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BY E-APPS April 29, 2022

Re: Response to Request for Additional Information Regarding Application by The Toronto-Dominion Bank and its subsidiary Bank Holding Companies to Acquire First Horizon Corporation

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

Dear Mr. Corkery:

On behalf of The Toronto-Dominion Bank ("TDB") and its subsidiary bank holding companies, TD Group US Holdings LLC ("TDGUS") and TD Bank US Holding Company ("TDBUSH" and, together with TDB and TDGUS, "TD" or the "Applicant"), enclosed please find a response (the "Response Submission") to the letter dated April 19, 2022, from Federal Reserve Bank of Philadelphia ("Reserve Bank"), requesting additional information on the application by the Applicant to acquire First Horizon Corporation ("FHN") and its subsidiary bank, First Horizon Bank, Memphis, Tennessee, through the merger of FHN with a subsidiary of TDBUSH, pursuant to Section 3(a) of the Bank Holding Company Act of 1956, as amended (the "BHC Act"), and Sections 225.11 and 225.15 of Regulation Y thereunder.

The Response Submission is divided into a non-confidential portion and a confidential portion. For the confidential portion, which has been marked "Confidential Treatment Requested," Applicant respectfully requests confidential treatment pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b), and the Board of Governors of the Federal Reserve System's ("Board") regulations thereunder, 12 C.F.R. Part 261 (collectively, "FOIA"), on the grounds that the information contained in the confidential portion has been actually and customarily kept confidential by the Applicant and, where relevant, FHN, and this information is being provided to the Board and the Reserve Bank under an assurance and expectation of privacy.[1] Disclosure of this information would reveal to competitors the internal strategies, transactions, and competitive position of the Applicant and, where

[1] *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2363 and 2366 (2019).

relevant, FHN, and would place the Applicant and FHN at a competitive disadvantage with respect to competitors who do not publicly reveal such information. Accordingly, we respectfully request that the confidential portion not be made available for public inspection or copying. In addition, we request that any memoranda, notes, or other writings of any kind whatsoever by an employee, agent, or other person under the control of the Board or the Reserve Bank that incorporate, include, or relate to any of the matters referred to in the confidential portion not be made part of any public record and not be disclosed to any person.

In the event of a FOIA request, we respectfully request notice of such request, as well as a reasonable period of time to respond prior to any release of materials by Board staff or Reserve Bank staff. This request for notice and an opportunity to respond also extends in the case of any part of the confidential portion (including any such memoranda, notes, or other writings by Board staff or Reserve Bank staff) being the subject of a FOIA request or a request or demand for disclosure by any governmental agency, Congressional office or committee, court, or grand jury.

* * *

If you have any questions regarding this Application, please contact me, Lee Meyerson (lmeyerson@stblaw.com) or Spencer Sloan (spencer.sloan@stblaw.com).

Very truly yours,

Adam J. Cohen

Adam J. Cohen

Enclosures

cc: Ms. Alison M. Thro
Board – Legal

Ms. Christina Vito
Mr. Eddy Hsiao
Reserve Bank

Ms. Ellen Glaessner
TD

Mr. Stephen Salley
Mr. Patrick Lynch
Mr. Bradford Olson
Sullivan & Cromwell

RESPONSE SUBMISSION OF THE TORONTO-DOMINION BANK

and its subsidiary bank holding companies

to the

REQUEST FOR ADDITIONAL INFORMATION OF APRIL 19, 2022

from the

FEDERAL RESERVE BANK OF PHILADELPHIA

relating to the proposal to acquire

FIRST HORIZON CORPORATION

April 29, 2022

Submission in Response to the Request for Information dated April 19, 2022
("Response Submission")[1]
April 29, 2022

Each item contained in the Request for Information dated April 19, 2022 is repeated below, followed by TD's response.

