

TORONTO DOMINION BANK

Form F-4

October 04, 2004

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As filed with the Securities and Exchange Commission on October 4, 2004

Registration No. 333-

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**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Form S-4/ F-4**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**Banknorth Delaware Inc.  
The Toronto-Dominion Bank**

*(Exact name of each registrant as specified in its charter)*

**DELAWARE  
CANADA**  
*(State or other jurisdiction of  
incorporation or organization)*

**6022  
6029**  
*(Primary Standard Industrial  
Classification Code Number)*

**Applied for  
13-5640479**  
*(I.R.S. Employer  
Identification Number)*

**P.O. Box 9540, Two Portland Square, Portland, ME 04112-9540, (207) 761-8500**

**Toronto-Dominion Centre, Toronto, Ontario, M5K 1A2, (416) 982-8222**  
*(Address, including zip code, and telephone number, including area code, of each registrant's principal executive offices)*

**Carol Mitchell, Esq.  
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P.O. Box 9540  
Two Portland Square  
Portland, ME 04112-9540  
(207) 761-8500**

**Victor J. Huebner  
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New York, NY 10019-6101  
(212) 827-7000**

*(Name, address, including zip code, and telephone number, including area code, of agent for service)*

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this Registration Statement.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Banknorth Delaware Inc., common stock, par value \$0.01 per share	182,000,000(1)		
The Toronto-Dominion Bank, common shares, without par value	42,788,200(1)	\$6,291,740,000(2)	\$797,164

(1) Based on the maximum number of shares of each class of capital stock expected to be issued in connection with the transactions described herein.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(f) based upon the average of the high and low share prices for the common stock of Banknorth Group Inc., the parent of Banknorth Delaware Inc., as reported by the New York Stock Exchange on September 29, 2004 as follows: 182,000,000 shares multiplied by the average price of \$34.57.

**The registrants hereby amend this registration statement on such date or dates as may be necessary to delay its effective date until the registrants shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.**

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**EXPLANATORY NOTE**

This registration statement comprises (1) the registration statement of Banknorth Delaware Inc. with respect to the shares of Banknorth Delaware Inc. common stock to be issued in the transactions contemplated by the amended and restated merger agreement among The Toronto-Dominion Bank ( TD ), its wholly-owned subsidiary Berlin Merger Co., Banknorth Group, Inc. ( Banknorth ) and its wholly-owned subsidiary Banknorth Delaware Inc., (2) the registration statement of TD with respect to the TD common shares to be issued pursuant to the transactions contemplated by the amended and restated merger agreement and (3) the proxy statement of Banknorth with respect to the special meeting of its shareholders to be held to consider and vote on the amended and restated merger agreement and the post-transaction certificate of incorporation of Banknorth Delaware Inc.

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**The information in this proxy statement/prospectus is not complete and can be changed. Banknorth Delaware Inc. and The Toronto-Dominion Bank may not sell the securities being offered by use of this proxy statement/prospectus until the registration statement filed with the Securities and Exchange Commission, of which this proxy statement/prospectus is part, is declared effective. This proxy statement/prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where such offer, solicitation or sale is prohibited.**

, 2004

**To the Shareholders of Banknorth Group, Inc.:**

We have entered into an amended and restated merger agreement with The Toronto-Dominion Bank, or TD. Pursuant to this merger agreement, Banknorth will reincorporate in Delaware and then merge with a wholly-owned subsidiary of TD. Upon completion of the two mergers, each Banknorth shareholder will receive, in exchange for the shares of Banknorth common stock owned by such shareholder, a package of consideration consisting of (1) a number of TD common shares equal to 0.2351, (2) an amount in cash equal to \$12.24 and (3) a number of shares of new Banknorth common stock equal to 0.49, in each case multiplied by the number of shares of Banknorth common stock owned by such shareholder. Upon completion of the transaction, TD will own 51% of new Banknorth's common stock and existing Banknorth shareholders will own the other 49%. Based on the closing price of TD's common shares on the New York Stock Exchange on \_\_\_\_\_, 2004, this represents an effective purchase price of \$ \_\_\_\_\_ per Banknorth share for the 51% of the outstanding Banknorth shares that TD will acquire in the transaction. The exchange ratios are fixed and accordingly the value of the TD common shares and new Banknorth common stock which you receive in the transaction will change based on changes in market prices. You should obtain current market quotations for both the TD common shares and the Banknorth common stock. The TD common shares are listed on the New York Stock Exchange and the Toronto Stock Exchange under the symbol TD. The Banknorth common stock is listed on the New York Stock Exchange under the symbol BNK.

Your board believes that this transaction provides Banknorth shareholders with a unique opportunity to realize a substantial premium for a majority of their shares while also retaining a significant equity stake in a company which has enhanced growth potential. We believe that having TD as our majority shareholder will provide us with access to greater financial resources and an array of sophisticated financial services and products, thereby enhancing our ability to implement our growth strategy.

**Your board has approved the merger agreement with TD and the transactions contemplated thereby, including the post-transaction certificate of incorporation of the new Banknorth and the governance provisions contained therein, and recommends that you vote FOR approval of these proposals at the special meeting.**

**Attached to this letter is an important document providing detailed information concerning TD, Banknorth and the proposed transaction. Please read this document carefully, including the section describing risk factors beginning on page 24.**

The first step of the transaction, in which we will reincorporate in Delaware, will be treated as a tax-free reorganization for United States federal income tax purposes, and you will not recognize gain or loss upon the exchange of Banknorth common stock solely for new Banknorth common stock. The second step of the transaction, in which TD will acquire 51% of new Banknorth's common stock, will be taxable to you, and you will recognize gain or loss equal to the difference between (1) the sum of the cash and the fair market value of the TD common shares that you receive and (2) your adjusted tax basis in the 51% of your shares of Banknorth common stock that you are effectively converting into TD common shares and cash in the transaction. You will not recognize any gain or loss on the shares of new Banknorth that you retain in the transaction.

We will hold a special meeting of shareholders at the Portland Marriott Hotel, 200 Sable Oak Drive, South Portland, Maine 04106 at 10:30 a.m., local time, on \_\_\_\_\_, 2004. At this special meeting, we will ask you to approve the merger agreement with TD and the post-transaction certificate of incorporation of the new Banknorth, including the governance provisions contained therein. **Whether or not you plan to attend the special meeting, please submit your proxy promptly by telephone or via the Internet in accordance with the instructions on the enclosed proxy card or by completing, dating and returning your proxy card in the enclosed envelope. Returning the proxy card or otherwise submitting your proxy does not deprive you of your right to attend the special meeting and vote in person. It is important to vote your shares in person or by proxy because we cannot complete this transaction unless the holders of a majority of our outstanding shares vote to approve the merger agreement and the post-transaction certificate of incorporation is approved by a majority of the votes cast on this proposal at the special meeting. Therefore, the failure to vote will have the same effect as a vote against the transaction.**

We look forward to your support.

Sincerely,

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William J. Ryan  
Chairman, President and Chief Executive Officer  
Banknorth Group, Inc.

**Neither the Securities and Exchange Commission nor any U.S. state or Canadian provincial securities commission has approved or disapproved of the securities to be issued in connection with the transaction or determined if this proxy statement/ prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**This proxy statement/ prospectus is dated                      , 2004 and is expected to be first mailed to Banknorth shareholders on or about                      , 2004.**

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**REFERENCE TO ADDITIONAL INFORMATION**

This proxy statement/ prospectus incorporates important business and financial information about Banknorth and TD from documents that are not included in or delivered with this document. This information is available to you without charge upon your written or oral request. You can obtain documents related to Banknorth and TD that are incorporated by reference in this document, without charge, by requesting them in writing or by telephone from the appropriate company.

Banknorth Group, Inc.  
Investor Relations  
Two Portland Square  
P.O. Box 9540  
Portland, Maine 04112-9540  
(207) 761-8517  
jnathanson@banknorth.com

The Toronto-Dominion Bank  
Investor Relations  
66 Wellington Street West  
Toronto, Ontario, Canada M5K 1A2  
(416) 308-9030  
tdir@td.com

Please note that copies of the documents provided to you will not include exhibits, unless the exhibits are specifically incorporated by reference in the documents or this proxy statement/ prospectus.

**In order to receive timely delivery of requested documents in advance of the special meeting, you should make your request no later than \_\_\_\_\_, 2004.**

**See Where You Can Find More Information beginning on page 150.**

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**BANKNORTH GROUP, INC.**

**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS**

**TO BE HELD ON \_\_\_\_\_, 2004**

To Our Shareholders:

A special meeting of shareholders of Banknorth Group, Inc. will be held at 10:30 a.m., local time, on \_\_\_\_\_, 2004 at the Portland Marriott Hotel, 200 Sable Oak Drive, South Portland, Maine 04106, to consider and vote on:

1. A proposal to approve the Amended and Restated Agreement and Plan of Merger, dated as of August 25, 2004, among The Toronto-Dominion Bank, its wholly-owned subsidiary Berlin Merger Co., Banknorth Group, Inc. and its wholly-owned subsidiary Banknorth Delaware Inc.;
2. A proposal to approve the post-transaction certificate of incorporation of Banknorth Delaware Inc. (which will be the successor to Banknorth following the completion of the transaction), including the governance provisions contained in that document;
3. A proposal to adjourn the special meeting if necessary to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting to approve the amended and restated merger agreement or the post-transaction certificate of incorporation of Banknorth Delaware; and

4. Any other matters that may properly come before the special meeting or any adjournment or postponement of the special meeting.

The close of business on \_\_\_\_\_, 2004 has been fixed as the record date for determining those Banknorth shareholders entitled to vote at the special meeting. Accordingly, only shareholders of record at the close of business on that date are entitled to notice of, and to vote at, the special meeting or any adjournment or postponement thereof.

**The Banknorth board of directors recommends that you vote in favor of the above proposals. The approval of both the proposal to approve the Amended and Restated Agreement and Plan of Merger and the proposal to approve the post-transaction certificate of incorporation, including the governance provisions contained in that document, is a condition to the completion of the transaction. Therefore, if Banknorth shareholders wish to approve the transaction, they must approve both of these proposals.**

**Your vote is very important.** Whether or not you plan to attend the special meeting, please submit your proxy promptly by telephone or via the Internet in accordance with the instructions on the accompanying proxy card, or by completing, dating and returning your proxy card in the enclosed envelope. A failure to vote by telephone, via the Internet, by mail or in person at the special meeting will have the same effect as a vote against approval of the merger agreement.

By Order of the Board of Directors

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Carol L. Mitchell, Esq.  
Executive Vice President, General Counsel,  
Secretary and Clerk

\_\_\_\_\_, 2004

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**QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND RELATED MATTERS**

**Q1: What am I being asked to vote on?**

A1: You are being asked to vote to approve an amended and restated merger agreement entered into by Banknorth Group, Inc. (which we refer to in this document as Banknorth) and its wholly-owned subsidiary Banknorth Delaware Inc. (which we refer to in this document as the new Banknorth or Banknorth Delaware), with The Toronto-Dominion Bank (which we refer to in this document as TD) and its wholly-owned subsidiary Berlin Merger Co. In this document, we refer to the amended and restated merger agreement as the merger agreement. Pursuant to the merger agreement, Banknorth will reincorporate in Delaware and then merge with Berlin Merger Co. Upon completion of this transaction, Banknorth will be a Delaware corporation and named TD Banknorth Inc. As a result of this transaction, TD will hold 51% of the outstanding shares of new Banknorth common stock and each Banknorth shareholder of record will receive, in exchange for the shares of Banknorth common stock owned by such shareholder, the following:

a number of TD common shares equal to 0.2351 multiplied by the number of shares of Banknorth common stock owned by such shareholder, plus cash in lieu of any fractional share interests;

an amount in cash equal to \$12.24 multiplied by the number of shares of Banknorth common stock owned by such shareholder; and

a number of shares of Banknorth Delaware common stock equal to 0.49 multiplied by the number of shares of Banknorth common stock owned by such shareholder, plus cash in lieu of any fractional share interests.

You are also being asked to vote to approve the post-transaction certificate of incorporation of the new Banknorth, including the governance provisions contained in that document, and on a procedural resolution to adjourn the special meeting if necessary to solicit additional votes to approve the merger agreement or the post-transaction certificate of incorporation.

**Q2: What vote of Banknorth shareholders and what vote of TD shareholders is required in connection with the mergers?**

A2: The affirmative vote of a majority of the outstanding shares of Banknorth common stock is required to approve the merger agreement. In addition, the approval of the post-transaction certificate of incorporation of the new Banknorth, which requires the affirmative vote of a majority of the votes cast on the matter at the special meeting, is also a condition to completion of the mergers. As a result, a vote against this proposal effectively will be a vote against the merger agreement. No vote of TD shareholders is required (or will be sought) in connection with the transaction.

**Q3: What happens if I do not vote?**

A3: If the proposals to approve the merger agreement and the post-transaction certificate of incorporation of the new Banknorth receive the required approval of Banknorth's shareholders and the mergers are completed, your Banknorth shares will be exchanged for the merger consideration whether or not you voted in favor of the merger agreement or at all. However, if you do not vote your shares with respect to the proposal to approve the merger agreement, that will be the equivalent of a vote against approval of the merger agreement and, therefore, against the transaction. Accordingly, your board of directors urges you to vote your shares in favor of the merger agreement and the post-transaction certificate of incorporation of the new Banknorth.

**Q4: What do I need to do now?**

A4: After carefully reading and considering the information contained in this document, please submit your proxy by telephone or via the Internet in accordance with the instructions set forth in the enclosed proxy card, or fill out, sign and date the proxy card, and then mail your signed proxy card in the enclosed prepaid envelope as soon as possible so that your shares may be voted at the special meeting. See The Special

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Meeting How to Vote Your Shares beginning on page 33.

**Q5: If my shares are held in street name by my broker, will my broker vote my shares for me?**

A5: You should instruct your broker to vote your shares. If you do not instruct your broker, your broker will generally not have the authority to vote your shares. Because approval of the merger agreement requires an affirmative vote of the holders of a majority of the outstanding shares of Banknorth common stock, these so-called broker non-votes, where the broker does not vote for or against approval of the merger agreement, have the same effect as votes cast against approval of the merger agreement and, therefore, against the transaction. Please check with your broker and follow the voting procedures your broker provides. Your broker will advise you whether you may submit voting instructions by telephone or via the Internet. See The Special Meeting Quorum and Required Votes and Broker Non-Votes beginning on page 35 and 34 respectively.

**Q6: If my shares are held in the Banknorth 401(k) Plan, what should I do?**

A6: If you are a participant in the Banknorth 401(k) Plan, you may give voting instructions to American Stock Transfer & Trust Company, our transfer agent, by completing and returning a voting instruction ballot distributed to plan participants along with this proxy statement/prospectus, or by telephone or via the Internet as described on your ballot. Our transfer agent will certify the totals for the 401(k) Plan to Banknorth, NA, which acts as trustee for the plan, for the purpose of having those shares voted in accordance with your instructions.

**Q7: May I change my vote after I have submitted a proxy by telephone or via the Internet or mailed my signed proxy card?**

A7: Yes. You may change your vote at any time before your proxy is voted at the special meeting. You can do this in several ways. You can send a written notice stating that you want to revoke your proxy, or you can complete and submit a new proxy card. If you choose either of these methods, you must submit your notice of revocation or your new proxy card to the Clerk of Banknorth (Carol L. Mitchell, Esq., Executive Vice President, General Counsel, Secretary and Clerk, Banknorth Group, Inc., P.O. Box 9540, Two Portland Square, Portland, Maine 04112-9540).

You can also change your vote by submitting a proxy at a later date by telephone or via the Internet, in which case your later-submitted proxy will be recorded and your earlier proxy revoked. You can also attend the special meeting and vote in person. Simply attending the special meeting, however, will not revoke your proxy; you must vote at the special meeting.

If you have instructed a broker to vote your shares, you must follow the voting procedures received from your broker to change your vote.

**Q8: If I want to attend the special meeting, what do I do?**

A8: You must come to the Portland Marriott Hotel, 200 Sable Oak Drive, South Portland, Maine 04106, at 10:30 a.m., local time, on \_\_\_\_\_, 2004. If you hold your shares in street name, you will need to bring proof of ownership (by means of a recent brokerage statement, letter from your bank or broker or similar means) to be admitted to the meeting. Shareholders of record as of the record date for the special meeting (\_\_\_\_\_, 2004) can vote in person at the special meeting. If your shares are held in street name, then you are not the shareholder of record and you must ask your broker, bank or other nominee holder how you can vote at the special meeting.

**Q9: Should I send in my stock certificates now?**

A9: No. After we complete the transaction, you will receive written instructions for exchanging your Banknorth share certificates for certificates representing TD common shares and new Banknorth common stock and receiving the cash merger consideration. **Please do not send in your stock certificates with your proxy card.**

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**Q10: What if I cannot find my stock certificate?**

A10: There will be a procedure for you to receive TD common shares and new Banknorth common stock in the transaction, even if you have lost one or more of your Banknorth stock certificates. This procedure, however, may take time to complete. In order to ensure that you will be able to receive certificates evidencing your TD common shares and Banknorth Delaware common stock promptly after the transaction is completed, if you cannot locate your Banknorth share certificates after looking for them carefully, we urge you to contact American Stock Transfer & Trust Company as soon as possible and follow the procedure they explain to you for replacing your Banknorth share certificates. American Stock Transfer & Trust Company can be reached at \_\_\_\_\_, or you can write to it at the following address:

American Stock Transfer & Trust Company  
59 Maiden Lane  
New York, NY 10038

**Q11: Who can help answer my additional questions about this transaction?**

A11: If you have questions about this transaction, you should contact:

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**SUMMARY**

*This summary highlights selected information from this proxy statement/prospectus. It does not contain all of the information that may be important to you. You should carefully read this entire document, including the exhibits hereto and the other documents to which this document refers you for a more complete understanding of the matters being considered at the special meeting. See *Where You Can Find More Information* beginning on page 152. Unless we have otherwise stated, all references in this proxy statement/prospectus to TD are to The Toronto-Dominion Bank, all references to Banknorth are to Banknorth Group, Inc., all references to Banknorth Delaware or new Banknorth are to Banknorth's subsidiary, Banknorth Delaware Inc., all references to dollars or \$ or U.S.\$ are to U.S. dollars, all references to C\$ are to Canadian dollars, all references to the merger agreement are to the Amended and Restated Agreement and Plan of Merger, dated as of August 25, 2004, among TD, Berlin Merger Co., Banknorth and Banknorth Delaware which is attached as Appendix A to this proxy statement/prospectus, all references to the stockholders agreement are to the Amended and Restated Stockholders Agreement, dated as of August 25, 2004, among TD, Banknorth and Banknorth Delaware, which is attached as Appendix D to this proxy statement/prospectus, and all references to the post-transaction certificate of incorporation are to the certificate of incorporation of Banknorth Delaware as it will be in effect following completion of the transaction, the form of which is attached as Appendix B to this proxy statement/prospectus.*

**The Companies**

*The Toronto-Dominion Bank*

Toronto-Dominion Centre

P.O. Box 1  
Toronto, Ontario, Canada M5K 1A2  
(416) 982-8222

The Toronto-Dominion Bank is a Canadian chartered bank formed through the amalgamation of The Bank of Toronto (established 1855) and The Dominion Bank (established 1869). The Toronto-Dominion Bank and its subsidiaries are collectively known as TD Bank Financial Group. In Canada and around the world, TD Bank Financial Group serves more than 13 million customers in three key businesses: personal and commercial banking including TD Canada Trust; wealth management including the global operations of TD Waterhouse; and wholesale banking, including TD Securities, operating in a number of locations in key financial centers around the globe. TD Bank Financial Group also ranks among the world's leading on-line financial services firms, with more than 4.5 million on-line customers. TD Bank Financial Group had C\$309 billion in assets, as of July 31, 2004.

Berlin Merger Co. is a Delaware corporation and a wholly-owned subsidiary of TD. Berlin Merger Co. was organized recently solely for the purpose of effecting the transaction with Banknorth described in this proxy statement/prospectus. It has not carried on any activities other than in connection with the merger agreement.

*Banknorth Group, Inc.*

Two Portland Square

P.O. Box 9540  
Portland, Maine 04112-9540  
(207) 761-8500

Banknorth is a Maine corporation and a registered bank holding company and financial holding company under the Bank Holding Company Act of 1956, as amended (which we refer to in this document as the BHC Act). Banknorth's principal asset is all of the capital stock of Banknorth, NA, a national bank that was initially formed as a Maine-chartered savings bank in the mid-19th century. At June 30, 2004, Banknorth, NA had 389 banking offices located in Maine, New Hampshire, Massachusetts, Vermont, New York and Connecticut. Through Banknorth, NA and its subsidiaries, Banknorth offers a full range of banking services and products to individuals, businesses and governments throughout its market areas, including commercial, consumer, trust, investment advisory and insurance brokerage services. At June 30,



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2004, Banknorth had consolidated assets of \$29.3 billion and consolidated shareholders' equity of \$2.9 billion.

On June 20, 2004, Banknorth and BostonFed Bancorp, Inc. entered into a merger agreement providing for Banknorth to acquire BostonFed, subject to receipt of BostonFed shareholder and regulatory approvals, for approximately \$195 million in Banknorth stock. BostonFed shareholders have the right to elect to receive up to 15% of the purchase price in cash instead of Banknorth shares. A maximum of approximately 6.1 million shares of Banknorth common stock will be issuable upon completion of the merger with BostonFed. At June 30, 2004, BostonFed had \$1.7 billion of consolidated assets, \$93.5 million of consolidated shareholders' equity and 16 offices in Essex, Middlesex, Norfolk and Suffolk Counties, Massachusetts.

Banknorth Delaware is a Delaware corporation and a wholly-owned subsidiary of Banknorth. Banknorth Delaware was organized recently solely for the purpose of effecting the transaction with TD described in this proxy statement/prospectus. It has not carried on any activities other than in connection with the merger agreement.

### **The Special Meeting (Page 33)**

*When and Where.* The special meeting of shareholders of Banknorth will be held at 10:30 a.m., local time, on \_\_\_\_\_, 2004 at the Portland Marriott Hotel, 200 Sable Oak Drive, South Portland, Maine 04106.

*Purposes of the Special Meeting.* The purposes of the special meeting are to consider and vote on:

1. A proposal to approve the merger agreement;
2. A proposal to approve the post-transaction certificate of incorporation, including the governance provisions contained in that document;
3. A proposal to adjourn the special meeting if necessary to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting to approve the merger agreement or the post-transaction certificate of incorporation; and
4. Any other matters that may properly come before the special meeting or any adjournment or postponement thereof.

*Record Date; Voting Power.* We have fixed the close of business on \_\_\_\_\_, 2004 as the record date for the determination of holders of Banknorth common stock entitled to notice of and to vote at the special meeting and any adjournment or postponement of the special meeting. At the close of business on the record date, there were \_\_\_\_\_ shares of Banknorth common stock outstanding and entitled to vote. Each share of Banknorth common stock entitles the holder to one vote at the special meeting on all matters properly presented at the meeting.

*Required Vote.* The affirmative vote of the holders of a majority of the outstanding shares of Banknorth common stock, voting in person or by proxy, is necessary to approve the merger agreement. The affirmative vote of a majority of the votes cast on the matter at the special meeting is required to approve the proposal to approve the post-transaction certificate of incorporation, which is a condition to the completion of the mergers, as well as the proposal to adjourn the special meeting if necessary to permit further solicitation of proxies on the proposal to approve the merger agreement and the post-transaction certificate of incorporation.

### **The Transaction (Page 37)**

The merger agreement provides for TD to acquire 51% of the outstanding common stock of the new Banknorth and for Banknorth's current stockholders to receive TD common shares and cash in exchange, as well as retain a 49% interest in new Banknorth following the transaction. The transaction will be effected in two steps in immediate succession.

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First, Banknorth will reincorporate from Maine to Delaware by merging with and into its wholly-owned subsidiary, Banknorth Delaware. In this migratory merger, your Banknorth shares will be converted into an identical number of shares of Banknorth Delaware. Following the migratory merger, Banknorth Delaware will be subject to the corporate laws of Delaware, where the majority of publicly-traded U.S. corporations are incorporated, rather than those of Maine. For a description of the material differences in the rights of shareholders of Banknorth and Banknorth Delaware, as well as TD, see [Comparison of Shareholder Rights](#) beginning on page 125.

Second, immediately after the migratory merger and without further action by Banknorth's shareholders, the acquisition merger will occur, in which TD's wholly-owned subsidiary, Berlin Merger Co., will merge with and into Banknorth Delaware, with Banknorth Delaware continuing as the surviving corporation with the name TD Banknorth Inc. As a result of the acquisition merger, TD will own approximately 51% of the outstanding shares of Banknorth Delaware common stock and the shareholders of Banknorth will own the remaining approximately 49% of the outstanding shares of Banknorth Delaware common stock.

The following diagrams show the steps in the transaction:

- 
- (1) Migratory merger to reincorporate Banknorth from Maine to Delaware.
  - (2) Acquisition merger for TD to acquire 51% of Banknorth Delaware's common stock.

**What You Will Receive if the Mergers are Completed (Page 73)**

If the mergers are completed, each Banknorth shareholder will receive, in exchange for the shares of Banknorth common stock owned by such shareholder, the following:

a number of TD common shares equal to 0.2351 multiplied by the number of shares of Banknorth common stock owned by such shareholder, plus cash in lieu of any fractional share interests;

an amount in cash equal to \$12.24 multiplied by the number of shares of Banknorth common stock owned by such shareholder; and

a number of shares of Banknorth Delaware common stock equal to 0.49 multiplied by the number of shares of Banknorth common stock owned by such shareholder, plus cash in lieu of any fractional share interests.

You will not receive any fractional shares of Banknorth Delaware common stock or any fractional TD common shares. Instead, TD will pay you cash for any fractional shares of Banknorth Delaware common stock or any fractional TD common shares you would have otherwise received.

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For example, if you own 10,000 shares of Banknorth common stock, when both mergers have been completed, you will receive 2,351 TD common shares, 4,900 shares of Banknorth Delaware common stock and \$122,400 in cash. If you own 10,001 shares of Banknorth common stock, following the mergers, you will receive the following:

2,351 TD common shares;

4,900 shares of Banknorth Delaware common stock;

\$122,412.24 in cash;

for the fractional TD common share, cash in U.S. dollars equal to 0.2351 multiplied by the average of the daily weighted averages of a TD common share on the Toronto Stock Exchange for the five trading days ending on the second business day preceding the date of completion of the mergers, as such price is converted into U.S. dollars; and

for the fractional share of Banknorth Delaware common stock, cash in U.S. dollars equal to 0.49 multiplied by the average closing market price of a share of Banknorth Delaware common stock for the five trading days immediately following the date of completion of the mergers.

The exchange ratio relating to the TD common shares you will receive is a fixed ratio, which means that it will not change if the trading price of the TD common shares changes between now and the time the transaction is completed. Therefore, the market value of the TD common shares you will receive in the transaction will depend on the price of the TD common shares at the time the transaction is completed. Similarly, the market value of the shares of Banknorth Delaware common stock which you will receive in the transaction will depend on the price of such shares at the time the transaction is completed. See **Risk Factors** beginning on page 24.

### **Dividend Policies and Possible Share Purchases for Cancellation**

Banknorth currently pays a dividend of approximately \$0.20 per quarter on its common stock, while TD currently pays a dividend of C\$0.36 per quarter (U.S.\$ based on the Canadian dollar/ U.S. dollar exchange rate on , 2004) on its common shares. Banknorth Delaware and TD expect to continue paying dividends at the respective current rates of Banknorth and TD following the closing of the transaction, subject to the discretion of their respective boards of directors based upon the companies' respective financial results and condition, capital needs and other relevant considerations.

Following the completion of the mergers, TD may purchase for cancellation up to C\$500 million in TD common shares, subject to market conditions and in accordance with U.S. and Canadian securities and other applicable laws. The approval of various regulators, including the Superintendent of Financial Institutions (Canada) (to whom we refer in this document as the Superintendent) under the Bank Act of Canada, would be required before TD could make any such purchases.

### **Board of Directors and Executive Management of Banknorth Delaware Following the Mergers (Page 111)**

Following the mergers, the board of directors of Banknorth Delaware will be comprised of the Banknorth directors in office at the time of the closing (of which there are currently 14) and up to 5 additional directors designated by TD prior to the closing. TD has agreed, in the stockholders agreement described below, to take no action to remove any of the directors of Banknorth who become directors of Banknorth Delaware prior to the time that their current terms of office as Banknorth directors are currently scheduled to end.

In addition, it is expected that William J. Ryan will continue as the Chairman, President and Chief Executive Officer of Banknorth Delaware, and that substantially all other members of Banknorth's current executive management team would continue to hold their current positions at Banknorth Delaware.

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**Recommendation of the Banknorth Board of Directors (Page 35)**

Banknorth's board of directors has determined that the merger agreement and the mergers are fair to, and in the best interests of, Banknorth and its shareholders and approved and declared advisable the merger agreement, the mergers and the other transactions contemplated by the merger agreement. Banknorth's board of directors has also approved the post-transaction certificate of incorporation, including the governance provisions contained in that document.

**Banknorth's board of directors recommends that you vote FOR approval of the merger agreement and the post-transaction certificate of incorporation.** The Banknorth board also recommends that you vote FOR the proposal to adjourn the special meeting if necessary to permit further solicitation of proxies to approve the merger agreement and the post-transaction certificate of incorporation.

**Opinions of Banknorth's Financial Advisors (Page 43)**

In determining to approve the merger agreement, the Banknorth board of directors considered the oral opinions of its financial advisors, Keefe, Bruyette & Woods, Inc., or KBW, and Lehman Brothers Inc., or Lehman Brothers, which were subsequently confirmed in writing as of August 25, 2004 and August 26, 2004, respectively, that, based upon and subject to the assumptions made, matters considered and limitations described in their respective opinions, the merger consideration to be received by the Banknorth shareholders in the transaction was fair to such shareholders from a financial point of view. We have attached the KBW opinion as Appendix E, and the Lehman Brothers opinion as Appendix F, to this proxy statement/prospectus. You should read the opinions carefully, as well as the descriptions of the opinions contained elsewhere in this proxy statement/prospectus, to understand the procedures followed, assumptions made, matters considered and qualifications and limitations on the reviews undertaken by KBW and Lehman Brothers, as well as for a description of the compensation paid and to be paid by Banknorth to such firms in connection with the rendering of their opinions.

**Interests of Banknorth Executive Officers and Directors in the Transaction (Page 56)**

When you consider the Banknorth board of directors' recommendation to vote in favor of approval of the merger agreement and the post-transaction certificate of incorporation, you should be aware that Banknorth's executive officers and directors have interests in the transaction that may be different from, or in addition to, the interests of the other Banknorth shareholders. The Banknorth board of directors was aware of these interests when it approved the merger agreement and the post-transaction certificate of incorporation and determined that the transactions contemplated by the merger agreement are fair to, and in the best interests of, Banknorth and its shareholders.

**Material U.S. Federal Income Tax Consequences of the Mergers (Page 62)**

For United States federal income tax purposes, you will be treated as exchanging your shares of Banknorth common stock for shares of Banknorth Delaware common stock in the migratory merger. It is anticipated that the migratory merger will be treated as a tax-free reorganization for United States federal income tax purposes, and you will not recognize gain or loss upon the exchange of Banknorth common stock solely for shares of Banknorth Delaware common stock. With respect to the acquisition merger, for United States federal income tax purposes, you will be treated as surrendering only those shares of Banknorth Delaware common stock that are exchanged for TD common shares and cash (with your remaining shares of Banknorth Delaware common stock being retained by you). The acquisition merger will be taxable to you, and you will recognize gain or loss equal to the difference between (1) the sum of the cash and the fair market value of the TD common shares that you receive and (2) your adjusted tax basis in the shares of Banknorth Delaware common stock that you surrender in the acquisition merger for TD common shares and cash. You will not recognize any gain or loss on the shares of Banknorth Delaware common stock that you retain in the acquisition merger.

