



**CRA Decision #182**  
**June 2017**

May 18, 2017

Mark Chorazak  
Counsel  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017-3954

Re: Application to merge Scottrade Bank, St. Louis, Missouri  
with and into TD Bank, National Association, Wilmington, Delaware  
OCC Control Number: 2016-NE-Combination-293512

Dear Mr. Chorazak:

The Office of the Comptroller of the Currency (OCC) hereby approves the application by TD Bank, National Association, Wilmington, Delaware (TD Bank), to merge Scottrade Bank, St. Louis, Missouri with and into TD Bank. This approval is granted after a thorough evaluation of all information available, including the application, other materials TD Bank's and Scottrade Bank's representatives have provided, commitments and representations made by the banks' representatives during the application process, and other information available to the OCC.

**I. Background and Transaction**

TD Bank is a national bank and an indirect subsidiary of TD Group US Holdings LLC, an intermediate holding company regulated by the Board of Governors of the Federal Reserve System (FRB). TD Bank proposes to acquire Scottrade Bank, a federal savings association, by merger. The bank merger is being entered into in connection with the proposed acquisition by TD Bank's affiliate, TD Ameritrade Holding Corporation (Ameritrade), of Scottrade Financial Services, Inc. (Scottrade Financial), the holding company of Scottrade Bank. The bank merger will occur prior to consummation of the acquisition of Scottrade Financial by Ameritrade. Consequently, at the time of the bank merger, Scottrade will not be affiliated with TD Bank. The deposits of both institutions are insured by the Federal Deposit Insurance Corporation.

TD Bank's main office is in Wilmington, Delaware and it has branches located in Connecticut, Delaware, District of Columbia, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, and Virginia. Scottrade Bank is headquartered in Missouri and operates no retail branches. TD Bank plans to retain its own main office and branches, and has no plans to retain the

headquarters of Scottrade Bank as a retail branch following consummation of the proposed merger. Scottrade Bank does not have any subsidiaries.

The OCC and the FRB received comments from two parties regarding the proposed merger. The OCC has carefully considered the concerns of the commenters as they relate to the statutory and regulatory factors considered by the OCC in acting on the application, including performance under the Community Reinvestment Act (CRA), and the probable effects of the transaction on the convenience and needs of the communities to be served. The public comments will be discussed subsequently in this letter.

## **II. Legal Authority for the Transaction**

This is a merger of an insured federal savings association with and into a national bank. Such mergers are authorized under 12 USC 215c, subject to 12 USC 1828(c) (the Bank Merger Act) and its implementing regulations, 12 CFR 5.33.<sup>1</sup>

## **III. The Bank Merger Act**

The OCC reviewed the proposed merger under the criteria of the Bank Merger Act (BMA) and applicable related OCC regulations and policies. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The OCC must also consider the financial and managerial resources and future prospects of the existing and resulting banks, the convenience and needs of the community to be served, and the risk to the stability of the banking and financial system.<sup>2</sup> The BMA also requires the OCC to take into consideration the effectiveness of each insured depository institution involved in the proposed transaction in combating money-laundering activities.<sup>3</sup> The OCC found approval of the application consistent with these factors.<sup>4</sup> The OCC's consideration of the probable effect of the merger on the convenience and needs of the community to be served is discussed in detail under the Public Comments and Convenience and Needs Analysis section of this approval.

## **IV. Community Reinvestment Act**

The CRA requires the OCC to take into account the records of the banks' performance in helping to meet the credit needs of their communities, including low- and moderate-income (LMI) neighborhoods, when evaluating applications under the BMA. Under the regulations implementing the CRA, a bank's record of performance may be the basis for denying or

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<sup>1</sup> Section 215c(a) makes such mergers subject to compliance with 12 USC 1815(d)(3) and 12 USC 1828(c). Section 1815(d)(3) was amended in 2006 and no longer has direct relevance to mergers under section 215c. Scottrade Bank is authorized to engage in the merger under 12 USC 1467a(s) and its applicable implementing regulations.

