

# PUBLIC SUBMISSION

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Merger Application - TD Bank, National Association and First Horizon Bank (2022-LB-Combination-326132)

**Comment On:** OCC-2022-0010-0001  
Merger Application - TD Bank NA - First Horizon Bank (2022-LB-Combination-326132)

**Document:** OCC-2022-0010-0315  
Comment on FR Doc # N/A

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## Submitter Information

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## General Comment

I work for TD. It is a good organization but something or someone's evil are doing really weird things (e.g. no one takes & replicates the playbook directly from an organization that just got busted and publicly embarrassed like Wells Fargo). But I suspect we are also taking a playbook from worse, Enron. I have reason to suspect (but just figured it out in the last week and a half or so) some accounting fraud and I have submitted an anonymous ethics report via TD's 3rd party ethics reporting system. Please make sure we get to the bottom of this before letting the acquisition proceed. But if we clean up this mess and are extremely transparent please approve the deal then. Deal?

# PUBLIC SUBMISSION

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**Docket:** OCC-2022-0010  
Merger Application - TD Bank, National Association and First Horizon Bank (2022-LB-Combination-326132)

**Comment On:** OCC-2022-0010-0001  
Merger Application - TD Bank NA - First Horizon Bank (2022-LB-Combination-326132)

**Document:** OCC-2022-0010-0321  
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## Submitter Information

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## General Comment

We were Iberia Bank customers before First Horizon Bank absorbed Iberia.

During the website integration from Iberia to FHB, there were inexcusable delays when our money was held and our payments delayed for over a week. Many other former Iberia depositors experienced these delays as well. In essence our money was frozen for over a week. I understand that time is money. And when the bank holds your money longer than it should, it makes money on your money. We don't support one merger on the heels of another.

Furthermore, First Horizon Bank did NOT reach out to us, an actual FHB account holder, a customer of their bank, to make us aware of the opportunity to comment on this proposed bank merger. As we review the 26 comments from my home state of Louisiana, I see that every single one is from a non-profit "partner" thanking the bank for support. While the good work of these agencies is admirable, the similarity of the letters suggests that there was some sort of template provided. FHB likely made these agencies aware of the comment period and provided the wording for the letters. Account holders like myself were left in the dark.

It appears that all 300 plus comments are from non-profits who have benefited from the generosity of First Horizon's donations. Typical phrases seen throughout the individual organizations' comments are:

"please accept this letter of support recognizing the committed partnership we enjoy with the bank"

"I am writing to recognize First Horizon Bank for its committed generosity and support of our organization and its programs"

Our guess is that First Horizon Bank has reached out to all the non-profits they have generously supported and requested a letter of support.

I hope you wonder why you don't hear from individual depositors like ourselves in the comment section.

We only discovered this was possible through a very recent CNN story. We should be hearing of this option to comment on the merger through our bank, First Horizon. Why doesn't First Horizon include a link for comments on their website?

More pointedly, why doesn't The Office of the Comptroller of the Currency require through the Bank Merger Act Application that FHB notify their depositors about the merger comment period.

Public Notice - Section H, page 95 of the Application is, in our opinion, a wholly inadequate way of informing the public of such a huge merger and most importantly the opportunity to comment directly to the OCC.

We believe that you would receive a much more balanced comment section rather than a completely one-sided support of the merger.

We believe that the OCC should require banks seeking to merge alert their depositors to the proposed merger and the corresponding comment period.

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BY E-APPS AND E-MAIL

September 6, 2022

Re: Application by The Toronto-Dominion Bank and its subsidiary Bank Holding Companies to Acquire First Horizon Corporation and for First Horizon Bank to Merge with and into TD Bank, National Association

James W. Corkery  
Assistant Vice President, Supervision,  
Regulation, and Credit  
Federal Reserve Bank of Philadelphia  
Ten Independence Mall  
Philadelphia, Pennsylvania 19106

Jason Almonte  
Director for Large Bank Licensing  
Office of the Comptroller of the Currency  
340 Madison Avenue, Fifth Floor  
New York, New York 10173

Dear Mr. Corkery and Mr. Almonte:

On behalf of The Toronto-Dominion Bank ("TDB"), its subsidiary bank holding companies, TD Group US Holdings LLC ("TDGUS") and TD Bank US Holding Company ("TDBUSH"), and TD Bank, National Association, Wilmington, Delaware, a direct wholly-owned national bank subsidiary of TDBUSH ("TDBNA" and, together with TDB, TDGUS and TDBUSH, "TD"), enclosed please find the response (the "Response") of TD to various written and oral public comments that individuals or organizations have submitted to the Federal Reserve and/or the Office of the Comptroller of the Currency ("OCC") in connection with the applications by TD (the "Applications") to acquire First Horizon Corporation ("FHN") and its subsidiary bank, First Horizon Bank, Memphis, Tennessee ("First Horizon Bank"), through the merger of FHN with a subsidiary of TDBUSH and the merger of First Horizon Bank with and into TDBNA, including during testimony at the public meeting jointly held by the Federal Reserve and OCC on August 18, 2022.