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**Material Canadian Federal Income Tax Consequences of the Mergers (Page 66)**

In general, neither the exchange of a share of Banknorth common stock for a share of Banknorth Delaware common stock pursuant to the migratory merger nor the conversion of Banknorth Delaware common stock into the right to receive the merger consideration pursuant to the acquisition merger will be subject to Canadian tax for a holder of Banknorth common stock who is not and is not deemed to be a resident of Canada. Dividends paid or credited to holders of TD common shares who are not and are not deemed to be a resident of Canada are subject to a Canadian withholding tax of 25%, subject to any reduction in the rate of withholding under an applicable international tax convention. Under the Canada-United States Income Tax Convention (1980), the rate of that withholding tax is generally reduced to 15% for holders who are residents of the United States and who beneficially own the dividends. Assuming that the TD common shares are not taxable Canadian property at the time of disposition, any capital gain realized on the disposition of those shares will not be subject to tax in Canada.

**Anticipated Accounting Treatment (Page 68)**

TD intends to account for the transaction on its financial statements as a purchase of Banknorth for both Canadian and U.S. financial accounting purposes. No accounting entries will be required on the separate stand-alone financial statements of Banknorth Delaware as a result of the mergers because push-down accounting rules do not apply in these circumstances. The availability or use of a specific method of accounting is not a condition to completion of the transaction.

**Regulatory Matters Related to the Mergers (Page 68)**

*U.S. Bank Holding Company Act.* TD is required to obtain the approval of the Board of Governors of the U.S. Federal Reserve System (which we refer to in this document as the Federal Reserve Board) under the BHC Act for the acquisition of control of Banknorth pursuant to the mergers. The U.S. Department of Justice will have an opportunity to comment during the approval process of the Federal Reserve Board and will have at least 15 but no more than 30 days following the approval of the Federal Reserve Board to challenge the approval on antitrust grounds.

*Bank Act of Canada.* Under the Bank Act of Canada, TD is required to obtain the approval of the Superintendent for the indirect acquisition of control pursuant to the mergers of Banknorth, NA and of certain other Banknorth subsidiaries which are directly owned by Banknorth. Under the Bank Act of Canada, approval of the Superintendent is also required for the issuance of the TD common shares included in the merger consideration.

*U.S. Antitrust Laws.* TD and Banknorth will be required, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (which we refer to in this document as the HSR Act), to notify and furnish required information to the Antitrust Division of the U.S. Department of Justice (which we refer to in this document as the Antitrust Division) and to the U.S. Federal Trade Commission (which we refer to in this document as the FTC) prior to completing the mergers, and the mergers cannot be completed until these notifications and filings have been made and the required waiting period has expired or been earlier terminated.

*Other Regulatory Approvals.* TD and Banknorth Delaware are also required to file applications with and obtain the approval of bank regulatory authorities in the State of Maine and, in the case of TD, the Commonwealth of Massachusetts, with respect to the transaction. The change in control of Banknorth, NA, which has a division which is registered as an investment advisor, requires the filing of notices with various U.S. state and federal securities authorities. Banknorth owns two captive insurance companies domiciled in the State of Vermont and, therefore, TD is required to file an application with and obtain the approval of the Vermont Insurance Commissioner for the change in ownership of those companies. Ownership changes regarding insurance brokerage agencies controlled by Banknorth also are subject to notice requirements with various state regulatory authorities.

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**No Dissenters Rights of Appraisal (Page 71)**

The holders of Banknorth common stock are not entitled to any dissenters rights of appraisal in connection with the mergers.

**The Merger Agreement (Page 73)**

The merger agreement is described beginning on page 73. The merger agreement is attached as Appendix A to this proxy statement/prospectus. We urge you to read the merger agreement in its entirety because this document is the legal document governing the mergers.

*Conditions to the Mergers.* The respective obligations of each of TD and Banknorth to complete the mergers are conditioned upon the satisfaction or waiver of the following conditions:

receipt of the required approval of the Banknorth shareholders of the merger agreement and the post-transaction certificate of incorporation;

approval for the listing on the New York Stock Exchange of the shares of Banknorth Delaware common stock and TD common shares to be issued in the mergers and, in the case of the TD common shares, on the Toronto Stock Exchange;

the combined registration statement on Form S-4/ F-4, which includes this joint proxy statement/prospectus, filed by Banknorth Delaware and TD with the Securities and Exchange Commission, or SEC, must have been declared effective by the SEC; and

receipt of required regulatory approvals and the absence of any injunction or other legal prohibition against the mergers.

TD's obligation to complete the mergers is subject to the satisfaction or waiver of a number of conditions, including the following:

the accuracy of the representations and warranties of Banknorth as of the closing date of the mergers, other than, in most cases, those failures to be true and correct that would not reasonably be expected to result in a material adverse effect on Banknorth;

performance in all material respects by Banknorth of the obligations required to be performed by it at or prior to the closing date of the mergers;

there being no legal or regulatory restriction or condition applicable to the mergers that would be reasonably likely to have a material adverse effect on Banknorth, Banknorth Delaware or TD; and

the establishment of the Banknorth Delaware board of directors in the manner described in The Merger Agreement Surviving Corporation Governing Documents and Directors.

Banknorth's obligation to complete the mergers is subject to the satisfaction or waiver of the following conditions:

the accuracy of the representations and warranties of TD as of the closing date of the mergers, other than, in most cases, those failures to be true and correct that would not reasonably be expected to result in a material adverse effect on TD;

performance in all material respects by TD of the obligations required to be performed by it at or prior to the closing date of the mergers; and

receipt of an opinion of Banknorth's counsel that the migratory merger will constitute a tax-free reorganization for U.S. federal income tax purposes.

*Termination.* The merger agreement may be terminated at any time before the completion of the mergers, whether before or after approval of the merger agreement and the post-transaction certificate of incorporation by the Banknorth shareholders, in any of the following ways:

by mutual written consent of TD and Banknorth; or

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by either TD or Banknorth if:

any governmental entity which must grant a required regulatory approval has denied approval of the mergers and this denial has become final and nonappealable or a governmental entity has issued a final nonappealable order prohibiting the completion of the mergers;

the mergers have not been completed by June 30, 2005, but neither TD nor Banknorth may terminate the merger agreement for this reason if its breach of any obligation under the merger agreement has resulted in the failure of the mergers to occur by that date;

there is a breach by the other party of the merger agreement which would prevent satisfaction of a closing condition and the breach cannot be cured or is not cured prior to 30 days after receipt of written notice of the breach, but neither TD nor Banknorth may terminate the merger agreement for this reason if it itself is then in material breach of the merger agreement; or

the shareholders of Banknorth fail to approve the merger agreement or the post-transaction certificate of incorporation at the Banknorth special meeting;

by TD, if the board of directors of Banknorth has withdrawn, modified or qualified in any manner adverse to TD its recommendation, taken any action or made any other public statement in connection with the Banknorth shareholders meeting inconsistent with its recommendation of the approval of the merger agreement and the post-transaction certificate of incorporation by the shareholders of Banknorth or failed to call a special meeting of shareholders to vote on approval of the merger agreement and the post-transaction certificate of incorporation; or

by Banknorth, at any time during the five business day period beginning two business days after the date on which the approval of the Federal Reserve Board or the Superintendent (whichever is later) required for completion of the acquisition merger is received, if

the weighted average price of the TD common shares during a ten-trading day measurement period preceding the receipt of approval of the Federal Reserve Board or the Superintendent (whichever is later) of the acquisition merger is less than approximately \$29.10 (which would represent a decline by more than 15% from the weighted average price of the TD common shares on August 25, 2004, which was \$34.23); and

the percentage ratio of the weighted average price of the TD common shares during that pre-closing measurement period to \$34.23 (the weighted average price on August 25, 2004) is more than 15 percentage points below the percentage ratio of the indexed weighted average price of the shares of five other major Canadian banks over the same pre-closing measurement period to the indexed price of those banks on August 25, 2004 (which was approximately \$39.09).

If Banknorth elects to terminate the merger agreement because of a decline in TD's share price under the circumstances described in the preceding bullet point, TD will have the right to increase the exchange ratio of TD shares issued as merger consideration, as provided in the merger agreement, and if TD does so then Banknorth will no longer have the right to terminate the merger agreement on this basis.

If the merger agreement is terminated under certain circumstances, including circumstances involving a change in recommendation by Banknorth's board of directors, Banknorth is required to pay TD a termination fee of up to \$150 million. The termination fee could discourage other companies from seeking to acquire or merge with Banknorth.

**The Stockholders Agreement (Page 89)**

Concurrently with entering into the merger agreement, TD and Banknorth also entered into a stockholders agreement that will become effective upon the completion of the mergers. The stockholders agreement contains provisions dealing with corporate governance and board representation rights, share purchase and transfer restrictions and other matters relating to TD's ownership of Banknorth Delaware

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shares following the completion of the mergers. The stockholders agreement is included as Appendix D to this proxy statement/ prospectus, and we urge you to read it in its entirety.

*Governance.* The stockholders agreement, and related provisions of the post-transaction certificate of incorporation and by-laws of Banknorth Delaware, permit TD to nominate and elect a separate class of directors (designated as Class B directors) to the Banknorth Delaware board. Initially TD intends to elect up to 5 Class B directors, but generally it may increase that number at any time to a majority of the entire board. All corporate action by the Banknorth Delaware board will require the affirmative vote of both a majority of the entire board as well as a majority of the Class B directors.

It is expected that the current Banknorth board will continue in office as directors of Banknorth Delaware following the mergers. In addition, the stockholders agreement provides that the Banknorth Delaware board following the mergers will at all times include four independent directors initially chosen by the current Banknorth board who will not be affiliated in any way with TD and who will have sole authority to make various decisions on behalf of Banknorth Delaware under the stockholders agreement, such as approving amendments to the stockholders agreement or authorizing a going-private transaction involving TD (generally, any transaction in which TD acquires additional publicly-held shares of Banknorth Delaware common stock, with the result that this stock is no longer publicly traded on a national securities exchange or market or is held by fewer than 300 shareholders). We refer to these four independent directors in this proxy statement/ prospectus as the designated independent directors. The successors to the initial designated independent directors will generally be chosen by the designated independent directors then in office, subject to the consent of the board's nominating committee (a majority of whose members will be TD nominees).

*Share Ownership and Transfer.* The stockholders agreement generally prohibits TD from acquiring more than 66 2/3% of Banknorth Delaware's outstanding voting stock, except in an authorized going-private transaction or in some other limited circumstances involving repurchases by Banknorth Delaware of its outstanding common stock. The stockholders agreement permits TD to bid for the remaining publicly-held Banknorth Delaware shares or otherwise engage in a going-private transaction only in compliance with the following conditions:

TD may not initiate discussions regarding or engage in a going-private transaction during the first two years after the completion of the mergers unless requested to do so by the designated independent directors. During the next three years, TD may initiate discussions with the designated independent directors regarding a going-private transaction but only on a confidential basis and may not proceed with such a transaction unless authorized to do so by the designated independent directors. During the first five years after the completion of the mergers, any going-private transaction also requires the approval or acceptance of the holders of a majority of the outstanding shares of common stock of Banknorth Delaware not owned by TD or its affiliates.

After the fifth year following the completion of the mergers, TD may initiate a going-private transaction after first offering to negotiate the terms of the transaction with the designated independent directors, and if requested by the designated independent directors, negotiating those terms for up to 60 days. The transaction may only be completed if it is approved by a majority of the designated independent directors or if it is approved or accepted by the holders of a majority of the outstanding shares of common stock of Banknorth Delaware not owned by TD or its affiliates.

Any going-private transaction that TD initiates must be for 100% of the shares of common stock of Banknorth Delaware not owned by TD or its affiliates.

As long as TD and its affiliates own 25% or more of Banknorth Delaware's voting stock, they will have a first right to purchase capital stock from Banknorth Delaware whenever Banknorth Delaware's board determines to raise capital. TD will also have the right to purchase its proportionate share of capital securities issued by Banknorth Delaware for any other reason, including pursuant to acquisitions.

In the stockholders agreement, TD has agreed that during the first two years after the completion of the mergers it will not transfer any Banknorth Delaware voting shares except to its affiliates. During the

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next three years, TD generally will be permitted to transfer Banknorth Delaware voting shares in broadly dispersed offerings, as security to collateralize a loan, subject to some limitations, and to persons who would own less than 5% of Banknorth's voting stock following such transfer, subject to Banknorth Delaware's right of first offer to purchase the shares. These transfer restrictions will terminate after the fifth anniversary of the completion of the mergers.

In addition, commencing generally with the third anniversary of the completion of the mergers (or following the second anniversary in some circumstances), TD may transfer Banknorth Delaware voting shares to a person who would, following such transfer, own more than 10% of Banknorth Delaware's voting shares. If TD intends to transfer less than all of its Banknorth Delaware voting shares in this type of a transfer, it must give Banknorth Delaware a right of first offer to purchase the shares. In addition, if TD intends to make this type of a transfer and as a result of that transfer TD would own less than 50% of Banknorth Delaware's outstanding voting shares, the other shareholders of Banknorth Delaware will have the right to participate in the transfer by TD pro rata on the same terms as TD (unless Banknorth Delaware exercises its right to purchase the shares, if applicable). The transfer restriction described in this paragraph will apply for as long as TD and its affiliates beneficially own at least 25% of Banknorth Delaware's voting securities.

*Non-Compete.* The stockholders agreement generally prohibits TD from providing branch-based consumer and commercial banking services in the continental United States through a federally-insured bank other than Banknorth Delaware's banking subsidiary. This restriction does not apply to banking operations that TD may conduct through its branches and agencies that operate in the U.S. as foreign branches of its Canadian banking operations, nor does it apply to banking services provided to TD's U.S. brokerage business through TD Waterhouse Bank, N.A. or any other bank whose primary business is to provide banking services to customers of a brokerage, mutual fund or other similar consumer financial business.

*Termination.* The stockholders agreement will generally remain in effect until such time as TD owns less than 15% of Banknorth Delaware's outstanding voting stock. Some of the provisions, such as the rights to purchase securities from Banknorth Delaware, will terminate when TD owns less than 25% of Banknorth Delaware's outstanding voting stock, and some of the governance rights described above will continue, on a temporary basis, while TD owns less than 50% but at least 35% of Banknorth Delaware's outstanding voting stock.

## **Comparison of Shareholder Rights (Page 125)**

The conversion of your shares of Banknorth common stock into shares of Banknorth Delaware common stock and TD common shares in the mergers will result in changes from your current rights as a Banknorth shareholder, which generally are governed by the Maine Business Corporation Act, which we refer to as the MBCA, and Banknorth's organizational documents, to your rights as a Banknorth Delaware shareholder, which generally are governed by the Delaware General Corporation Law, which we refer to as the DGCL, and Banknorth Delaware's organizational documents, and to your rights as a TD shareholder, which generally are governed by the Bank Act of Canada and TD's organizational documents.

**Table of Contents****SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA OF TD**

The following table sets forth certain selected consolidated financial information of TD prepared in accordance with generally accepted accounting principles in Canada (which we refer to in this document as Canadian GAAP), except as otherwise indicated. The information as at and for each of the five years ended October 31, 2003, 2002, 2001, 2000 and 1999 has been derived from the consolidated financial statements of TD as filed with the SEC. The information as at and for the nine-month periods ended July 31, 2004 and July 31, 2003 has been derived from the unaudited consolidated financial statements of TD and the notes thereto filed by TD with the SEC, which reflect, in the opinion of TD's management, all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of such information. Results for interim periods are not necessarily indicative of results which may be expected for any other interim period or for the fiscal year as a whole. The information presented below is only a summary and should be read in conjunction with the respective audited and unaudited financial statements of TD, including the notes thereto, incorporated by reference in this proxy statement/prospectus. See [Where You Can Find More Information](#) beginning on page 152.

Amounts determined under generally accepted accounting principles in the U.S. (which we refer to in this document as U.S. GAAP) that are materially different from those determined under Canadian GAAP are indicated below. For a reconciliation to U.S. GAAP of TD's consolidated financial statements for the nine months ended July 31, 2004, see Note 10 to the consolidated financial statements of TD for the nine months ended July 31, 2004, incorporated by reference herein to TD's Form 6-K filed with the SEC on August 26, 2004, and for a discussion of the principal differences between Canadian GAAP and U.S. GAAP and a reconciliation to U.S. GAAP of TD's consolidated financial statements for the year ended October 31, 2003, see Note 25 to the consolidated financial statements of TD, incorporated by reference herein from TD's Form 40-F for the year ended October 31, 2003, filed with the SEC on December 15, 2003. A reconciliation to U.S. GAAP for other periods presented is included in the notes to the applicable historical consolidated financial statements of TD filed by TD with the SEC. See [Where You Can Find More Information](#) beginning on page 152.

	Nine Months Ended July 31,		Year Ended October 31,				
	2004	2003	2003	2002	2001	2000	1999(1)
(C\$ in millions, except per share data and ratios)							
<b>Operations Data:</b>							
Interest income	C\$8,312	C\$8,543	C\$11,202	C\$11,606	C\$14,271	C\$13,675	C\$10,874
Interest expense	3,862	4,306	5,586	6,306	9,880	10,070	7,893
Net interest income	4,450	4,237	5,616	5,300	4,391	3,605	2,981
Provision for (recovery of) credit losses	(313)	269	186	2,925	920	480	275
Net interest income after credit loss provision	4,763	3,968	5,430	2,375	3,471	3,125	2,706
Other income	3,783	3,330	4,424	4,929	6,447	6,400	5,931
Non-interest expenses	6,103	6,404	8,364	7,752	8,654	8,127	4,561
Net income (loss)	1,698	575	1,076	(67)	1,392	1,025	2,981
Net income (loss) (U.S. GAAP basis)	1,569	596	1,162	(95)	1,531	1,095	2,837
Preferred dividends	61	66	87	93	92	66	43
Net income (loss) applicable to common shares	1,637	509	989	(160)	1,300	969	2,938
Net income (loss) applicable to common shares (US GAAP basis)	1,527	547	1,098	(165)	1,461	1,051	2,806
<b>Per Common Share:</b>							
Net income (basic)	C\$2.50	C\$.78	C\$1.52	C\$.25	C\$2.07	C\$1.56	C\$4.90
Net income (basic)(U.S. GAAP basis)	2.35	.84	1.69	(.26)	2.32	1.69	4.68
Net income (fully diluted)	2.48	.78	1.51	(.25)	2.05	1.53	4.81
Net income (fully diluted)(U.S. GAAP)	2.34	.84	1.68	(.26)	2.30	1.66	4.68

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basis)

Cash dividends

declared(2)	1.00	.84	1.16	1.12	1.09	.92	.72
Book value (period end)	18.94	17.47	17.64	17.91	18.97	17.83	17.25

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	Nine Months Ended July 31,		Year Ended October 31,				
	2004	2003	2003	2002	2001	2000	1999(1)
(C\$ in millions, except share data and ratios)							
<b>Consolidated Balance Sheet (period end):</b>							
Total assets	C\$309,193	C\$302,215	C\$273,532	C\$278,040	C\$287,838	C\$264,818	C\$214,417
Total assets (U.S. GAAP basis)	318,517	312,429	283,439	289,565	301,587	265,885	214,999
Loans (net)	123,222	120,078	118,058	122,627	119,673	120,721	87,485
Deposits	211,504	198,628	182,880	189,190	193,914	185,808	140,386
Subordinated notes	5,671	5,143	5,887	4,343	4,892	4,883	3,217
Total shareholders equity	13,674	12,947	13,111	13,041	13,404	12,350	11,533
Common shares outstanding (thousands)	652,960	653,365	656,261	645,399	628,451	622,616	620,343
<b>Selected Ratios:</b>							
Return on risk weighted assets	2.15%	.65%	.92%	(.05)%	1.08%	0.86%	2.74%
Return on average common equity	18.3	6.0	8.7	(1.3)	11.3	8.9	34.3
Common equity to total assets	4.0	3.8	4.2	4.2	4.1	4.2	5.0
Net impaired loans to net loans and bankers acceptances (period end)	(0.5)	(0.5)	(0.5)	(0.7)		(0.1)	(0.3)
Productivity(3)	74.1	84.6	83.3	75.8	79.8	81.2	51.2
Provision for credit losses as a % of net loans and bankers acceptances	(.33)	.28	.15	2.24	.71	.39	.28
Net common equity as a % of risk-weighted assets(4)	8.5	6.3	7.4	6.2	5.3	4.3	9.0
Tier 1 capital to risk weighted assets	12.3	9.7	10.5	8.1	8.4	7.2	10.1
Total capital to risk-weighted assets	16.8	13.9	15.6	11.6	11.9	10.8	13.3
Common dividend payout ratio	40.0	107.1	76.2		52.6	59.0	14.7

(1) Adjusted to reflect the one-for-one stock dividend paid on July 31, 1999.

(2) Equivalent to U.S.\$0.81 in fiscal 2003, U.S.\$0.72 in fiscal 2002, U.S.\$0.70 in fiscal 2001, U.S.\$0.62 in fiscal 2000 and U.S.\$0.48 in fiscal 1999, and U.S.\$0.75 and U.S.\$0.57 for the first nine months of fiscal 2004 and 2003, respectively, based on the exchange rate used at each payment date.

(3) Non-interest expenses, as a percentage of the sum of net interest income and other income.

(4) Common shareholders equity less net intangible assets and goodwill divided by risk weighted assets.



**Table of Contents****SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA OF BANKNORTH**

The following table sets forth certain selected consolidated financial information of Banknorth prepared in accordance with U.S. GAAP. This information as at and for each of the five years ended December 31, 2003, 2002, 2001, 2000 and 1999 has been derived from the consolidated financial statements of Banknorth and notes thereto as filed with the SEC. The information as at and for the six-month periods ended June 30, 2004 and June 30, 2003 has been derived from the unaudited consolidated financial statements of Banknorth and the notes thereto filed by Banknorth with the SEC, which reflect, in the opinion of Banknorth's management, all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of such information. Results for interim periods are not necessarily indicative of results which may be expected for any other interim period or for the fiscal year as a whole. The information presented below is only a summary and should be read in conjunction with the respective audited and unaudited financial statements of Banknorth, including the notes thereto, incorporated by reference in this proxy statement/prospectus. See [Where You Can Find More Information](#) beginning on page 152.

	December 31,					
	June 30, 2004	2003	2002	2001	2000	1999
(U.S. \$ thousands, except per share data)						
<b>Balance Sheet Data:</b>						
Total assets	\$29,275,790	\$26,453,735	\$23,418,941	\$21,076,586	\$18,233,810	\$18,508,264
Securities(1)	7,991,964	7,247,232	6,947,876	6,156,861	5,880,658	6,873,182
Total loans and leases, net(2)	17,862,692	16,113,675	13,847,735	12,525,493	10,692,112	9,699,608
Goodwill and other intangibles	1,418,688	1,163,054	695,158	466,633	185,520	184,381
Deposits	19,336,629	17,901,185	15,664,601	14,221,049	12,107,256	11,710,501
Borrowings	6,911,425	5,882,864	5,432,581	4,602,388	4,659,390	5,466,253
Shareholders' equity	2,866,692	2,520,519	2,063,485	1,789,115	1,330,857	1,192,274
Nonperforming assets	67,167	63,103	68,953	81,227	67,132	69,192
Book value per share	16.61	15.54	13.70	11.83	9.42	8.22
Tangible book value per share	8.39	8.37	9.09	8.75	8.11	6.95

	Six Months Ended June 30,		Year Ended December 31,				
	2004	2003	2003	2002	2001	2000	1999
(U.S. \$ in thousands, except per share data)							
<b>Operations Data:</b>							
Interest and dividend income	\$601,798	\$611,805	\$1,192,969	\$1,235,117	\$1,263,789	\$1,330,287	\$1,227,519
Interest expense	154,139	194,095	352,138	438,600	583,899	726,737	613,124
Net interest income	447,659	417,710	840,831	796,517	679,890	603,550	614,395
Provision for loan and lease losses	19,000	21,401	42,301	44,314	41,889	23,819	23,575
Net interest income after provision for loan and lease losses	428,659	396,309	798,530	752,203	638,001	579,731	590,820
Net securities gains (losses)	6,936	36,206	42,460	7,282	1,329	(15,456)	655
Other noninterest income	170,758	157,861	324,699	267,226	239,176	226,644	191,140
Noninterest expense (excluding merger and consolidation costs and	317,796	297,475	602,676	564,701	501,708	459,385	460,306

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prepayment penalties on borrowings)							
Merger and consolidation costs(3)	5,748	5,981	8,104	14,691	7,614	43,007	28,002
Prepayment penalties on borrowings		30,490	30,490		5,995		
Income before income tax expense	282,809	256,430	524,419	447,319	363,189	288,527	294,307
Income tax expense	96,636	87,511	173,660	148,681	124,104	96,793	97,349
Net income before extraordinary item and cumulative effect of change in accounting principle	186,173	168,919	350,759	298,638	239,085	191,734	196,958
Cumulative effect of change in accounting principle, net of tax					(290)		
Net income	\$ 186,173	\$ 168,919	\$ 350,759	\$ 298,638	\$ 238,795	\$ 191,734	\$ 196,958

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	Six Months Ended June 30,		Year Ended December 31,				
	2004	2003	2003	2002	2001	2000	1999
(U.S. \$ in thousands, except per share data and ratios)							
Net income per share before extraordinary item and cumulative effect of change in accounting principle:							
Basic	\$ 1.12	\$ 1.06	\$ 2.18	\$ 2.01	\$ 1.73	\$ 1.33	\$ 1.35
Diluted	1.10	1.04	2.15	1.99	1.71	1.32	1.34
Net income per share:							
Basic	1.12	1.06	2.18	2.01	1.70	1.33	1.35
Diluted	1.10	1.04	2.15	1.99	1.68	1.32	1.34
Dividends per share	0.39	0.32	0.70	0.58	0.53	0.50	0.47

	At or For the Six Months Ended June 30,		Year Ended December 31,				
	2004	2003	2003	2002	2001	2000	1999
<b>Other Data:</b>							
Return on average assets	1.36%	1.35%	1.37%	1.39%	1.29%	1.05%	1.12%
Return on average equity	13.82	14.25	14.51	16.25	16.48	15.69	16.42
Average equity to average assets	9.87	9.46	9.44	8.56	7.82	6.66	6.81
Interest rate spread(4)	3.44	3.41	3.41	3.69	3.43	3.05	3.33
Net interest margin(4)	3.67	3.69	3.66	4.07	3.99	3.60	3.80
Tier 1 leverage capital ratio at end of period	6.80	6.36	6.65	7.13	7.14	7.02	6.75
Dividend payout ratio	35.08	29.77	31.90	28.76	30.27	36.91	33.19
Efficiency ratio(5)	51.74	54.59	53.09	54.10	55.34	61.67	60.57
Nonperforming assets as a percent of total assets at end of period	0.23	0.25	0.24	0.29	0.39	0.37	0.37

(1) Includes securities held to maturity.

(2) Does not include loans held for sale.

(3) Merger and consolidation costs consist of merger charges, charter consolidation costs, asset write-downs and branch closing costs where applicable.

(4) Ratios are on a fully-tax equivalent basis.

(5) The efficiency ratio represents noninterest expense as a percentage of net interest income and noninterest income.

**Table of Contents****SELECTED UNAUDITED PRO FORMA CONSOLIDATED****FINANCIAL DATA OF TD**

The following tables set forth selected unaudited pro forma consolidated financial data of TD. The pro forma amounts included in the tables below have been prepared in accordance with Canadian GAAP (except where noted), are based on the purchase method of accounting and are presented as if the transaction had occurred (1) as at July 31, 2004 for the purposes of the pro forma consolidated balance sheet and (2) as at November 1, 2002 for the purposes of the unaudited pro forma consolidated statements of income for the nine months ended July 31, 2004 and the year ended October 31, 2003. The pro forma amounts in the tables below do not include the anticipated financial benefits from such items as cost savings and revenue synergies arising from the transaction, nor do these amounts include restructuring and other costs that may be incurred by TD or Banknorth in connection with the transaction.

You should read this information in conjunction with, and the information is qualified in its entirety by, the consolidated financial statements and accompanying notes of TD and Banknorth incorporated into this proxy statement/ prospectus by reference and the unaudited pro forma consolidated financial statements of TD and accompanying discussions and notes beginning on page 99. See *Where You Can Find More Information* beginning on page 152. The pro forma amounts in the tables below are presented for informational purposes only. You should not rely on the pro forma amounts as being necessarily indicative of the financial position or results of operations of TD that would have actually occurred had the transaction been effective during the periods presented or the future financial position or results of operations of TD. The consolidated financial information as at the date and for the periods presented may have been different had the transaction actually been effective as at such date or during those periods.

	<b>As at July 31, 2004</b>	
	<b>(C\$ in millions)</b>	
<b>Balance Sheet Data:</b>		
Total assets	C\$ 351,906	
Total assets (U.S. GAAP basis)	361,169	
Loans (net of allowances for credit losses)	147,156	
Loans (net of allowances for credit losses) (U.S. GAAP basis)	153,037	
Total Deposits	238,807	
Total shareholders' equity	15,634	
	<b>Nine Months Ended July 31, 2004</b>	<b>Year Ended October 31, 2003</b>
	<b>(C\$ in millions, except per share data)</b>	
<b>Operations Data:</b>		
Net income	C\$ 1,752	C\$ 1,134
Net income (U.S. GAAP basis)	1,623	1,220
Net income (basic) per common share	2.42	1.51
Net income (basic) per common share (U.S. GAAP basis)	2.28	1.67
Net income (diluted) per common share	2.40	1.50
Net income (diluted) per common share (U.S. GAAP basis)	2.27	1.66

**Table of Contents****Pro-Forma Tier 1 Ratio**

TD prepares its capital ratios using Canadian guidelines for capital adequacy requirements as specified by the Superintendent. TD's Tier 1 ratio at July 31, 2004 was 12.3%.

Pro forma capitalization ratios include Banknorth's June 30, 2004 risk weighted assets. Adjustments to TD's consolidated Tier 1 capital arising from the transaction include adding the issuance of TD common shares, adding the non-controlling interest in subsidiaries and deducting the additional goodwill and intangibles (net of future tax and adjusted for intangible assets in excess of 5% of gross Tier 1 capital), but do not include adding Banknorth's trust preferred securities because it is not anticipated that TD would receive Tier 1 capital credit for these securities. The resulting pro forma Tier 1 capital ratio is 8.9%, which remains above the Superintendent's target level of 7%.

**Earnings before amortization of intangibles**

TD prepares its financial statements in accordance with Canadian GAAP. TD also utilizes earnings before the amortization of intangibles to assess each of its businesses and to measure overall performance. To arrive at this measure, TD removes amortization of intangibles from Canadian GAAP earnings.

Currently, the majority of TD's intangible amortization relates to the Canada Trust acquisition in fiscal 2000. TD excludes amortization of intangibles as this approach ensures comparable treatment with goodwill, which is not amortized. Consequently, TD believes that earnings before amortization of intangibles provides the reader with an understanding of TD's results that can be consistently tracked from period to period.

As explained, earnings before amortization of intangibles is different from reported results determined in accordance with Canadian GAAP. Earnings before amortization of intangibles is not a defined term under Canadian GAAP, and therefore it may not be comparable to similar terms used by other issuers. The table below provides a reconciliation between TD's pro forma earnings before amortization of intangibles and its pro forma reported results determined in accordance with Canadian GAAP.

Pro forma earnings before amortization of intangibles, applicable to common shares and per common share, are determined after excluding the amortization expense arising from intangibles from the pro forma consolidated statement of income.