1. **Provide revised pro forma financial statements for TDGUS (parent-only balance sheet and consolidated balance sheet and capital ratios), TDBUSH (parent-only balance sheet), and TD Bank, National Association ("TD Bank"), Wilmington, Delaware (balance sheet and capital ratios), for the most recent quarter-end. Include detailed explanatory footnotes.**

The information requested by this Item 1 will be provided to the Board on a supplemental basis when available, which TD expects will occur shortly after all of the relevant financial statements for the first quarter of 2022 become available.

2. **Provide the calculation of the pro forma goodwill resulting from the proposed transaction. Discuss in detail how each line item in the goodwill calculation was determined.**

The information requested by this Item 2 will be provided to the Board on a supplemental basis when available, which TD expects will occur shortly after all of the relevant financial statements for the first quarter of 2022 become available.

3. **Provide actual and pro forma asset quality ratios (the classified ratio and the nonperforming assets ratio) for TDGUS on a consolidated basis and the resultant merged bank as of the most recent quarter end. The numerator and denominator of each calculated ratio must be as of the same date. The asset quality ratios should be calculated as follows, with supporting details of the calculations:**

    a. **Provide two separate elements: (i) internally classified assets, comprised of the separate categories of substandard, doubtful, and loss (with relevant components of other real estate owned ("OREO") separately identified in each category), and (ii) nonperforming assets, comprised of nonaccrual loans, all restructured loans, and OREO.**

    b. **Provide a breakdown of each category (for example, commercial real estate, oil and gas, consumer loans) of internally classified assets and nonperforming assets.**

[1] Capitalized terms used but not defined herein have the meanings set forth in the Application to the Board of Governors of the Federal Reserve System pursuant to Section 3 of the Bank Holding Company Act, dated March 21, 2022, relating to TD's proposed acquisition of First Horizon Corporation (the "Application").

c. **For the classified assets ratio, the level of classified assets should be compared to the total amount of tier 1 capital and allowance for loan loss reserves.**

d. **For the nonperforming assets ratio, the level of nonperforming assets should be compared to the total equity capital (common stock, perpetual preferred stock, surplus, retained earnings accumulated other comprehensive income) and the allowance for loan loss reserves.**

The information requested by this Item 3 will be provided to the Board on a supplemental basis when available, which TD expects will occur shortly after all of the relevant financial statements for the first quarter of 2022 become available.

4. **Provide actual and pro forma loan loss reserve coverage ratios for TDGUS on a consolidated basis and the resultant merged bank as of the most recent quarter end. The coverage ratios should be calculated as follows, with supporting details of the calculations:**

   a. **For the consolidated applicant, for the numerator use the total allowance for loan loss reserves and for the denominator use nonaccrual loans and loans past due more than 90 days.**

   b. **For the target bank, and/or the resultant merged bank, for the numerator use the total allowance for loan loss reserves and for the denominator use nonaccrual loans.**

The information requested by this Item 4 will be provided to the Board on a supplemental basis when available, which TD expects will occur shortly after all of the relevant financial statements for the first quarter of 2022 become available.

5. **Provide the parent-only balance sheet for each of the Applicants that reflects the accounting entries for the payment of funds for the purchase of common stock from the First Horizon shareholders.**

The information requested by this Item 5 will be provided to the Board on a supplemental basis when available, which TD expects will occur shortly after all of the relevant financial statements for the first quarter of 2022 become available.

6. **Discuss the reason(s) that led to TDBUSH's determination not to treat any of the Replacement TDBUSH Preferred Stock as additional Tier 1 Capital following consummation of the Second Step Merger.**

In the event that TDB elects to consummate the Second Step Merger, each outstanding share of FHN's existing preferred stock will be automatically converted, at the effective time of the Second Step Merger, into a share of a newly issued share of preferred stock of TDBUSH (the "Replacement TDBUSH Preferred Stock"). The terms of each series of Replacement TDBUSH Preferred Stock would be substantially the same as the existing terms of the corresponding series of FHN preferred stock, including the dates on which each series of Replacement TDBUSH Preferred Stock would be callable by TDBUSH (which, in all cases, would be within five years from the effective time of the Second Step Merger). Because the Replacement TDBUSH Preferred Stock would technically be issued at the effective time of the Second Step Merger, we understand that the Board may take the position that none of the Replacement TDBUSH Preferred Stock would qualify as Additional Tier 1 Capital under the Board's capital rules, since such stock would be callable within five years of issuance (*i.e.*, the effective time of the Second Step Merger).[2] Accordingly, after discussions with counsel and in the abundance of caution, TDBUSH has determined not to treat any of the Replacement TDBUSH Preferred Stock as Additional Tier 1 Capital following consummation of the Second Step Merger.

