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Comptroller of the Currency  
Administrator of National Banks

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Large Bank Licensing  
250 E Street, SW  
Washington, DC 20219

**CRA Decision #150**  
**October 2012**

August 15, 2012

Ms. Regina Nappi  
Senior Vice President/Senior Counsel  
TD Bank, National Association  
75 John Roberts Road, Building A  
South Portland, Maine 04106

RE: Application by TD Bank, National Association, Wilmington, Delaware, for approval to  
establish a branch in Miami, Florida  
Control No.: 2012 NE 05 0068

Charter No.: 24096

Dear Ms. Nappi:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the proposal by TD Bank, National Association to establish a branch at 6601 South Dixie Highway, Miami, Dade County, Florida. This approval is granted based on a thorough review of all information available, including the representations and commitments made in the application and by the bank’s representatives.

#### Community Reinvestment Act

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the record of the institution’s performance in helping to meet the credit needs of its communities, including low- and moderate-income (“LMI”) neighborhoods, when evaluating branch applications. The OCC considered the CRA Performance Evaluation (“PE”) of TD Bank in the approval of this branch application.

TD Bank’s most recent PE, dated December 31, 2011, and issued by the OCC, assigned the bank an overall “Outstanding” rating under the large bank performance test. Among the major factors supporting the rating were: (i) excellent overall lending performance, with an excellent distribution of loans by income level of the borrower, excellent lending activity, and an excellent level of community development lending, as well as an adequate geographic distribution of loans; (ii) excellent overall community development investment performance throughout the bank’s assessment areas; and (iii) a branch network accessible to geographies and individuals of different income levels in the bank’s assessment areas, as well as a good level of community development services in all rating areas.

The OCC considers an institution's record of complying with the laws relating to discrimination and other illegal credit practices as part of its lending performance. The OCC may lower an institution's overall CRA rating if evidence of discrimination or illegal credit practices is found, by the bank in any geography, or by any affiliate in an assessment area whose loans were considered as part of the bank's lending performance. During this examination cycle, the OCC's examiners did not identify evidence of discriminatory or other illegal credit practices with regard to those statutes over which the OCC has primary supervisory and enforcement authority.

Section 1025 of the Dodd-Frank Wall Street Reform and Consumer Protection Act assigns to the Consumer Financial Protection Bureau ("CFPB") exclusive examination authority, and primary enforcement authority, to ensure compliance by banks and federal savings associations ("FSAs") with Federal consumer financial laws, if the bank or FSA has more than \$10 billion in assets. The CFPB has not provided the OCC with any information about, or other evidence of, discriminatory or other illegal credit practices relative to this institution with respect to the Federal consumer financial laws.

### Comment Letter

The OCC received one letter from the public commenting on this branch application. The comment letter raises concerns with TD Bank's mortgage lending practices resulting from its representation that it sent "testers" to four different TD Bank branches in the Orlando metropolitan area during 2011 and 2012. According to the commenter, the testing identified a pattern of inadequate training and supervision of employees involved in mortgage lending, which, the comment asserted, sometimes translated into providing inferior services to potential borrowers who were African American as compared to similarly situated white borrowers. The comment letter does not identify which TD Bank employees allegedly treated its testers differently or the specific branches at which its testing occurred.

In addition, the commenter indicates that, based on its own (undated) HMDA analysis, there is room for TD Bank to improve its market penetrations to African American and Hispanic borrowers.

The commenter represents that it had a conference call with TD Bank representatives on June 4, 2012, and received a follow-up letter on June 5, 2012, in which TD Bank indicated that it was beginning a new training initiative to all platform and teller staff in its eleven Orlando area branch offices to be completed by July 20, 2012, to address the concerns raised by the commenter. The commenter urges the OCC to examine the bank's fair lending training materials closely to ensure that such training will provide enough guidance to the bank's personnel to ensure equal treatment of customers. The commenter also urges TD Bank to initiate a self-testing and compliance program to measure the success of their training.

TD Bank's response letter dated June 20, 2012, indicates that it does not disagree that there is room for improvement in market penetration to African American and Hispanic borrowers. However, TD Bank represents that the conclusions of the commenter are not indicative of TD Bank's commitment to fair and responsible lending.<sup>1</sup> TD Bank represents that its presence in

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<sup>1</sup> TD Bank notes that the 2010 HMDA data are the most recent publicly-available data on its mortgage lending.

the Orlando MSA dates only from its acquisition in April 2010 of three failed Florida-based banks in a transaction assisted by the Federal Deposit Insurance Corporation. TD Bank represents that it did not begin mortgage lending through its own Orlando branches until February 2011, and the 2010 HMDA data represents applications received through the internet, by telephone, or via the mortgage loan officers at the acquired banks. TD Bank further represents that since it established a presence in the Orlando area, it has worked to grow its mortgage platform and increase its penetration to minority individuals, working closely with several local community organizations to reach potential African American and Hispanic mortgage loan applicants and borrowers, including the Central Florida Urban League, Golden Rule, Reliable Business Solutions, and Hands of Central Florida.

TD Bank represents that it is fully committed to the principles of fair lending and to treating all prospective and existing customers fairly and equitably. The bank's mortgage lending programs include fair lending policies and product guides, testing of the integrity of its HMDA data, and ongoing fair lending training for employees with the following additional enhancements.

Shortly after receiving the comment letter and discussing the concerns with the commenter, TD Bank began a five week retraining commitment as a first step in reviewing and enhancing its fair lending practices and procedures specifically in its eleven Orlando-area branch offices. Other steps planned include several additional education endeavors as well as the implementation of a self-testing and review process to determine the ongoing effectiveness of the bank's training efforts.

As part of our consideration of this branch application, the OCC has reviewed and taken into account the commenter's concerns and TD Bank's steps to address them. The OCC will assess the bank's responsive steps as part of our ongoing supervision.

#### Branch Approval

Based on this review, I determined that approval is consistent with the relevant statutory factors set forth in 12 USC 36(c), and with the Community Reinvestment Act, the National Historic Preservation Act, and the National Environmental Policy Act.

This letter is also the OCC's authorization for the bank to establish Branch No. 153814A, to be located at the above address, and to be known as the "South Miami Store" branch.

Within 10 days after opening, the bank must advise this office in writing of the branch opening date, and confirm its popular name, so the OCC may complete its records. If the branch is not opened within 18 months from this approval date, the approval automatically terminates, unless the OCC grants an extension.

If the branch is subsequently closed, please be guided by the branch closing notice requirements in 12 USC 1831r-1, and the "Branch Closing" booklet found in *the Comptroller's Licensing Manual*.

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.

If you have any questions, please contact Karen M. Cervera, Licensing Applications Technician, at (212) 790-4055.

Sincerely,

*Stephen A. Lybarger*

Stephen A. Lybarger  
Deputy Comptroller for Licensing