**Pro forma Consolidated Net Income**

	<b>Nine Months Ended July 31, 2004</b>	<b>Year Ended October 31, 2003</b>
	(C\$ in millions, except share data)	
Net income applicable to common shares	C\$ 1,691	C\$ 1,047
Impact of intangibles amortization expense (tax effected)	447	592
Earnings before amortization of intangibles	C\$ 2,138	C\$ 1,639
Diluted average common shares outstanding ( <i>millions</i> )	703.3	697.5
Diluted net income per common share, before amortization of intangibles	C\$ 3.04	C\$ 2.35

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**COMPARATIVE PER SHARE DATA**

The following tables present, for the periods indicated, selected historical and pro forma consolidated financial information per TD common share and selected historical and pro forma equivalent financial information per share of Banknorth common stock.

You should read this information in conjunction with, and the information is qualified in its entirety by, the consolidated financial statements and accompanying notes of TD and Banknorth incorporated into this proxy statement/ prospectus by reference and the unaudited pro forma combined financial statements of TD and accompanying discussions and notes beginning on page 99. See also *Where You Can Find More Information* beginning on page 152. The pro forma amounts in the tables below are presented for informational purposes only. You should not rely on the pro forma or pro forma equivalent amounts as being necessarily indicative of the financial position or results of operations of TD or Banknorth that would have actually occurred had the transaction been effective during the periods presented or of the future financial position or the results which may be obtained by TD or Banknorth in the future. The combined financial information as at or for the periods presented may have been different had the transaction actually been effective as at or during those periods.

**TD common share data, Banknorth historical share data and Banknorth pro forma equivalent share data relating to portion of merger consideration consisting of TD common shares**

The following table presents, in Canadian dollars, the earnings per share, dividends and book values with respect to (1) each of TD and Banknorth on a historical basis, (2) TD, on a pro forma basis giving effect to the transaction, and (3) Banknorth, on a pro forma equivalent basis with respect to the portion of the merger consideration that will be received in the form of TD common shares. The TD pro forma amounts are presented as if the transaction had been effective for the periods presented based on the purchase method of accounting. The TD pro forma amounts do not include any cost savings or revenue synergies arising from the transaction, and do not include restructuring or integration costs. The Banknorth pro forma equivalent amounts are calculated by multiplying the corresponding TD pro forma amount by the exchange ratio of 0.2351 TD common shares included in the merger consideration, and do not include the merger consideration of U.S.\$12.24 or 0.49 shares of Banknorth Delaware common stock. Since Banknorth and TD have different fiscal years, (1) Banknorth historical amounts are presented as at and for the nine months ended June 30, 2004 and as at and for the year ended December 31, 2003 and (2) for purposes of calculating the Banknorth pro forma equivalent amounts, the corresponding TD pro forma amounts as at and for the nine months ended July 31, 2004 were used to calculate the Banknorth pro forma equivalent amounts as at and for the nine months ended June 30, 2004, and the corresponding TD pro forma amounts as at and for the year ended October 31, 2003 were used to calculate the Banknorth pro forma equivalent amounts as at and for the year ended December 31, 2003.

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	As at and For the Nine Months Ended July 31, 2004(c)	As at and For the Year Ended October 31, 2003(d)
	(C\$)	
<b>Basic Earnings Per Share</b>		
<i>TD historical (Canadian GAAP)</i>	C\$ 2.50	C\$ 1.52
<i>TD historical (U.S. GAAP)</i>	2.35	1.69
<i>Banknorth historical (U.S. GAAP)</i>	2.23	3.03
<i>TD pro forma(Canadian GAAP)(a)</i>	2.42	1.51
<i>TD pro forma (U.S. GAAP)(a)</i>	2.28	1.67
<i>Banknorth pro forma equivalent (Canadian GAAP)</i>	0.57	0.36
<i>Banknorth pro forma equivalent (U.S. GAAP)</i>	0.54	0.39
<b>Diluted Earnings Per Share</b>		
<i>TD historical (Canadian GAAP)</i>	C\$ 2.48	C\$ 1.51
<i>TD historical (U.S. GAAP)</i>	2.34	1.68
<i>Banknorth historical (U.S. GAAP)</i>	2.19	2.99
<i>TD pro forma(Canadian GAAP)(a)</i>	2.40	1.50
<i>TD pro forma (U.S. GAAP)(a)</i>	2.27	1.66
<i>Banknorth pro forma equivalent (Canadian GAAP)</i>	0.56	0.35
<i>Banknorth pro forma equivalent (U.S. GAAP)</i>	0.53	0.39
<b>Dividends Per Share</b>		
<i>TD historical and pro forma</i>	C\$ 1.00	C\$ 1.16
<i>Banknorth historical(e)</i>	0.77	0.97
<i>Banknorth pro forma equivalent</i>	0.24	0.27
<b>Book Value Per Share at Period End</b>		
<i>TD historical (Canadian GAAP)</i>	C\$ 18.94	C\$ 17.64
<i>TD historical (U.S. GAAP)</i>	19.19	18.67
<i>Banknorth historical (U.S. GAAP)</i>	22.23	20.08
<i>TD pro forma(Canadian GAAP)(b)</i>	20.57	
<i>TD pro forma (U.S. GAAP)(b)</i>	20.55	
<i>Banknorth pro forma equivalent (Canadian GAAP)</i>	4.84	
<i>Banknorth pro forma equivalent (U.S. GAAP)</i>	4.83	

- (a) These TD pro forma per share amounts were determined for the periods shown after giving effect to the appropriate pro forma adjustments (assuming completion of the transaction as at the beginning of the indicated period).
- (b) TD pro forma book value per share was determined as at July 31, 2004 after giving effect to transaction-related expenses and other pro forma adjustments.
- (c) Banknorth historical and pro forma equivalent amounts (except with respect to book value per share at period end) have been converted into Canadian dollars based on the average U.S. dollar/Canadian dollar exchange rate during the nine months ended June 30, 2004. The average exchange rate is calculated as the average of the noon buying rate on the last day of each month during the period. The Banknorth historical and pro forma equivalent book value per share at period end has been converted into Canadian dollars using the U.S. dollar/Canadian dollar exchange rate as at June 30, 2004.
- (d) Banknorth historical and pro forma equivalent amounts (except with respect to book value per share at period end) have been converted into Canadian dollars based on the average U.S. dollar/Canadian dollar exchange rate during the year ended December 31, 2003. The average exchange rate is calculated as the average of the noon buying rate on the last day of each month during the period. The Banknorth historical book value per share at period end has been converted into Canadian dollars using the U.S. dollar/Canadian dollar exchange rate as at December 31, 2003.
- (e)

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It is anticipated that the initial dividend rate on the Banknorth Delaware common stock will be equal to the current dividend rate on the Banknorth common stock.

### **Banknorth historical share data and Banknorth pro forma equivalent share data relating to portion of merger consideration consisting of TD common shares and Banknorth Delaware common stock**

The following table presents, in U.S. dollars, the earnings per share, dividends and book values with respect to Banknorth on a historical basis and on a pro forma equivalent basis with respect to the portion of the merger consideration that will be received in the form of TD common shares and shares of Banknorth Delaware common stock. The pro forma equivalent amounts with respect to the Banknorth common stock are calculated by: (1) multiplying the corresponding Banknorth historical amount by 0.49; (2) multiplying the corresponding TD pro forma amount (on a U.S. GAAP basis) by 0.2351, and adjusting this number for foreign exchange

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rates; and (3) adding together the amounts determined in steps (1) and (2). The Banknorth pro forma equivalent amounts do not include the merger consideration of \$12.24 per share. Since Banknorth and TD have different fiscal years, for purposes of calculating the Banknorth pro forma equivalent amounts, the corresponding TD pro forma amounts as at and for the nine months ended July 31, 2004 were used to calculate the Banknorth pro forma equivalent amounts as at and for the nine months ended June 30, 2004, and the corresponding TD pro forma amounts as at and for the year ended October 31, 2003 were used to calculate the Banknorth pro forma equivalent amounts as at and for the year ended December 31, 2003.

	As at and For the Nine Months Ended June 30, 2004(a)	As at and For the Year Ended December 31, 2003(b)
(U.S. \$)		
<b>Basic Earnings Per Share</b>		
<i>Banknorth historical</i>	\$ 1.68	\$ 2.18
<i>Banknorth pro forma equivalent:</i>		
<i>Banknorth historical × 0.49</i>	0.82	1.07
<i>TD pro forma (U.S. GAAP) × 0.2351</i>	0.41	0.27
<i>Banknorth pro forma equivalent</i>	1.23	1.34
<b>Diluted Earnings Per Share</b>		
<i>Banknorth historical</i>	\$ 1.65	\$ 2.15
<i>Banknorth pro forma equivalent:</i>		
<i>Banknorth historical × 0.49</i>	0.81	1.05
<i>TD pro forma (U.S. GAAP) × 0.2351</i>	0.40	0.27
<i>Banknorth pro forma equivalent</i>	1.21	1.32
<b>Dividends Per Share(c)</b>		
<i>Banknorth historical</i>	\$ 0.58	\$ 0.70
<i>Banknorth pro forma equivalent:</i>		
<i>Banknorth historical × 0.49</i>	0.28	0.34
<i>TD historical and pro forma × 0.2351</i>	0.18	0.19
<i>Banknorth pro forma equivalent</i>	0.46	0.53
<b>Book Value Per Share at Period End</b>		
<i>Banknorth historical</i>	\$ 16.61	\$ 15.54
<i>Banknorth pro forma equivalent:</i>		
<i>Banknorth historical × 0.49</i>	8.14	
<i>TD pro forma (U.S. GAAP) × 0.2351</i>	3.63	
<i>Banknorth pro forma equivalent</i>	11.77	

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- (a) TD pro forma amounts (except with respect to book value per share at period end) have been converted into U.S. dollars based on the average U.S. dollar/Canadian dollar exchange rate during the nine months ended July 31, 2004. The average exchange rate is calculated as the average of the noon buying rate on the last day of each month during the period. The TD pro forma book value per share at period end has been converted into U.S. dollars using the U.S. dollar/Canadian dollar exchange rate as at July 31, 2004.
- (b) TD pro forma amounts have been converted into U.S. dollars based on the average U.S. dollar/Canadian dollar exchange rate during the fiscal year ended October 31, 2003. The average exchange rate is calculated as the average of the noon buying rate on the last day of each month during the period.
- (c) It is anticipated that the initial dividend rate on the Banknorth Delaware common stock will be equal to the current dividend rate on the Banknorth common stock.

**Table of Contents****COMPARATIVE PER SHARE MARKET PRICE AND EXCHANGE RATE DATA****Comparative Per Share Market Prices**

The TD common shares are listed on the Toronto Stock Exchange and the New York Stock Exchange under the trading symbol TD, and also trade on the Tokyo Stock Exchange. The Banknorth common stock is listed on the New York Stock Exchange under the trading symbol BNK. The following table sets forth, for the respective calendar quarters indicated, the high and low sale prices per TD common share as reported on the Toronto Stock Exchange and the New York Stock Exchange Composite Tape and the high and low sale prices per share of Banknorth common stock as reported on the New York Stock Exchange Composite Tape. Market price information for the Banknorth common stock for periods prior to November 4, 2002 represents trading on The Nasdaq Stock Market's National Market System. The Toronto Stock Exchange sale prices are presented in Canadian dollars, and the New York Stock Exchange sale prices are presented in U.S. dollars. For comparison purposes, the following table uses calendar quarters (except with respect to dividends declared by TD, which are presented on a fiscal quarter basis), but it should be noted that TD's fiscal year end is October 31 and Banknorth's fiscal year end is December 31.

	The Toronto Stock Exchange			The New York Stock Exchange				
	TD Common Shares			TD Common Shares		Banknorth Common Stock		
	High	Low	Dividends Declared <sup>(1)</sup>	High	Low	High	Low	Dividends Declared
2001								
First Quarter	C\$45.55	C\$37.70	C\$0.25	U.S.\$30.33	U.S.\$23.96	U.S.\$21.06	U.S.\$18.13	U.S.\$0.130
Second Quarter	42.20	37.95	0.28	27.77	24.35	22.93	19.38	0.130
Third Quarter	44.50	35.10	0.28	28.88	22.42	24.39	18.93	0.130
Fourth Quarter	41.86	35.00	0.28	26.62	22.20	22.92	19.78	0.135
2002								
First Quarter	C\$44.43	C\$40.16	C\$0.28	U.S.\$27.87	U.S.\$25.13	U.S.\$26.80	U.S.\$22.25	U.S.\$0.135
Second Quarter	45.03	32.40	0.28	28.60	21.52	27.45	24.96	0.145
Third Quarter	36.00	27.15	0.28	23.60	17.00	27.40	20.71	0.150
Fourth Quarter	35.40	25.17	0.28	22.81	15.77	24.58	20.68	0.150
2003								
First Quarter	C\$35.65	C\$31.20	C\$0.28	U.S.\$23.27	U.S.\$20.50	U.S.\$24.02	U.S.\$20.60	U.S.\$0.160
Second Quarter	38.52	32.36	0.28	28.71	21.94	26.68	21.09	0.160
Third Quarter	39.67	36.11	0.28	29.19	25.76	29.70	25.43	0.190
Fourth Quarter	44.78	38.25	0.32	33.76	28.42	33.57	27.58	0.190
2004								
First Quarter	C\$47.49	C\$42.88	C\$0.32	U.S.\$35.71	U.S.\$32.59	U.S.\$34.45	U.S.\$30.53	U.S.\$0.195
Second Quarter	48.25	42.67	0.34	36.69	31.16	34.75	30.25	0.195
Third Quarter	47.07	42.54	0.34	36.76	31.94	36.10	30.49	0.200
Fourth Quarter (through , 2004)			0.36					

(1) Dividends declared during fiscal quarters ended January 31, April 31, July 31 and October 31.

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The table below sets forth the high and low sale prices for each of the six most recent full calendar months for TD common shares as reported on the Toronto Stock Exchange and the New York Stock Exchange Composite Tape and the Banknorth common stock on the New York Stock Exchange Composite Tape. The Toronto Stock Exchange sales prices of TD common shares are presented in Canadian dollars, and the New York Stock Exchange sale prices of TD common shares and Banknorth common shares are presented in U.S. dollars.

	The Toronto Stock Exchange		The New York Stock Exchange			
	TD Common Shares		TD Common Shares		Banknorth Common Stock	
	High	Low	High	Low	High	Low
April 2004	C\$48.25	C\$43.50	U.S.\$36.69	U.S.\$31.83	U.S.\$34.75	U.S.\$30.25
May 2004	45.75	43.30	33.57	31.16	32.95	30.55
June 2004	46.59	42.67	34.53	31.81	33.25	31.98
July 2004	44.40	42.54	33.60	31.94	32.60	31.05
August 2004	46.07	42.71	35.30	32.46	36.10	30.49
September 2004	47.07	45.00	36.76	34.58	35.00	33.62

The table below sets forth the closing sale prices of the TD common shares and the Banknorth common stock as reported on the New York Stock Exchange Composite Tape on August 24, 2004, the last trading day before the public announcement that TD and Banknorth were engaged in discussions regarding the mergers, August 25, 2004, the last trading day before the public announcement of the mergers, and \_\_\_\_\_, 2004, the last practicable trading day before the distribution of this proxy statement/ prospectus. The table also sets forth the equivalent pro forma sale price of Banknorth common stock on each of these dates, as determined by multiplying the applicable closing sale price of TD common shares by the exchange ratio of 0.2351 TD common shares included in the merger consideration, adding \$12.24 (the per share cash component of the merger consideration), and dividing the sum by 0.51. The pro forma equivalent sale price for the Banknorth common stock approximates the value, based on the TD share price for a particular date, of the value of the TD common shares and cash consideration effectively to be paid for 51% of the outstanding Banknorth shares. **Shareholders should note that this calculation does not represent the per share value that they will effectively receive for each of their Banknorth shares (since the shareholders will effectively retain 49% of their Banknorth shares), nor is it indicative of the price at which shares of Banknorth Delaware common stock may trade following completion of the mergers.** We urge you to obtain current market quotations for both the TD common shares and the Banknorth common stock.

	TD Common Shares	Banknorth Common Stock	Banknorth Pro Forma Equivalent
At August 24, 2004	U.S.\$35.19	U.S.\$31.70	U.S.\$40.22
At August 25, 2004	34.17	34.88	39.75
At _____, 2004			

**Table of Contents****Currency Exchange Rate Data**

The following tables show, for the periods indicated, certain information regarding the average U.S. dollar/ Canadian dollar exchange rate during various periods. The information is based on the noon buying rate in the City of New York. On \_\_\_\_\_, 2004, the currency exchange rate was C\$ \_\_\_\_\_ per U.S.\$1.00.

<b>Year Ended December 31,</b>	<b>Average Rate(1)</b>
	<b>(Per U.S.\$1.00)</b>
1999	C\$ 1.482708
2000	1.487050
2001	1.551890
2002	1.570240
2003	1.391575
<b>Nine Months Ended July 31,</b>	<b>Average Rate(1)</b>
	<b>(Per U.S.\$1.00)</b>
2003	C\$ 1.466656
2004	1.330511

(1) The average rate is calculated as the average of the noon buying rate on the last day of each month during the period.

**Table of Contents****RISK FACTORS**

In addition to the other information included or incorporated by reference in this proxy statement/ prospectus, including the matters addressed under the caption Cautionary Statement Concerning Forward-Looking Statements, beginning on page 32, you should carefully consider the matters described below in deciding whether to vote for approval of the merger agreement and the post-transaction certificate of incorporation.

***Because the TD exchange ratio is fixed and the market price of TD common shares may fluctuate, and because the value of the Banknorth Delaware common stock which you will receive is not known at this time, you cannot be certain of the dollar value of the merger consideration that you will receive upon completion of the mergers.***

Upon completion of the mergers, each Banknorth shareholder of record will be entitled to receive, in exchange for the shares of Banknorth common stock owned by such shareholder, a package of consideration consisting of (1) a number of TD common shares equal to 0.2351 multiplied by the number of shares of Banknorth common stock owned by such shareholder, (2) an amount in cash equal to \$12.24 multiplied by the number of shares of Banknorth common stock owned by such shareholder and (3) a number of shares of Banknorth Delaware common stock equal to 0.49 multiplied by the number of shares of Banknorth common stock owned by such shareholders, plus cash in lieu of any fractional share interests. Because the exchange ratio of 0.2351 TD common shares as part of the consideration for each Banknorth share is fixed, the value of the TD common shares issued in the acquisition merger will depend on the market price of TD common shares at the time they are issued. There will be no adjustment to the fixed number of shares of TD common stock issued to Banknorth shareholders based upon changes in the market price of TD common shares or Banknorth common stock prior to the closing. While Banknorth has the right to terminate the merger agreement if the market price of TD s common shares declines by more than 15% between the announcement of this transaction and a measuring period prior to the closing and this decline is more than 15 percentage points greater than the decline, if any, in an index of Canadian bank stocks over the same period, this termination right is not available to Banknorth if TD increases the exchange ratio as provided in the merger agreement. Accordingly, there can be no assurance that Banknorth would be able to exercise this termination right in the event of a significant decline in TD s common share price or that Banknorth s board would elect to exercise this right even if permitted to do so.

The dollar value of the merger consideration that you will receive also is dependent on the value of the shares of Banknorth Delaware common stock which you will receive upon completion of the mergers. The initial trading price of the Banknorth Delaware common stock upon completion of the mergers will reflect changes in the price of the Banknorth common stock prior to such time, as well as factors relating to completion of the mergers. The market price of the Banknorth common stock prior to the completion of mergers should reflect the fact that 51% of the outstanding shares will be converted in the mergers into TD common shares and cash representing a significant premium over Banknorth s stand-alone market prices, while the market price of the Banknorth Delaware common stock after the mergers will not reflect that implied premium. Accordingly, the pre-merger market price of the Banknorth common stock will not be directly comparable to the post-merger market price of the Banknorth Delaware common stock.

The market price of the Banknorth Delaware common stock and the TD common shares at the time the mergers are completed may vary from the respective prices of the Banknorth common stock and the TD common shares on the date the merger agreement was executed, on the date of this proxy statement/ prospectus and on the date of the special meeting as a result of various factors that are beyond the control of TD and Banknorth, including the following:

changes in the business, operations or prospects of TD or Banknorth;

governmental or regulatory developments, including any limitations or conditions to consummation of the mergers;

changes in the interest rate environment;

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changes in general economic conditions and the outlook for economic conditions;

changes in securities markets, including changes due to terrorist activities, world events or other factors;

the market assessment of the benefits of the mergers and of the likelihood that the mergers will be completed; and

the timing of the completion of the mergers.

Certain institutional shareholders of Banknorth may only be able to own shares of U.S. companies and therefore may not be permitted to hold TD common shares, and others may not wish to hold TD common shares for various reasons, including because TD is not a U.S. company. As a result, related sales are likely to occur prior to or following the completion of the mergers. If the supply of TD common shares is significantly greater than the associated demand, the market price of the TD common shares may significantly decline, in which case there can be no assurance that the market price would thereafter recover.

In addition to the approval of Banknorth's shareholders, completion of the mergers is subject to receipt of regulatory approvals and satisfaction of other conditions that may not occur until some time after the special meeting. Therefore, at the time of the special meeting you will not know the precise dollar value of the merger consideration you will become entitled to receive at the effective time of the mergers. You are urged to obtain a current market quotation for the TD common shares and the Banknorth common stock.

***The rights of Banknorth shareholders will change as a result of the mergers.***

Following the completion of the mergers, Banknorth shareholders will no longer be shareholders in Banknorth, a Maine corporation, but will instead be shareholders of both Banknorth Delaware, a Delaware corporation, and TD, a Canadian chartered bank. The post-transaction certificate of incorporation and the stockholders agreement that Banknorth Delaware and TD have entered into contain a number of governance and other provisions that will affect the rights of all Banknorth Delaware shareholders. There will be important differences between your current rights as a shareholder of Banknorth, on the one hand, and the rights to which you will be entitled as a shareholder of Banknorth Delaware and of TD, on the other hand. For example:

Banknorth Delaware and its shareholders will not be entitled to the protection of the anti-takeover provisions contained in Sections 1109 and 1110 of the MBCA. As a result, Banknorth Delaware will not be restricted from engaging in a business combination with TD in its capacity as the holder of 25% or more of the outstanding Banknorth Delaware common stock under Section 1109 of the MBCA, and the shareholders of Banknorth and Banknorth Delaware will not have the opportunity to obtain the fair value of their shares, pursuant to Section 1110 of the MBCA, from TD in connection with the transactions contemplated by the merger agreement or from any other person or entity which subsequently acquires 25% or more of the outstanding Banknorth Delaware common stock.

The Banknorth board of directors is divided into three classes and one-third of the directors are elected annually to serve three-year terms, whereas all members of the TD board of directors are, and all members of the Banknorth Delaware board of directors will be, elected annually for one-year terms.

Banknorth's and TD's governing documents provide that shareholder action may be taken without a meeting of shareholders if all shareholders entitled to vote with respect to the action consent in writing to that action. Banknorth Delaware's governing documents upon completion of the mergers will provide that such action may be taken by written consent of at least the number of shareholders whose vote would be required to take the action if it were taken upon a vote at a meeting of shareholders. As a result, TD's 51% ownership of Banknorth Delaware will allow it to

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take most actions that require shareholder approval by written consent, without the requirement that Banknorth Delaware call a special meeting of shareholders.

The rights of shareholders of Banknorth Delaware will also be affected by a number of the rights granted to TD as the controlling shareholder of Banknorth Delaware. For a discussion of these rights, see the risk factor captioned "TD will exercise significant control over Banknorth Delaware" below and "The Stockholders Agreement" beginning on page 89.

For a more detailed discussion of the differences in the rights of shareholders of Banknorth, Banknorth Delaware and TD, see also "Comparison of Shareholder Rights" beginning on page 125.

### ***Directors and officers of Banknorth have interests in the transaction that may differ from the interests of shareholders.***

When considering the recommendation of Banknorth's board of directors, you should be aware that some executive officers and directors of Banknorth may have interests in the transaction that are different from your interests. For example, some executive officers have entered into agreements with Banknorth in connection with the mergers that provide, among other things, restricted stock unit grants, retention and non-competition payments and termination benefits following the transaction. These and some other additional interests of Banknorth directors and executive officers may create potential conflicts of interest and cause some of these persons to view the proposed transaction differently than you may view it, as a shareholder. See "The Transaction - Interests of Banknorth's Executive Officers and Directors in the Transaction" beginning on page 56.

### ***TD will exercise significant control over Banknorth Delaware.***

When the mergers are completed, TD will own approximately 51% of the outstanding shares of Banknorth Delaware common stock and may acquire additional shares subject to some limitations. As a result, TD generally will have the ability to control the outcome of any matter submitted for the vote or consent of Banknorth Delaware shareholders. The stockholders agreement provides that TD may increase the number of Class B directors (who are elected exclusively by TD) at any time to a majority of the entire board and that all corporate action by the Banknorth Delaware board will require the affirmative vote of both a majority of the entire board as well as a majority of the Class B directors (whether or not the Class B directors then constitute a majority of the entire board). Accordingly, TD generally will be able to control the outcome of all matters that come before the Banknorth Delaware board except in the specific instances where the stockholders agreement requires separate approval of the designated independent directors. The stockholders agreement and related provisions of the post-transaction certificate of incorporation also permit TD to retain its majority position on the Banknorth Delaware board and certain of its governance rights for limited periods of time even after its ownership of Banknorth Delaware common stock has declined below 50% (but not below 35%) of the outstanding shares. As a result of TD's controlling interest in Banknorth Delaware, TD will have the power, subject to applicable law, to take actions that might be favorable to TD but not necessarily favorable to other Banknorth Delaware shareholders. In addition, TD's ownership position and governance rights will prevent Banknorth Delaware from participating in a change of control transaction with a third party in the future unless TD consents to such transaction. Moreover, TD will be under no obligation to purchase all of the remaining publicly held shares of Banknorth Delaware at any particular time and may, in its discretion, purchase significant additional amounts of Banknorth Delaware common stock (but generally not in excess of 66 2/3% of the outstanding shares) in the open market or otherwise without making an offer for all remaining publicly held shares. As a result, the stock of Banknorth Delaware could trade at prices that do not reflect a "takeover premium" to the same extent as do the stocks of similarly-situated companies that do not have a majority or significant shareholder.

In addition, TD is generally free under the stockholders agreement, after the third anniversary of the completion of the mergers (and in some circumstances after the second anniversary), to transfer some or all of its shares of Banknorth Delaware common stock, including a controlling block, to a third party

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(although in some circumstances TD must give Banknorth Delaware the opportunity to purchase such transferred shares (which it could assign to another buyer) and/or allow the public shareholders of Banknorth Delaware to transfer their portion of the shares on the same financial terms as TD). Accordingly, there can be no assurance that in the future TD will continue to be Banknorth's controlling shareholder.

Targeted acquisitions of other banks have been an important strategy of Banknorth. The ability to accomplish such acquisitions depends on a number of factors, including the selling bank's perception of the quality of the consideration that is being offered in the transaction, expectations for the prospects of the combined institution after the merger and, where stock is part of the consideration as it frequently has been, the anticipated performance and liquidity of the buyer's stock following the merger. There can be no assurance that future acquisition targets will view Banknorth Delaware, or the liquidity and growth potential of its stock, as favorably following the mergers as they did prior to the announcement of the proposed transaction with TD. Accordingly, while we expect that Banknorth Delaware will continue to grow by acquisition after the mergers, there can be no assurance that Banknorth Delaware will be able to continue to identify and execute beneficial acquisition opportunities following the mergers.

***Conflicts of interest may arise between TD and Banknorth Delaware, which may be resolved in a manner that adversely affects Banknorth Delaware's business, financial condition or results of operations.***

Conflicts of interest may arise between Banknorth Delaware, on the one hand, and TD and its other affiliates, on the other hand, in areas relating to past, ongoing and future relationships, including corporate opportunities, potential acquisitions or financing transactions, sales or other dispositions by TD of its interest in Banknorth Delaware and the exercise by TD of its potential to control the management and affairs of Banknorth Delaware. It is expected that after the mergers a significant number (and potentially a majority) of the directors on the Banknorth Delaware board will be persons who are also officers or directors of TD and its subsidiaries. Service as a director or officer of both Banknorth Delaware and TD or its other subsidiaries could create conflicts of interest if such directors or officers are faced with decisions that could have materially different implications for Banknorth Delaware and for TD. The post-transaction certificate of incorporation and the stockholders agreement contain provisions relating to the allocation of business opportunities that may be suitable for both Banknorth Delaware and TD. The parties have not established any other formal procedures for Banknorth Delaware and TD to resolve potential or actual conflicts of interest between them. There can be no assurance that any of the foregoing conflicts will be resolved in a manner that does not adversely affect the business, financial condition or results of operations of Banknorth Delaware.

In addition, although the stockholders agreement restricts TD's ability to conduct a branch-based banking business in the United States other than through Banknorth Delaware, there are a number of limitations and exceptions to those restrictions, including operations conducted directly by TD branches and agencies, banking support of the TD Waterhouse brokerage business (including through TD's existing U.S. insured depository institution, TD Waterhouse Bank, N.A.) and the ability to at least temporarily operate banks acquired by TD incidentally to a business combination between TD and a third party. It is possible that some of those businesses may compete with Banknorth Delaware and may have greater resources to do so. Moreover, because TD currently controls a depository institution in the United States the deposits of which are insured by the Federal Deposit Insurance Corporation (which we refer to in this document as the FDIC) and may in the future control others, Banknorth Delaware's subsidiary bank, Banknorth, NA, could be assessed for losses suffered or anticipated by the FDIC as a result of a default by, or assistance provided by the FDIC in connection with the potential default by, another insured depository institution controlled by TD. Any such assessment would be senior to the claims of Banknorth Delaware as shareholder and may adversely affect the business, financial conditions or results of operations of Banknorth Delaware. In addition, TD will have other obligations under U.S. banking laws to any such other depository institutions in the United States that it controls, including an obligation to guarantee, subject to certain limits, any plan of prompt corrective action such an institution is required to

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undertake should it become undercapitalized. Should these obligations arise, they may limit TD's ability to make capital available to, and otherwise support, Banknorth Delaware.

***The ability of TD and Banknorth Delaware to pay dividends to their shareholders is subject to regulatory requirements.***

The ability of TD, Banknorth and, upon completion of the mergers, Banknorth Delaware to pay dividends to their shareholders is subject to various regulatory requirements. For a description of the requirements which are applicable to TD, see "Description of TD Share Capital Limitations Affecting Holders of TD Common Shares" beginning on page 119, and for a description of the requirements which are applicable to Banknorth Delaware, see "Description of Banknorth Delaware Capital Stock Regulatory Limitations" beginning on page 123.

Banknorth Delaware intends to continue Banknorth's quarterly dividend policy, but the merger agreement does not commit Banknorth, Banknorth Delaware or TD to do so.

***The mergers are subject to the receipt of consents and approvals from government entities that may not be received or that may impose conditions that could have an adverse effect on TD or Banknorth Delaware.***

We cannot complete the mergers unless we receive various consents, orders, approvals and clearances from the Federal Reserve Board, the Superintendent and other bank regulatory, antitrust and other authorities in the U.S. While we believe that we will receive the requisite regulatory approvals from these authorities, there can be no assurance of this. In addition, these authorities may impose conditions on the completion of the mergers or require changes to the terms of the mergers. While TD and Banknorth do not currently expect that any such conditions or changes would be imposed, there can be no assurance that they will not be, and such conditions or changes could have the effect of delaying completion of the mergers or imposing additional costs on or limiting the revenues of TD or Banknorth Delaware following the mergers, any of which may have an adverse effect on TD or Banknorth Delaware following the mergers. See "The Transaction Regulatory Matters Related to the Mergers" beginning on page 68 and "Proposal No. 1: The Merger Agreement Conditions to the Mergers" beginning on page 83.