7. **Confirm that First Horizon's President and Chief Executive Officer D. Bryan Jordan is the only individual who will join the board and senior management team of Applicants.**

As discussed in the Application, Mr. D. Bryan Jordan, FHN's President and Chief Executive Officer, is expected to join the boards of directors of each of TDBUSH and TDBNA (as well as TDBUSA) as a director and as chair following the Parent Merger. At that time, Mr. Jordan will also join TDB as Vice Chair and as a member of TDB's senior executive team reporting to Bharat Masrani. At this time, Mr. Jordan is the only member of FHN's and First Horizon Bank's management team that has been identified to join either the boards of directors of TDBUSH, TDBNA or TDBUSA, or TDB's senior executive team.

TD currently is evaluating FHN's and First Horizon Bank's senior management team and may consider adding other executives to TDB's senior executive team or U.S. senior management team whose experience and expertise would contribute to the financial and managerial strength of the combined organization following the consummation of the Proposed Transaction.

8. **Describe the changes that would be made upon consummation of the proposal, if any, in the risk management process and/or infrastructure at TDBUSH in light of the significant increase in its asset size and extended geographic footprint.**

The Proposed Transaction will not impact TD's fundamental approach to managing risk, which at its core is embodied by its Risk Appetite Statement, and which serves as the basis for TD's risk governance framework. TD's established risk management principles, such as maintaining a local presence in its markets, clear accountabilities across each of the three lines of defense, and a disciplined risk culture, will not be impacted by the Proposed Transaction.

Operating within this risk management framework, TD's risk management infrastructure is designed to support the growth strategy of TD's U.S. operations and closely resembles the risk management structure of TDB, where the model has proven effective at a greater scale across TDB's international footprint. TD's core risk management principles of enterprise-wide scope, transparent and effective communication, enhanced accountability, independent oversight, integrated risk and control culture, and strategic balance will continue to be applied to TD's

[2] *See* 12 C.F.R. § 217.20(c)(1)(v) (requiring that Additional Tier 1 Capital, "if callable by its terms… may be called by the Board-regulated institution only after a minimum of five years following issuance.").

increased U.S. operations and extended geographic footprint following the consummation of the Proposed Transaction. Although the Proposed Transaction will result in an increase in scale and geographic expansion, FHN's businesses are not complex and are not expected to result in any novel risks or material concentrations at the combined organization. To the contrary, geographic expansion will provide for greater geographic diversification that serves as a risk-mitigant for the combined organization. Moreover, TD and FHN have similar approaches to governance, risk, and control, as well as comparable product and service offerings, which provides for a more straightforward integration and natural cultural fit.

Prior to consummation of the Proposed Transaction, TD's Risk Management teams will complete a comprehensive integration planning process to review the sufficiency of the risk management infrastructure for the combined organization. This review process will cover TD's risk management frameworks, standards, policies, procedures, resources, systems, and models. This integration planning process will also review FHN's existing risk management framework and will leverage the comprehensive due diligence that was performed by TD's Risk Management team as part of TD's evaluation of the Proposed Transaction. In most instances, TD expects to apply its existing risk management practices to the operations of the combined organization; however, TD intends to evaluate FHN's risk management framework and adopt the best practices from each institution's processes, policies, and procedures.

As a result of the integration planning process, TD expects that it will implement some targeted modification to its risk management framework to accommodate its expanded footprint and new mix of businesses following the Proposed Transaction. For example, although FHN's businesses are not complex and are not expected to result in any novel risks or material concentrations at the combined organization, certain of TD's asset concentration limits and other Risk Appetite metrics, in particular those in notional dollars, will have to be adjusted to incorporate the combined assets of the combined organization.