\* \* \*

TD appreciates the opportunity to respond to the comments submitted on the Applications. If you have any questions regarding the Response, please contact me or Lee Meyerson (lmeyerson@stblaw.com).

September 6, 2022

Very truly yours,

*Spencer A. Sloan*

Spencer A. Sloan

Enclosures

cc: Ms. Alison M. Thro  
Federal Reserve Board

Ms. Christina Vito  
Mr. Eddy Hsiao  
Federal Reserve Bank of Philadelphia

Ms. Wai-Fan Chang  
OCC

Ms. Debra Grissom  
Mr. William Cook  
Tennessee Department of Financial Institutions

Mr. Kashif Zaman  
TD



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Dear Mr. Corkery and Mr. Almonte:

This letter provides the response of The Toronto-Dominion Bank ("TDB"), its subsidiary bank holding companies, TD Group US Holdings LLC ("TDGUS") and TD Bank US Holding Company ("TDBUSH"), and TD Bank, National Association, Wilmington, Delaware, a direct wholly-owned national bank subsidiary of TDBUSH ("TDBNA" and, together with TDB, TDGUS and TDBUSH, "TD"), to certain concerns that individuals or organizations have submitted to the Federal Reserve and/or the Office of the Comptroller of the Currency ("OCC") in connection with the applications by TD (the "Applications") to acquire First Horizon Corporation ("FHN") and its subsidiary bank, First Horizon Bank, Memphis, Tennessee ("First Horizon Bank"), through the merger of FHN with a subsidiary of TDBUSH and the merger of First Horizon Bank with and into TDBNA (collectively, the "Proposed Transaction"), including during testimony at the public meeting jointly held by the Federal Reserve and OCC on August 18, 2022 (the "Public Meeting").<sup>1</sup>

TD has provided additional information responsive to the concerns of various commenters in the Applications, the public portions of which are available on the Federal Reserve's and OCC's public websites, and incorporates such information by reference.

TD thrives when the communities it serves thrive. As Leo Salom, TDBNA's President and Chief Executive Officer, noted at the Public Meeting, TD has worked hard to earn the trust of those it serves and the communities in which it operates, and TD is committed to continuing its tradition of service following the Proposed Transaction. This commitment will improve the combined organization's ability to innovate, serve a broader group of customers

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<sup>1</sup> TD requests that the Federal Reserve and OCC consider this response letter as TD's response to any other comment letters submitted by individuals or organizations that are substantively similar to those submitted or distributed to the Applicants as of the date of this response.

and build stronger ties to its communities. In addition, continuing to embrace each bank's commitment to serving its communities will enable the combined organization to maintain its strengths as a lender, an employer and a provider of services to its customers. The following sections address in turn topics raised by certain individuals or organizations at the Public Meeting and/or in recent written comments.

## **I. Community Benefits Plan**

It is essential to TD that the decisions it makes are aligned with needs identified by a diversity of voices and perspectives in its communities. Likewise, TD has been closely collaborating with the National Community Reinvestment Coalition ("NCRC") and its member community groups to develop a deeper understanding of the needs of communities across the footprints of TD and FHN. In recent months senior leadership of TD has participated in listening sessions with the NCRC and its members, hearing from more than 125 community leaders, who have expressed the urgent needs of their respective communities. TD has greatly valued the engagement from such groups and the opportunity to hear more about the priorities of community leaders. TD seeks to be responsive to the needs of the communities of both TD and FHN.

With the benefit of these listening sessions and TD's ongoing community group collaboration, as Mr. Salom stated at the Public Meeting, TD is diligently working to complete an actionable community benefits plan as part of its ongoing growth story in connection with the Proposed Transaction. TD continues to evaluate the ways in which the combined organization will serve the convenience and needs of the communities across its footprint as TD formulates a community benefits plan for the combined organization. However, TD's forthcoming community benefits plan will focus on low- and moderate-income ("LMI") communities and communities of color and is currently expected to include components relating to mortgage lending, small business lending (including lending to small businesses located in LMI communities), access to affordable housing, community development lending and investments, supplier diversity and branch additions in LMI and/or majority-minority communities.

TD is confident that through the Proposed Transaction, the combined organization will be in a stronger position to make the communities it serves better places to live. And, contrary to concerns expressed by certain commenters during the Public Meeting, TD expects to maintain and build on the partnerships that both banks have established with community organizations, leveraging the resources of the combined organization to expand service to communities. To that end, TD is actively working to develop a meaningful community benefits plan that will ensure that the combined organization builds on the extensive legacies of both banks in serving community needs.

## **II. Overdrafts**

Certain commenters have raised concerns with respect to TD's overdraft policies. TD's goal is transparency and customer flexibility in its overdraft policies and practices and has worked diligently to evolve its overdraft services in recent years to meet consumer needs. Well before its August 2020 settlement with the CFPB relating to certain optional overdraft services for customers of its Debit Card Advance product, TD had already voluntarily and proactively implemented enhancements to its overdraft disclosure and enrollment processes beginning in 2014. Currently, TD offers its customers a selection of overdraft services,

including Standard Overdraft Service—which is included in most checking accounts—as well as additional optional coverage under TD’s Debit Card Advance and Savings Overdraft Protection services. These services are valued by customers and help them avoid declined transactions due to insufficient funds. Alternatively, TD also offers a “Decline All” option, which customers can select to have TD decline transactions that would overdraft a customer’s account, in order to minimize the risk of overdrafts. Information regarding overdraft protection options is freely available online and in relevant customer account documentation. And, TD includes additional customer resources on its website, including information to help customers choose the overdraft options that work for their individual banking needs and helpful tips on how to avoid overdraft fees.