***TD expects to maintain its status as a foreign private issuer in the U.S. and thus will be exempt from a number of rules under the U.S. Securities Exchange Act of 1934 and will be permitted to file less information with the SEC than a company incorporated in the United States.***

As a foreign private issuer, TD is exempt from rules under the U.S. Securities Exchange Act of 1934 (which we refer to in this document as the Exchange Act), that impose disclosure requirements, as well as procedural requirements, for proxy solicitations under Section 14 of the Exchange Act. In addition, TD's officers, directors and principal shareholders are exempt from the reporting and short-swing profit recovery provisions of Section 16 of the Exchange Act. Moreover, TD is not required to file periodic reports and financial statements with the SEC as frequently or as promptly as U.S. companies whose securities are registered under the Exchange Act, nor is it generally required to comply with Regulation FD, which restricts the selective disclosure of material nonpublic information. Accordingly, there may be less information concerning TD publicly available than there is for U.S. public companies such as Banknorth and, following the mergers, Banknorth Delaware. In addition, TD is permitted, under a multi-jurisdictional disclosure system adopted by the United States and Canada, to prepare its disclosure documents in accordance with Canadian disclosure requirements, including preparing its financial statements in accordance with Canadian generally accepted accounting principles, which differ in some respects from U.S. generally accepted accounting principles.

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***Upon completion of the acquisition merger, holders of Banknorth common stock will also become holders of TD common shares, and the market price for TD common shares may be affected by factors different from those that historically have affected Banknorth or may in the future affect Banknorth Delaware.***

Upon completion of the mergers, holders of Banknorth Delaware common stock will also become holders of TD common shares. TD's businesses differ from those of Banknorth Delaware, and accordingly the results of operations of TD will be affected by some factors different from those currently affecting the results of operations of Banknorth. For a discussion of the businesses of Banknorth and TD and of some important factors to consider in connection with those businesses, see the documents incorporated by reference in this proxy statement/prospectus and referred to under "Where You Can Find More Information" beginning on page 152.

***Applicable laws restrict the purchase, sale and transfer of TD's securities.***

The Bank Act of Canada contains restrictions on the purchase or other acquisition, issue, transfer and voting of TD shares. Pursuant to these restrictions, no person is permitted to acquire any shares of TD if the acquisition would cause the person to have a significant interest in any class of shares of TD, without obtaining the prior approval of the Minister of Finance of Canada (to whom we refer in this document as the Minister of Finance). In addition, TD is not permitted to record any transfer or issue of shares of TD if the transfer or issue would cause the person to have a significant interest in TD, unless prior approval is obtained from the Minister of Finance. No person who has a significant interest in TD may exercise any voting rights attached to the shares held by that person, unless that prior approval of the Minister of Finance was obtained. For these purposes, a person has a significant interest in a class of shares of TD where the aggregate of any shares of that class beneficially owned by that person, any entity controlled by that person and by any person acting jointly or in concert with that person exceeds 10% of all of the outstanding shares of that class of shares of TD. If a person contravenes any of these restrictions, the Minister of Finance may, by order, direct that person to dispose of all or any portion of those shares.

In addition, under the Bank Act of Canada, the Minister of Finance may only approve the acquisition of up to 30% of the shares of any class of non-voting shares and up to 20% of the shares of any class of voting shares and provided, in each case, that the person acquiring those shares does not have any direct or indirect influence over TD that, if exercised, would result in that person having control in fact of TD. For these purposes, the shares beneficially owned by that person, any entity controlled by that person and by any person acting jointly or in concert with that person with respect to TD common shares are aggregated. In addition, the Bank Act of Canada prohibits banks, including TD, from recording a transfer or issuing shares of any class to Her Majesty in right of Canada or of a province, an agent of Her Majesty, a foreign government or an agent of a foreign government.

Finally, the government of Canada has placed a temporary moratorium on mergers among Canada's largest financial institutions, including TD and its peers. The government has stated that it will lift this moratorium once it has had the opportunity to complete a policy review of its merger review guidelines. No precise timetable for the completion of this review has been announced.

The restrictions contained in the Bank Act of Canada and the Canadian government's policies may deter, delay or prevent a future acquisition of a significant interest in TD and will prevent the acquisition of control of TD, including transactions that could be perceived as advantageous to TD's shareholders.

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**CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS**

Some of the statements contained or incorporated by reference in this proxy statement/ prospectus, including those relating to TD's and Banknorth's strategies and other statements that are predictive in nature, that depend upon or refer to future events or conditions, or that include words such as expects, anticipates, intends, plans, believes, estimates or similar expressions, are forward-looking statements within the meaning of Section 21E of the Exchange Act and Section 27A of the U.S. Securities Act of 1933 (which we refer to in this document as the Securities Act). Without limiting the generality of the preceding sentence, statements contained in the sections The Transaction TD's Reasons for the Transaction, The Transaction Banknorth's Reasons for the Transaction and The Transaction Opinions of Banknorth's Financial Advisors include forward-looking statements. These statements are not historical facts but instead represent only TD's and/or Banknorth's expectations, estimates and projections regarding future events.

The forward-looking statements contained or incorporated by reference in this proxy statement/ prospectus are not guarantees of future performance and involve certain risks and uncertainties that are difficult to predict. The future results and shareholder values of TD, Banknorth and Banknorth Delaware may differ materially from those expressed in the forward looking statements contained or incorporated by reference in this proxy statement/ prospectus due to, among other factors, the matters set forth under Risk Factors and the factors detailed in each company's filings with the SEC, including the factors detailed in TD's Form 40-F for its fiscal year ended October 31, 2003, TD's reports on Form 6-K and Banknorth's annual report on Form 10-K for the year ended December 31, 2003 and Banknorth's quarterly reports on Form 10-Q and current reports on Form 8-K. Neither TD nor Banknorth undertakes any obligation to update or release any revisions to these forward-looking statements to reflect events or circumstances after the date of this proxy statement/ prospectus or to reflect the occurrence of unanticipated events, except as required by law.

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**THE SPECIAL MEETING**

**Date, Time and Place**

A special meeting of shareholders of Banknorth will be held at 10:30 a.m., local time, on \_\_\_\_\_, \_\_\_\_\_, 2004 at the Portland Marriott Hotel, 200 Sable Oak Drive, South Portland, Maine 04106.

**Matters to be Considered**

The purposes of the special meeting are to consider and vote on:

a proposal to approve the merger agreement;

a proposal to approve the post-transaction certificate of incorporation, including the governance provisions contained in that document;

a proposal to adjourn the special meeting if necessary to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting to approve the merger agreement or the post-transaction certificate of incorporation; and

any other matters that may properly come before the special meeting or any adjournment or postponement thereof.

At this time, the Banknorth board of directors is unaware of any matters, other than those set forth in the preceding sentence, that may properly come before the special meeting.

The approval of both the proposal to approve the merger agreement and the proposal to approve the post-transaction certificate of incorporation, including the governance provisions contained in that document, is a condition to the completion of the transaction. Therefore, if Banknorth shareholders wish to approve the transaction, they must approve both of these proposals.

**Shares Outstanding Entitled to Vote; Record Date**

The close of business on \_\_\_\_\_, 2004 has been fixed by Banknorth as the record date for the determination of holders of Banknorth common stock entitled to notice of and to vote at the special meeting and any adjournment or postponement of the special meeting. At the close of business on the record date, there were \_\_\_\_\_ shares of Banknorth common stock outstanding and entitled to vote. Each share of Banknorth common stock entitles the holder to one vote at the special meeting on all matters properly presented at the meeting.

**How to Vote Your Shares**

Shareholders of record may vote by telephone, via the Internet, by mail or by attending the special meeting and voting in person. Our telephone and voting procedures are designed to authenticate shareholders.

Voting by Telephone: You can vote your shares by telephone by calling the toll-free telephone number on your proxy card. Telephone voting is available 24 hours a day. Easy-to-follow voice prompts allow you to vote your shares and confirm that your instructions have been properly recorded. Our telephone voting procedures are designed to authenticate shareholders by using individual control numbers. **IF YOU VOTE BY TELEPHONE, YOU DO NOT NEED TO RETURN YOUR PROXY CARD.**

Voting via the Internet: You can vote via the Internet by accessing the web site listed on your proxy card and following the instructions you will find on the web site. Internet voting is available 24 hours a day. As with telephone voting, you will be given the opportunity to confirm that your instructions have been properly recorded. **IF YOU VOTE VIA THE INTERNET, YOU DO NOT NEED TO RETURN YOUR PROXY CARD.**

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Voting by Mail: If you choose to vote by mail, simply mark the enclosed proxy card, date and sign it, and return it in the postage paid envelope provided.

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If your shares are held in the name of a bank, broker or other holder of record, you will receive instructions from the holder of record that you must follow in order for your shares to be voted. Please follow their instructions carefully. Also, please note that if the holder of record of your shares is a broker, bank or other nominee and you wish to vote at the special meeting, you must request a legal proxy from your bank, broker or other nominee that holds your shares and present that proxy and proof of identification at the special meeting.

If you are a participant in the Banknorth 401(k) Plan, you may give voting instructions to American Stock Transfer & Trust Company, our transfer agent, by completing and returning a voting instruction ballot distributed to plan participants along with this proxy statement, or by telephone or via the Internet as described on your ballot. Our transfer agent will certify the totals for the 401(k) Plan to Banknorth, NA, which acts as trustee for the plan, for the purpose of having those shares voted in accordance with your instructions.

## **How to Change Your Vote**

You will have the power to revoke your proxy at any time before it is exercised by:

delivering to the clerk of Banknorth prior to the special meeting a written notice of revocation (Carol L. Mitchell, Esq., Executive Vice President, General Counsel, Secretary and Clerk, Banknorth Group, Inc., P.O. Box 9540, Two Portland Square, Portland, Maine 04112-9540);

delivering to Banknorth prior to the special meeting a properly executed proxy with a later date;

voting on a later date by telephone or via the Internet (only your last telephone or Internet proxy will be counted); or

attending the special meeting and giving the clerk notice of your intention to vote in person.

Attendance at the special meeting will not, in and of itself, constitute revocation of a proxy.

## **Counting Your Vote**

If you provide specific voting instructions, your shares will be voted as instructed. If you hold shares in your name and sign and return a proxy card or vote by telephone or via the Internet without giving specific voting instructions, your shares will be voted FOR approval of the merger agreement, FOR approval of the post-transaction certificate of incorporation, including the governance provisions contained in that document, and FOR the proposal to adjourn the special meeting if necessary to permit further solicitation of proxies on the proposal to approve the merger agreement and the post-transaction certificate of incorporation.

At this time, we are unaware of any matters, other than set forth above, that may properly come before the special meeting. If any other matters properly come before the special meeting, the persons named as proxies will vote in accordance with their judgment with respect to such matters.

Proxies solicited may be voted only at the special meeting and any adjournment or postponement thereof and will not be used for any other meeting.

## **Broker Non-Votes**

Any broker non-votes submitted by brokers or nominees in connection with the special meeting will not be counted for purposes of determining the number of votes cast on a proposal but will be treated as present for quorum purposes. Broker non-votes are shares held by brokers or nominees as to which voting instructions have not been received from the beneficial owners or the persons entitled to vote those shares and the broker or nominee does not have discretionary voting power under rules applicable to broker-dealers. Under these rules, the proposals to approve the merger agreement, to approve the post-transaction certificate of incorporation and to adjourn the special meeting are not items on which brokerage firms may vote in their discretion on behalf of their clients if such clients have not furnished voting instructions within ten days of the special meeting. Because the proposal to approve the merger agreement is required to be approved by the holders of a majority of the outstanding shares of Banknorth common stock, abstentions and broker non-votes will have the same effect as a vote against the proposal.



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to approve the merger agreement at the special meeting. And for the same reason, the failure of any Banknorth shareholder to vote by proxy or in person at the special meeting will have the effect of a vote against this proposal. Because of the vote required for the proposals to approve the post-transaction certificate of incorporation and to adjourn the special meeting, abstentions and broker non-votes will have no effect on these proposals.

### **Quorum and Required Votes**

A quorum, consisting of the holders of a majority of the issued and outstanding shares of Banknorth common stock, must be present in person or by proxy before any action may be taken at the special meeting. Abstentions will be treated as shares that are present for purposes of determining the presence of a quorum but will not be counted in the voting on a proposal.

The affirmative vote of the holders of a majority of the outstanding shares of Banknorth common stock, voting in person or by proxy, is necessary to approve the merger agreement. The affirmative vote of a majority of the votes cast on the matter at the special meeting is required to approve the post-transaction certificate of incorporation, including the governance provisions contained in that document. The approval of the proposal to approve the post-transaction certificate of incorporation is a condition to completion of the mergers, and thus a vote against this proposal effectively will be a vote against the merger agreement. The affirmative vote of the holders of a majority of the votes cast on the matter at the special meeting also is required to approve the proposal to adjourn the special meeting if necessary to permit further solicitation of proxies on the proposals to approve the merger agreement and the post-transaction certificate of incorporation and any other matter properly submitted to shareholders for their consideration at the special meeting.

The directors and executive officers of Banknorth and their respective affiliates collectively owned approximately 1.6% of the outstanding shares of Banknorth common stock as of September 30, 2004 (inclusive of shares subject to stock options, which may be exercised within 60 days following that date) special meeting. See *Beneficial Ownership of Banknorth Common Stock* on page 113. It is anticipated that all officers and directors, with the exception of John Otis Drew, will vote their shares in favor of the proposal to approve the merger agreement and the proposal to approve the post-transaction certificate of incorporation, including the governance provisions contained in that document.

As of the close of business on the record date for the special meeting, TD beneficially owned less than 0.01% of the outstanding shares of Banknorth common stock and, to the knowledge of TD, none of its directors and executive officers beneficially owned any shares of Banknorth common stock.

### **Solicitation of Proxies**

Banknorth will pay for all costs incurred by it in connection with the solicitation of proxies from its shareholders on behalf of its board of directors, except that Banknorth and TD will share equally the cost of printing and mailing this document and the fee payable to the SEC in connection with the filing of the registration statement of which this document is a part. In addition to solicitation by mail, the directors, officers and employees of Banknorth, TD and their respective subsidiaries may solicit proxies from shareholders of Banknorth in person or by telephone, telegram, facsimile or other electronic methods without compensation other than reimbursement for their actual expenses.

Arrangements also will be made with brokerage firms and other custodians, nominees and fiduciaries for the forwarding of solicitation material to the beneficial owners of stock held of record by such persons, and Banknorth will reimburse such custodians, nominees and fiduciaries for their reasonable out-of-pocket expenses in connection therewith.

### **Recommendation of the Board of Directors**

The Banknorth board of directors has approved the merger agreement, the transactions contemplated by the merger agreement and the post-transaction certificate of incorporation, including the governance provisions contained in that document. Based on Banknorth's reasons for the merger described in this document, including the fairness opinions of KBW and Lehman Brothers, the board of directors of

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Banknorth believes that the merger agreement and the transactions contemplated thereby are in the best interests of Banknorth's shareholders and recommends that you vote FOR approval of the merger agreement. See The Transaction Banknorth's Reasons for the Transaction beginning on page 40. The Banknorth board of directors also recommends that you vote FOR approval of the post-transaction certificate of incorporation, including the governance provisions contained in that document, and the proposal to adjourn the special meeting if necessary to solicit additional proxies to vote in favor of the merger agreement.

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**THE TRANSACTION**

**Background of the Transaction**

As part of its continuing efforts to improve Banknorth's community banking franchise and enhance shareholder value, Banknorth's board of directors and management, together with Banknorth's financial advisors, have periodically reviewed various strategic options available to Banknorth, including, among other things, continued independence, the acquisition of other institutions and a strategic merger with or acquisition by another financial institution. These evaluations have included annual meetings between the board of directors of Banknorth and representatives of KBW to discuss Banknorth's strategic options. In the course of these periodic reviews, the board of directors and management have considered, among other things, trends in the local, regional and national financial institutions merger and acquisition market, as well as information about companies that were possible merger targets for Banknorth and companies that were considered to be possible acquirors of Banknorth.

In recent years, management of Banknorth and representatives of KBW have communicated informally with representatives of other larger financial institutions with respect to their views regarding the banking industry and their respective companies' strategic direction. None of these discussions, other than with TD as described below, proceeded beyond the exploratory stage and no understanding with respect to the terms of any potential transaction was reached.

On March 8, 2004, William J. Ryan, Chairman, President and Chief Executive Officer of Banknorth, had an introductory meeting with W. Edmund Clark, President and Chief Executive Officer of TD, and J. David Livingston, Executive Vice President - Corporate Development of TD, in New York, New York. This meeting was held following a call from Goldman, Sachs & Co., TD's financial advisor, to Mr. Ryan earlier in the year advising Mr. Ryan that Mr. Clark would like to meet him.

On April 6, 2004, Mr. Ryan and Peter J. Verrill, Senior Executive Vice President and Chief Operating Officer of Banknorth, met with Mr. Livingston in Portland, Maine. Following this meeting, on April 16, 2004, TD and Banknorth entered into a confidentiality agreement, and on April 21, 2004 Banknorth sent certain information regarding it to TD.

On April 27, 2004, representatives of KBW met with Messrs. Ryan and Verrill in Portland, Maine to discuss strategic alternatives that may be available to Banknorth, including a potential transaction with TD.

On May 18, 2004, Messrs. Ryan, Clark and Livingston met in Portland, Maine to discuss a potential transaction between TD and Banknorth. At this meeting, they discussed possible financial terms and governance arrangements.

On May 26, 2004, Mr. Ryan telephoned Mr. Clark and advised Mr. Clark that Banknorth wished to postpone further discussions regarding a possible transaction because Banknorth was engaged in discussions regarding a potential acquisition of a company by Banknorth, which ultimately were not successful.

On June 8-9, 2004, the board of directors and management of Banknorth held its annual strategic planning retreat in Bretton Woods, New Hampshire. Representatives of KBW attended these meetings to discuss strategic alternatives with the board of directors and management of Banknorth.

On June 15, 2004, Mr. Verrill and Mr. Livingston spoke by telephone and agreed that they and Messrs. Ryan and Clark should meet again to discuss the possibility of a transaction. During the week of June 23, 2004, Messrs. Ryan and Clark and Messrs. Verrill and Livingston spoke by telephone, and on July 1, 2004, Messrs. Verrill and Livingston met in Toronto. These telephone conversations and the July 1 meeting primarily involved updates on Banknorth's and TD's financial position and operations since the parties had last met and further discussion of the possible financial terms and governance arrangements discussed in May 2004.

On July 6, 2004, Banknorth sent to TD additional materials regarding Banknorth prepared by management of Banknorth and KBW. On July 20, 2004, Goldman Sachs sent to Banknorth a proposed term sheet and other discussion materials for a proposed transaction between TD and Banknorth.



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On July 21, 2004, Messrs. Clark and Livingston met with John M. Thompson, the chairman of TD's board of directors, the U.S.-based members of TD's board and the chairs of the committees of TD's board, at which Messrs. Clark and Livingston provided an overview of Banknorth, its operations, financial history and other matters and a summary of the proposed transaction. On July 26, 2004, the strategic planning committee of the board of directors of Banknorth held a telephonic meeting to discuss a potential transaction with TD and other possible transactions.

On July 28, 2004, Mr. Livingston met with Messrs. Ryan and Verrill in Portland, Maine. During this meeting, Mr. Livingston outlined TD's proposed terms for the proposed transaction, including a price of \$36-\$37 per share for 51% of the outstanding Banknorth common stock and a package of merger consideration which consisted of cash, TD common stock and Banknorth Delaware common stock. Mr. Ryan informed Mr. Livingston that TD's price proposal was inadequate and that a price of at least \$40 per share would be required for him to support a transaction.

On August 2, 2004, Banknorth retained Wachtell, Lipton, Rosen & Katz to act as co-counsel with Elias, Matz, Tiernan & Herrick L.L.P. in connection with the potential transaction with TD. On this same date, Mr. Verrill and Carol L. Mitchell, Executive Vice President and General Counsel of Banknorth, met in Portland, Maine with Fredric Tomczyk, Vice Chair - Corporate Operations of TD, regarding the retention of executives and employee benefit matters.

On August 4, 2004, the strategic planning committee of the board of directors of Banknorth and representatives of KBW had a telephonic meeting to discuss the status of discussions with TD and the financial and strategic rationale for a potential transaction with TD. On this same date, representatives of Banknorth and TD and their respective financial and legal advisors had a conference call to discuss the terms of the potential transaction.

On August 9, 2004, Messrs. Ryan and Verrill met with Mr. Clark and Mr. Livingston in Toronto, Canada to discuss the proposed transaction. At this meeting the parties discussed and agreed generally on a framework for determining the per share purchase price for 51% of the outstanding Banknorth common stock and Mr. Ryan reiterated his insistence on a price of at least \$40 per share for 51% of the outstanding Banknorth common stock.

On August 11, 2004, the board of directors of Banknorth held a telephonic special meeting in which management and representatives of KBW participated to discuss the financial and strategic rationale for a potential transaction with TD. After discussion, it was generally agreed that management should proceed with the discussions with TD.

On August 13, 2004, Simpson Thacher & Bartlett LLP, U.S. counsel to TD, distributed an initial draft of the stockholders agreement, which was followed by distributions of initial drafts of the merger agreement on August 17, 2004 and initial drafts of other ancillary documents during the following days. These documents were the subject of negotiations by the parties and their respective advisors over the next week.

On August 16, 2004, the board of directors of TD held a meeting in Toronto, Canada to review and discuss the proposed transaction with Banknorth. At this meeting, members of TD management reviewed with the TD board the proposed terms of the transaction, financial and operational information regarding Banknorth, and management, due diligence and legal issues relating to the possible transaction. After discussion, the board agreed that TD management should continue negotiations with Banknorth.

Also on August 16, 2004, Ms. Mitchell and Mr. Tomczyk and representatives of counsel to TD and Banknorth met in New York, New York to discuss retention of executives and employee benefit matters, and on August 18, 2004, Ms. Mitchell and Mr. Tomczyk met in Portland, Maine to continue these discussions.

On August 17, 2004, the board of directors of Banknorth held a regular meeting in Lake George, New York at which management, representatives of KBW and representatives of Banknorth's legal advisors were present. At this meeting, representatives of KBW made a preliminary presentation regarding

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the financial aspects of the proposed transaction, TD and its operations and the other strategic alternatives likely to be available to Banknorth. At this meeting, counsel reviewed with the board the fiduciary obligations and legal standards applicable to the proposed transaction. After discussion, it was generally agreed that management should proceed with the discussions with TD.

During the evening on August 17, 2004, Messrs. Clark, Thompson, Ryan and Verrill met for dinner in Toronto, Canada. On August 18, 2004, members of the respective managements of TD and Banknorth met for an introductory dinner in Portland, Maine, at which they discussed, among other things, the scope and process of mutual due diligence investigations to be conducted relating to the proposed transaction.

During the following days, the parties and their respective advisors extensively negotiated the terms of the transactions, including the governance arrangements, and the related documents. Between August 18 and 22, 2004, reciprocal due diligence was conducted by TD and Banknorth in Portland, Maine. Representatives of TD remained on site at Banknorth through August 25, 2004.

On August 20, 2004, Banknorth retained Lehman Brothers to render its opinion with respect to the fairness, from a financial point of view, to Banknorth's shareholders of the merger consideration.

On August 25, 2004, newspaper reports cited a potential transaction between TD and Banknorth and, in response, TD and Banknorth issued a joint press release confirming the existence of discussions regarding a potential transaction between the parties.

On August 25, 2004, the board of directors of Banknorth held a special meeting in Portland, Maine to review and discuss the proposed transaction with TD. Represented at the meeting were management of Banknorth and representatives of its financial and legal advisors. Counsel to Banknorth presented the terms of the definitive merger agreement and stockholders agreement, the form of the post-transaction certificate of incorporation, the effects of the proposed transaction on existing severance agreements and employee benefit plans of Banknorth and the employment agreements, retention agreements and other arrangements which had been negotiated by the parties to increase the likelihood that the members of Banknorth's senior management would remain in the employ of Banknorth Delaware for a substantial period following the mergers. Counsel again reviewed with the board the fiduciary obligations and legal standards applicable to the proposed transaction, and also discussed the approvals and other conditions necessary to consummate the transaction and the regulatory process involved in obtaining requisite regulatory approvals. Representatives of KBW and Lehman Brothers made a presentation regarding the fairness, from a financial point of view to the shareholders of Banknorth, of the consideration to be received by such shareholders in the mergers, and each of KBW and Lehman Brothers rendered its opinion that, as of August 25, 2004, and based upon and subject to certain matters stated in their respective opinions, the merger consideration was fair from a financial point of view to Banknorth's shareholders. After the presentations and extensive review and discussion, the board went into an executive session at which only directors were present to further discuss the proposed transaction. At the end of this session, the board of directors of Banknorth unanimously approved and adopted the merger agreement and the stockholders agreement and the transactions contemplated thereby, as well as the form of the post-transaction certificate of incorporation, the employment agreements and retention agreements and a necessary amendment to Banknorth's shareholder rights plan to exempt TD and the mergers from its terms. The board also instructed management to execute and deliver the merger agreement, the stockholders agreement and the related agreements, and to take all other steps which are necessary to effect the mergers and the other transactions contemplated thereby.

On August 25, 2004, following the meeting of the board of directors of Banknorth, the board of directors of TD held a special meeting in Toronto, Canada to review and discuss the proposed transaction with Banknorth. After extensive review and discussion, the board of directors of TD unanimously approved the merger agreement and the stockholders agreement and the transactions contemplated thereby, as well as the employment agreements and retention agreements. The board also instructed management to execute and deliver the merger agreement, the stockholders agreement and the related agreements, as applicable, and to take all other steps which are necessary to effect the mergers and the other transactions contemplated thereby.

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On August 26, 2004, Banknorth and TD issued a joint press release announcing the transaction before the opening of trading on the NYSE and the Toronto Stock Exchange.

On September 29, 2004, the board of directors of Banknorth held a telephonic meeting to consider amended and restated versions of the merger agreement and the stockholders agreement, which reflected certain technical and clarifying changes to these agreements. Represented at the meeting were management of Banknorth and representatives of its financial and legal advisors. During the meeting, the board of directors discussed with management and its financial and legal advisors the reaction to the proposed transaction in the investment community since the announcement of the merger agreement. During this discussion, one director, John Otis Drew, expressed continuing concerns about the transaction, which generally reflected the comments he subsequently made in the written statement described below. No other director expressed agreement with Mr. Drew's concerns. Following this discussion, counsel to Banknorth presented the terms of the proposed amended and restated versions of the merger agreement and the stockholders agreement. After this presentation, the board of directors of Banknorth approved the amended and restated versions of the merger agreement and the stockholders agreement and instructed management to execute and deliver them. All directors voted to approve these actions, with the exception of Mr. Drew. TD (acting pursuant to authority granted by its board of directors), Banknorth and their respective merger subsidiaries subsequently entered into these amended and restated agreements.

On September 30, 2004, Mr. Drew provided a statement to Ms. Mitchell and Banknorth directors explaining his vote at the September 29 board meeting against the amended and restated merger agreement and the amended and restated stockholders agreement. Mr. Drew stated that he voted against the amended and restated agreements based on factors relating to shareholder value and the lack of protections afforded to minority shareholder interests. Mr. Drew stated that he believed that an auction process would be the best way to optimize shareholder value. He expressed concerns regarding the taxability of the portion of the merger consideration consisting of cash and TD shares and future dividends on such shares. Mr. Drew also expressed concern over the future value of the Banknorth Delaware common stock to shareholders of Banknorth and to potential acquisition targets, in light of what he viewed as limited protections on the value of the Banknorth Delaware shares held by minority shareholders and concerns regarding the future independence of Banknorth Delaware directors to protect minority shareholders. Mr. Drew also stated that he found troublesome the agreements entered into with certain members of Banknorth management in connection with the transaction (which are described in *Interests of Banknorth's Executive Officers and Directors in the Transaction* beginning on page 56), which he believed served to reduce or eliminate their downside risk in the transaction compared to other Banknorth shareholders. Therefore, Mr. Drew stated that he opposes the transaction, although he does not generally oppose a transaction with TD.

### **Banknorth's Reasons for the Transaction**

The Banknorth board has determined that the merger agreement and the transactions contemplated thereby are fair to, and in the best interests of, Banknorth and its shareholders. In approving the merger agreement and the transactions contemplated thereby, the board of directors of Banknorth consulted with its financial advisors with respect to the financial aspects and fairness of the mergers to Banknorth's shareholders from a financial point of view and with its legal counsel as to its legal duties and the terms of the merger agreement, the stockholders agreement and the related documents, including the form of the post-transaction certificate of incorporation. In reaching its determination to approve the merger agreement and the stockholders agreement, the transactions contemplated thereby and the related documents, including the form of the post-transaction certificate of incorporation, the board of directors of Banknorth, with advice from Banknorth's executive officers and Banknorth's financial and legal advisors, considered a number of factors, including the following material factors:

The board's knowledge of Banknorth's business, operations, financial condition and prospects and of TD's business, operations, financial conditions and prospects, taking into account the results of Banknorth's due diligence review of TD, discussions with management of TD and the presentations of Banknorth's financial advisors.

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The board's knowledge of the current and prospective environment in which Banknorth operates, including national and economic conditions, the competitive environment, the market for potential acquisitions and the likely effect of these factors on Banknorth's potential growth, development, productivity, profitability and strategic options.

The board's assessment that the mergers were reasonably likely to enhance Banknorth's strategic goal of expanding its operations geographically, thereby reducing Banknorth's exposure to regional economic conditions and enhancing its ability to expand into higher-growth banking markets. The board also considered the potential for Banknorth Delaware to market TD products and services to an expanded and more diverse customer base. In that regard, the board considered, among other things, the likely risks to Banknorth and its shareholders of expanding in a significant manner outside New England without a strong financial partner, potential acquisitions which may be pursued by Banknorth, the sources of capital which may be available to Banknorth Delaware following the mergers and the experience of Banknorth's management in identifying previous acquisition opportunities and in implementing numerous previous acquisitions. The board also considered the potential hurdles to a growth strategy that could result from the mergers, including the need to obtain TD's concurrence with respect to acquisitions and other significant corporation decisions, and the possibility that certain acquisition targets could be less inclined to enter into acquisition transactions with Banknorth Delaware in the context of the company having a controlling shareholder; in this regard, the board also considered the experience of other U.S. bank holding companies owned by foreign banks that have successfully implemented acquisition strategies in the U.S.

The financial terms of the transaction, including the ability of Banknorth's shareholders to continue to participate in the future growth of Banknorth Delaware by receiving Banknorth Delaware common stock and in the future growth of TD by receiving TD common shares. In this regard, the board considered the possibility that, with TD as a controlling shareholder, the stock of Banknorth Delaware could trade at prices that do not reflect a takeover premium to the same extent as do the stocks of similarly situated companies that do not have a majority or large shareholder, and the fact that the arrangements with TD would permit it to purchase a significant additional equity ownership position in Banknorth Delaware beyond its initial 51% without requiring TD to make an offer to purchase all of the remaining public shares.

The financial analysis presented by KBW and Lehman Brothers, as financial advisors to Banknorth, and the opinions delivered by each of them to the effect that, as of August 25, 2004, and based upon and subject to the assumptions made, matters considered and limitations set forth in the opinions, the merger consideration is fair to Banknorth's shareholders from a financial point of view. See "The Transaction Opinions of Banknorth's Financial Advisors" beginning on page 43.

The board's understanding of the other strategic alternatives likely to be available to Banknorth.

The structure of the mergers and their effects, including without limitation the fact that TD would become the majority shareholder of Banknorth Delaware upon consummation.

The fact that, based on the transaction structure required by TD as a result of its existing corporate structure, the TD common shares (as well as the cash) received by Banknorth shareholders in the acquisition merger would be taxable to them for U.S. federal income tax purposes;

The terms of the merger agreement, including provisions restricting Banknorth's solicitation of third party acquisition proposals, requiring Banknorth to hold a special meeting of its shareholders to vote on the merger agreement notwithstanding the potential receipt of a competing third party acquisition proposal and providing for Banknorth's payment of a termination fee to TD in certain events, all of which the Banknorth board understood, while required by TD as a condition to TD's willingness to enter into the merger agreement, could affect the willingness of a third party to propose a competing business transaction with Banknorth.