Finally, TD is fully committed to taking the steps necessary to maintain a high performing risk management function at the combined organization, including providing the necessary level of incremental resources and investment.

9. **The application states that "[TDB] is in the process of evaluating the loan and deposit products and services offered by TD B[ank] and F[HN] Bank to determine the differences between the two and what, if any, adjustments will be made." Indicate the anticipated timing for completing this evaluation, and provide updated information once it is complete.**

As described in the Application, TD's initial assessment of First Horizon Bank's products and services indicates that the business and core competencies of TDBNA and First Horizon Bank are highly complementary. Each bank offers a large number of banking services and products designed to serve the needs of their respective communities. As part of its integration planning process, TDBNA is conducting a comprehensive review of First Horizon Bank's products and services, including a review of its deposit, credit card, affordable mortgage and home equity products, among others, to gain a better understanding of the differences between TDBNA's and First Horizon Bank's offerings and determine what, if any, adjustments will be made. As part of this review, TDBNA staff are in the process of conducting a series of meetings with their counterparts at First Horizon Bank. TDBNA expects that this review will extend into the second half of 2022.

10. Provide any current community development lending, investment, or service activities of either bank that are expected to be discontinued after the merger.

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 the Proposed Transaction will provide greater opportunities for the combined organization to invest in the growth of the communities it serves. Final decisions regarding the anticipated community development lending, investment, or service activities of the combined organization will be informed by TD's ongoing review and continued due diligence of FHN's community development program.

11. The application states that "TDBNA will leverage the CRA and consumer protection compliance strengths of both banks to create a strong and comprehensive combined compliance program." Please discuss the specific consumer protection compliance strengths of each bank that are expected to be leveraged by the combined bank. Discuss what compliance staffing resources would be retained.

As discussed in more detail in the response to Item 8 (which fully applies to TDBNA's Compliance Risk Management function and the CRA program), the Proposed Transaction will not impact TD's fundamental approach to managing its CRA and consumer compliance programs. TDBNA's Fair and Responsible Banking Policy encompasses the three lines of defense 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 Application. As part of these lines of defense, TD has an Enterprise Testing Center within its Corporate Transformation & Operations group, which delivers compliance testing via full-scope and limited-scope testing engagements of business lines to assess their compliance with applicable laws, rules, regulations, policies and procedures, and an Internal Audit function, which is responsible for independently evaluating the effectiveness of the Fair and Responsible Banking program.

The results of TD's due diligence of FHN in anticipation of the Proposed Transaction indicated that FHN has a sound consumer Compliance Management System ("CMS"), as well as a sound CRA program with a "Satisfactory" CRA rating from their most recent performance evaluation. While TD's CMS may be broader in scope and designed to support a more complex business mix, TD expects that through the review and integration of FHN's CMS, it will identify practices or program elements that would strengthen the CMS for the combined organization. TD intends to leverage the best practices of each organization and build an integrated CMS that provides strong and sustainable oversight for the combined organization.

TD generally expects to retain the experienced compliance risk management professional talent at FHN, which will augment and strengthen the experience and expertise in the Compliance Risk Management function at the combined organization.

12. **Discuss any products and services that the combined bank would offer in the markets of FHN Bank that are not currently offered by FHN Bank.**

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 improved digital and mobile products, extended branch hours and enhanced service capabilities across all of its channels. For example, First Horizon Bank's customers will benefit from TDBNA's recently implemented or announced customer-oriented enhancements to its policies that better support customers' long-term financial well-being. These enhancements include (among others):

- TD Essential Banking, a low-cost, no-overdraft-fee deposit account that meets the Bank On National Account Standards for low-cost accounts and is aimed at addressing the needs of unbanked or underbanked customers;

- Enhancements to TD's bank-wide overdraft policies, including an updated $50 overdraft threshold, with customers being able to overdraw their account up to $50 before incurring an overdraft fee;

- Providing customers with overdrawn accounts by more than $50 up to 24 hours to cure and avoid an overdraft fee;

- The elimination of the transfer fees for customers using savings overdraft protection services; and

- Enhanced digital offerings that allow customers to better manage their financial health and wellbeing.