TD also offers products and services that mitigate the risk of overdrafts. As part of its “TD Overdraft Relief” initiative, TD recently implemented customer-oriented enhancements to its bank-wide overdraft policies, which will help all TD deposit account customers better manage their accounts, make informed financial choices and avoid potential overdraft fees. For example, in September 2021, TD expanded its product offerings and introduced TD Essential Banking, a low-cost, no-overdraft-fee deposit account that meets the Bank On National Account Standards for low-cost accounts. This new product is ideal for customers who want an everyday bank account without overdraft fees or non-sufficient funds fees and without any minimum daily balance requirements.

In addition to this new account offering, TD launched an updated \$50 overdraft threshold with customers being able to overdraw their account up to \$50 before incurring an overdraft fee. This update follows TD’s previous increase, in September 2021, to its overdraft threshold from \$5 to \$10. Moreover, TD reduced the maximum number of overdraft fees it charges per day from five to three. Through the “TD Cares” program, TDBNA also offered refunds to retail deposit customers of overdraft fees to provide financial relief to customers during the COVID-19 pandemic. Finally, TD also provides alerts and notifications so customers are informed and can take action when their account balances are low—customers are even able to set up custom e-mail alerts through the TD Mobile Banking App and online banking at different account balance levels to help them monitor spending.

TD continues to enhance its overdraft policies and practices and has recently announced additional enhancements to its overdraft services to benefit consumers. Significantly, TD will be eliminating non-sufficient funds fees, the fees assessed when items are not paid due to insufficient funds, for retail checking customers. Additionally, TD will provide customers who overdraw their account by more than \$50 until 11:00 p.m. on the next business day to cure and avoid an overdraft fee. TD will also eliminate the transfer fee for customers using Savings Overdraft Protection services. These enhancements are expected to be deployed later in 2022. Finally, TD is also enhancing its notifications and alerts systems to further aid consumers in monitoring account balance levels—current alerts are triggered after batch processing, but TD will be launching real-time balance threshold alerts in the future.

Although one commenter raised concerns with respect to TD’s overdraft enhancements relative to its peers, TD notes that its elimination of non-sufficient funds fees, its overdraft fee amount, its daily limit on overdraft fees, its threshold before an overdraft fee is charged and its extended grace period for overdraft fees will be generally consistent with—and in many

instances more favorable to consumers than—such policies at other peer institutions once TD’s planned enhancements are implemented.<sup>2</sup>

In the more-than two years since the TD’s CFPB overdraft settlement, TD has continued to seek ways to proactively improve its overdraft policies and product offerings to best serve its retail deposit customers. As a result of TD’s ongoing efforts to evolve its overdraft practices, TD’s collection of overdraft fees has declined accordingly in recent years. For example, between 2019 and 2021, TD’s overdraft fee income decreased by over 15%, and a similar reduction is apparent in TD’s overdraft fee income as a percentage of non-interest income and total income over the same period. Although one commenter claimed that over half of TD’s service charge income is from overdraft and non-sufficient funds fees, TD notes that overdraft fee income did not comprise the majority of its service charge income between 2019 and 2021 and that the percentage of service charge income from overdraft fees also declined materially during such period. Each of these trends have continued into 2022, with continued declines for such metrics through the quarter ending June 30, 2022.

TD’s customer-oriented enhancements to its overdraft services are designed to better support its customers’ long-term financial well-being. TD remains committed to supporting its customers’ financial health and will bring such enhancements to FHN’s customers following the consummation of the Proposed Transaction as TD expands its customer-oriented services to FHN’s communities.

### **III. Mortgage Lending**

TD takes seriously the role it plays in expanding homeownership in all segments of its communities, particularly in LMI and minority communities where societal barriers to homeownership too often make homeownership unobtainable. Certain commenters at the Public Meeting raised concerns alleging racial disparities in TD’s mortgage lending activities, with a focus on Philadelphia and New York. TD strongly disputes any claim that it makes lending decisions or discriminates on any prohibited basis, including an individual’s race.

TD is committed to the spirit and letter of federal and state fair lending laws designed to promote fair and equal access to credit, and has established robust strategies and controls across the first, second and third lines of defense in furtherance of fair lending commitments. TDBNA’s Fair and Responsible Banking Policy articulates the bank’s commitment to treat all consumers fairly, without regard to race, ethnicity, sex or other factors prohibited by fair lending laws and/or bank policy and includes policies and procedures, training for employees and the board of directors, monitoring and testing, as well as vendor management and complaint monitoring to cover full product lifecycles, as discussed in more detail in the Applications.