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The terms of the stockholders agreement, including without limitation the provisions dealing with the corporate governance of Banknorth Delaware, TD's preemptive and other rights to purchase capital stock of Banknorth Delaware from Banknorth Delaware or in the open market, restrictions on TD's acquisition and transfer of Banknorth Delaware common stock, and the requirements to be followed by TD after completion of the mergers in seeking to effect any going private transaction with respect to Banknorth Delaware. In considering the foregoing, the board also generally considered its understanding of the rights of TD as a majority shareholder of Banknorth Delaware following the mergers.

The expected effect of the mergers on Banknorth's employees, all of whom are anticipated to become employees of Banknorth Delaware and have opportunities for continued career advancement with it.

The expected effect of the mergers on the depositors, customers and the communities served by Banknorth, which the board believed likely would be positive due to the absence of any requirement to divest or close overlapping branches and the expected continuity of Banknorth's existing senior management team.

The employment agreements being entered into with William J. Ryan, chief executive officer of Banknorth, and Peter J. Verrill, chief operating officer of Banknorth, and the retention agreements to be entered into with other executive officers of Banknorth, and the consequent increased likelihood that the members of Banknorth's senior management would remain in place at Banknorth Delaware for a substantial period following the mergers.

The benefits to which officers and employees of Banknorth would be entitled under the pre-existing employee benefit plans of Banknorth which contained change-in-control provisions which would be triggered by the mergers, including Banknorth's Executive Incentive Plan and equity compensation plans, and the fact that Banknorth's executive officers have other interests in the transaction that may be in addition to their interests as shareholders of Banknorth, including the employment and retention agreements described in the preceding paragraph. See *The Transaction - Interests of Banknorth's Executive Officers and Directors in the Transaction* beginning on page 56.

The shareholder and regulatory approvals required in connection with the mergers and the other terms of the merger agreement, and the likelihood that, once the merger agreement had been entered into, the mergers would be completed if approved by Banknorth's shareholders.

The foregoing discussion of the information considered by Banknorth's board of directors is not exhaustive, but includes the material factors that Banknorth's board of directors considered in approving and recommending the mergers. In view of the wide variety of factors considered by Banknorth's board of directors in connection with its evaluation of the mergers and the complexity of these factors, the board of directors of Banknorth did not consider it practical to, nor did it attempt to, quantify, rank or otherwise assign any specific or relative weights to the specific factors that it considered in reaching its decision. The board of directors discussed the factors described above, including asking questions of Banknorth's senior management and legal and financial advisers, and reached a consensus that the mergers were in the best interests of Banknorth and its shareholders. In considering the factors described above, individual directors may have assigned different weights to different factors. Banknorth's board of directors relied on the experience and expertise of Banknorth's financial advisors for quantitative analysis of the financial terms of the mergers. See *The Transaction - Opinions of Banknorth's Financial Advisors* beginning on page 43.

The above explanation of the reasoning of Banknorth's board of directors and all other information presented in this section is forward-looking in nature and, therefore, should be read in light of the factors discussed under *Cautionary Statement Concerning Forward-Looking Statements* beginning on page 32.

**For the reasons set forth above, Banknorth's board of directors has approved the merger agreement and the transactions contemplated thereby as advisable and in the best interests of Banknorth and its shareholders and recommends that Banknorth shareholders vote for approval of the merger agreement. For the reasons set forth above, Banknorth's board of directors has also approved the post-transaction**

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**certificate of incorporation and recommends that Banknorth shareholders vote for approval of the post-transaction certificate of incorporation, including the governance provisions contained in that document.**

**Opinions of Banknorth's Financial Advisors**

*KBW.* Banknorth engaged KBW to act as a financial advisor in connection with a possible transaction with TD. Pursuant to the terms of its engagement, KBW agreed to assist Banknorth in analyzing, structuring, negotiating and effecting a transaction with TD. Banknorth selected KBW because KBW is a nationally-recognized investment banking firm with substantial experience in transactions similar to the mergers and is familiar with Banknorth and its business. As part of its investment banking business, KBW is continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions.

On August 25, 2004, the board of directors of Banknorth held a meeting to evaluate the proposed mergers. At this meeting, KBW reviewed the financial aspects of the proposed mergers and rendered an oral opinion (subsequently confirmed in writing) to Banknorth that, as of August 25, 2004, the consideration to be received by Banknorth shareholders was fair from a financial point of view.

The full text of KBW's written opinion is attached as Appendix E to this document and is incorporated herein by reference. Shareholders of Banknorth are urged to read the opinion in its entirety for a description of the procedures followed, assumptions made, matters considered, and qualifications and limitations on the review undertaken by KBW.

**KBW's opinion is directed to the board of directors of Banknorth and addresses only the fairness, from a financial point of view, of the merger consideration to Banknorth shareholders. It does not address the underlying business decision to proceed with the mergers and does not constitute a recommendation to any shareholder of Banknorth as to how the shareholder should vote at Banknorth's special meeting with respect to the merger agreement or any matter related thereto.**

In rendering its opinion, KBW:

reviewed the merger agreement;

reviewed the stockholders agreement;

reviewed annual reports to shareholders of TD which it deemed relevant;

reviewed annual reports to shareholders and annual reports on Form 10-K of Banknorth which it deemed relevant;

reviewed quarterly reports to shareholders of TD which it deemed relevant;

reviewed quarterly reports on Form 10-Q of Banknorth which it deemed relevant;

reviewed certain other communications from Banknorth and TD to their respective shareholders which it deemed relevant;

reviewed certain internal financial data, projections and other information of both Banknorth and TD, including financial projections prepared by management;

held discussions with senior management of Banknorth and TD with respect to their past and current business operations, regulatory relationships, financial condition and future prospects;

reviewed and studied the historical stock prices and trading volumes of the common stocks of Banknorth and TD;

reviewed the market prices, valuation multiples, publicly reported financial condition and results of operations for Banknorth and TD and compared them with those of certain publicly traded companies that KBW deemed to be relevant;

evaluated the potential pro forma impact of the mergers on TD;



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compared the proposed financial terms of the mergers with the financial terms of certain other business combinations in the banking industry that KBW deemed comparable or relevant; and

performed such other studies and analyses that it considered appropriate.

In conducting its review and arriving at its opinion, KBW relied upon and assumed the accuracy and completeness of all of the financial and other information provided to or otherwise made available to KBW or that was discussed with, or reviewed by or for KBW, or that was publicly available. KBW did not attempt or assume any responsibility to verify such information independently. KBW relied upon the managements of Banknorth and TD as to the reasonableness and achievability of the financial and operating forecasts and projections, and assumptions and bases for those projections, provided to KBW. KBW assumed, without independent verification, that the aggregate allowances for loan and lease losses for Banknorth and TD are adequate. KBW did not make or obtain any evaluations or appraisals of any assets or liabilities of Banknorth or TD, and KBW did not examine any books and records or review individual credit files.

For purposes of rendering its opinion, KBW assumed that, in all respects material to its analyses:

the mergers will be completed substantially in accordance with the terms set forth in the merger agreement;

the representations and warranties of each party in the merger agreement and in all related documents and instruments referred to in the merger agreement are true and correct;

each party to the merger agreement and all related documents will perform all of the covenants and agreements required to be performed by such party under such documents;

all conditions to the completion of the mergers will be satisfied without any waivers; and

in the course of obtaining the necessary regulatory, contractual, or other consents or approvals for the mergers, no restrictions, including any divestiture requirements, termination or other payments or amendments or modifications that will be imposed, will have a material adverse effect on the future results of operations or financial condition of TD or Banknorth Delaware or the contemplated benefits of the mergers, including any cost savings, revenue enhancements and related expenses expected to result from the mergers.

The projections furnished to KBW and used by it in certain of its analyses were prepared by the senior managements of Banknorth and TD. Banknorth and TD do not publicly disclose internal management projections of the type provided to KBW in connection with its review of the mergers. As a result, such projections were not prepared with a view towards public disclosure. The projections were based on numerous variables and assumptions which are inherently uncertain, including factors related to general economic and competitive conditions. Accordingly, actual results could vary significantly from those set forth in the projections.

KBW's opinion is not an expression of an opinion as to the prices at which shares of Banknorth Delaware common stock or TD common shares will trade following the announcement of the mergers, the actual value of the shares of TD common stock or Banknorth Delaware common stock when issued pursuant to the merger agreement or the prices at which the TD common shares or Banknorth Delaware stock will trade following the completion of the mergers.

In performing its analyses, KBW made numerous assumptions with respect to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of Banknorth, TD and KBW. Any estimates contained in the analyses performed by KBW are not necessarily indicative of actual values or future results, which may be significantly more or less favorable than suggested by these analyses. Additionally, estimates of the value of businesses or securities do not purport to be appraisals or to reflect the prices at which such businesses or securities might actually

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be sold. Accordingly, these analyses and estimates are inherently subject to substantial uncertainty. In addition, the KBW opinion was among several factors taken into consideration by the Banknorth board of directors in making its determination to approve the merger agreement and the mergers. Consequently, the analyses described below should not be viewed as determinative of the decision of the Banknorth board of directors of Banknorth with respect to the fairness of the merger consideration.

*Lehman Brothers.* Banknorth engaged Lehman Brothers to render its opinion with respect to the fairness, from a financial point of view, to Banknorth's shareholders of the consideration to be received by those shareholders in the mergers. On August 25, 2004, Lehman Brothers rendered its oral opinion to the Banknorth board of directors that as of that date, and based upon and subject to certain matters stated in that opinion, from a financial point of view, the consideration to be received by Banknorth's shareholders in the mergers was fair to Banknorth's shareholders. Lehman Brothers subsequently confirmed the oral opinion by delivery of its written opinion dated August 26, 2004.

The full text of Lehman Brothers' opinion is attached as Appendix F to this document. The opinion outlines the procedures followed, assumptions made, matters considered and qualifications and limitations on the review undertaken by Lehman Brothers in rendering its opinion. The description of the opinion set forth below is qualified in its entirety by reference to the opinion. Banknorth shareholders may read the entire opinion for a discussion of the assumptions made, matters considered and limitations on the review undertaken by Lehman Brothers in rendering its opinion.

No limitations were imposed by Banknorth on the scope of Lehman Brothers' investigation or the procedures to be followed by Lehman Brothers in rendering its opinion. The Lehman Brothers opinion was provided for the information and assistance of the Banknorth board of directors in connection with its consideration of the mergers. The Lehman Brothers opinion does not address any other aspect of the transaction and is not intended to be and does not constitute a recommendation to any shareholder of Banknorth as to how that shareholder should vote with respect to the merger agreement. Lehman Brothers was not requested to opine as to, and the Lehman Brothers opinion does not address, Banknorth's underlying business decision to proceed with or effect the mergers, nor does the Lehman Brothers opinion address the relative merits of the mergers compared to any other business strategies or alternatives that might be available to Banknorth.

In arriving at its opinion, Lehman Brothers reviewed and analyzed:

the merger agreement and the specific terms of the proposed mergers;

publicly available information concerning Banknorth that Lehman Brothers believed to be relevant to its analysis, including Banknorth's annual report on Form 10-K for the fiscal year ended December 31, 2003, and Banknorth's quarterly reports on Form 10-Q for the quarters ended March 31, 2004 and June 30, 2004;

publicly available information concerning TD that Lehman Brothers believed to be relevant to its analysis, including TD's annual report for the fiscal year ended October 31, 2003, and TD's quarterly reports for the quarters ended January 31, 2004 and April 30, 2004;

financial and operating information with respect to the business, operations and prospects of Banknorth furnished to Lehman Brothers by Banknorth, including financial projections prepared by Banknorth's management;

the trading histories of the Banknorth common stock and the TD common shares from August 23, 1999 to August 23, 2004 and a comparison of those trading histories with each other and with those of other companies that Lehman Brothers deemed relevant;

a comparison of the historical financial results and present financial condition of Banknorth and TD with those of other companies that Lehman Brothers deemed relevant;

the potential pro forma impact of the proposed mergers on the future financial performance of TD;

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the dividends expected to be received by the holders of Banknorth common stock on their shares of Banknorth Delaware common stock and TD common shares following consummation of the proposed mergers;

a comparison of the financial terms of the proposed mergers with the financial terms of certain other transactions that Lehman Brothers deemed relevant; and

independent research analysts' estimates of the future financial performance of Banknorth and TD published by First Call and I/B/E/S.

In addition, Lehman Brothers had discussions with the managements of Banknorth and TD concerning their respective businesses, operations, assets, liabilities, financial condition and prospects and undertook such other studies, analyses and investigations as Lehman Brothers deemed appropriate.

In arriving at its opinion, Lehman Brothers assumed and relied upon the accuracy and completeness of the financial and other information used by Lehman Brothers without assuming any responsibility for independent verification of that information. Lehman Brothers further relied upon the assurances of management of Banknorth or TD that they were not aware of any facts or circumstances that would make that information inaccurate or misleading. In arriving at its opinion, Lehman Brothers reviewed and analyzed financial projections for Banknorth prepared by the management of Banknorth. Upon advice of the management of Banknorth, Lehman Brothers assumed that such projections were reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of Banknorth as to the future financial performance of Banknorth and that Banknorth would perform substantially in accordance with such estimates. Lehman Brothers was not provided with, and did not have access to, any financial projections of TD prepared by the management of TD. Accordingly, upon advice of the management of TD and with the consent of Banknorth, Lehman Brothers assumed that the independent research analysts' estimates published by I/B/E/S were a reasonable basis upon which to evaluate the future financial performance of TD, and Lehman Brothers used such estimates in performing its analysis. Lehman Brothers is not an expert in the evaluation of loan portfolios or allowances for loan and real estate owned losses and, upon advice of the management of Banknorth and TD, we have assumed that Banknorth's and TD's current allowances for loan and real estate owned losses will be in the aggregate adequate to cover all such losses. In arriving at its opinion, Lehman Brothers did not conduct a physical inspection of the properties and facilities of Banknorth or TD and did not make or obtain any evaluations or appraisals of the assets or liabilities of Banknorth or TD. Lehman Brothers' opinion necessarily was based upon market, economic and other conditions as they existed on, and could be evaluated as of, the date of the Lehman Brothers opinion.

Lehman Brothers' opinion is not an expression of an opinion as to the future trading or acquisition value of the TD common shares or the Banknorth Delaware common stock.

In performing its analyses, Lehman Brothers made numerous assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond the control of Lehman Brothers, Banknorth or TD. In its analyses, Lehman Brothers assumed stable business and economic conditions and a stable competitive environment in the markets in which the Company operates. These assumptions are beyond the control of Banknorth or Lehman Brothers. Any estimates contained in the analyses of Lehman Brothers are not necessarily indicative of future results or actual values, which may be significantly more or less favorable than those suggested by those estimates. In addition, analyses relating to the value of businesses do not purport to be appraisals or to reflect the prices at which businesses actually may be sold. The analyses performed were prepared solely as part of the analysis by Lehman Brothers of the fairness to Banknorth's shareholders of the consideration to be received by those shareholders in the mergers, from a financial point of view, and were prepared in connection with the delivery by Lehman Brothers of its opinion to the Banknorth board of directors.

*August 25, 2004 Joint Presentation by KBW and Lehman Brothers.* At the August 25, 2004 meeting of the Banknorth board of directors, KBW and Lehman Brothers made a joint presentation of certain financial analyses of the proposed mergers.

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The following is a summary of the material analyses presented jointly by KBW and Lehman Brothers to the Banknorth board of directors on August 25, 2004, in connection with their oral and written opinions. The summary is not a complete description of the analyses underlying the KBW or Lehman Brothers opinions or the presentation made by KBW and Lehman Brothers to the Banknorth board, but summarizes the material analyses performed and presented in connection with such opinions. The preparation of a fairness opinion is a complex analytic process involving various determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances. Therefore, a fairness opinion is not readily susceptible to partial analysis or summary description. In arriving at their opinions, KBW and Lehman Brothers did not attribute any particular weight to any analysis or factor considered, but rather made qualitative judgments as to the significance and relevance of each analysis and factor. The financial analyses summarized below include information presented in tabular format. Accordingly, KBW and Lehman Brothers believe that their analyses and the summary of its analyses must be considered as a whole and that selecting portions of its analyses and factors or focusing on the information presented below in tabular format, without considering all analyses and factors or the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of the process underlying its analyses and opinion. The tables alone do not constitute a complete description of the financial analyses.

**Summary of Proposal.** KBW and Lehman Brothers summarized the proposed mergers, in which TD would acquire 51% of the Banknorth Delaware common stock outstanding upon consummation of the mergers and existing Banknorth shareholders would retain a 49% ownership stake in Banknorth Delaware. Upon completion of the mergers, each Banknorth shareholder of record will be entitled to receive, in exchange for the shares of Banknorth common stock owned by such shareholder, a package of consideration consisting of (1) a number of TD common shares equal to 0.2351 multiplied by the number of shares of Banknorth common stock owned by such shareholder, (2) an amount in cash equal to \$12.24 multiplied by the number of shares of Banknorth common stock owned by such shareholder and (3) a number of shares of Banknorth Delaware common stock equal to 0.49 multiplied by the number of shares of Banknorth common stock owned by such shareholder, plus cash in lieu of fractional share interests. The negotiated per share value of the 51% ownership interest to be sold to TD was \$40.00, based on the average price for a TD common share over a measuring period prior to announcement of the transaction, of which 60% was payable in cash and 40% was payable in TD common shares.

**Banknorth Discounted Cash Flow Analysis.** KBW and Lehman Brothers calculated the present value of Banknorth's common stock by adding (1) the present value of the estimated future dividend stream that it was estimated Banknorth could generate over the period beginning January 2005 and ending in December 2009 and (2) the present value of the terminal value of the Banknorth common stock.

The base case discounted cash flow analysis used earnings per share and dividends per share in accordance with projections prepared by Banknorth management, a 14.0 times terminal multiple consistent with Banknorth's nationwide peer group median price to estimated 2004 earnings per share multiple as of August 23, 2004, and an 11.02% discount rate calculated by the capital asset pricing model. The analysis produced a present value of \$31.63 per share. This value was used as the base case discounted cash flow valuation of both Banknorth and Banknorth Delaware.

The discounted cash flow value of Banknorth based on five years of estimated future dividends with a sale of control in 2009 used identical earnings per share, dividends per share and capital asset pricing model based discount rate assumptions as utilized in the base case analysis. A terminal value of 16.2 times the 2009 estimated earnings per share was utilized, which was consistent with the median price to estimated 2004 earnings per share calculated in the Whole Company Transaction Analysis described below. The analysis produced a present value of \$36.02 per share.

KBW and Lehman Brothers presented a sensitivity table with a range of discount rates from 10.0% to 12.0% and a range of terminal multiples from 13.0 times to 17.0 times applied to the 2009 earnings per share estimate. This resulted in a range of values from \$28.42 to \$39.33 per share.

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**Summary Valuation Analysis of the TD Proposal.** KBW and Lehman Brothers presented a comparison of values attributable to Banknorth on a per share basis. The comparison included Banknorth's closing market price of \$31.49 as of August 23, 2004, the base case discounted cash flow value of \$31.63, three blended valuation scenarios incorporating the values theoretically attributable to the mergers with and without potential future sales of the remaining Banknorth Delaware common stock, and the \$36.02 discounted cash flow value of Banknorth based on a continued independence strategy with a sale of control in 2009.

KBW and Lehman Brothers used three scenarios to calculate the estimated per share value attributable to the mergers and the potential future sale of the remaining 49% ownership interest in Banknorth Delaware:

*Scenario 1 Value Per Share Assuming No Eventual Premium Paid for Remaining Shares of Banknorth Delaware:* KBW and Lehman Brothers calculated the estimated per share value by adding the product of 51% and \$40.00 to the product of 49% and \$31.63 (the base case discounted cash flow value), to produce a value of \$35.90 per share.

*Scenario 2 Value Per Share Assuming a 10% Premium Paid for the Remaining Shares of Banknorth Delaware:* KBW and Lehman Brothers calculated the estimated per share value by adding the product of 51% and \$40.00 to the product of 15.7% (representing the additional percentage of shares TD may accumulate in the open market under the stockholders agreement) and \$31.63 to the product of 33.3% and \$34.42 (representing the potential purchase by TD of Banknorth Delaware's remaining 33.3% shares outstanding at a 10% premium to the terminal value calculated in the base case discounted cash flow analysis), to produce a value of \$36.83 per share.

*Scenario 3 Value Per Share Assuming a 25% Premium Paid for the Remaining Shares of Banknorth Delaware:* KBW and Lehman Brothers calculated the estimated per share value by adding the product of 51% and \$40.00 to the product of 15.7% (representing the additional percentage of shares TD may accumulate in the open market under the stockholders agreement) and \$31.63 to the product of 33.3% and \$38.60 (representing the potential purchase by TD of Banknorth Delaware's remaining 33.3% shares outstanding at a 25% premium to the terminal value calculated in the base case discounted cash flow analysis), to produce a value of \$38.23 per share. The following table summarizes the calculations made in the three scenarios:

	<b>Value Received for 51% of One Share at \$40.00 Value</b>	<b>Value Received for 49% of One Share at Banknorth Base Case Discounted Cash Flow Value</b>	<b>Value Received for 15.7% of One Share at Banknorth Base Case Discounted Cash Flow Value</b>	<b>Value Received for 33.3% of One Share with Premium Applied to Discounted Cash Flow Terminal Value</b>	<b>Blended Total Value Received Per Share</b>
Valuation Scenario 1: Value per share assuming no minority premium	\$20.40	\$15.50	NA	NA	\$35.90
Valuation Scenario 2: Value per share assuming a 10% terminal value premium	\$20.40	NA	\$4.96	\$11.47	\$36.83
Valuation Scenario 3: Value per share assuming a 25% terminal value premium	\$20.40	NA	\$4.96	\$12.87	\$38.23

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The following table summarizes the comparison of the values attributable to Banknorth on a per share basis:

Current Market Price	\$31.49
Base Case DCF Valuation	\$31.63
Base Case DCF Change-of-Control Valuation	\$36.02
<b>TD Proposal:</b>	
Per Share Value Received for 51% of the shares	\$40.00
Valuation Scenario 1	\$35.90
Valuation Scenario 2	\$36.83
Valuation Scenario 3	\$38.23

KBW and Lehman Brothers stated that the discounted cash flow present value analysis is a widely used valuation methodology but noted that it relies on numerous assumptions, including asset and earnings growth rates, terminal values and discount rates. The analysis did not purport to be indicative of the actual values or expected values of the Banknorth common stock or the Banknorth Delaware common stock following the mergers. Additionally, KBW and Lehman Brothers noted that neither the merger agreement nor the stockholders agreement contained any legal commitments on behalf of TD to purchase additional shares of Banknorth Delaware common stock.

**Whole Company Transaction Analysis.** KBW and Lehman Brothers reviewed certain financial data related to a set of acquisitions of banking institutions nationwide announced after January 1, 2004, with aggregate announced transaction values over \$1 billion. The transactions included in the analysis are set forth below:

Acquiror	Acquiree
Fifth Third Bancorp	First National Bankshares of Florida, Inc.
Wachovia Corporation	SouthTrust Corporation
SunTrust Banks, Inc.	National Commerce Financial Corp.
Citizens Financial Group, Inc.	Charter One Financial, Inc.
BNP Paribas Group	Community First Bankshares, Inc.
National City Corporation	Provident Financial Group, Inc.
Regions Financial Corporation	Union Planters Corporation
J.P. Morgan Chase & Co.	Bank One Corporation

For each whole company transaction, KBW and Lehman Brothers compared, among other things, the implied ratio of price per common share paid for the acquired company to:

- (a) the earnings per share of the acquired company for the latest twelve months of results publicly available prior to the date the transaction was announced;
- (b) the First Call mean estimated earnings per share of the acquired company for the calendar year ended December 31, 2004, as of the announcement of the transaction;
- (b) the First Call mean estimated earnings per share of the acquired company for the calendar year ended December 31, 2005, as of the announcement of the transaction;
- (c) the First Call mean estimated earnings per share of the acquired company for the next four quarters as of the announcement of the transaction;
- (d) the book value per share of the acquired company based on the latest publicly available financial statements of the company available prior to the announcement of the acquisition;
- (e) the tangible book value per share of the acquired company based on the latest publicly available financial statements of the company available prior to the announcement of the acquisition;



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(d) the closing market price of the acquired company, if publicly traded or listed, on the day preceding the announcement of the transaction; and

(e) the closing market price of the acquired company, if publicly traded or listed, on the day one month preceding the announcement of the transaction.

Additionally, KBW and Lehman Brothers compared the core deposit premium paid in each whole company transaction. The core deposit premium is calculated as the premium paid in the transaction over the acquired company's tangible common equity as a percentage of the acquired company's core deposits. For purposes of this analysis, core deposits are defined as total deposits less the sum of all certificates of deposits with balances over \$100,000 and any brokered or purchased deposits.

Financial data for Banknorth was as of June 30, 2004, and adjustments were made for its pending acquisition of BostonFed Bancorp, Inc. Earnings per share estimates for Banknorth were based on First Call published estimates.

KBW and Lehman Brothers compared the whole company transactions to the \$40.00 per share offered in exchange for 51% of Banknorth's shares outstanding and the three valuation scenarios attributable to Banknorth in the mergers as described above.

The results of the comparison to whole company transactions are set forth in the following table:

	<b>Valuation Scenario 1: \$35.90 Per Share</b>	<b>Valuation Scenario 2: \$36.83 Per Share</b>	<b>Valuation Scenario 3: \$38.23 Per Share</b>	<b>51% of Banknorth Shares Sold for \$40.00 Per Share</b>	<b>Comparable Transactions Average</b>	<b>Comparable Transactions Median</b>
Deal Price/ Trailing 12 Months Earnings per Share	16.4x	16.8x	17.5x	18.3x	19.9x	19.4x
Deal Price/ 2004 Estimated Earnings per Share	15.4x	15.8x	16.4x	17.2x	17.7x	16.2x
Deal Price/ 2005 Estimated Earnings per Share	14.0x	14.3x	14.9x	15.6x	15.9x	14.9x
Deal Price/ Next Four Quarters Estimated Earnings per Share	14.5x	14.9x	15.5x	16.2x	17.3x	16.3x
Deal Price/ Book Value per Share	209%	215%	223%	233%	264%	255%
Deal Price/ Tangible Book Value per Share	427%	438%	454%	475%	382%	364%
Core Deposit Premium	26.7%	27.7%	29.1%	30.9%	29.9%	29.9%
1 Day Market Premium	14.0%	17.0%	21.4%	27.0%	16.7%	15.2%
1 Month Market Premium	14.4%	17.3%	21.8%	27.4%	21.1%	21.2%

No company or transaction used as a comparison in the above analysis is identical to Banknorth, TD or the mergers. Accordingly, an analysis of these results is not purely quantitative. Rather, it involves complex considerations and judgments concerning differences in financial and operating characteristics of the companies. All of the transactions included in this analysis involved the sale of a 100% interest in the selling institution, as opposed to the sale of a 51% interest in Banknorth in the mergers.

**Selected Peer Group Analyses for Banknorth.** Using publicly available information, KBW and Lehman Brothers compared the financial performance, financial condition and market valuations of Banknorth to those of a group of comparable nationwide regional banking institutions.

Companies included in Banknorth's peer group were the following:

- Comerica Incorporated
- M&T Bank Corporation
- AmSouth Bancorporation
- UnionBanCal Corporation
- Huntington Bancshares Incorporated



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Compass Bancshares, Inc.  
 Commerce Bancorp, Inc.  
 North Fork Bancorporation, Inc.  
 Hibernia Corporation  
 Colonial BancGroup, Inc.  
 Webster Financial Corporation  
 Associated Banc-Corp

For purposes of such analysis, the financial information used by KBW and Lehman Brothers was as of and for the quarter ended June 30, 2004. Stock price information was as of August 23, 2004, and earnings per share estimates were taken from First Call, a recognized data service that monitors and publishes compilations of earnings per share estimates by selected research analysts.

The KBW and Lehman Brothers analysis showed the following concerning Banknorth's financial performance:

Performance Measure	Banknorth	Peer Group Average	Peer Group Median
Core Return on Assets	1.40%	1.40%	1.44%
Core Return on Equity	13.92%	17.46%	18.88%
Core Cash Return on Average Tangible Assets	1.49%	1.45%	1.45%
Core Cash Return on Average Tangible Equity	26.67%	24.90%	21.72%
Net Interest Margin	3.66%	3.77%	3.82%
Fee Income/ Total Revenue	27.2%	32.3%	32.9%
Efficiency Ratio	50.5%	54.1%	55.4%

The KBW and Lehman Brothers analysis showed the following concerning Banknorth's financial condition:

Measure	Banknorth	Peer Group Average	Peer Group Median
Equity/ Assets	9.79%	8.11%	8.53%
Tangible Equity/ Tangible Assets	5.20%	6.24%	6.23%
Loans Held for Investment/ Deposits	93.7%	93.7%	97.6%
Securities/ Assets	27.3%	25.9%	24.4%
Loan Loss Reserve/ Loans Held for Investment	1.37%	1.43%	1.41%
Non Performing Assets/ Loans Held for Investment + Other Real Estate Owned	0.37%	0.55%	0.50%
Net Charge Offs/ Average Loans Held for Investment	0.20%	0.25%	0.22%

The KBW and Lehman Brothers analysis showed the following concerning Banknorth's market valuation:

Valuation Metric	Banknorth	Peer Group Average	Peer Group Median
One Year Stock Price Performance	13.4%	24.0%	24.4%
Stock Price/ Book Value per Share	1.84x	2.37x	2.18x
Stock Price/ Tangible Book Value per Share	3.74x	3.18x	3.01x
Stock Price/ 2004 Earnings per Share Estimate	13.5x	14.3x	14.0x
Stock Price/ 2005 Earnings per Share Estimate	12.3x	12.9x	12.7x
Dividend Yield	2.5%	2.7%	3.0%
2004 Dividend Payout Ratio	34.3%	38.5%	43.0%



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**Selected Peer Group Analyses for TD.** Using publicly available information, KBW and Lehman Brothers compared the financial performance, financial condition and market valuations of TD to those of a group of comparable Canadian banks, which are set forth below.

Royal Bank of Canada  
 Canadian Imperial Bank of Commerce  
 The Bank of Nova Scotia  
 Bank of Montreal  
 National Bank of Canada

For purposes of such analysis, the financial information used by KBW and Lehman Brothers was as of and for the fiscal quarter ended April 30, 2004. Stock price information was as of August 23, 2004, and earnings per share estimates were taken from I/B/E/S, a recognized data service that monitors and publishes compilations of earnings per share estimates by selected research analysts.