FHN's customers will also benefit from TD's recently expanded affordable mortgage products that includes TD Home Access, which is designed to increase homeownership opportunities in Black and Hispanic communities across several markets within TDBNA's footprint through affordable mortgage offerings and greater flexibility in debt-to-income ratio allowances.

First Horizon Bank's small business customers will also have access to expanded product offerings following the Proposed Transaction. For example, TDBNA's Digital Application for Small Business program provides for borrowing requests of up to $100,000, which allows customers to apply for loans when doing so is most convenient for the customer (even after business hours or on weekends).

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.

13. **Provide any update on the status of the "Credit Card Fees" litigation described on page 208 of TDB's most recent annual Report to Shareholders.**

The “Credit Card Fees” litigation is a case pending in multiple courts in Canada involving claims asserted solely against TDB; the litigation does not involve TDB’s U.S. operations. After a joint settlement approval hearing on December 6, 2021, the Canadian national settlement was approved by the five Canadian courts in which the actions were filed. Class counsel is arranging for distribution of the settlement funds.

14. Regarding commercial products for medium sized businesses, for organizations with (i) $10M-$250M in annual revenue or sales and (ii) $250M-$5B in annual revenue or sales, provide TDB’s and First Horizon’s state-level total committed credit facilities and utilized funded volume in 2020 and 2021. State-level totals should be based on obligor’s state, as identified by obligor’s address associated with the credit facility / account. This amount should be calculated consistent with instructions in the Board’s FR Y-14Q including that the following criteria should be used to identify the credit facilities included in the state-level aggregates requested by this question.

a. Obligor is a domestic commercial for-profit nonfinancial entity (“qualifying obligor”).

i. Exclude entities domiciled outside the U.S. (defined in the FR Y-9C Glossary).

ii. Exclude nonprofit entities.

iii. Exclude obligors with a NAICS code beginning with 52 (Finance and Insurance), or 5312 (Real Estate Agents and Brokers), or 551111 (Offices of Bank or Intermediate Holding Companies).

iv. Exclude “Natural Person” obligors (including individuals doing business as (“DBA”) another entity, whether the primary source of repayment analysis is the personal credit of the natural person behind the DBA.

b. Obligor is not a small business and facility is not a small business loan.

i. Exclude small business loans as defined in the consolidated holding company’s normal course of business. And exclude loans guaranteed by the Small Business Administration.

c. Obligor has $1 million or more in total committed credit with the consolidated holding company.

d. Exclude all credit card / charge card loans.

e. If a measure of obligor revenue is available, include facilities with obligors having between $10 million and $5 billion in revenue. Classify obligors as having (i) $10 million to $250 and (ii) $250 million and $5 billion in revenue.

i. **If criteria (a), (b) and (c) are met but a measure of obligor revenue is unavailable, include facilities with committed exposure between $1M and $1B. Categorize these facilities with revenue bucket (i) for the sake of state-level totals.**

For the information requested by this item, please see Confidential Exhibit A to this Response Submission.

15. Regarding warehouse lending:

a. **Provide a measure of TDB's and First Horizon's (a) volume and (b) market share of warehouse lending in 2020 and 2021.**

b. **Identify major competitors and provide these competitors' volume and market share.**

The information requested by this Item 15 will be provided to the Board on a supplemental basis when available.

16. Regarding fixed income products sold to institutional investor:

a. **Provide a measure of TDB's and First Horizon's (a) volume and (b) market share of fixed income products in 2020 and 2021.**

For the information requested by this item 16.a., please see Confidential Exhibit B to this Response Submission.

b. **Identify major competitors and provide these competitors' volume and market share.**

The national market for fixed income products sold to institutional investors includes a significant number of major competitors whose volumes and market shares far exceed those of TDB and FHN, individually or in the aggregate. The market is extremely competitive, and the sheer number and size of banks and other financial services engaged in the fixed income product market, including the G-SIBs (other than the custody banks) and many of the largest brokerage firms, ensures that the industry will remain highly competitive following the Proposed Transaction.