<sup>2</sup> 12 USC 1828(c)(5)(last sentence). *See also* 12 CFR 5.33(e)(1)(ii)(B)(C) & (E).

<sup>3</sup> 12 USC 1828(c)(11). *See also* 12 CFR 5.33(e)(1)(ii)(D).

<sup>4</sup> The OCC also may not generally approve a merger if the resulting bank's level of deposits and consolidated liabilities exceed certain limits. *See* 12 USC 1828(c)(13), 12 USC 1852 and 12 CFR Part 251. These limits are not an issue in this transaction due to the size of the banks involved.

conditioning approval of an application subject to the BMA.<sup>5</sup> Accordingly, the OCC considered the CRA performance evaluation (PE) of each bank involved in this transaction. Based on this review, the OCC has concluded that the banks' records of performance under the CRA are consistent with approval of this application.

#### **A. TD Bank's CRA Performance**

TD Bank's most recent CRA PE, prepared by the OCC, is dated December 2013. The bank's overall rating was Satisfactory.<sup>6</sup> The major factors that supported this rating included: an excellent level of lending activity; an adequate distribution of loans both by income level of geography and borrower income; a good level of community development lending activity that had a positive impact on the bank's overall lending test rating; an excellent level and responsiveness of qualified investment activity; accessible office locations; and a relatively high level of community development services.

#### **B. Scottrade Bank's CRA Performance**

Scottrade Bank's most recent CRA PE, prepared by the OCC, is dated April 2013. The bank's overall CRA rating was Satisfactory.<sup>7</sup> The major factors that contributed to this rating included: an adequate level of community development lending, services, and qualified investment activity in its assessment area; use of complex community development loans; and adequate responsiveness to credit and community development needs in its assessment area.

### **V. Public Comments and Convenience and Needs Analysis**

#### **A. Convenience and Needs Analysis**

Under the BMA, the OCC must consider the convenience and needs of the communities to be served by the resulting bank.<sup>8</sup> In evaluating this application, the OCC reviewed the banks' CRA records of performance, written public comments, information provided by TD Bank to the OCC in response to public comments and an additional information request, information provided by

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<sup>5</sup> 12 CFR 25.29(d).

<sup>6</sup> During the course of this evaluation, examiners considered the bank's Home Mortgage Disclosure Act (HMDA) reportable loans and small loans to businesses for the calendar years 2011, 2012, and 2013. TD Bank's community development loans, investments, and services were evaluated from January 1, 2012, through December 31, 2013. Retail services were evaluated from January 1, 2011, through December 31, 2013. A copy of the CRA PE is available at <https://www.occ.gov/static/cra/craeval/oct16/24096.pdf>. TD Bank received a high satisfactory rating on the lending and service tests, and an outstanding rating on the investment test.

<sup>7</sup> During the course of this evaluation, examiners reviewed the bank's community development activities from July 8, 2008, through April 1, 2013. Scottrade began operations on July 8, 2008. At that time, the Office of Thrift Supervision designated the bank as a wholesale institution for purposes of the CRA. Scottrade is an internet-based federal savings association that does not have any retail branches. A copy of the CRA PE is available at <https://www.occ.gov/static/cra/craeval/jun14/718050.pdf>.

<sup>8</sup> See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(C).

TD Bank to the FRB in connection with the pending holding company application, and information available to the OCC as a result of its supervisory responsibilities. Based on its review, the OCC has concluded that the probable effect of the business combination on the convenience and needs of the communities to be served is consistent with approval of this application.