The KBW and Lehman Brothers analysis showed the following concerning TD's financial performance:

Performance Measure	TD	TD Peer Group Average	TD Peer Group Median
Return on Common Equity	16.3%	19.4%	19.0%
Net Interest Margin	2.34%	1.89%	1.80%
Fee Income/ Total Revenue	46.4%	56.6%	57.4%
Cash Efficiency Ratio	65.3%	63.4%	63.2%

The KBW and Lehman Brothers analysis showed the following concerning TD's financial condition:

Measure	TD	TD Peer Group Average	TD Peer Group Median
Tangible Common Equity/ Risk Weighted Assets	8.0%	7.8%	7.3%
Tier 1 Risk Based Capital Ratio	11.9%	10.2%	9.7%
Total Risk Based Capital Ratio	16.4%	12.8%	12.9%
Loans/ Deposits	58.3%	73.5%	73.4%
Loan Loss Reserve/ Loans	1.21%	1.45%	1.45%
Loan Loss Reserve/ Gross Impaired Loans	161.4%	144.9%	136.7%
Gross Impaired Loans/ Loans	0.75%	1.00%	1.02%

The KBW and Lehman Brothers analysis showed the following concerning TD's market valuation:

Measure	TD	TD Peer Group Average	TD Peer Group Median
Stock Price/ Book Value per Share	1.83x	1.69x	1.69x
Stock Price/ Tangible Book Value per Share	3.00x	2.07x	2.00x
Stock Price/ 2004 Earnings per Share Est	12.1x	12.3x	12.4x
Stock Price/ 2005 Earnings per Share Est	11.2x	11.3x	11.4x
Dividend Yield	3.2%	3.1%	3.1%
2004 Dividend Payout Ratio	39.2%	38.5%	37.7%

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Because of the inherent differences between the businesses, operations, financial conditions and prospects of TD and Banknorth and the businesses, operations, financial conditions and prospects of the companies included in their peer groups, KBW and Lehman Brothers believed that it was inappropriate to

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rely solely on the quantitative results of the analysis, and accordingly, also made qualitative judgments concerning differences between the financial and operating characteristics of TD, Banknorth and the companies in their respective peer groups that would affect the public trading values of TD, Banknorth and the peer companies. In particular, KBW and Lehman Brothers considered markets served, rates of growth and profitability of TD and Banknorth and each of the companies in the peer groups.

**Financial Impact Analysis.** KBW and Lehman Brothers performed a pro forma merger analysis that combined projected income statement and balance sheet information of TD and Banknorth to determine the impact of the mergers on TD. Assumptions regarding the accounting treatment and acquisition adjustments were used to calculate the financial impact that the mergers would have on certain projected financial results of TD. This analysis indicated that the mergers are expected to be accretive to TD's estimated GAAP and cash earnings per share in 2005 and 2006. Furthermore, the analysis indicated that TD's tangible common equity to risk weighted assets ratio, tier one risk-based capital ratio and total risk-based capital ratio would all decline but remain above regulatory minimums for well capitalized institutions, as set forth by the Superintendent. This analysis was based on internal projections provided by TD and Banknorth's senior management teams. For all of the above analysis, the actual results achieved by TD following the mergers may vary from the projected results, and the variations may be material.

**TD Discounted Cash Flow Analysis.** KBW and Lehman Brothers calculated the present value of the TD common stock by adding (1) the present value of the estimated future dividend stream that TD could generate over the period beginning November 2004 and ending in October 2009 and (2) the present value of the terminal value of the TD common stock.

The base case discounted cash flow analysis used TD's I/B/E/S mean estimated operating earnings per share for the fiscal year ending October 31, 2005, an 8.0% post 2005 operating earnings per share growth rate, dividends per share based on a 40% payout ratio, a 12.1 times terminal multiple consistent with TD's price to estimated 2004 operating earnings per share multiple as of August 23, 2004, and an 11.76% discount rate calculated by the capital asset pricing model. The analysis produced a value of U.S.\$33.93. TD's closing stock price at August 23, 2004 was U.S.\$34.07.

KBW and Lehman Brothers presented a sensitivity table with a range of discount rates from 11.0% to 13.0% and a range of terminal multiples from 11.0 times to 13.0 times applied to the 2009 operating earnings per share estimate. This resulted in a range of values from U.S.\$29.75 to U.S.\$37.26 per share.

KBW and Lehman Brothers presented a second sensitivity table with a range of operating earnings per share growth rates from 6.0% to 10.0% and a range of terminal multiples from 11.0 times to 13.0 times applied to the 2009 operating earnings per share estimate. This resulted in a range of values from U.S.\$29.25 to U.S.\$38.62 per share.

KBW and Lehman Brothers presented a third sensitivity table with a range of discount rates from 11.0% to 13.0% and a range of operating earnings per share growth rates from 6.0% to 10.0%. This resulted in a range of values from U.S.\$30.09 to U.S.\$37.50 per share.

KBW and Lehman Brothers stated that the discounted cash flow present value analysis is a widely used valuation methodology but noted that it relies on numerous assumptions, including asset and earnings growth rates, terminal values and discount rates. The analysis did not purport to be indicative of the actual values or expected values of the TD common stock.

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**Related Buy-in Transaction Analysis.** KBW and Lehman Brothers summarized the market premiums paid for the remaining outstanding shares of selected acquired companies where the parent company held a controlling interest or large minority interest in the acquired institution prior to the acquisition of the remaining outstanding shares. The transactions included in this analysis are set forth below.

Acquiror	Acquiree
<i>Transactions in the Banking Industry:</i>	
BNP Paribas Group	BancWest Corporation
Allied Irish Banks Limited	First Maryland Bancorp
The Hongkong and Shanghai Banking Corporation ( HSBC )	Marine Midland Banks, Inc.
<i>Other Relevant Transaction:</i>	
Toronto-Dominion Bank	TD Waterhouse Group, Inc.

For each precedent transaction, KBW and Lehman Brothers compared, among other things, the implied ratio of price per common share paid for the acquired company to:

the closing market price of the acquired company on the day preceding the announcement of the buy-in transaction;

the closing market price of the acquired company on the day five days preceding the announcement of the buy-in transaction;

the closing market price of the acquired company on the day one month preceding the announcement of the buy-in transaction; and

an adjusted closing market price of the acquired company on the day preceding the announcement of the buy-in transaction, whereby the acquired company's closing market price was adjusted upward by a percentage equivalent to any underperformance relative to the NASDAQ Bank Index from the announcement of the parent company's initial investment in the acquired company to the announcement of the buy-in transaction.

The results of the analysis are set forth in the following table.

	Pre Buy-In Ownership of Buyer	1 Day Market Premium	5 Day Market Premium	1 Month Market Premium	Adjusted One Day Premium
BNP Paribas/ BancWest	45.0%	40.1%	40.3%	47.6%	40.1%
Allied Irish/ First Maryland	49.9%	57.0%	60.2%	55.4%	19.0%
HSBC/ Marine Midland	51.1%	38.9%	38.6%	60.4%	25.2%
Average of Relevant Banking Industry Transactions	NM	45.3%	46.4%	54.5%	28.1%
Median of Relevant Banking Industry Transactions	NM	40.1%	40.3%	55.4%	25.2%
Toronto-Dominion/ TD Waterhouse	88.0%	53.2%	49.1%	32.9%	53.2%

No company or transaction used as a comparison in the above analysis is identical to Banknorth, TD or the mergers. Accordingly, an analysis of these results is not mathematical. Rather, it involves complex considerations and judgments concerning differences in financial and operating characteristics of the companies.

**Other Analyses.** KBW and Lehman Brothers compared the relative financial and market performance of Banknorth and TD to a variety of relevant industry peer groups and indices. KBW and Lehman Brothers also reviewed earnings estimates, balance sheet composition, historical stock performance and other financial data for TD.

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The Banknorth board of directors retained KBW as an independent contractor to act as financial adviser to Banknorth in connection with the mergers, and engaged Lehman Brothers solely to deliver its fairness opinion. As part of their investment banking businesses, KBW and Lehman Brothers are continually engaged in the valuation of banking businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes. As specialists in the securities of banking companies, KBW and Lehman Brothers have experience in, and knowledge of, the valuation of banking enterprises. In the ordinary course of their business as broker-dealers, KBW and Lehman Brothers may, from time to time, purchase securities from, and sell securities to, Banknorth and TD. As market makers in and active traders of securities, KBW and Lehman Brothers may from time to time have a long or short position in, and buy or sell, debt or equity securities of Banknorth and TD for KBW or Lehman Brothers' own account and for the accounts of their customers.

Banknorth and KBW have entered into an agreement relating to the services to be provided by KBW in connection with the mergers. Banknorth agreed to pay KBW a cash fee of \$500,000 upon execution of a definitive agreement with respect to the mergers, \$1,000,000 upon delivery of a written fairness opinion in connection with the mergers, \$500,000 concurrent with the mailing of a proxy statement/prospectus in connection with the mergers and, at the time of closing, a cash contingent fee equal to 0.375% of the aggregate market value of the consideration paid for 51% of the outstanding shares of Banknorth common stock. The contingent fee is dependent upon the final per share consideration received by Banknorth shareholders. All fees paid by Banknorth to KBW prior to the contingent fee will be credited against the contingent fee. Pursuant to the KBW engagement agreement, Banknorth also agreed to indemnify KBW and its affiliates against certain liabilities, including liabilities under the federal securities laws.

Banknorth and Lehman Brothers have entered into an agreement relating to the services to be provided by Lehman Brothers in connection with the mergers. Banknorth agreed to pay Lehman Brothers a cash fee of \$1,000,000 upon delivery of a fairness opinion in connection with the mergers and a cash fee of \$1,000,000 upon closing of the mergers. Pursuant to the Lehman Brothers engagement agreement, Banknorth also agreed to indemnify Lehman Brothers and its affiliates against certain liabilities, including liabilities under the federal securities laws.

**August 17, 2004 Presentation by KBW to the Banknorth Board**

As noted in "Background of the Transaction" beginning on page 37, on August 17, 2004, KBW made a preliminary presentation to the board of directors of Banknorth. The presentation included an overview of the proposed transaction terms and structure as of that date (which were subject to ongoing negotiations), a summary overview of publicly available information about TD, a discussion of the financial performance of Banknorth and its peers based on publicly available information, a review of the pro forma impact of the transaction at the TD and Banknorth levels, a review of publicly available information regarding recent merger and acquisition transactions in the banking sector and a review of publicly available information about precedent minority buy-in transactions. The presentation also contained an analysis of multiple potential growth scenarios of Banknorth that had been prepared by Banknorth at the request of TD in connection with its evaluation of Banknorth, including a summary of valuations that might be realized under such potential growth scenarios. These analyses were based on numerous hypothetical assumptions and estimates regarding possible future events and scenarios, many of which are beyond the control of KBW, Banknorth or TD. For a summary of the analyses underlying KBW's fairness opinion, see "Opinions of Banknorth's Financial Advisors" beginning on page 43.

Utilizing the hypothetical growth scenarios, KBW provided a five-year discounted cash flow analysis of the possible value to Banknorth shareholders of (1) the proposed transaction, when combined with future open-market purchases of Banknorth Delaware common stock that TD might make and a possible future acquisition by TD of all of the shares of Banknorth Delaware common stock not owned by TD, in comparison to (2) Banknorth's prevailing stock price range. The hypothetical growth scenarios used by KBW compared a "base case" model using earnings per share and dividends per share in accordance with projections prepared by Banknorth management with two additional hypothetical scenarios that assumed

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the successful accomplishment of acquisitions over a five-year period that would result in the addition of an average of \$3 billion, in one case, and \$6 billion, in the other case, in tangible assets per year and an associated positive impact on projected earnings per share. For each of these illustrative scenarios, KBW assumed that (1) TD would initially purchase 51% of Banknorth's outstanding common stock in the proposed transaction, (2) it would buy additional shares on the open market over the succeeding five years to increase its percentage ownership position in Banknorth Delaware and (3) it would purchase the remaining publicly held shares at the end of the fifth year following completion of the proposed transaction. KBW estimated the net present value of each of these components as well as of projected dividends.

In order to determine the possible value of a hypothetical future acquisition by TD of all of the shares of Banknorth Delaware common stock not then owned by TD at the end of the fifth year, KBW reviewed the premiums to prevailing stock market prices paid in similar precedent transactions involving minority buy-ins and determined median premiums of 12.5%, 13.4% and 10.6% to the stock price one day before, five days before and one month before announcement respectively for non-bank transactions, and median premiums of 40.1%, 40.3% and 55.4% to the stock price one day before, five days before and one month before announcement respectively for three precedent banking transactions—BNP Paribas/ Bancwest Corporation, Allied Irish Banks/ First Maryland Bancorp and HSBC/ Marine Midland.

KBW used a discount rate of 9% to estimate the net present value of the hypothetical open market purchases by TD of additional shares of Banknorth Delaware common stock over the five years following completion of the proposed transaction and of 11% to estimate the net present value of the hypothetical purchase of the remaining publicly held shares at the end of the fifth year; assumed that the stock of Banknorth Delaware would trade at a stock price equating to 15.7 times projected earnings and maintain a dividend payout ratio of 35% during the five-year period; and assumed that TD would pay a market premium of 10% to the projected market price in the assumed minority buy-in transaction. Based on these assumptions, KBW determined net present values for each component (initial purchase of 51% of Banknorth shares, open market purchases and minority buy-in transaction by TD) and of projected dividends, which resulted in an aggregate net present value of \$38.72 for the scenario not assuming any acquisitions (base case), \$40.53 for the scenario assuming the acquisition of an average of \$3 billion in tangible assets per year and \$41.10 for the scenario assuming the acquisition of an average of \$6 billion in tangible assets per year. These hypothetical values were compared to the prevailing Banknorth common stock price of \$31.02. For each scenario, KBW also presented sensitivity analyses showing the effect on the estimated net present values of changing assumptions regarding the market premium paid in the minority buy-in, the relevant discount rates and the trading multiple of the Banknorth Delaware common stock.

## **TD's Reasons for the Transaction**

The board of directors of TD approved the merger agreement after TD's senior management discussed with the board of directors the business, assets, liabilities, results of operations, financial performance and prospects of Banknorth, the possibilities for continued growth through future acquisitions, Banknorth's history of completing such acquisitions and the experience of Banknorth's management team and their commitment to remain with Banknorth Delaware following the transactions. The board of directors determined that the acquisition of 51% of the outstanding stock of Banknorth Delaware would have the benefits of, among other things, maintaining a U.S. share currency for potential future acquisitions and providing additional options for management and employee incentive compensation.

## **Interests of Banknorth's Executive Officers and Directors in the Transaction**

When you are considering the recommendation of Banknorth's board of directors with respect to approving the merger agreement and the post-transaction certificate of incorporation, you should be aware that Banknorth's directors and executive officers have interests in the mergers which are in addition to, or different from, their interests as shareholders of Banknorth. The Banknorth board of directors was aware of these factors and considered them, among other matters, in approving the merger agreement and the post-transaction certificate of incorporation. These interests are described below.

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*Existing Severance Agreements.* Banknorth previously entered into severance agreements with Messrs. Ryan, Verrill, Ott, Greene and Ms. Suehrstedt, as well as Stephen J. Boyle, John W. Fridlington and Carol L. Mitchell and certain other officers of Banknorth, pursuant to which these officers would receive specified benefits in the event that their employment was terminated by Banknorth other than for cause, disability, retirement or death following a change in control of Banknorth or the officers terminated their employment under such circumstances for good reason (each as defined in the applicable severance agreement). Upon a qualifying termination following a change in control, the officer would be entitled to a lump sum payment equal to three times (in the case of the above-named officers) and three or two times (in the case of other officers) the sum of the officer's annual salary and the greatest of the annual bonuses paid or accrued in the year of termination or any of the three immediately preceding years. For purposes of determining the officer's benefit under the officer's supplemental retirement agreement with Banknorth, the severance agreements also provide that the officer would be credited with additional age and service equal to three years (in the case of the above-named officers) and three or two years (in the case of other officers). With the exception of Mr. Boyle and the other officers not named above, reductions for early commencement of supplemental retirement benefits for these executives would be eliminated and provisions in the executive's supplemental retirement agreement with Banknorth (which we refer to in this document as the SERP) that prohibit the accrual of additional benefits after the executive has been credited with more than a stated number of years of service would be disregarded. In the case of Mr. Boyle and all but one of the other officers not named above, for purposes of determining each such officer's early retirement and other forms of benefit under his or her SERP, if such officer is less than 55 years of age on the date of termination of employment, such officer would be deemed to be at least 55 years of age on such date. In addition, upon a qualifying termination, each covered officer would be entitled to continued welfare benefits coverage at the expense of Banknorth at a level equivalent to the insurance coverage in effect for the officer immediately prior to termination of his or her employment until the earlier of three years (in the case of the above-named officers) and three or two years (in the case of other officers) following termination of employment or the date the officer has commenced new employment which provides comparable benefits and all rights under any equity or long-term incentive plan would be fully vested to the extent not otherwise provided by the terms of any such plan. The agreements also provide that if any amounts or benefits received under the existing agreements or otherwise are subject to the excise tax imposed under Section 4999 of the Internal Revenue Code of 1986, as amended (which we refer to in this document as the Code), an additional payment will be made to restore the executive to the after-tax position that he or she would have been in if the excise tax had not been imposed.

*New Agreements with Banknorth Executive Officers.* In order to increase the likelihood that Banknorth's executive officers would remain in the employ of Banknorth Delaware following the completion of the mergers, employment agreements were entered into with each of Messrs. Ryan and Verrill and retention agreements were entered into with Messrs. Ott and Greene and Ms. Suehrstedt, as well as Messrs. Boyle and Fridlington and Ms. Mitchell and certain other executive officers. Upon completion of the mergers, these agreements will become effective and will supersede the existing severance agreements between Banknorth and these officers described above.

The new employment agreement among Banknorth, TD and Mr. Ryan provides that during the five-year period following the completion of the mergers, Mr. Ryan will be employed as Chairman, President and Chief Executive Officer of Banknorth Delaware and will serve as a director and Vice Chairman of TD. The new employment agreement between Banknorth and Mr. Verrill provides that during the four-year period following the completion of the mergers, Mr. Verrill will be employed as Senior Executive Vice President and Chief Operating Officer of Banknorth Delaware. The retention agreements between Banknorth and each of the other six Banknorth executives, including Messrs. Ott and Greene and Ms. Suehrstedt, provide that during the three-year period following the completion of the mergers, each executive will serve in such positions as may be assigned by Banknorth consistent with the executive's position prior to the mergers.

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Each of the new agreements provides that during the term of the agreement the executive will receive an annual base salary at least equal to that in effect immediately prior to the completion of the mergers, will have incentive compensation opportunities no less favorable than those available to the executive prior to the completion of the mergers and will be entitled to participate in all employee benefit plans offered by Banknorth Delaware to its employees. Assuming the mergers were completed as of the date of this document, the annual base salary payable to each of Messrs. Ryan, Verrill, Ott and Greene and Ms. Suehrstedt would be \$853,500, \$480,434, \$348,000, \$303,000 and \$296,000, respectively, and the annual base salary payable to Messrs. Boyle and Fridlington and Ms. Mitchell would be \$219,763, \$296,000 and \$296,000, respectively. Additionally, each agreement provides that, within 10 days of the effective date of the mergers, each executive will receive any unpaid portion of a pro-rata long-term incentive award in an amount as described in Section 5 of Banknorth's Executive Incentive Plan. Mr. Ryan's employment agreement also provides for the purchase of a \$5 million whole life insurance policy on his life, with Banknorth to pay the premiums on the policy until the policy is fully paid. The insurance premiums for this policy are currently estimated to be \$        to \$        per year for        years.

Pursuant to the new agreements, each executive agreed to waive existing rights to accelerated vesting of the options to acquire Banknorth common stock held by him or her that would otherwise occur upon completion of the mergers in accordance with the terms of the stock compensation plans under which such options were granted.

Each of the agreements provides that upon completion of the mergers, the executive will be granted restricted stock units in TD with a grant date value equal to \$6 million in the case of Mr. Ryan, \$3 million in the case of Mr. Verrill and \$2 million in the case of each of the other six executives. These TD restricted stock units will vest based on the executive's continued employment through the third anniversary of the completion of the mergers, subject to earlier vesting upon termination of employment due to death, disability, involuntary termination other than for cause, as defined in the agreements, or voluntary termination by the executive for good reason, as defined in the agreements. However, even if the restricted stock units become vested prior to the third anniversary of the completion of the mergers, payment of the awards will be delayed until such time and will be contingent upon the executive's compliance with the non-solicitation and non-competition provisions in the new agreements. The restricted stock units will be paid out in cash based on the closing price of the TD common stock on the third anniversary of the completion of the mergers, unless the executive elects to defer the cash payment pursuant to a deferred compensation plan maintained by Banknorth Delaware. The cash amount payable in respect of the restricted stock units will be adjusted up or down, but not by more than 20%, to reflect the performance of Banknorth Delaware against an annual growth in operating earnings per share target established each year by the compensation committee of the board of directors of Banknorth Delaware, provided that such operating earnings per share target (1) shall not increase by more than 10% annually and (2) shall exclude for all relevant years costs associated with the mergers, any cost related to the expensing of stock options and extraordinary items.

In consideration for each of the eight executive officers' continued employment through the third anniversary of the mergers and his or her agreement to comply with the non-solicitation and non-compete provisions in the new agreement, each executive will become entitled to receive a non-competition and retention amount on the third anniversary of the completion of the mergers, subject to earlier payment upon termination of employment due to death, disability, involuntary termination other than for cause or voluntary termination by the executive for good reason. Such amount consists of two components, one being a lump sum cash payment and the second being various enhancements to the executive's existing SERP. The lump sum cash payments equal \$6,081,925 for Mr. Ryan, \$2,788,977 for Mr. Verrill, \$1,746,675 for Mr. Greene, \$2,098,239 for Mr. Ott, \$1,571,925 for Ms. Suehrstedt, \$1,046,964 for Mr. Boyle, \$1,571,925 for Mr. Fridlington and \$1,571,925 for Ms. Mitchell. The SERP enhancements generally consist of (1) crediting the executive with an additional 36 months of age and service for all purposes under the SERP, including benefit accrual, (2) disregarding any SERP provisions that prohibit the accrual of additional benefits after the executive has been credited with more than a stated number of

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years of service and (3) treating the executive as immediately eligible for any early retirement benefit without being subject to reduction for early commencement of payment (except that, in the case of Mr. Boyle, for purposes of determining the early retirement and other forms of benefit under his SERP, if Mr. Boyle is less than 55 years of age on the date of termination of employment, he would be deemed to be at least 55 years of age on such date). The value of the SERP enhancements are estimated to be approximately \$2,270,000 for Mr. Ryan, \$2,130,000 for Mr. Verrill, \$460,000 for Mr. Greene, \$960,000 for Mr. Ott, \$900,000 for Ms. Suehrestedt, \$130,000 for Mr. Boyle, \$530,000 for Mr. Fridlington and \$850,000 for Ms. Mitchell.

If, during the term of the new agreement, the executive's employment is involuntarily terminated without cause, or the executive terminates his or her employment for good reason, the executive will be entitled to receive the following:

accrued benefits through the date of termination,

the non-competition and retention payment,

a prorated bonus for the year of termination based on the executive's average annual bonuses for the prior three years (which we refer to in this document as the prorated bonus),

continued welfare benefits coverage at the expense of Banknorth Delaware until the earlier of 36 months or the date the executive commences new employment with comparable benefits or, under certain circumstances where it is not possible to provide continued coverage, a lump sum cash amount equal to twice the aggregate allocable cost of such coverage, and

accelerated vesting of (1) all unvested stock options granted prior to the mergers, (2) any grants of equity-based compensation awards from TD or Banknorth Delaware after the mergers if the termination of employment occurs after a subsequent change in control of either TD or Banknorth Delaware and (3) the restricted stock units granted upon completion of the mergers (without regard to the performance conditions) although such units will not be payable until the third anniversary of the completion of the mergers and will be forfeited if the executive fails to comply with the non-solicitation and non-compete provisions of the new agreement.

In addition, upon a qualifying termination of Messrs. Ryan's or Verrill's employment, the executive will be entitled to receive a lump sum severance amount equal to the product of (1) the sum of (A) his annual base salary, (B) his average annual bonus for the last three years, (C) the maximum employer matching contributions (other than employee contributions) that would have been credited to his account under Banknorth's 401(k) plan for the year of termination and (D) the total value of all other contributions and forfeitures allocated to his 401(k) account for the plan year ending immediately prior to either the completion of the mergers or the termination of his employment, whichever year would produce the greater value, *multiplied by* (2) the lesser of (A) three or (B) the number of years and portions thereof remaining until, in the case of Mr. Ryan, the fifth year anniversary of the completion of the mergers and, in the case of Mr. Verrill, the fourth year anniversary of the completion of the mergers, but not less than one and a half years (if such termination occurs prior to a change in control of either TD or Banknorth Delaware) or two years (if such termination occurs after a subsequent change in control of either TD or Banknorth Delaware).

In addition, each of the executives (other than Messrs. Ryan and Verrill) will be entitled to two years of salary continuation upon a termination of employment, following the third anniversary of the completion of the mergers, either by Banknorth Delaware without cause or by the executive for good reason.

In the event of a termination due to death or disability (or, in the case of Messrs. Ryan and Verrill, retirement at or after age 65), the executive will receive the accrued benefits, prorated bonus, the non-competition and retention payment and accelerated vesting of the unvested stock options granted prior to the mergers and the restricted stock units granted upon completion of the mergers, and in the case of Mr. Ryan continued payments on his life insurance policy by Banknorth Delaware. If the executive ceases to be employed for any reason at or following the end of the term of the agreement other than a

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termination for cause, the executive will be entitled to continued welfare benefits coverage at the expense of Banknorth Delaware until the earlier of 36 months or the date the executive commences new employment with comparable benefits.

During the term of each applicable agreement and thereafter, the executives will not disclose confidential information of Banknorth. During the term of each applicable agreement and for a period of three years following the date the executive ceases to be employed by Banknorth, the executive may not hire or solicit any employees or consultants of Banknorth and may not solicit certain clients of Banknorth or compete with Banknorth.

If any amounts or benefits received under the new agreements or otherwise are subject to the excise tax imposed under Section 4999 of the Code, an additional payment will be made to restore the executive to the after-tax position that he or she would have been in if the excise tax had not been imposed, provided that such excess parachute payments exceed 105% of three times the executive's base amount, as defined in Section 280G of the Code. In the event this 105% threshold is not met, the excess parachute payments will be reduced so that they do not exceed three times the executive's base amount.

Assuming that the mergers are completed on February 1, 2005, in the event that immediately thereafter the employment of the executives was involuntarily terminated by Banknorth without cause or by the executives for good reason, the aggregate cash benefits payable to the executives under the new agreements would be approximately \$18.5 million for Mr. Ryan, \$10.2 million for Mr. Verrill, \$4.2 million for Mr. Greene, \$5.1 million for Mr. Ott, \$4.5 million for Ms. Suehrstedt, \$3.2 million for Mr. Boyle, \$4.1 million for Mr. Fridlington and \$4.4 million for Ms. Mitchell, in each case including the restricted stock units and SERP enhancements described above and excluding the cost of any gross-up for the excise tax under Section 4999 of the Code and the payments under the Executive Incentive Plan described below. If the executive voluntarily terminates his or her employment prior to the third anniversary of the completion of the mergers, the executive will not receive any of the above amounts. In such event, the executive will receive the payments under the Executive Incentive Plan described below plus any gross-up payment if the executive is subject to excise taxes under Section 4999 of the Code.

*Executive Incentive Plan.* Under Banknorth's Executive Incentive Plan, Banknorth has granted incentive awards each year that provide for cash payments if performance goals are achieved during the performance period. Both short-term (one-year) and long-term (three-year) incentive awards have been granted under the plan, with the performance periods commencing each January 1. Under the terms of the plan, in the event of a change in control of Banknorth, each participant will receive payments for his or her incentive awards within 30 days of the date of the change in control as follows: (1) for performance periods which had an original term of one year or less, the amount required to be paid pursuant to the participant's severance agreement and (2) for performance periods of more than one year, an amount based on the greater of (A) the actual attainment of the performance goals and (B) the assumed attainment of the maximum of the performance goals for each respective performance period, pro rated to the date of the change in control. Completion of the mergers will constitute a change in control under the Executive Incentive Plan. Accordingly, the participant will receive a payment under the change in control provision of the Executive Incentive Plan in connection with the mergers. The long-term incentive payments for the performance periods due to end on December 31, 2005, 2006 and 2007 under this plan are estimated to be approximately \$5,845,055 for Mr. Ryan and \$2,922,527 for each of Messrs. Verrill, Fridlington, Greene and Ott and Ms. Mitchell and Ms. Suehrstedt, and \$464,835 for Mr. Boyle. Subject to the approval of TD, Banknorth may pay short-term incentive awards for the 2004 calendar year, which are not contingent on the mergers, and the above-referenced long-term incentive payments, in December 2004, with any additional amounts that may be owed to the participants based on Banknorth's actual operating results for 2004, in the case of the short-term payments, and the actual date of completion of the mergers, in the case of the long-term payments, to be paid to the participants upon completion of the mergers.

*Equity-Based Awards.* The merger agreement provides that upon completion of the mergers, each outstanding and unexercised option to acquire shares of Banknorth common stock will cease to represent the right to acquire shares of Banknorth common stock and will become a right to acquire shares of

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Banknorth Delaware common stock and each stock account under the Banknorth deferred compensation plan will cease to represent shares of Banknorth common stock and will represent the number of shares of Banknorth Delaware common stock equal to the number of shares of Banknorth common stock previously subject to such account. See Treatment of Banknorth Stock Options and Other Equity-Based Awards beginning on page 71. Pursuant to the terms of Banknorth's stock option and equity incentive plans, all unvested options to purchase shares of Banknorth common stock will become vested and exercisable upon completion of the mergers, except for options held by those executives who have agreed to waive their right to accelerated vesting (which include the eight executives discussed above). As of the date of this document, the eight executive officers of Banknorth as a group held options to acquire an aggregate of \_\_\_\_\_ shares of Banknorth common stock under Banknorth's stock option plans that are not vested. Because the executives have waived their right to accelerated vesting, none of these options will vest solely as a result of the mergers, although they will vest immediately if the executive's employment is terminated following the mergers due to death, disability, involuntary termination without cause or voluntarily termination by the executive for good reason (and, in the case of Messrs. Ryan and Verrill, retirement at or after age 65). The stock options to acquire shares of Banknorth common stock granted to non-employee directors of Banknorth are fully vested as of the date of grant and therefore the mergers will not result in any accelerated vesting of such options.

It is anticipated that the executive officers of Banknorth will be granted stock options and/or restricted stock in the ordinary course of business consistent with past practice prior to the completion of the mergers, subject to the terms of the merger agreement and provided that Banknorth take such actions as are necessary to ensure that such awards do not vest upon completion of the mergers.

Shares of Banknorth common stock issued under Banknorth's Restricted Stock Plan for Non-Employee Directors may not be sold, hypothecated or transferred, except upon the death, disability or retirement of the director, a termination of the director's service with a consent of a majority of the board of directors or a change in control of Banknorth. The restrictions on these shares will lapse upon completion of the mergers. As of the date of this document, the non-employee directors held an aggregate of \_\_\_\_\_ shares of Banknorth common stock under this plan.

*Indemnification and Insurance.* Banknorth's directors and officers are entitled to continuing indemnification against certain liabilities by virtue of provisions contained in the merger agreement. Pursuant to the merger agreement, Banknorth Delaware agreed to indemnify and hold harmless, and provide advancement of expenses to, each present and former director or officer of Banknorth or its subsidiaries determined as of the effective time of the migratory merger (which we refer to collectively in this document as the indemnified parties), arising out of matters relating to their service as a director or officer and existing or occurring prior to the completion of the mergers, to the fullest extent to which such indemnified parties would be entitled under applicable law and the by-laws of Banknorth and Banknorth Delaware as in effect on the date of the merger agreement. Banknorth Delaware also generally agreed in the merger agreement that all rights to indemnification and all limitations on liability existing in favor of the indemnified parties in the respective certificate of incorporation, by-laws or similar organizational documents of Banknorth, Banknorth Delaware or any of their respective subsidiaries as in effect as of the date of the merger agreement with respect to matters occurring prior to the completion of the mergers will survive the mergers and shall continue in full force and effect after the completion of the mergers.

Pursuant to the merger agreement, Banknorth Delaware agreed to maintain in effect, for six years from the completion of the mergers, directors' and officers' liability insurance containing terms and conditions which are not less advantageous than any such policies maintained by Banknorth as of the date of the merger agreement, with respect to matters occurring prior to the completion of the mergers. TD may elect to substitute TD policies, which may be tail policies, for these policies to be maintained.