For the information requested by this item, please see Confidential Exhibit B to this Response Submission.

17. Identify TDB's and First Horizon's products or services and lines of business in which TDB and First Horizon compete. For each product/service and line of business:

a. **Provide a measure of TDB's and First Horizon's (a) volume and (b) market share in 2020 and 2021.**[3]

b. **Identify major competitors and provide these competitors' volume and market share in 2020 and 2021.**

The national market for commercial banking products and services includes a significant number of major competitors whose volumes and market shares far exceed those of TD and FHN, individually or in the aggregate. The market is extremely competitive, and the sheer number and size of banks and other non-bank financial services companies in this market ensures that the industry will remain highly competitive following the Proposed Transaction.

For information requested by this item, please see Confidential Exhibit C to this Response Submission. Additional information requested by this Item 17 will be provided to the Board on a supplemental basis as soon as its available.

18. **TDB indicated that it is considering two different transactions, including one where TDB would elect to either delay the Second Step Merger until after the Bank Merger or forego the Second Step Merger altogether. The Board generally has not taken action on two requests, one of which will not occur. With respect to this aspect of the proposal:**

    a. **Discuss (i) the potential benefits to TDB of each transaction, and (ii) why TDB has not elected one option over the other.**

    b. **Identify the criteria TDB is using to determine which transaction it ultimately would pursue.**

    c. **Indicate when TDB will know which of the transactions it ultimately plans to consummate.**

For additional information requested by this item, please see Confidential Exhibit D to this Response Submission.

19. **Identify any U.S. states that have a community reinvestment law that is applicable to Applicants and TD Bank. For each such state, (i) identify the requirements imposed by the state's community reinvestment law and (ii) discuss how Applicants and TD Bank have complied with the requirements of the state's community reinvestment law.**

There are no state community reinvestment laws that are applicable to the Applicants or TDBNA that are potentially relevant to the Board's required considerations under Section 3(d)(3) of the BHC Act (12 U.S.C. § 1842(d)(3)) and none of the Applicants nor TDBNA has been evaluated

[3] TD understands that the Board has clarified that the information requested in response to this Item 17 should be limited to information relating to commercial banking products and service lines of business.

by any state banking authority with respect to state community reinvestment laws, including those laws.[4]

The Applicants have identified Connecticut, the District of Columbia, Illinois, Massachusetts, New York, Washington, and West Virginia as all of the states which have state community reinvestment laws relevant to the Board's required considerations under Section 3(d)(3) of the BHC Act (12 U.S.C. § 1842(d)(3)) (*i.e.*, including states where TDBNA is not located).[5] As discussed below, none of these state community reinvestment laws are applicable state community reinvestment laws for purposes of the Board's consideration of the Application under Section 3(d)(3) of the BHC Act.[6]

- *Connecticut*: Conn. Gen. Stat. § 36a-32 provides that, in connection with the examination of a "bank," the Connecticut Banking Commissioner "shall assess the record of the performance of the bank in helping to meet the credit needs of its entire community, including low and moderate-income neighborhoods." This community reinvestment law requirement applies to banks chartered or organized under the laws of Connecticut, national banks having their principal office in Connecticut, and out-of-state state-chartered banks that maintain a branch in Connecticut.[7] Because TDBNA is a national bank that is not headquartered in Connecticut, such state statute is not an applicable state

[4] *See* Conn. Gen. Stat. § 36a-30 *et seq*.; D.C. Code § 26-431.01 *et seq*.; 205 ILCS 735/35-10; Mass. Gen. Laws. ch. 167, § 14; N.Y. Comp. Codes R. & Regs. tit. 3 § 76.5; Rev. Code Wash. § 30A.60.010; W. Va. Code §§ 31A-8B-1 *et seq*.