In 2021, TDBNA moved beyond the traditional risk mitigation approach to fair lending to embrace a strategic planning approach within the first lines of business to address societal barriers to entry faced by traditionally underserved communities. TDBNA’s business strategic planning process was updated to specifically consider and articulate approaches for reaching underserved communities, including through strategic plans developed by TDBNA’s

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<sup>2</sup> Consumer Financial Protection Bureau, *Overdraft/NSF metrics for Top 20 banks based on overdraft/NSF revenue reported* (April 1, 2022).



first line businesses under the advisement of its second line of defense. Accordingly, TD has launched strategic initiatives to proactively address societal barriers faced by underserved communities. These initiatives include offering a wide array of affordable mortgage products as well as undertaking targeted marketing and community engagement efforts encompassing, for example, direct-to-consumer marketing in majority-minority census tracts and an expanded, diverse mortgage workforce focused on supporting minority communities.

TD's commitment to expanding access to homeownership is exemplified by its wide array of targeted home lending products that feature limited down payment requirements and closing costs, as well as credit score expansion. "Right Step", TD's LMI mortgage product, available to LMI customers or for properties located in LMI areas, offers customers substantial savings, flexible options (with down payment as low as 3% for single family homes), and competitive fixed interest rates that provide stability and additional savings. Right Step was enhanced in 2021 to further increase access, with a lower FICO score requirement, expanded debt-to-income ratio and combined loan-to-value ("LTV") eligibility, and a \$500 minimum borrower contribution amount for down payments.

Additionally, in March 2022, TDBNA launched the Home Access Mortgage Product, a Special Purpose Credit Program, which is specifically designed to increase homeownership opportunities in Black and Hispanic communities across several markets within TDBNA's footprint, including Philadelphia and New York. The TD Home Access Mortgage is available for income-eligible applicants in majority Black and Hispanic census tracts and provides prospective buyers with an affordable mortgage option, which includes a \$5,000 lender credit that borrowers can use for closing costs or towards a down payment, and offers more flexibility with greater debt-to-income ratio allowances as well as expanded credit parameters.

TDBNA also works with government agencies to offer affordable mortgage products with low down payment requirements, including for LMI and first-time borrowers. These affordable mortgage products include:

- HomeReady: TD participates in the HomeReady loan program backed by Fannie Mae, which allows income-eligible borrowers to qualify for a home loan with as little as a 3% down payment.
- FNMA 97 Mortgage: TDBNA offers 97% LTV mortgage loans sponsored by Fannie Mae in order to expand credit and support homeownership by specifically targeting first-time homebuyers.
- FHA Mortgage: TDBNA offers 30-year fixed rate mortgage loans sponsored by the Federal Housing Administration that feature a minimum down payment requirement as low as 3.5% and reduced credit score requirements.
- VA Mortgage: TDBNA provides 30-year fixed rate mortgage loans sponsored by the Department of Veterans Affairs with no down payment requirement in order to expand homeownership among veterans.
- USDA Rural Development: TDBNA offers mortgage loans under the U.S. Department of Agriculture's Rural Development program for income-eligible borrowers that feature no down payment requirement in order to expand access to homeownership in rural areas.

In addition to its affordable mortgage products, TD is committed to providing resources to help expand homeownership in underserved communities. TD provides extensive informational resources available freely online, by phone or in person at its branches to educate prospective homebuyers about the mortgage application process as well as to help such prospective homebuyers find affordable mortgage products that fit their needs.

As noted above, TD is also focusing on a variety of marketing and community engagement efforts for minority borrowers, including in Philadelphia and New York, as part of TD's ongoing efforts to support homeownership in all segments of its communities. These efforts include:

- Direct Marketing: Regular direct-to-consumer campaigns promote pre-qualified offers within Black and Hispanic census tracts. These include both direct mail and email solicitations. To date, almost 2 million solicitations have gone out in Philadelphia and New York.
- Improved Digital Support: Affordable mortgage options, including TD's new Home Access Mortgage described above, are presented on TD.com allowing borrowers to better educate themselves on their borrowing options.
- Improved Mortgage Loan Officer Coverage: TD is investing in the development of a racially and ethnically diverse mortgage workforce to serve its communities. Accordingly, TD is significantly expanding the number of community mortgage loan officers, who are focused on first-time homebuyers, and mortgage loan officers in key markets across TD's footprint, with a focus on minority markets, to ensure that its workforce reflects the market segments that TD serves. TD is increasing its number of mortgage loan officers by 40%, including increasing its number of mortgage loan officers by 71% in Philadelphia and by 36% in New York. And, in 2022, the number of diverse mortgage loan officers at TD has grown by 86%.
- Branch Model Improvements: In May 2022, TD moved to a new Consumer Direct Model allowing customers in branches to be immediately supported by a loan officer.
- Branch Engagement & Training: Additional training, with a focus on affordable mortgage offers, has been supplied to TD branches supporting minority markets. And TD continues to invest in training programs for its community and mortgage loan officers, creating responsible, knowledgeable subject matter experts.
- Strategic Partnerships: TDBNA creates and fosters strategic partnerships with minority trade organizations—such as the National Association of Real Estate Brokers, the National Association of Hispanic Real Estate Professionals, and the Asian Real Estate Association of America—to advance shared goals.