Pursuant to the merger agreement, Banknorth Delaware also generally agreed, during the three-year period following completion of the mergers, not to change the terms of the post-transaction certificate of incorporation or Banknorth Delaware's by-laws regarding indemnification or related matters or make material changes to Banknorth Delaware's policies and practices with respect to directors' and officers'

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liability insurance, which in either case relate to matters arising after the completion of the mergers and would reasonably be expected to be adverse to Banknorth Delaware's directors, unless in the case of changes to such policies or practices relating to insurance, such change is approved in advance by the designated independent directors.

Other than as set forth above, no director or executive officer of Banknorth has any direct or indirect material interest in the mergers, except insofar as ownership of Banknorth common stock might be deemed such an interest. See Beneficial Ownership of Banknorth Common Stock beginning on page 113.

## **Material U.S. Federal Income Tax Consequences of the Mergers**

The following discussion sets forth the material United States federal income tax consequences of the migratory merger and the acquisition merger to U.S. holders (as defined below) of Banknorth common stock, and the ownership of TD common shares received pursuant to the acquisition merger, all as of the date of this proxy statement/ prospectus. As discussed in greater detail below, the receipt of TD common shares and cash in the acquisition merger generally will be taxable to Banknorth shareholders, while the receipt of shares of Banknorth Delaware common stock pursuant to the migratory merger will generally not be taxable. This discussion is based upon the Code, the regulations of the United States Treasury Department and court and administrative rulings and decisions in effect on the date of this document. These laws may change, possibly retroactively, and any change could affect the continuing validity of this discussion.

For purposes of this discussion, we use the term "U.S. holder" to mean:

an individual citizen or resident of the United States;

a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;

an estate the income of which is subject to United States federal income taxation regardless of its source; or

a trust which either (1) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

If a partnership holds TD common shares or Banknorth common stock, the tax treatment of a partner will generally depend on the status of the partners and the activities of the partnership. If you are a partner of a partnership holding TD common shares or Banknorth common stock, you should consult your tax advisors.

This discussion assumes that you hold your TD common shares or Banknorth common stock as capital assets within the meaning of Section 1221 of the Code. This discussion does not address any tax consequences arising under the laws of any state, local or foreign jurisdiction or under any U.S. federal laws other than those pertaining to the income tax. Further, this discussion does not address all aspects of United States federal income taxation that may be relevant to you in light of your particular circumstances or that may be applicable to you if you are subject to special treatment under the United States federal income tax laws, including if you are:

a financial institution;

a tax-exempt organization;

an S corporation or other pass-through entity;

an insurance company;

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a mutual fund;

a dealer in securities or foreign currencies;

a trader in securities who elects the mark-to-market method of accounting for your securities;

a person liable for alternative minimum tax;

a Banknorth shareholder who received Banknorth common stock through the exercise of employee stock options or through a tax-qualified retirement plan;

a person that has a functional currency other than the United States dollar;

a holder of options granted under any Banknorth benefit plan; or

a Banknorth shareholder who holds Banknorth common stock as part of a hedge against currency risk, straddle or a constructive sale or conversion transaction.

***Migratory Merger***

For U.S. federal income tax purposes, you will be treated as exchanging your shares of Banknorth common stock for shares of Banknorth Delaware common stock in the migratory merger. It is anticipated that the migratory merger will qualify as a reorganization within the meaning of Section 368(a) of the Code. It is a condition to the closing of the mergers that Banknorth receive an opinion from Elias, Matz, Tiernan & Herrick L.L.P. that, for United States federal income tax purposes, the migratory merger will qualify as a reorganization within the meaning of Section 368(a) of the Code. This opinion will be based on representation letters provided by Banknorth and Banknorth Delaware to be delivered at the time of closing, and on customary factual assumptions and will assume that the migratory merger will be completed according to the terms of the merger agreement. Banknorth has not and does not intend to seek any ruling from the Internal Revenue Service regarding any matters relating to the migratory merger, and as a result, there can be no assurance that the Internal Revenue Service will not disagree with or challenge any of the conclusions described herein.

Assuming the migratory merger qualifies as a reorganization within the meaning of Section 368 (a) of the Code, the material United States federal income tax consequences of the migratory merger are as follows:

the migratory merger will be treated as a reorganization within the meaning of Section 368(a) of the Code;

you will not recognize gain or loss upon the exchange of Banknorth common stock solely for Banknorth Delaware common stock;

your aggregate tax basis in the Banknorth Delaware common stock that you receive in the migratory merger will equal your aggregate tax basis in the Banknorth common stock you surrender; and

your holding period for the Banknorth Delaware common stock that you receive in the migratory merger will include your holding period for the shares of Banknorth common stock that you surrender in the migratory merger.

If you acquired different blocks of Banknorth common stock at different times and at different prices, your tax basis and holding period in your Banknorth Delaware common stock may be determined with reference to each block of Banknorth common stock.

Additionally, you will be required to retain records pertaining to the migratory merger and you will be required to file with your United States federal income tax return for the year in which the migratory merger takes place a statement setting forth certain facts relating to the migratory merger.

***Acquisition Merger***

For U.S. federal income tax purposes, you will be treated as surrendering only those shares of Banknorth Delaware common stock that are exchanged for TD common shares and cash in the acquisition



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merger (with your remaining shares of Banknorth Delaware common stock being retained by you). The acquisition merger will be treated for United States federal income tax purposes as a taxable sale by you of the shares of Banknorth Delaware common stock that you surrender in the acquisition merger. The material United States federal income tax consequences of the acquisition merger are as follows:

you will recognize gain or loss equal to the difference between (1) the sum of the cash consideration (including any cash received in lieu of fractional shares) and the fair market value of the TD common shares received in the acquisition merger and (2) your adjusted tax basis in the shares of Banknorth Delaware common stock surrendered in the acquisition merger for TD common shares and cash;

your aggregate tax basis in the shares of Banknorth Delaware common stock that you retain will equal your tax basis in such shares immediately prior to the acquisition merger;

your aggregate tax basis in the TD common shares that you receive in the acquisition merger will equal the fair market value of such common shares at the time of the acquisition merger;

your holding period for the shares of Banknorth Delaware common stock that you retain will not change as a result of the acquisition merger; and

your holding period for the TD common shares that you receive in the acquisition merger should generally begin on the date after the acquisition merger.

If you acquired different blocks of Banknorth common stock at different times and at different prices, with respect to the Banknorth Delaware common stock you received in exchange for each of those blocks of Banknorth common stock in the migratory merger, any gain or loss will be determined separately with respect to each such block of Banknorth Delaware common stock surrendered, and the cash and TD common shares you receive will be allocated pro rata to each such block of Banknorth Delaware common stock.

***Taxation of Capital Gain or Loss***

Any gain or loss that you recognize in connection with the acquisition merger will generally be capital gain or loss and will be long-term capital gain or loss if, as of the date of the acquisition merger, your holding period in your Banknorth Delaware common stock is greater than one year as of the date of the acquisition merger. For non-corporate shareholders, long-term capital gain generally is subject to tax at preferential rates. There are limitations on the deductibility of capital losses.

***Backup Withholding and Information Reporting***

If you are a non-corporate holder of Banknorth Delaware common stock, you may be subject to information reporting and backup withholding on any cash payments you receive in the acquisition merger. You will not be subject to backup withholding, however, if you:

furnish a correct taxpayer identification number and certify that you are not subject to backup withholding on the substitute Form W-9 or successor form included in the letter of transmittal you will receive; or

are otherwise exempt from backup withholding.

Any amounts withheld under the backup withholding rules will be allowed as a refund or credit against your United States federal income tax liability, provided you furnish the required information to the Internal Revenue Service.

**Table of Contents****Material U.S. Federal Income Tax Consequences of Owning and Disposing of TD Common Shares*****Taxation of Dividends***

Distributions on your TD common shares (including amounts withheld to reflect Canadian withholding taxes) will be taxable as dividends to the extent paid out of TD's current or accumulated earnings and profits, as determined under United States federal income tax principles. Such income (including withheld taxes) will be includable in your gross income as ordinary income on the day actually or constructively received by you. Such dividends will not be eligible for the dividends received deduction allowed to corporations. With respect to non-corporate U.S. holders, certain dividends received before January 1, 2009 from a qualified foreign corporation may be subject to reduced rates of taxation. A foreign corporation is treated as a qualified foreign corporation with respect to dividends paid by that corporation on shares that are readily tradable on an established securities market in the United States. United States Treasury Department guidance indicates that the TD common shares, which are listed on the New York Stock Exchange, are readily tradable on an established securities market in the United States. There can be no assurance that the TD common shares will be considered readily tradable on an established securities market in later years. Non-corporate holders that do not meet a minimum holding period requirement during which they are not protected from the risk of loss or that elect to treat the dividend income as investment income pursuant to Section 163(d)(4) of the Code will not be eligible for the reduced rates of taxation regardless of TD's status as a qualified foreign corporation. In addition, the rate reduction will not apply to dividends if the recipient of a dividend is obligated to make related payments with respect to positions in substantially similar or related property. This disallowance applies even if the minimum holding period has been met. U.S. holders should consult their own tax advisors regarding the application of these rules given their particular circumstances.

The amount of any dividend paid on the TD common shares in Canadian currency will equal the United States dollar value of the Canadian currency calculated by reference to the exchange rate in effect on the date the dividend is properly included in income by you, regardless of whether the Canadian currency is converted into United States dollars. You will have a basis in the Canadian currency equal to its United States dollar value on the date the dividend is properly included in income. Any gain or loss realized on a subsequent conversion or other disposition of the Canadian currency will be treated as United States source ordinary income or loss.

Subject to certain conditions and limitations, Canadian withholding taxes on dividends may be treated as foreign taxes eligible for credit against your United States federal income tax liability. For purposes of calculating the foreign tax credit, dividends paid on the TD common shares will be treated as income from sources outside the United States and will generally constitute passive income or, in the case of certain U.S. holders, financial services income. Special rules apply to certain individuals whose foreign source income during the taxable year consists entirely of qualified passive income and whose creditable foreign taxes paid or accrued during the taxable year do not exceed \$300 (\$600 in the case of a joint return). Further, in certain circumstances, if you:

have held TD common shares for less than a specified minimum period during which you are not protected from risk of loss,

are obligated to make payments related to the dividends with respect to positions in substantially similar or related property, or

hold the TD common shares in arrangements in which your expected economic profit, after non-U.S. taxes, is insubstantial, you will not be allowed a foreign tax credit for foreign taxes imposed on dividends paid on the TD common shares. The rules governing the foreign tax credit are complex. You are urged to consult your tax advisors regarding the availability of the foreign tax credit under your particular circumstances.

To the extent that the amount of any distribution exceeds TD current and accumulated earnings and profits, the distribution will first be treated as a tax-free return of capital, causing a reduction in the

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adjusted basis of the TD common shares (thereby increasing the amount of gain, or decreasing the amount of loss, to be recognized by the U.S. holder on a subsequent disposition of the common shares), and the balance in excess of adjusted basis will be taxed as capital gain. Consequently, these distributions in excess of TD's current and accumulated earnings and profits would not give rise to foreign source income and a U.S. holder would not be able to use the foreign tax credit arising from any Canadian withholding tax imposed on that distribution unless that credit can be applied (subject to applicable limitations) against U.S. tax due on other foreign source income in the appropriate category for foreign tax credit purposes.

### ***Taxation of Capital Gains***

For United States federal income tax purposes, you will recognize taxable gain or loss on any sale or exchange of TD common shares in an amount equal to the difference between the amount realized for the TD common shares and your tax basis in the TD common shares. Such gain or loss will generally be capital gain or loss. Capital gains of individuals derived with respect to capital assets held for more than one year are eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations. Any gain or loss recognized by you will generally be treated as United States source gain or loss.

### ***Information Reporting and Backup Withholding***

In general, information reporting will apply to dividends in respect of TD common shares and the proceeds from the sale, exchange or redemption of TD common shares that are paid to you within the United States (and in certain cases, outside the United States), unless you are an exempt recipient such as a corporation. Backup withholding may apply to such payments if you fail to provide a taxpayer identification number or certification of other exempt status or fail to report in full dividend and interest income.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your United States federal income tax liability provided the required information is furnished to the Internal Revenue Service.

**This discussion does not address tax consequences that may vary with, or are contingent on, individual circumstances. Moreover, it does not address any non-income tax or any foreign, state or local tax consequences. You should consult your own tax advisors concerning the United States federal income tax consequences of the migratory merger, the acquisition merger and the ownership of TD common shares in light of your particular situation, as well as any consequences arising under the laws of any other taxing jurisdiction.**

## **Material Canadian Federal Income Tax Consequences of the Mergers**

The following discussion is a summary of the principal Canadian federal income tax considerations under the Income Tax Act (Canada) (which we refer to in this document as the Canadian Tax Act) of (1) the migratory merger, (2) the receipt of the merger consideration, including a portion of a TD common share, cash and a portion of a share of Banknorth Delaware common stock, in the acquisition merger and (3) the holding and disposition of TD common shares and shares of Banknorth Delaware common stock received pursuant to the acquisition merger generally applicable to holders of Banknorth common stock who, for purposes of the Canadian Tax Act and at all relevant times, are not and are not deemed to be resident in Canada, will hold Banknorth Delaware common stock and TD common shares as capital property, deal at arm's length with and are not affiliated with TD, Banknorth and Banknorth Delaware and who do not use or hold the Banknorth common stock, the Banknorth Delaware common stock or the TD common shares in a business carried on in Canada (which we refer to in this document as non-resident holders). Special rules, which are not discussed in this summary, may apply to a non-resident insurer that carries on an insurance business in Canada and elsewhere.

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This summary is based upon the current provisions of the Canadian Tax Act, the regulations under the Canadian Tax Act, all specific proposals to amend the Canadian Tax Act and the regulations publicly announced by the Minister of Finance prior to the date of this proxy statement/ prospectus and the current administrative and assessing practices and policies of the Canada Revenue Agency published in writing prior to the date hereof. This summary does not otherwise take into account or anticipate any change in law, whether by legislative, governmental or judicial action, nor does it take into account or consider any provincial, territorial or foreign income tax legislation or considerations, which may be different from those discussed herein.

This summary is of a general nature only and is not intended to be legal or tax advice to non-resident holders. This summary is not exhaustive of all Canadian federal income tax considerations. Accordingly, holders of Banknorth common stock should consult their own tax advisors with respect to their particular circumstances.

### ***Migratory Merger and Conversion of Banknorth Delaware Common Stock***

Neither the exchange of shares of Banknorth common stock for shares of Banknorth Delaware common stock pursuant to the migratory merger nor the conversion of the shares of Banknorth Delaware common stock held by a non-resident holder, after giving effect to the migratory merger, into the right to receive (1) a number of TD common shares equal to 0.2351 multiplied by the number of shares of Banknorth Delaware common stock owned by such non-resident holder, (2) an amount in cash equal to \$12.24 multiplied by the number of shares of Banknorth Delaware common stock owned by such non-resident holder and (3) a number of shares of Banknorth Delaware common stock equal to 0.49 multiplied by the number of shares of Banknorth Delaware common stock owned by such non-resident holder, plus cash in lieu of any fractional share interests, will be subject to tax under the Canadian Tax Act.

## **Material Canadian Federal Income Tax Consequences of Owning and Disposing of TD Common Shares**

### ***Dividends on TD Common Shares***

Dividends paid or credited (or deemed to have been paid or credited) on the TD common shares to a non-resident holder will be subject to non-resident withholding tax under the Canadian Tax Act at the rate of 25% of the gross amount of those dividends, subject to any reduction in the rate of withholding to which the non-resident holder is entitled under an applicable international tax convention between Canada and the non-resident holder's country of residence. Where the non-resident holder is a resident of the United States entitled to benefits under the Canada-United States Income Tax Convention (1980) (which we refer to in this document as the Convention) and is the beneficial owner of the dividends, the rate of this withholding tax is generally reduced to 15%. Under the Convention, dividends paid to certain religious, scientific, literary, educational or charitable organizations and certain pension organizations that are resident in, and generally exempt from taxation by, the United States, are generally exempt from Canadian non-resident withholding tax, provided that certain administrative procedures are observed by such an organization.

### ***Dividends on Shares of Banknorth Delaware Common Stock***

Dividends paid or credited (or deemed to have been paid or credited) on the Banknorth Delaware common stock to a non-resident holder will not be subject to tax under the Canadian Tax Act.

### ***Disposition of TD Common Shares***

A non-resident holder will not be subject to tax under the Canadian Tax Act in respect of any capital gain realized by that non-resident holder on a disposition of a TD common share, unless the TD common share constitutes taxable Canadian property to the non-resident holder for purposes of the Canadian Tax Act and the non-resident holder is not entitled to relief under an applicable income tax convention. Provided that, at the time of disposition, the TD common shares are listed on a prescribed stock exchange

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(which includes The Toronto Stock Exchange and the New York Stock Exchange), the TD common shares will generally not constitute taxable Canadian property to a non-resident holder at that time unless, at any time during the 60-month period that ends at that time, the holder, persons with whom the holder does not deal at arm's length or the holder together with those persons, owns 25% or more of the issued shares of any class or any series of the capital stock of TD. Notwithstanding the foregoing, in certain circumstances set out in the Canadian Tax Act, the TD common shares could be deemed to be taxable Canadian property.

Even if the TD common shares are taxable Canadian property to a non-resident holder, the Convention will generally exempt a non-resident holder who is a resident of the United States for purposes of the Convention from tax under the Canadian Tax Act on any capital gain arising on the disposition of a TD common share unless the value of the shares of TD at the time of disposition is derived principally from real property situated in Canada.

### ***Disposition of Shares of Banknorth Delaware Common Stock***

A non-resident holder will not be subject to tax under the Canadian Tax Act in respect of any capital gain realized by that non-resident holder on a disposition of a share of Banknorth Delaware common stock.

### **Anticipated Accounting Treatment**

TD intends to account for the transaction as a purchase of Banknorth for both Canadian and United States financial accounting purposes. Accordingly, the aggregate fair value of the consideration paid by TD in connection with the transaction will be allocated to Banknorth's assets based on their fair values as of the completion of the transaction, and the results of operations of Banknorth will be included in TD's consolidated results of operations only for periods subsequent to the completion of the transaction.

No accounting entries will be required on the separate stand-alone financial statements of Banknorth Delaware as a result of the mergers because push-down accounting rules do not apply in these circumstances. Push-down accounting refers to establishing a new basis of accounting in the separate stand-alone financial statements of an acquired entity based on the purchase of substantially all of the voting stock of the acquired entity. The phrase "substantially all" generally refers to acquisitions of 80% or more of the voting stock of an entity. Because TD will acquire only 51% of the voting stock of Banknorth Delaware, push-down accounting does not apply, and Banknorth Delaware's separate stand-alone financial statements will require no adjustments.

Completion of the transaction is not subject to the availability or use of a specific method of accounting.

### **Regulatory Matters Related to the Mergers**

To complete the mergers, we need to obtain approvals or consents from, or make filings with, a number of U.S. federal and state bank and other regulatory authorities as well as regulatory authorities in Canada. These approvals and filings are described below.

#### ***Federal Reserve Board Approval***

TD will file an application with the Federal Reserve Board under the BHC Act requesting approval of the acquisition merger. Copies of the application will be provided to the U.S. Department of Justice. The application will describe the terms of the acquisition merger and the parties involved and will provide other financial and managerial information. In evaluating the application, the Federal Reserve Board will consider the financial and managerial resources and prospects of the existing institutions both currently and after giving effect to the mergers, and the convenience and needs of the communities to be served by both companies' insured depository institution subsidiaries, as well as the parties' effectiveness in combating money-laundering activities. Among other things, the Federal Reserve Board will also evaluate the capital adequacy of Banknorth Delaware after the mergers.

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The Federal Reserve Board must deny an application if it determines that the transaction would result in a monopoly or be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize a given business activity in any part of the United States. The Federal Reserve Board must also deny an application if it determines that the transaction would substantially lessen competition or would tend to create a monopoly in any section of the country, or would in any other manner result in a restraint of trade, unless the Federal Reserve Board finds that the anticompetitive effects of the transaction are clearly outweighed by the probable effects of the transaction in providing benefits to the public.

Under the Community Reinvestment Act, or CRA, the Federal Reserve Board must take into account the record of performance of each of Banknorth and TD in meeting the credit needs of the entire community, including low and moderate income neighborhoods, served by their depository institution subsidiaries. As part of the review process in merger transactions, the Federal Reserve Board frequently receives protests from community groups and others. All of the insured depository institution subsidiaries of Banknorth and TD required to have ratings under the CRA have received either an outstanding or satisfactory CRA rating in their most recent CRA examinations by their respective federal regulators. Applicable federal law provides for the publication of notice and public comment on applications filed with the Federal Reserve Board. Under current law, the mergers may not be completed until the Federal Reserve Board has approved the mergers and a period of 30 days, which may be reduced to 15 days by the Federal Reserve Board with the concurrence of the Attorney General of the United States, following the date of approval by the Federal Reserve Board, has expired.

### ***U.S. Antitrust Clearance***

The acquisition merger will be subject to review by the Antitrust Division or the FTC to determine whether it complies with applicable antitrust law. Under the provisions of the HSR Act, and its related rules, the acquisition merger cannot be completed until both Banknorth and TD file notification of the proposed transaction with the Antitrust Division and the FTC and the specified waiting periods have expired or been terminated. Banknorth and TD will file their pre-merger notification and report forms pursuant to the HSR Act in the near future and the waiting period will expire thirty days after the filing of such notification unless we receive notice from the Antitrust Division or the FTC that they require additional information in order to evaluate the competitive impact of the proposed transaction.

At any time before the mergers are completed, the Antitrust Division or the FTC could take action under the antitrust laws as it deems necessary or desirable in the public interest, including seeking to enjoin the mergers or seeking divestiture of substantial assets of Banknorth or TD or their subsidiaries. Private parties also may seek to take legal action under the antitrust laws under some circumstances. Based upon an examination of information available relating to the businesses in which the companies are engaged, Banknorth and TD believe that the completion of the mergers will not violate U.S. antitrust laws. However, we can give no assurance that a challenge to the mergers on antitrust grounds will not be made, or, if such a challenge is made, that we will prevail.

In addition, the mergers may be reviewed by the state attorneys general in the various states in which Banknorth and TD operate. While we believe there are substantial arguments to the contrary, these authorities may claim that there is authority under the applicable state and federal antitrust laws and regulations to investigate and/or disapprove the mergers under the circumstances and based upon the review set forth in the particular state laws and regulations. There can be no assurance that one or more state attorneys general will not attempt to file an antitrust action to challenge the mergers.

### ***Canadian Approvals***

The consent of the Superintendent will be required in order to consummate the acquisition merger. Consent of the Superintendent under Section 468(6) of the Bank Act of Canada is required in respect of the indirect acquisition of control of Banknorth, NA and in respect of certain other subsidiaries which are directly owned by Banknorth.

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Subsection 65(1) of the Bank Act of Canada imposes a requirement to obtain consent from the Superintendent prior to the issuance for non-cash consideration of any shares of a bank governed by the Bank Act of Canada. Thus, TD must obtain the consent of the Superintendent in respect of the issuance by TD of its common shares in the acquisition merger.

TD is in the process of requesting all required consents from the Superintendent.

### ***Other Approvals***

TD and Banknorth Delaware are also required to file applications with and obtain the approval of the mergers by banking authorities in the State of Maine and, in the case of TD, the Commonwealth of Massachusetts. The change in control of Banknorth, NA, which has a division which is registered as an investment advisor, requires the filing of notices with various U.S. state and federal securities authorities. Banknorth owns two captive insurance companies domiciled in the State of Vermont and, therefore, TD is required to file an application with and obtain the approval of the Vermont Insurance Commissioner. Ownership changes regarding insurance brokerage agencies controlled by Banknorth also are subject to notice requirements with various state regulatory authorities. Banknorth and TD are in the process of filing the required notices and applications in these various jurisdictions or with these various organizations.

While we believe that the requisite regulatory approvals for the mergers will be received, there can be no assurances of this or regarding the timing of receipt of the approvals, our ability to obtain the approvals on satisfactory terms or the absence of litigation challenging such approvals. There can likewise be no assurance that U.S., Canadian or state regulatory authorities will not attempt to challenge the mergers on antitrust grounds or for other reasons, or, if such a challenge is made, as to the result thereof. The obligations of TD and Banknorth to complete the mergers are conditioned upon the receipt of all required regulatory approvals (and, in the case of TD's obligation to complete the mergers, the receipt of these approvals without the imposition of any condition or restriction that would reasonably be expected to have a material adverse effect on Banknorth, Banknorth Delaware or TD). See Proposal No. 1: The Merger Agreement Conditions to the Mergers beginning on page 83.

The approval of an application means only that the regulatory criteria for approval have been satisfied or waived. It does not mean that the approving authority has determined that the consideration to be received by Banknorth shareholders in the mergers is fair. Regulatory approval does not constitute an endorsement or recommendation of the mergers.

### **Merger Fees, Costs and Expenses**

All expenses incurred in connection with the merger agreement and the transactions contemplated by the merger agreement will be paid by the party incurring those expenses, except that Banknorth and TD will share equally the costs and expenses incurred in connection with the filing, printing and mailing of this proxy statement/ prospectus and the registration statement of which this proxy statement/ prospectus forms a part. See Proposal No. 1: The Merger Agreement Termination Fees and Expenses beginning on page 85.

### **Exchange of Banknorth Stock Certificates**

At or prior to the completion of the mergers, TD will cause to be deposited with an exchange agent appointed by TD, subject to the approval of Banknorth, which shall not be unreasonably withheld, an estimated amount of cash sufficient to pay the cash portion of the merger consideration and the cash in lieu of any fractional shares that would otherwise be issued in the mergers, and certificates representing the TD common shares to be issued as part of the merger consideration. At or prior to the completion of the mergers, Banknorth Delaware will cause to be deposited with the exchange agent certificates representing the shares of Banknorth Delaware common stock to be issued as part of the merger consideration.

As soon as reasonably practicable after the completion of the mergers, and in no event more than five business days thereafter, the exchange agent will mail to each record holder of Banknorth common stock a

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form of letter of transmittal and instructions for use in effecting the surrender of the Banknorth stock certificates. Upon proper surrender of a Banknorth stock certificate for exchange and cancellation to the exchange agent, together with a letter of transmittal and such other documents as may be specified in the instructions, the holder of the Banknorth stock certificate will be entitled to receive the merger consideration. The holder of the Banknorth stock certificate will be permitted to specify which shares of Banknorth Delaware common stock will be converted into the portion of the merger consideration consisting of TD shares and cash and which shares will be converted into the portion of the merger consideration consisting of shares of Banknorth Delaware common stock.

Banknorth stock certificates may be exchanged for Banknorth Delaware stock certificates, TD share certificates and cash with the exchange agent for up to twelve months after the completion of the mergers. At the end of that period, any TD share certificates and cash may at TD's option be returned to TD, and in such case, any holders of Banknorth stock certificates that have not exchanged their stock certificates would then be entitled to look only to TD and Banknorth Delaware, and only as general creditors of TD or Banknorth Delaware, as applicable, for the portion of the merger consideration to be paid by TD or Banknorth, as applicable.

Until you exchange your Banknorth stock certificates for acquisition merger consideration, you will not receive any dividends or other distributions in respect of any TD common shares or shares of Banknorth Delaware common stock, as applicable, which you are entitled to receive in connection with that exchange. Once you exchange your Banknorth stock certificates for the merger consideration, you will receive, without interest, any dividends or distributions with a record date after the completion of the mergers and payable with respect to the TD common shares and shares of Banknorth Delaware common stock you receive.

If your Banknorth stock certificate has been lost, stolen or destroyed you may receive TD share certificates and Banknorth Delaware stock certificates, as applicable, upon the making of an affidavit of that fact. You may be required to post a bond in a reasonable amount as an indemnity against any claim that may be made with respect to the lost, stolen or destroyed Banknorth stock certificate.

After completion of the migratory merger, there will be no further transfers of shares of Banknorth common stock on the stock transfer books of Banknorth or Banknorth Delaware.

Banknorth stock certificates should not be sent to Banknorth or TD at this time. Banknorth shareholders will receive instructions for surrendering their stock certificates with their letter of transmittal.

## **Treatment of Banknorth Stock Options and Other Equity-Based Awards**

Each outstanding option to purchase shares of Banknorth common stock granted under a Banknorth equity compensation plan, whether vested or unvested, will be converted at the time of completion of the migratory merger into a replacement option to purchase shares of Banknorth Delaware common stock on the same terms and conditions under which it was issued. The number of shares of Banknorth Delaware common stock subject to each such replacement stock option will equal the number of the shares of Banknorth common stock subject to each converted stock option, at the per share exercise price specified in such converted stock option.

At the time of the migratory merger, each stock account under the Banknorth deferred compensation plan will cease to represent shares of Banknorth common stock and will represent the same number of shares of Banknorth Delaware common stock as the number of shares of Banknorth common stock that had been subject to such stock account.

## **No Dissenters' Rights of Appraisal**

The MBCA provides that in some merger and other similar transactions, shareholders of a Maine corporation who comply with statutory requirements have the right to receive, instead of the merger consideration, cash for each of the shareholder's shares in an amount equal to the fair value of each voting share as of the day prior to the control transaction date, taking into account all relevant factors, including

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an increment representing a proportion of any value payable for acquisition of control of the corporation. If the parties are unable to agree upon the fair value of their shares, then the fair value will be appraised by the Superior Court of the county in Maine where the registered office of Banknorth is located. However, this right to appraisal is not available under the MBCA to holders of Banknorth common shares in connection with the migratory merger.

The DGCL provides that in some mergers, shareholders who do not vote in favor of a merger and who comply with a series of statutory requirements have the right to receive, instead of the merger consideration, the fair value of their shares as appraised by the Delaware Court of Chancery, payable in cash. However, this right to appraisal is not available under the DGCL to holders of Banknorth Delaware common stock in connection with the acquisition merger.

As a result of the foregoing, Banknorth shareholders will not be entitled to exercise any dissenters' rights of appraisal in connection with the transactions contemplated by the merger agreement.

## **Stock Exchange Listings**

Banknorth is obligated under the merger agreement to use its reasonable best efforts to cause the Banknorth Delaware common stock issued in the mergers to be approved for listing on the New York Stock Exchange, subject to customary conditions and official notice of issuance, prior to the completion time of the migratory merger. TD is obligated under the merger agreement to use its reasonable best efforts to cause the TD common shares issued in the acquisition merger to be approved for listing on the Toronto Stock Exchange and the New York Stock Exchange, subject to customary conditions and official notice of issuance, prior to the completion of the acquisition merger. In addition, it is a condition to the closing of the mergers that these shares be approved for listing on the New York Stock Exchange, and in the case of TD common stock, the Toronto Stock Exchange. Banknorth common stock will be delisted from the New York Stock Exchange following consummation of the mergers. TD and Banknorth expect to file the necessary listing applications with the New York and Toronto Stock Exchanges in the near future.

## **Resale of TD Common Shares and Banknorth Delaware Common Stock**

*U.S. Resale Requirements.* The TD common shares and Banknorth Delaware common stock issued pursuant to the merger agreement will not be subject to any restrictions on transfer arising under the Securities Act, except for shares issued to any Banknorth shareholder who may be deemed to be an affiliate of TD or Banknorth Delaware for purposes of Rule 144 or Rule 145 under the Securities Act. It is expected that each affiliate of Banknorth will enter into an agreement with TD providing that the affiliate will not transfer any TD common shares or Banknorth Delaware common stock received in the mergers except in compliance with the Securities Act.

This document does not constitute a registration statement covering resales of shares by persons who are otherwise restricted from selling their shares pursuant to Rules 144 and 145 of the Securities Act.