The Applicant notes that various other laws in these and other states (i) require certain banks to file copies of reports prepared and filed with federal banking agencies under the Community Reinvestment Act of 1977 with the applicable state banking agency, (ii) include reference to a bank's record of performance under the Community Reinvestment Act of 1977, or its record of meeting the credit needs of its communities, as a factor for a state banking agency's consideration when such banking agency is acting on an application by certain banks to that banking agency, (iii) require certain minimum performance ratings under the Community Reinvestment Act of 1977 as an eligibility criterion for the bank's acceptance of public funds, and/or (iv) include miscellaneous other references to community reinvestment compliance. Although the Applicant complies with such laws where applicable, such laws do not impose affirmative obligations on a bank to meet credit needs of local communities and are not "State community reinvestment laws" relevant to the Board's consideration for purposes of Section 3(d)(3) of the BHC Act. *See* Senate Report No. 103-240, p. 15 (March 23, 1994) ("Additionally, in considering acquisitions of banks, the Federal Reserve must review a bank holding company's subsidiary banks compliance with state community reinvestment laws. These measures are intended to ensure that banks operating across state lines continue to meet their obligations to the communities they serve in all the states in which they conduct business."). The Applicant further notes that various state laws may be preempted by the National Bank Act and implementing OCC regulations with respect to a national bank, such as TDBNA. *See* 12 CFR part 7, subpart D; OCC Bulletin 2022-02 (February 2, 2022).

[5] *Id*.

[6] The Board has recently found that the community reinvestment laws of Connecticut, the District of Columbia, Massachusetts, and New York do not apply to a holding company of a national bank for purposes of Section 3(d)(3) of the BHC Act. *See* Citizens Financial Group, Inc., FRB Order No. 2022-11 (March 22, 2022).

[7] Conn. Gen. Stat. § 36a-30(a)(1); Conn. Gen. Stat. § 36a-2(4), (12) and (28). The Connecticut Banking Department appears to examine only Connecticut-chartered institutions for CRA compliance. *See* Community Reinvestment Act (CRA) Ratings, StateConn. Dep't Banking (April 29, 2022), https://portal.ct.gov/DOB/Bank-Data/CRA/CTBank-Ratings.

community reinvestment law for purposes of the Board's consideration of the Application under Section 3(d)(3) of the BHC Act.

- *District of Columbia*: D.C. Code § 26-431.03 provides that each "financial institution" has a "continuing and affirmative obligation to meet the credit needs of its local communities, including low-income and moderate-income area," and D.C. Code § 26-431.04 requires that each "financial institution" submit a community development plan stating the financial institution's plans for meeting the credit and financial services needs of the residents of the District. A "financial institution" to which this community reinvestment law applies is defined as a bank (and certain other institutions) "which is regulated, supervised, examined, or licensed by the Department of Insurance, Securities, and Banking ["DISB"]; which has applied to be regulated, supervised, examined, or licensed by the [DISB]; which is subject to the regulation, supervision, examination, or licensure by the [DISB]; or which is engaged in an activity covered by the District of Columbia Banking Code."[8] Because TDBNA is not regulated, supervised, examined, or licensed by the DISB, has not applied to be regulated, supervised, examined, or licensed by the DISB, and is not engaged in an activity covered by the District of Columbia Banking Code, such state statute is not an applicable state community reinvestment law for purposes of the Board's consideration of the Application under Section 3(d)(3) of the BHC Act.

- *Illinois*: 205 ILCS 735/35-10 provides that each "covered financial institution" has a "continuing and affirmative obligation to meet the financial services needs of the communities in which its offices, branches, and other facilities are maintained," and also provides that the Illinois Secretary of Financial and Professional Regulation "shall assess the record of each covered financial institution in satisfying its obligation" to meet the financial services needs of its communities. A "covered financial institution" to which this community reinvestment law applies is defined as "a bank chartered under the Illinois Banking Act," certain other Illinois-chartered or licensed non-bank entities, and "any other financial institution under the jurisdiction" of the Illinois Department of Financial and Professional Regulation. Because TDBNA is not chartered under Illinois law or under the jurisdiction of the Illinois Department of Financial and Professional Regulation, such state statute is not an applicable state community reinvestment law for purposes of the Board's consideration of the Application under Section 3(d)(3) of the BHC Act.