### Public Comments

The OCC received letters from two commenters regarding this application. One comment generally set forth an analysis of TD Bank's "strengths and weaknesses and areas for improvement" with regard to the bank's CRA-related activities in New York City. This commenter also stated that this application should provide more detail regarding how the proposed transaction will meet the "convenience and needs of the community to be served," and therefore the application should not be approved without a comprehensive CRA plan.<sup>9</sup>

The commenter recognized TD Bank's CRA-related activities in New York City, including the level of the bank's community development loans, investments, and grants, as well as the responsiveness of the bank's community development staff. The commenter also highlighted TD Bank's volume of home improvement lending, its small business lending efforts, and its growing retail branch presence in New York City.

However, the commenter also expressed concerns about the bank's lending practices in New York City, including concerns that TD Bank is not a major multifamily lender<sup>10</sup> and that it should be making a larger number of home purchase loans to LMI borrowers and borrowers of color in New York City. In addition, the commenter expressed concerns about the affordability of the bank's checking account products,<sup>11</sup> and was critical about certain bank overdraft practices. Specifically, while the commenter stated that it was pleased that TD Bank no longer reorders items from highest to lowest dollar amount for processing, the commenter expressed concern that TD Bank allows overdrafts on debit card and Automatic Teller Machine (ATM) transactions.

The second comment expressed concerns, among other things, that the proposed merger would result in branch closures. However, TD Bank represented in its application that no closures of retail banking branches are contemplated.<sup>12</sup>

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<sup>9</sup> Neither the BMA nor the CRA require applicants to submit a CRA plan as part of the application. See generally 12 USC 1828(c) and 12 USC 2901.

<sup>10</sup> The CRA does not require a bank to engage in any particular type of lending, investment or service. See generally 12 USC 2901.

<sup>11</sup> TD Bank represented that deposit customers of Scottrade Bank are typically customers of Scottrade Bank's brokerage affiliate and maintain the deposit account to facilitate moving funds into and out of their brokerage accounts. Scottrade Bank customers will be eligible to participate in TD Bank's deposit sweep program on terms comparable to Scottrade Bank's existing program, but with enhanced features.

<sup>12</sup> The commenter appears to be referring to the closure of investment banking offices of Scottrade Bank's brokerage affiliate. TD Bank represented that Scottrade Bank does not operate any retail banking branches.

*Analysis of Public Comments*

In response to concerns regarding TD Bank's lending efforts in New York City, TD Bank identified five affordable loan products<sup>13</sup> that it offers to address community credit needs: RightStep Mortgage Loans, Federal Housing Authority Mortgage Loans, Veteran's Administration Loans, United States Department of Agriculture/Rural Housing Loans, and Helping Hands Home Improvement Loans. According to TD Bank, its RightStep Mortgage Loan product has been its most effective product to date in providing access to affordable housing for LMI individuals, LMI areas, minority individuals, and majority-minority areas in the New York-Northern New Jersey-Long Island Multistate Metropolitan Area (MMA).<sup>14</sup> In addition, TD Bank stated that it launched its HomeReady affordable mortgage program in September 2016. TD Bank represented that it expects that the HomeReady program will enhance its ability to serve creditworthy LMI borrowers with expanded eligibility for financing homes in low-income communities.

TD Bank stated that it conducts significant affordable housing outreach and has two Community Development Managers dedicated to these efforts in the New York-Northern New Jersey-Long Island MMA. According to TD Bank, these managers are responsible for overseeing community development activities in the bank's market to support TD Bank's overall CRA performance. TD Bank represented that since its last CRA PE, these managers have conducted 282 outreach discussions with affordable housing community groups, which have focused on promoting opportunities for TD Bank to partner with these organizations on volunteer and grant opportunities, home buyer education efforts, and financing of projects that support affordable housing. In addition, TD Bank represented that, since its most recent CRA PE, it has conducted 296 home-buyer education seminars and 103 financial education workshops, which have helped to promote TD Bank's efforts in serving LMI communities.

TD Bank further represented that it is committed to meeting the demand for affordable housing throughout its footprint, and has taken actions to increase the volume of home purchase loans it originates to LMI borrowers and minority borrowers in the communities it serves. In particular, TD Bank represented that it has undertaken a multi-year initiative to grow its mortgage loan sales team by continuing to hire experienced mortgage loan officers throughout its footprint, including in the New York-Northern New Jersey-Long Island MMA.