In response to certain commenters' specific claims alleging racial disparities in mortgage lending activities nationwide and specifically in Philadelphia and New York state, TD notes that credit decisions are based on credit underwriting factors for each individual customer, such as income, debt level, credit score and other established and industry-standard factors, not on factors such as race or ethnicity. Additionally, based on its review of available mortgage lending data, including Home Mortgage Disclosure Act ("HMDA") data, TD notes

that a number of claims made by such commenters are not accurate or require additional context to be correctly interpreted.

For example, one commenter claimed that TD was less likely to approve a mortgage for a high-income Black applicant than a low-income white applicant in Philadelphia over the last three years. However, based on TD's review of available data within the Philadelphia metropolitan statistical area from 2018 to 2020 and contrary to such assertion, TD approved 36% of applications from high-income Black applicants, compared to 25% of applications from low-income white applicants. The commenter also claimed that TD had a 46% approval rate for Black applicants seeking purchase money loans and a 22% approval rate for Black applicants seeking refinance loans. However, TD's approval rate for Black applicants seeking purchase money loans (56%) and approval rate for Black applicants seeking refinance loans (38%) from 2019 to 2021 were each significantly greater than the rates claimed by such commenter. Finally, in response to the commenter's assertions regarding disparities in TD's mortgage loan originations in minority communities between 2018 and 2020, TD notes that more recent data shows significant growth in TD's mortgage loan originations among minority borrowers. Due to marketing and community engagement activities, including those supporting minority lending across Philadelphia, TD achieved a year-over-year increase of 42% in its mortgage loan originations to minority borrowers in Philadelphia in the first half of 2022 as compared to the first half of 2021.

Another commenter made assertions relating to TD's mortgage loan originations and denials for Black applicants both nationally and in New York in 2020 and 2021. In response, TD notes that the mortgage loan origination and denial figures cited by such commenter require additional context. Specifically, the mortgage loan origination and denial numbers cited by the commenter incorrectly suggest that TD denied a greater proportion of mortgage applications than it did, since such data do not include mortgage loan applications that were approved by TD but not accepted by the applicant, nor do they include applications which were voluntarily withdrawn by the applicant.

Additional information regarding TD's fair lending compliance framework and mortgage lending activities is provided in the Applications.

#### **IV. Branches and Digital Offerings**

Certain commenters raised concerns regarding access to branches. TD is America's Most Convenient Bank and strives to live up to that brand promise every day. By serving the needs of its communities through its branch network and other channels, TD will ensure the Proposed Transaction will bring substantial benefits to the customers and communities currently served by both banks. TDBNA operates an extensive network of approximately 1,160 branches and 2,700 ATMs throughout its communities. TD's extensive branch and ATM network provide the longest hours in its markets and "Always-On" customer service (including through call centers and 24-hour online and mobile support). Moreover, TD's "OneTD" model (which eliminates banking silos and provides a one-stop shopping experience for all consumer and business customers) provides the feel and customer-oriented approach of a local community bank, supported by the technology and resources of a top-ten U.S. banking organization. TDBNA's customer-facing retail and commercial employees have direct interaction with consumers and businesses to build an understanding of local needs.

While many consumers now bank online for daily transactions, TD knows that physical banking locations are critical in many communities, including LMI communities and communities of color. Accordingly, TD reiterates, consistent with its message since the day the Proposed Transaction was announced, that no First Horizon Bank branch closures are planned as a result of the Proposed Transaction. Moreover, during the next five years, 20 to 25 of the combined organization's new branch locations are expected to be in LMI and/or majority-minority communities. TD will also bring its extended branch hours to First Horizon Bank communities to allow more customers to conduct their banking when it is convenient for them. In many places, branches are also expected to be open 7 days a week, providing additional flexibility for the combined organization's customers. Finally, TD is also introducing advice centers in many branches, including in LMI communities, where customers can conduct transactions and receive insights on different account types, investment options, mortgages and other products and services. For example, earlier this year TD opened new advice centers in LMI communities in East Boston, Massachusetts and North Charleston, South Carolina.

Convenience means that customers can bank where and when they choose. TD understands that customer behavior has evolved greatly, as more customers are migrating quickly to online and digital-based products and services. Digital engagement is another way to reach underserved communities and underscores TD's commitment to bringing financial access and inclusion to all segments of society. Accordingly, TD has enhanced its digital banking experience for consumers and businesses by offering online account opening, remote deposits, the ability to receive real-time payments, card lock/unlock features, password security services and curbside debit card delivery.

In recent years, TD has also amplified its efforts to help people from all walks of life improve their money skills through its digital resources. For example, financial tips and tools are available to all U.S. TD Mobile Banking App users through the "TD for Me" feature. Similarly, employees can send customers SMS text messages directing them to financial education information relevant to the customer's interest and needs. And, TD has established the TD Bank Learning Center ("TDBLC"), which offers a variety of learning modules, including topics on mortgages, credit scores and reports, elder fraud prevention, identity theft and small business and delivers online, interactive financial education content in English and Spanish. In April 2020 in response to COVID-19, TDBLC added new content, including modules on mortgage relief, budgeting and mindful living. In TDBNA's branches, employees use tablets to take customers to the TDBLC, combining just-in-time financial education with personal financial advice. As a result of the Proposed Transaction, TD expects to offer its extensive suite of digital banking tools to more customers. The Proposed Transaction will also provide the combined organization with greater financial resources to invest in customer product enhancements and technology for further client experience improvements.