- *Massachusetts*: Mass. Gen. Laws. ch. 167, § 14 provides that the Massachusetts Commissioner of Banks "shall assess the record of each supervised bank in satisfying their continuing and affirmative obligation to help meet the credit needs of the communities in which offices and branches are maintained, including areas contiguous thereto and low and moderate income neighborhoods." A "bank" to which this community reinvestment law applies is defined as "association or corporation chartered by the commonwealth [of Massachusetts]…or an individual, association, partnership or corporation incorporated or doing a banking business in the commonwealth [of

[8] D.C. Code § 26-431.02(7); D.C. Code § 26-551.02(18).

Massachusetts] subject to the supervision of the commissioner."[9] Because TDBNA is not chartered under Massachusetts law or doing a banking business in Massachusetts subject to the supervision of the Massachusetts Commissioner of Banks, such state statute is not an applicable state community reinvestment law for purposes of the Board's consideration of the Application under Section 3(d)(3) of the BHC Act.

- *New York*: New York Banking Law regulations provide that the New York Department of Financial Services "from time to time" will "conduct community reinvestment evaluations of each banking institution to which [such regulation] applies."[10] A "banking institution" to which this community reinvestment law applies is defined as "a New York State-chartered commercial bank" and certain other New York-chartered non-bank entities.[11] Because TDBNA is not chartered under New York law, such state law is not an applicable state community reinvestment law for purposes of the Board's consideration of the Application under Section 3(d)(3) of the BHC Act.

- *Washington*: Rev. Code Wash. § 30A.60.010 provides that, "[i]n conducting an examination of a bank chartered under *Title 30 RCW," the Washington Director of Banks "shall investigate and assess the record of performance of the bank in meeting the credit needs of the bank's entire community, including low and moderate-income neighborhoods." Because this state statute provides for community investment examination only of banks chartered under Washington state law, and TDBNA is not chartered under Washington state law, such state statute is not an applicable state community reinvestment law for purposes of the Board's consideration of the Application under Section 3(d)(3) of the BHC Act.[12]

- *West Virginia*: W. Va. Code § 31A-8B-4 provides that, "[i]n connection with its examination or investigation of a banking institution or bank holding company," the West Virginia Commissioner of Banking "shall (a) [a]ssess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods…and (b) Take such record into account in its evaluation of [certain applications to the West Virginia Commissioner of Banking]." "Banking institutions" or "bank holding companies" which are subject to the examination or investigation by the West Virginia Commissioner of Banking (and thus to which this community reinvestment law applies) include only "state banks" chartered under the laws of West Virginia or holding companies that control a West Virginia bank or have their principal place of business in West Virginia.[13] Because TDBNA is not subject to the examination or investigation by the West Virginia Commissioner of Banking, and does not have an application before the West Virginia Commissioner of Banking, such state statute is not

[9] Mass. Gen. Laws. ch. 167, § 1

[10] N.Y. Comp. Codes R. & Regs. tit. 3 § 76.5(a).

[11] N.Y. Comp. Codes R. & Regs. tit. 3 § 76.2(d).

[12] *See also* Rev. Code Wash. § 30A.60.010(2).

[13] *See* W. Va. Code § 31A-2-4(a); W. Va. Code § 31A-1-2(s); W. Va. Code § 31A-8A-7; W. Va. Code § 31A-8A-1. *See also* W. Va. Code R. § 106-12-1.

an applicable state community reinvestment law for purposes of the Board's consideration of the Application under Section 3(d)(3) of the BHC Act.

20. Indicate whether First Horizon's investment advisor subsidiaries have already begun working with their customers to assign client accounts to a subsidiary of TDGUS.

FHN's investment advisory subsidiaries have not begun working with customers to assign client accounts to any subsidiary of TDGUS.