With regard to concerns about TD Bank's overdraft practices, TD Bank confirmed that in April 2016, it implemented a system of processing transactions in chronological order. With respect to allowing transactions on ATM and debit card transactions that cause an overdraft, TD Bank stated that it believes promoting customer choice is preferable to a policy of declining customer transactions. TD Bank stated that in order to ensure that customers make fully informed choices, TD Bank provides customer disclosures regarding all of its products and services. In addition,

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<sup>13</sup> TD Bank provided detail regarding each loan product's pertinent affordability features, including the volume of originations for the period January 1, 2014 to December 31, 2015, in its publicly available response to the OCC's additional information request.

<sup>14</sup> The New York-Northern New Jersey-Long Island MMA includes New York City.

TD Bank stated that it has taken a number of steps to limit the amount of overdraft charges that customers may incur. By way of example, TD Bank represented that as of October 2016, it no longer charges sustained overdraft fees on accounts that remain overdrawn for multiple consecutive days. Further, TD Bank represented that overdrafts less than \$5 will not result in an overdraft fee, and the number of overdraft fees charged in one day is limited to five.

The OCC has carefully considered the commenters' concerns as they relate to the probable effects of the business combination on the convenience and needs of the communities to be served by the resulting institution, and has determined that they are consistent with the approval of this application.

### **B. Request for an Extension of the Comment Period**

One of the commenters requested that the OCC extend the comment period. The standard that the OCC applies to determine whether to extend a public comment period is set forth in 12 CFR 5.10(b)(2), which provides:

The OCC may extend the comment period if: (i) The applicant fails to file all required publically available information on a timely basis to permit review by interested persons or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information; (ii) Any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application; or (iii) The OCC determines that other extenuating circumstances exist.

After careful consideration, the OCC determined not to extend the public comment period. None of the reasons set forth in 12 CFR 5.10(b)(2) as justification for extending the comment period were evident in connection with this application.

### **C. Request for Public Hearing**

One of the commenters requested that the OCC hold a public hearing on the application. The standard that the OCC applies to determine whether to grant or deny a hearing request is set forth in 12 CFR 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.

After careful consideration, the OCC has determined not to hold a public hearing. The OCC has thoroughly reviewed the public comments submitted and is not aware of any reason why these written submissions are insufficient or why a public hearing would be in the public interest.

## **VI. Consummation Requirements**

The OCC Northeastern District Licensing Office must be advised in writing 10 days in advance of the desired effective date of the merger, so that the OCC may issue the necessary certification letter. The effective date must not occur prior to expiration of the Department of Justice's 15 day injunction period and any other required regulatory approvals. The OCC will issue a letter certifying consummation of the merger after it receives the following:

- A Secretary's Certificate for each bank, certifying that a majority of the board of directors has approved the proposed merger.
- A Secretary's Certificate for each bank, certifying that any required shareholder approvals have been obtained.
- Documentation that all other required regulatory approvals have been received.

If the merger is not consummated within six months from the approval date, the approval will automatically terminate unless the OCC grants an extension of time.

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. The OCC may modify, suspend or rescind any portion of this approval if a material change in the information on which the OCC relied occurs prior to the date of the merger. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

Enclosed is a letter requesting your feedback on how we handled your application. We would appreciate your response, so we may improve our service. All correspondence and questions regarding this application should be directed to Wai-Fan Chang, Senior Licensing Analyst, at (212) 790-4055 or by email at [wai-fan.chang@occ.treas.gov](mailto:wai-fan.chang@occ.treas.gov). Please include the OCC control number listed above on any correspondence related to this filing.

Sincerely,

*signed*

Stephen A. Lybarger  
Deputy Comptroller for Licensing

Enclosure