mail sandya.reddy@occ.treas.gov.

Sincerely,

/s/ Sandya Reddy

Sandya Reddy

Acting Director for District Licensing

Enclosures: Survey Letter