Additional information regarding TD's branch network and digital offerings is provided in the Applications.

## **V. Community Development Lending & Investment**

Some commenters expressed concerns regarding future community development lending and investment activities following the Proposed Acquisition. TD notes that it continually reviews opportunities to deploy capital that can lead to successful economic

development, job creation, community revitalization and support for the development or retention of affordable housing. At this time, TD has not identified any community development lending, investment, or service activities of either bank that it expects to discontinue after the Proposed Transaction. To the contrary, TD fully expects to leverage the strengths of both banks to bolster community development lending, investments and service activities in the banks' combined footprint. And, FHN has committed to contribute \$40.0 million upon the closing of the Proposed Transaction to a new charitable foundation that it will establish to focus on community support in the Memphis, Tennessee metro area and other markets in which First Horizon Bank currently operates. Accordingly, the Proposed Transaction will provide greater opportunities for the combined organization to invest in the growth of the communities it serves.

TD recognizes its critical role in deploying its resources—including its people and capital—across its footprint to strengthen the economic and social well-being of individuals, families, businesses and communities. One way TD approaches this role is through employing its capital for community development financings to improve lives and create economic opportunities in underserved communities. TDBNA invests in the communities it serves by, among other ways, providing community development loans and services, low-income housing tax credit (“LIHTC”) and New Markets tax credit (“NMTC”) financing, investing in multi-family affordable housing and area economic development bonds, purchasing CRA-qualified Fannie Mae mortgage-backed securities and providing equity-equivalent investments to local non-profit organizations serving identified community needs.

Notably, in June 2021, TD announced the establishment of a \$105 million equity fund in support of minority-owned small businesses, demonstrating its continued commitment to combat racial inequities and provide opportunity in underserved communities. Of this equity fund capital, \$75 million will be funded through a Specialized Small Business Investment Company (“SSBIC”) initiative. SSBICs provide financial assistance to disadvantaged businesses that are minority-owned, women-owned or are in areas of need. In addition, \$30 million will be specifically earmarked for Black- and Latinx-owned small businesses, funded through Community Development Financial Institutions (“CDFIs”), which are notably skilled in helping businesses in communities of color secure financing. To date, TD has funded investments in 7 CDFIs and has a growing pipeline of support. Additionally, as an allocation winner from the U.S. Treasury, the TD Community Development Corporation has also allocated NMTC to approximately 40 projects to revitalize low-income neighborhoods, helping to create 12,600 jobs among other positive impacts.

TD also provides significant financing to support new construction and rehabilitation of affordable housing for LMI families, individuals and elderly residents. During calendar year 2021, TDBNA contributed \$740 million in loans to help develop or preserve affordable housing in LMI and underserved communities. For example, TD Bank is funding construction of an affordable housing complex in Paterson, New Jersey, with a \$25 million financing package that includes a \$13.2 million construction loan and \$12 million in tax-credit equity. The building is sponsored by two local non-profit agencies and St. Joseph's University Medical Center, and is the first project in New Jersey that will pair health services with housing in an innovative new model that will serve residents who are frequent users of hospital services. More recently, in June 2022, TD announced a \$28 million loan to Dantes Partners, the Delta Housing Corporation of D.C. and Gilbane Development Company for the complete renovation of a multi-housing community located in a rapidly evolving Washington, D.C.

neighborhood to provide greatly needed affordable rental housing for local working and middle-class families. Additionally, in July 2022, TD announced \$22 million in construction financing to redevelop William Barton Rogers Middle School in the Hyde Park neighborhood of Boston into 74 units of safe and accessible mixed-income housing for all seniors, including LGBTQ seniors, in partnership with Pennrose, one of the largest affordable housing developers in the country, and LGBTQ Senior Housing, Inc., a local non-profit that will work with the community to identify LGBTQ residents for the new development.

Finally, TD also uses its philanthropy to address the need for affordable housing by applying grants directly to local organizations. TD's annual Housing for Everyone grant program helps to build, maintain and renovate affordable housing units and eliminate housing needs. Over the last 16 years, TD has provided more than \$42 million to 500 organizations making an impact in their communities. One recipient for a 2021 grant was Homes of Hope in South Carolina, to support a program to help its clients improve their economic stability through job or educational training and more. Housing for Everyone also enabled HomeFront in Trenton, New Jersey, to hire four new case managers to address increased local needs for eviction prevention, emergency housing and other services in response to the pandemic.

Additional information regarding TD's and FHN's community development lending and investment activities is provided in the Applications.

## **VI. Inclusive Products and Services**

Certain commenters expressed concern regarding the impact of the Proposed Transaction on access to financial services and products for consumers and small businesses. The Proposed Transaction will benefit consumers through expanded access to affordable products and services, including products and services for the underbanked and for small businesses. TD continues to evaluate the products and services offered by TDBNA and First Horizon Bank to assess the similarities and differences between each bank's product groups and final decisions regarding the retention of First Horizon Bank product offerings remain subject to these ongoing diligence efforts. However, TD expects that TDBNA will offer its complete portfolio of products and services in all of First Horizon Bank's markets, thereby allowing First Horizon Bank's customers to benefit from TDBNA's inclusive products and services aimed to support all customers' long-term financial well-being.

TD takes its role of supporting people from all walks of life very seriously. In addition to making significant investments in community projects, programs and initiatives, TD's financial inclusion strategy seeks to provide individuals and businesses with access to useful and affordable financial products and services that meet their needs, delivered in a responsible and sustainable way. TD aims to empower its customers through products, services and tools that can help improve access to financial services and help build financial confidence and stability.

TD's products are designed to be inclusive and accessible, and TD has an "open access" model for helping customers join the mainstream banking system. For example, all TD deposit products are offered with no credit checks; no minimum opening deposits; free instant issue debit card, and free access to online banking and statements, bill pay, and direct deposit. TDBNA also opens personal accounts regardless of whether a person is unemployed or is or has been bankrupt, subject to required conditions. These features help reduce barriers to financial services, particularly for vulnerable populations. TD is also committed to

providing additional account options designed to meet the needs of customers, including the unbanked or underbanked, in more communities. As mentioned above, TD recently introduced a low-cost, no-overdraft-fee deposit account—TD Essential Banking—to help its customers establish a more secure, inclusive and sustainable financial future for themselves, their families and their communities. Other affordable retail banking products include TD’s Convenience Checking account, which comes with no minimum balance requirements and no monthly maintenance fees for students and young adults ages 17 through 23, and the TD 60 Plus Checking Account for customers who are 60 years or older, which allows customers to earn interest while keeping a lower minimum daily balance to avoid a monthly fee.

TDBNA also offers affordable consumer loan products that help provide underserved communities with mainstream financial services and products. These products include TD’s wide array of affordable home mortgage products discussed above, as well as home equity loans, with a low minimum loan amount of \$10,000 and a low fixed rate with terms from 5 to 30 years. TD also offers the TD Cash Secured Credit Card, a credit card with a low deposit requirement (which was recently reduced from \$500 to \$300 for increased access) that allows customers who may not otherwise qualify for a credit card to build or rebuild their credit.

TD also understands the important role small businesses play in local and national economies and is committed to helping them grow and overcome financial challenges through TD’s convenient banking model and effective business solutions. That’s why TDBNA works to become a trusted business partner and help its small business customers achieve their business and personal goals. For example, TD knows that for many small businesses, particularly those owned by women and/or minorities, access to capital remains one of the greatest challenges. To increase access to credit for small businesses, TDBNA’s core small business loan products have been optimized for small business customers, and TD’s average small business loan is approximately \$127,000. TDBNA fully leverages Small Business Administration (“SBA”) products (7a and Express Loans) in the credit center and they are embedded into TDBNA’s core underwriting function. As an SBA preferred lender, TDBNA was one of the SBA’s top participants in the Paycheck Protection Program.

Moreover, through TDBNA’s digital and mobile tools, small business customers can manage their finances, learn new skills and apply for new solutions. For example, TD built and launched a customized digital PPP application and rapidly trained and cross-trained employees to evaluate and process applications. Moreover, in mid-2018, TDBNA launched the Digital Application for Small Business for borrowing requests of up to \$100,000, which allows customers to apply for loans when doing so is most convenient (even after business hours or on weekends). TDBNA also launched TD Online Accounting to provide a convenient, integrated payment and accounting experience for its small and closely held business customers to conduct banking and bookkeeping activities through TD’s Small Business Online Banking platform. As a result of TD’s efforts, TDBNA recently announced that it ranked No. 1 for the fifth consecutive year in total number of approved SBA loan units in its footprint for the SBA’s 2021 fiscal year, and TD also ranked highest in Small Business Banking in the South by J.D. Power in 2021.

TD is also committed to supporting small business through its support of microfinance organizations. For example, TDBNA works with Ascendus (formerly Accion), a nationwide non-profit CDFI, by referring potential clients who opt in to Ascendus to meet their credit needs when TDBNA small business loan products are not able to provide the correct fit.

Additionally, as the recipient of a \$100,000 grant from the TD Charitable Foundation (the “Foundation”), in 2021, the Black Business Capital Financing Corporation (“BBCFC”) supported more than 200 Black business owners in creating continuity plans and accessing capital at the height of the pandemic. To support these business owners, BBCFC helped prepare PPP applications and created business continuity and sustainability plans, while managing an expanded loan pool for those businesses ineligible for government relief. As a result, BBCFC helped those businesses retain more than 1,300 jobs throughout the state of Florida. Finally, in recent months the Carolina Small Business Development Fund (“CSBDF”) was awarded a grant from the Foundation to support its efforts to promote Latino entrepreneurship. CSBDF provides access to low-cost capital and bilingual technical assistance to help small businesses overcome barriers to success.

Additional information regarding TD’s and FHN’s inclusive and affordable product offerings is provided in the Applications.

## **VII. Financial Stability**

Certain commenters argued that the federal banking agencies should undertake a more robust review of financial stability risks when evaluating proposed bank mergers. However, as discussed further in the Applications, the Proposed Transaction would not result in greater or more concentrated risks to the stability of the U.S. financial system, and would not result in any significant increase in any of the metrics used by federal banking agencies to evaluate the systemic footprint of the combined organization.

In particular, although the Proposed Transaction would increase the size of TD’s operations, the combined organization’s “size” systemic indicator score, as calculated under the Method 1 and Method 2 GSIB surcharge scoring methodologies of Subpart H of the Board’s Regulation Q, would increase by only two points under Method 1 and four points under Method 2, each as compared to TDGUS’s systemic indicator scores as of December 31, 2021. Accordingly, the size of the resulting organization would not pose any separate discernible or increased risk to the financial stability of the U.S. financial system.

Moreover, neither TD nor FHN engages in complex activities, such as being a core clearing and settlement organization for critical financial markets, which might complicate the resolution process by increasing the complexity, costs or timeframes involved in a resolution, and the Proposed Transaction does not involve the acquisition or assumption of complex assets or liabilities. And, TD does not currently, and would not as a result of the Proposed Transaction, engage in business activities or participate in markets to a degree that would pose significant risk to other institutions, in the event of financial distress of the combined organization. In addition, TD and its subsidiary depository institutions have complied with applicable resolution planning requirements and have satisfactorily demonstrated to their U.S. banking regulators that they have adequately assessed any challenges that their structures and business activities pose to an orderly resolution.

Finally, in the Federal Reserve’s most recent supervisory stress tests in June 2022, TD demonstrated that even under hypothetical severely adverse conditions, the capital ratios of TDGUS would remain significantly above the regulatory minimum levels, demonstrating the resiliency of its balance sheet and its strong credit risk and asset liability management practices. Rather than posing financial stability concerns, the Proposed Transaction is expected to provide financial stability benefits by enhancing TD’s financial position, as the



combined organization will maintain TD's strong capital and liquidity position but with a more diversified geographic footprint and product offering.

Certain commenters also raised concerns regarding the impact that TD's recently announced agreement to acquire Cowen Inc. ("Cowen") may have on the ability to successfully integrate FHN with TD and on the combined organization's resulting systemic risk profile. TD has carefully examined the acquisition and integration of Cowen and does not expect the Cowen transaction to have an effect on the Proposed Transaction, particularly given the segregated nature of the Cowen and FHN businesses. TD also has ample financial and managerial resources to successfully consummate the proposed acquisition of Cowen and to integrate Cowen into TD, in addition to the Proposed Transaction. Likewise, TD has set up two integration teams in connection with these transactions, one for FHN and one for Cowen, and TD notes that TDBNA is not involved in the proposed acquisition or integration of Cowen. To the extent any common resources are needed for the respective integration processes, TD is managing such commonalities by ensuring strong lines of communication between the two integration teams and supplementing resources to support integration teams where necessary. Accordingly, with respect to potential impacts on clients, TD is comfortable that there is minimal overlap from an integration perspective, and any work being done to integrate the capital markets platforms into TD Securities can be managed independently from the core banking platforms. Finally, TD does not anticipate the proposed acquisition of Cowen to materially alter the complexity or resolvability of the combined organization.

### **VIII. Competition**

Contrary to certain concerns expressed by commenters regarding the competitive effects of the Proposed Transaction, the Proposed Transaction would not have adverse competitive effects or result in decreased competition within the United States. As discussed more extensively in the Applications, the existing branch banking operations of TDBNA and First Horizon Bank overlap in only 16 Federal Reserve banking markets. In each of those overlapping markets, the resulting Herfindahl-Hirschman Index ("HHI") and change in HHI after the Proposed Transaction would be well within the 1800/200 HHI "safe harbor" provided under the DOJ Bank Merger Competitive Review guidelines, and the pro forma deposit market share would be well below 35%, even before giving effect to competitive non-bank depository participants, such as thrifts and credit unions. Although one commenter raised concerns with respect to the HHIs in Houston and Dallas, TDBNA and First Horizon Bank do not currently have overlapping branch banking operations in Texas, and therefore the level of competition in such markets would not be impacted by the Proposed Transaction.

Rather than reducing competition, the Proposed Transaction promotes competition in the relevant markets because it will make the combined organization stronger and more competitive. The Proposed Transaction would allow the combined organization to compete more effectively against market leaders, as the Proposed Transaction will result in a combined company with a strong and resilient capital base and liquidity position, with greater financial resources to invest in customer product enhancements and technology for client experience improvements, as well as long-term investments in the communities and customers of both organizations.

\* \* \*

TD appreciates the opportunity to respond to testimony at the Public Meeting and to the comment letters submitted on the Applications. If you have any questions regarding this response, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Shelley R. Silva". The signature is written in a cursive, flowing style.

Shelley Sylva  
Head of U.S. Corporate Citizenship