*Canadian Resale Restrictions.* The TD common shares issued pursuant to the merger agreement will not be subject to any substantial restrictions on transfer under applicable Canadian securities law. In any Canadian jurisdiction where these restrictions would otherwise apply, TD will apply for orders and rulings from the applicable securities regulatory authorities in order to permit the resale of these TD common shares without substantial restrictions on transfer.

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**PROPOSAL NO. 1: THE MERGER AGREEMENT**

The following is a summary of selected provisions of the merger agreement, including the effects of those provisions. While TD and Banknorth believe this description covers the material terms of the merger agreement, it may not contain all of the information that is important to you and is qualified in its entirety by reference to the merger agreement, which is attached as Appendix A to this document and is incorporated by reference in this document. We urge you to read the entire merger agreement carefully.

**Structure of the Mergers**

The transactions contemplated by the merger agreement will be effected in two steps. Subject to the terms and conditions of the merger agreement, and in accordance with Maine and Delaware law, Banknorth will effect a migratory merger by merging with and into Banknorth Delaware, its newly-formed Delaware subsidiary. Banknorth Delaware will be the surviving corporation in the migratory merger and will continue its corporate existence under the laws of the State of Delaware. When the migratory merger is completed, the separate corporate existence of Banknorth will terminate. Immediately thereafter, subject to the terms and conditions of the merger agreement, and in accordance with Delaware law, Berlin Merger Co., a newly-formed Delaware subsidiary of TD, will merge with and into Banknorth Delaware. Banknorth Delaware will be the surviving corporation in the acquisition merger, and will continue its corporate existence under the laws of the State of Delaware under the name TD Banknorth Inc. Upon consummation of the acquisition merger, the separate corporate existence of Berlin Merger Co. will terminate.

**Merger Consideration**

*Merger Consideration Generally.* Upon completion of the migratory merger, each share of Banknorth issued and outstanding or owned directly by Banknorth as treasury stock will be converted into one share of Banknorth Delaware. There will be no actual exchange of shares in connection with the migratory merger, and shareholders of Banknorth Delaware will receive the consideration to be paid in connection with the transactions in connection with the acquisition merger. The remainder of this section deals with the consideration to be paid in connection with the acquisition merger.

*Conversion of Banknorth Delaware Common Stock.* Upon completion of the acquisition merger, each Banknorth Delaware shareholder of record will be entitled to receive, in exchange for the shares of Banknorth Delaware common stock owned by such shareholder, the following:

a number of TD common shares equal to 0.2351 multiplied by the number of shares of Banknorth Delaware common stock owned by such shareholder (which will be the same number of shares as the number of share of Banknorth common stock such shareholder held immediately prior to the migratory merger);

an amount in cash equal to \$12.24 multiplied by the number of shares of Banknorth Delaware common stock owned by such shareholder; and

a number of shares of Banknorth Delaware common stock equal to 0.49 multiplied by the number of shares of Banknorth Delaware common stock owned by such shareholder.

*Cancellation of Treasury Stock.* All shares of Banknorth Delaware common stock owned by Banknorth Delaware or TD (other than, in each case, shares in trust accounts, managed accounts and the like for the benefit of customers) immediately prior to the effective time of the acquisition merger will be cancelled and retired and will cease to exist, and no merger consideration will be delivered in exchange for these shares.

*Conversion of Berlin Merger Co. Common Stock.* Upon completion of the acquisition merger, all shares of Berlin Merger Co. common stock outstanding immediately prior to the effective time of the acquisition merger, collectively, will be converted into one share of Banknorth Delaware common stock.

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*Issuance of Banknorth Delaware Common Stock and Class B Common Stock to TD.* In consideration of the deposit by TD with the exchange agent of the cash consideration and the TD common shares payable as merger consideration, upon completion of the acquisition merger Banknorth Delaware will issue to TD:

the number of shares of Banknorth Delaware common stock (taking into account the one share of Banknorth Delaware common stock already issued in connection with the conversion of the Berlin Merger Co. common stock) equal to 51% of the total number of shares of Banknorth Delaware common stock outstanding after the effective time of the migratory merger and

one share of Class B common stock of Banknorth Delaware.

*Fractional Shares.* Neither Banknorth Delaware nor TD will issue any fractional shares of Banknorth Delaware common stock or TD common shares, as the case may be, in the acquisition merger. Instead, a Banknorth Delaware shareholder will receive:

instead of a fraction of a share of Banknorth Delaware common stock, cash equal to

the fractional part of a share of Banknorth Delaware common stock the shareholder would otherwise be entitled to receive, *multiplied by*

the average of the closing sale prices of Banknorth Delaware common stock on the New York Stock Exchange for the five trading days immediately following the date the mergers are completed; and

instead of a fraction of a TD common share, cash equal to

the fractional part of a TD common share the shareholder would otherwise be entitled to received, *multiplied by*

the average of the daily weighted average prices for the TD common shares on the Toronto Stock Exchange for the five trading days ending on the second trading day prior to the date the mergers are completed, converted into U.S. dollars using the spot exchange rate for each day as reported by *The Wall Street Journal* on the following business day.

*Certain Adjustments.* If, between the date of the merger agreement and the completion of the mergers, TD pays a dividend in, subdivides, combines into a smaller number of shares or issues by reclassification of its shares, the TD common shares, the exchange ratio for the TD common shares to be issued as merger consideration will be appropriately adjusted to provide the Banknorth Delaware shareholders the same economic effect as contemplated by the merger agreement prior to the relevant event.

## **Surviving Corporation Governing Documents and Directors**

At the effective time of the migratory merger, the certificate of incorporation and by-laws of Banknorth Delaware, as in effect immediately prior to the migratory merger, will be the certificate of incorporation and by-laws of Banknorth Delaware as the surviving corporation of the migratory merger. Thereafter, at the effective time of the acquisition merger, the certificate of incorporation and by-laws of Banknorth Delaware, as in effect immediately prior to the effective time of the acquisition merger, will be amended in the form attached as Appendices B and C to this proxy statement/ prospectus, respectively, and will be the certificate of incorporation and by-laws of Banknorth Delaware as the surviving corporation of the acquisition merger. See Proposal No. 2: The Post-Transaction Certificate of Incorporation beginning on page 87 and Comparison of Shareholder Rights beginning on page 125.

The board of directors of Banknorth Delaware will initially be composed of up to 19 members, consisting of 14 members from the current Banknorth board of directors, including William J. Ryan, the chief executive officer of Banknorth, who will be Class A directors, and up to five individuals designated by TD, who will be Class B directors. For more information about the composition of the board of directors of, and other governance arrangements relating to, Banknorth Delaware following the completion

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of the mergers, see Proposal No. 2: The Post-Transaction Certificate of Incorporation beginning on page 87 and The Stockholders Agreement Corporate Governance beginning on page 93.

### **Closing**

Unless the parties agree otherwise, the closing of the mergers will occur on the second business day after the satisfaction or waiver of all closing conditions except for the conditions that, by their terms, are to be satisfied at the closing. See Conditions to the Mergers beginning on page 83.

### **Effective Time of the Mergers**

The migratory merger will become effective at the time specified in the certificate of merger relating to the migratory merger filed with the Secretary of State of the State of Delaware and the articles of merger relating to the migratory merger filed with the Secretary of State of the State of Maine. The acquisition merger will become effective at the time specified in the certificate of merger relating to the acquisition merger filed with the Secretary of State of the State of Delaware. We will file these certificates and articles of merger as soon as practicable after the satisfaction or waiver of the closing conditions in the merger agreement.

### **Representations and Warranties**

The merger agreement contains representations and warranties made by Banknorth to TD relating to a number of matters, including the following:

corporate or other organization and similar matters of Banknorth and its subsidiaries;

capital structure;

corporate authorization and validity of the merger agreement and the stockholders agreement and the absence of conflicts with organizational documents, laws and agreements;

required consents and filings with governmental entities;

the amendment of the Banknorth shareholder rights plan to provide that the rights granted under the shareholder rights plan will not be triggered by the signing of the merger agreement or the completion of the mergers;

proper filing of documents with the SEC and the accuracy of information contained in those documents, compliance with the Sarbanes-Oxley Act and the implementation of proper disclosure controls and procedures;

the conformity with U.S. GAAP and SEC requirements of Banknorth's financial statements filed with the SEC and the absence of undisclosed liabilities;

broker's and finder's fees related to the mergers;

the absence of certain material changes or events since the date of Banknorth's last audited financial statements;

the absence of litigation, investigations and injunctions;

tax matters;

employees and employee benefit plans;

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the approval by Banknorth's board of directors of the merger agreement, the stockholders agreement and the mergers, the recommendation of the merger agreement to the shareholders of Banknorth and the authorization of Banknorth, as the sole stockholder of Banknorth Delaware, to adopt the merger agreement;

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the approval by Banknorth Delaware's board of directors of the merger agreement, the stockholders agreement and the mergers and the recommendation of the merger agreement and the mergers by the sole stockholder of Banknorth Delaware;

the inapplicability of takeover statutes to Banknorth, the merger agreement, the mergers or the stockholders agreement;

Banknorth's possession of all permits and regulatory approvals required to conduct its business and compliance by Banknorth with law;

the existence, validity and absence of defaults under material contracts;

the absence of agreements with or directives from regulatory agencies;

title to real and personal property and the validity of and absence of defaults relating to, leases for leased property;

adequacy of insurance coverage;

environmental matters;

ownership and validity of intellectual property rights;

the receipt of the opinions of Banknorth's financial advisors as to the fairness, from a financial point of view, of the merger consideration to Banknorth's shareholders;

labor matters;

the nature, absence of defaults relating to and financial position with respect to derivative instruments and transactions;

registration under the Investment Advisers Act of 1940 of Banknorth's investment adviser subsidiaries and compliance with applicable laws; and

loans to executive officers, principal shareholders and directors.

The merger agreement also contains representations and warranties by TD to Banknorth relating to a number of matters, including the following:

corporate or other organization and similar matters;

capital structure;

corporate authorization and validity of the merger agreement and the stockholders agreement and the absence of conflicts with organizational documents, laws and agreements;

required consents and filings with governmental entities;

proper filing of documents with the SEC and Canadian securities regulatory authorities and the accuracy of information contained in those documents, compliance with the Sarbanes-Oxley Act and the implementation of proper disclosure controls and procedures;

the conformity with Canadian GAAP and SEC or Canadian securities regulation authority requirements of TD's financial statements and the absence of undisclosed liabilities;

the absence of certain material changes or events since the date of TD's last audited financial statements;

broker's and finder's fees related to the mergers;

the absence of litigation, investigations and injunctions;

TD's possession of all permits and regulatory approvals required to conduct its business and compliance by TD with law;

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the absence of agreements with or directives from regulatory agencies;

tax matters; and

the availability of adequate funds to pay the cash portion of the acquisition merger consideration.

Certain of these representations and warranties are qualified as to materiality or material adverse effect. For purposes of the merger agreement, a material adverse effect with respect to TD or Banknorth, as the case may be, means a material adverse effect on the business, results of operations or financial condition of that party and its subsidiaries taken as a whole or a material adverse effect on that party's ability to consummate the transactions contemplated by the merger agreement on a timely basis, other than an effect that is caused by:

changes applicable to banks or their holding companies generally in

laws, rules or regulations of general applicability or published interpretations of those laws, rules or regulations by courts or governmental authorities;

U.S. GAAP;

in the case of TD only, Canadian GAAP; or

regulatory accounting requirements;

the announcement of the merger agreement or any action or omission of either party or any subsidiary of either party required under the merger agreement or taken or omitted to be taken with the express written permission of the other party;

changes in general economic or capital market conditions affecting banks or their holding companies generally; or

changes or events affecting the financial services industry generally and not specifically relating to TD or Banknorth or their respective subsidiaries, as the case may be.

Any decrease in the trading or market prices of TD's common shares or Banknorth's common stock will not by itself be deemed to be a material adverse effect.

The representations and warranties in the merger agreement do not survive the effective time of the mergers and, as described below under Termination beginning on page 84, if the merger agreement is validly terminated there will be no liability under the representations and warranties of the parties, or otherwise under the merger agreement, unless a party willfully breached the merger agreement.

**Covenants and Agreements**

*Conduct of Business of Banknorth Pending the Mergers.* Banknorth has agreed that, prior to the completion of the mergers, it and its subsidiaries will conduct their respective businesses in the ordinary course of business consistent with past practice and use reasonable best efforts to preserve intact their respective business organizations, authorizations from governmental entities and business relationships and to retain its officers and key employees. Banknorth has also agreed, on behalf of itself and its subsidiaries, to take no action that would reasonably be expected to adversely affect or delay the receipt of any required regulatory approvals needed to complete the mergers.

Additionally, Banknorth has agreed that except as set forth in the merger agreement, as required by the merger agreement between Banknorth and BostonFed or as otherwise agreed to by the parties, and subject to applicable law, during the period from the date of the merger agreement to the completion of the mergers, Banknorth and its subsidiaries will not, and will not permit any of its subsidiaries to, without the prior written consent of TD:

adjust, split, combine or reclassify any of its capital stock, or redeem, repurchase or otherwise acquire any of its capital stock;

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pay any dividends or other distributions on its capital stock, other than regular quarterly dividends, dividends paid by subsidiaries and dividends on trust preferred securities;

issue additional shares of its capital stock, except:

pursuant to the exercise of existing stock options;

the grant of stock options and restricted stock in the ordinary course of business, subject to specified limits on the aggregate number of these grants, but no such award may vest as a result of completion of the mergers; and

the issuance of shares of Banknorth common stock in the ordinary course of business in connection with other specified employee benefit plans, but no such award may vest as a result of completion of the mergers;

amend or waive any provision of, or redeem the rights issued under, the Banknorth shareholder rights plan or otherwise take any action to exempt any person (other than TD and its subsidiaries) from the Banknorth shareholder rights plan or any takeover statute;

enter into new material lines of business or change its lending, investment, risk and asset-liability management and other material banking or operating policies;

dispose of material assets;

make any acquisition of or investment in any other person or of assets of another person, except for:

foreclosures, restructurings and other similar acquisitions in connection with securing or collecting debts previously contracted in the ordinary course of business;

purchases of investment securities in the ordinary course of business consistent with past practice; and

loans originated or acquired in accordance with the loan restrictions described below;

incur any indebtedness for borrowed money, issue any debt securities or guarantee the obligations of any person, except in the ordinary course of business consistent with past practice;

enter into new, or amend, terminate or waive rights under, any material contract, except in the ordinary course of business consistent with past practice;

foreclose on or take a deed or title to any commercial real estate without first conducting a specified environmental assessment of the property, or if that assessment indicates the presence of a hazardous substance;

subject to some exceptions,

increase the compensation or fringe benefits of, or grant severance or termination payments to, any present or former director, officer or employee of Banknorth or its subsidiaries;

make loans to, or transfer or lease any assets to, any director, officer or employee of Banknorth or its subsidiaries;

establish, amend or terminate any Banknorth employee benefit plan; or

increase the funding obligation or contribution rate of specified Banknorth employee benefit plans;

increase the size of the Banknorth board of directors;

make any capital expenditures in excess of \$25 million in the aggregate, other than budgeted expenditures;

open, relocate or close any branch office or loan production or servicing facility or make an application to do so;

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make or acquire any loan or issue a commitment for any loan with a principal balance in excess of \$40 million;

engage in any material transaction or incur any material obligation except in the ordinary course of business consistent with past practice;

make payments or loans to, or transfer or lease any assets to, or enter into any arrangement with, any of its officers or directors or any of their immediate family members or other related parties, except in the ordinary course of business consistent with past practice (and with respect to compensation-related matters subject to the other restrictions described in this section);

pay or otherwise satisfy any claim, including settling any litigation

relating to the merger agreement or the transactions contemplated thereby or

that is otherwise material to Banknorth and its subsidiaries, except the satisfaction of liabilities not relating to the merger agreement or the transactions contemplated thereby in the ordinary course of business consistent with past practice;

amend its articles of incorporation, by-laws or similar governing documents, or enter into an agreement relating to a business combination, liquidation or similar transaction;

restructure or materially change its investment securities portfolio policy or the manner in which the portfolio is classified or reported, or invest in any mortgage-backed or mortgage related securities which would be considered high-risk securities under applicable regulatory pronouncements;

make any material change in its policies and practices with respect to underwriting, pricing, originating, acquiring, selling, servicing, or buying or selling rights to service loans;

take any action that is intended or would reasonably be expected to result in any of the conditions to the completion of the mergers not to be satisfied or a required regulatory approval not being obtained without imposition of a condition that would be reasonably likely to have a material adverse effect on Banknorth, Banknorth Delaware or TD, or which would reasonably be expected to disqualify the migratory merger as a reorganization under Section 368(a) of the Code;

make any changes in its accounting methods or method of tax accounting, practices or policies, except as may be required under applicable law, regulation or U.S. GAAP, in each case as concurred with by Banknorth's independent public accountants;

enter into any securitizations of any loans or create any special purpose funding or variable interest entity;

make or change any material tax election (except as required by applicable law), file any material amended tax returns, settle or compromise any material tax liability of Banknorth or any of its subsidiaries or surrender any right to claim a material tax refund, in each case other than in the ordinary course of business consistent with past practice (for purposes of this restriction, material means \$10 million or more of taxes); or

agree to, or make any commitment to, take any of these restricted actions.

*Conduct of Business of TD Pending the Mergers.* TD has agreed to a more limited set of restrictions on its business prior to the completion of the mergers. Specifically, TD agreed that, except as permitted by the merger agreement or as required by applicable law, during the period from the date of the merger agreement to the completion of the mergers, TD and its subsidiaries will not, without the prior written consent of Banknorth:

amend its by-laws in a manner that would materially and adversely affect the economic benefits of the acquisition merger to the holders of Banknorth common stock;

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take any action that would cause the conditions to completion of the mergers not to be satisfied or the required regulatory approvals not being obtained without the imposition of a condition that would be reasonably likely to have a material adverse effect on Banknorth, Banknorth Delaware or TD;

declare or pay any extraordinary or special dividends on or make other extraordinary or special distributions in respect of its capital stock, provided that this restriction will not prohibit TD from increasing the regular quarterly dividend on the TD common shares; or

agree to, or make any commitment to, take any of these restricted actions.

*Banknorth Shareholder Meeting and Duty to Recommend.* The merger agreement requires Banknorth to call and hold a special meeting of its shareholders to approve the merger agreement and the post-transaction certificate of incorporation. The board of directors of Banknorth has agreed to recommend that Banknorth's shareholders vote in favor of approval of the merger agreement and the post-transaction certificate of incorporation and to not withdraw, modify or qualify in any manner adverse to TD its recommendation to Banknorth's shareholders to approve the merger agreement and the post-transaction certificate of incorporation or to take any other action or make any other public statement in connection with the meeting of Banknorth's shareholders inconsistent with its recommendation (which we refer to in this document as a change in Banknorth recommendation), except that Banknorth's board of directors may effect a change in Banknorth recommendation if and only to the extent that:

Banknorth has complied in all material respects with its obligations under the no solicitation covenant of the merger agreement, which is described under "No Solicitation" below;

Banknorth's board of directors, after consultation with outside counsel, determines in good faith that the failure to effect a change in Banknorth recommendation would result in a violation of the board's fiduciary duties under applicable law; and

Banknorth has received an unsolicited bona fide written acquisition proposal (as described below) from a third party which its board of directors concludes in good faith constitutes a superior proposal (as described below), after

giving at least five business days' notice to TD of its intention to effect a change in Banknorth recommendation, specifying the material terms and conditions of the superior proposal and furnishing TD a copy of the relevant proposed transaction agreement, if any, and

negotiating with TD during this period of not less than five business days to improve the terms of the merger agreement so that the acquisition proposal ceases to be a superior proposal after giving effect to any adjustments which may be offered by TD pursuant to these negotiations.

For purposes of the merger agreement,

an "acquisition proposal" means a proposal, offer or transaction (other than a proposal or offer made by TD or its affiliates) relating to any merger, reorganization, share exchange, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving Banknorth or any of its significant subsidiaries, or any purchase or sale of 10% or more of the assets (including stock of Banknorth subsidiaries) of Banknorth and its subsidiaries, taken as a whole, or any purchase or sale of, or tender offer or exchange offer for, voting securities of Banknorth or any of its significant subsidiaries that would result in any person beneficially owning 10% or more of the total voting power of Banknorth (or of the surviving parent entity in such a transaction) or any of its significant subsidiaries; and

a "superior proposal" means a bona fide written acquisition proposal to acquire a majority of the consolidated assets of Banknorth and its subsidiaries, or a majority of the voting securities of Banknorth, which the board of directors of Banknorth concludes in good faith, after consultation with its financial and legal advisors, taking into account all legal, financial, regulatory and other

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aspects of the proposal and the person making the proposal, including any break-up fees, expense reimbursement provisions and conditions to consummation:

is more favorable to the shareholders of Banknorth, from a financial point of view, than the mergers; and

is fully financed or reasonably capable of being financed and otherwise reasonably capable of being completed on the terms proposed.

*Banknorth Delaware Sole Shareholder Meeting.* Banknorth, acting as sole shareholder of Banknorth Delaware, has agreed to adopt the merger agreement in respect of the migratory merger and the acquisition merger and to irrevocably waive any right of appraisal with respect to the acquisition merger or right to dissent from the acquisition merger that Banknorth may have, and to cause Banknorth Delaware to call a meeting of its sole shareholder for this purpose.

*No Solicitation.* The merger agreement precludes Banknorth, its subsidiaries and their respective directors and officers, and requires Banknorth to use its reasonable best efforts to preclude its and its subsidiaries' employees and representatives from, directly or indirectly:

initiating, soliciting or knowingly encouraging or facilitating any inquiries, proposals or the making of any proposals or offers from any person relating to an acquisition proposal;

having any discussions with, or providing any confidential information or data to, any person relating to an acquisition proposal, or engaging in any negotiations concerning an acquisition proposal, or knowingly facilitating any effort or attempt to make or implement an acquisition proposal;

approving or recommending, or proposing to approve or recommend, any acquisition proposal;

approving or recommending, or proposing to approve or recommend, or executing or entering into, any letter of intent, agreement in principle, merger agreement, asset purchase or share exchange agreement, option agreement or other similar agreement related to any acquisition proposal or proposing; or

agreeing to do any of the foregoing.

Notwithstanding the foregoing, if Banknorth receives an unsolicited bona fide acquisition proposal prior to obtaining the required approval of the shareholders of Banknorth of the merger agreement and the post-transaction certificate of incorporation, Banknorth may participate in negotiations or discussions with, or provide confidential information or data to, the person making that acquisition proposal if:

Banknorth's board of directors concludes in good faith that the acquisition proposal constitutes or is reasonably likely to result in a superior proposal;

Banknorth's board of directors, after consultation with outside counsel, determines in good faith that the failure to take those actions would result in a violation of the board's fiduciary duties under applicable law;

prior to providing any confidential information to the person making the inquiry or proposal, Banknorth enters into a confidentiality agreement with the person making the inquiry or proposal having terms that are no less favorable to Banknorth than those in the confidentiality agreement between TD and Banknorth; and

Banknorth provides TD with a copy of any confidential information or data provided to such person making the inquiry or proposal.

Banknorth has agreed to, and to cause its subsidiaries, advisors, employees and other agents to, cease immediately any and all existing activities, discussions or negotiations, if any, with any third party conducted prior to August 25, 2004 with respect to any acquisition proposal and to use its reasonable best efforts to enforce any standstill, confidentiality or similar agreement relating to any acquisition proposal,

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including by requiring other parties to promptly return or destroy any confidential information previously furnished.

Banknorth also agreed to promptly (within one business day) following the receipt of any acquisition proposal, advise TD of the substance of the proposal, including the identity of the person making the proposal, and to keep TD apprised of any related developments, discussions and negotiations on a current basis (and, in any event, within 48 hours of such developments, discussions or negotiations).

The merger agreement provides that the above-described no solicitation restrictions do not prohibit Banknorth and its board of directors from complying with Rules 14d-9 and 14e-2 under the Exchange Act with regard to an acquisition proposal, provided that any such disclosure may be deemed to be a change in Banknorth recommendation unless the board of directors reaffirms its recommendation of the merger agreement in such disclosure. See Termination beginning on page 84.

*Reasonable Best Efforts Covenant.* TD and Banknorth have agreed to use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all actions necessary, proper or advisable to comply with all legal requirements with respect to the mergers, to complete the mergers and the other transactions contemplated by the merger agreement and to obtain any governmental and third-party approvals required in connection with the mergers. However, neither Banknorth nor TD is required to take any action referred to above if the taking of that action is reasonably likely to result in a condition or restriction that would be reasonably likely to have a material adverse effect on Banknorth, Banknorth Delaware or TD.

*Employee Benefit Plans Covenant.* The merger agreement provides that as of the completion of the mergers, employees of Banknorth and its subsidiaries will become employees of Banknorth Delaware or its subsidiaries. Banknorth Delaware has agreed, from the completion of the mergers until December 31, 2006, to provide to these employees compensation and employee benefit plans, programs and arrangements that are no less favorable than those generally provided to these employees immediately prior to the completion of the mergers. Subject to certain exceptions, Banknorth Delaware will honor all benefit obligations to and contractual rights of current and former employees and directors of Banknorth and its subsidiaries under the Banknorth benefit plans, and will ensure that, upon the completion of the mergers, the continuing employees of Banknorth Delaware will be eligible to participate in each of the benefit plans maintained by Banknorth prior to the completion of the mergers to the same extent as immediately prior to the completion of the mergers. As of the completion of the mergers, Banknorth Delaware will enter into employment agreements or retention agreements with certain officers of Banknorth. See The Transaction Interests of Banknorth's Executive Officers and Directors in the Transaction New Agreements with Banknorth Executive Officers beginning on page 57.

As described in The Transaction Interests of Banknorth's Executive Officers and Directors in the Transaction Executive Incentive Plan, beginning on page 60, Banknorth may accelerate certain payments under Banknorth's existing Executive Incentive Plan in connection with the mergers, subject to approval of TD with respect to the accelerated timing of payments and the amount of the accelerated portion of such payments.

*Indemnification and Directors' and Officers' Insurance.* Banknorth Delaware has agreed that, following the completion of the mergers, it will indemnify and hold harmless Banknorth's present and former directors and officers to the same extent they are indemnified under applicable law and the by-laws of Banknorth and Banknorth Delaware as of the date of the merger agreement, as well as maintain directors' and officers' liability insurance for a period of six years after completion of the mergers, with respect to actions or omissions prior to the completion of the mergers. Banknorth Delaware also generally agreed to maintain directors' rights to indemnification and Banknorth's policies and practices with respect to director's and officer's liability insurance for a three-year period following completion of the mergers with respect to actions or omissions during this period. See The Transaction Interests of Banknorth's Executive Officers and Directors in the Transaction Indemnification and Insurance beginning on page 61.

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*TD Board Appointment.* As of the completion of the mergers, William J. Ryan will be elected or appointed as a member of the TD board of directors.

*Certain Other Covenants.* The merger agreement contains additional covenants, including covenants relating to the filing of this proxy statement/ prospectus, cooperation regarding filings and proceedings with governmental and other agencies and organizations and obtaining required consents, the listing of shares of Banknorth Delaware common stock and TD common shares to be issued in the mergers or upon exercise of stock options following the mergers, the establishment of a transition committee, the sharing of information regarding Banknorth's and TD's businesses and obtaining appropriate agreements from Banknorth affiliates.

### **Conditions to the Mergers**

*Conditions to Each Party's Obligations.* The obligations of Banknorth, Banknorth Delaware, TD and Berlin Merger Co. to complete the mergers are subject to the satisfaction at or before the completion of the migratory merger of the following conditions:

receipt of the required approval of the shareholders of Banknorth of the merger agreement and the post-transaction certificate of incorporation;

approval for the listing on the New York Stock Exchange of the shares of Banknorth Delaware common stock and TD common shares to be issued in the mergers and, in the case of the TD common shares, on the Toronto Stock Exchange;

the combined registration statement on Form S-4/ F-4, which includes this joint proxy statement/ prospectus, being effective under the Securities Act; and

the receipt and continued effectiveness of required regulatory approvals (as described under "The Transaction - Regulatory Matters Related to the Mergers") and the absence of any injunction or other legal prohibition against the mergers.

*Conditions to TD's and Berlin Merger Co.'s Obligations.* The obligations of TD and Berlin Merger Co. to complete the mergers are subject to the satisfaction or waiver at or before the completion of the migratory merger of the following conditions:

the representations and warranties of Banknorth being true and correct as of the date of the merger agreement and as of the date of completion of the migratory merger (except that certain representations and warranties will be read without materiality or material adverse effect qualifications), other than, in most cases, those failures to be true and correct that would not result or reasonably be expected to result, individually or in the aggregate, in a material adverse effect on Banknorth;

performance in all material respects by Banknorth and Banknorth Delaware of the obligations required to be performed by them at or prior to the date of completion of the migratory merger;

there being no legal or regulatory restriction or condition applicable to the mergers that would be reasonably likely to have a material adverse effect on Banknorth, Banknorth Delaware or TD;

TD's receipt of a certificate of certain officers of Banknorth as to the number of shares of Banknorth common stock outstanding on the date of completion of the migratory merger; and

the establishment of the Banknorth Delaware board of directors in the manner described above under "Surviving Corporation Governing Documents and Directors."

*Conditions to Banknorth's and Banknorth Delaware's Obligations.* The obligations of Banknorth and Banknorth Delaware to complete the mergers are subject to the satisfaction or waiver at or before the completion of the migratory merger of the following conditions:

the representations and warranties of TD being true and correct as of the date of the merger agreement and as of the date of completion of the migratory merger (except that certain

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representations and warranties will be read without materiality or material adverse effect qualifications), other than, in most cases, those failures to be true and correct that would not result or reasonably be expected to result, individually or in the aggregate, in a material adverse effect on TD;

performance in all material respects by TD of the obligations required to be performed by it at or prior to the date of completion of the migratory merger; and

receipt of an opinion of Banknorth's counsel that the migratory merger will constitute a tax-free reorganization for U.S. federal income tax purposes.

### **Termination**

The merger agreement may be terminated at any time before the completion of the mergers, whether before or after approval of the merger agreement by the Banknorth shareholders, in any of the following ways:

by mutual written consent of TD and Banknorth;

by either TD or Banknorth if:

any governmental entity which must grant a required regulatory approval has denied approval of the mergers and this denial has become final and nonappealable or a governmental entity has issued a final nonappealable order prohibiting the completion of the mergers;

the mergers have not been completed on or before June 30, 2005, but neither TD nor Banknorth may terminate the merger agreement for this reason if its breach of any obligation under the merger agreement has resulted in the failure of the mergers to occur by that date;

there is a breach by the other party of the merger agreement which would prevent satisfaction of a closing condition and the breach cannot be cured prior to the completion of the mergers or is not cured prior to 30 days after receipt of written notice of the breach, but neither TD nor Banknorth may terminate the merger agreement for this reason if it itself is then in material breach of the merger agreement; or

the shareholders of Banknorth fail to give the necessary approval of the merger agreement and the post-transaction certificate of incorporation at the Banknorth special meeting;

by TD, if the board of directors of Banknorth has effected a change in Banknorth recommendation or failed to call a special meeting of its shareholders to vote on approval of the merger agreement and the post-transaction certificate of incorporation (see Covenants and Agreements - Banknorth Shareholder Meeting and Duty to Recommend beginning on page 80);

by Banknorth, at any time during the five business day period beginning two business days after the date on which the approval of the Federal Reserve Board or the Superintendent (whichever is later) required for completion of the acquisition merger is received, if

the weighted average price of the TD common shares during a ten-trading day measurement period preceding the receipt of approval of the Federal Reserve Board or the Superintendent (whichever is later) of the acquisition merger is less than \$29.095 (which would represent a decline of more than 15% from the weighted average price of the TD common shares on August 25, 2004, which was \$34.23); and

the percentage ratio of the weighted average price of the TD common shares during that pre-closing measurement period to \$34.23 (the weighted average price on August 25, 2004) is more than 15 percentage points below the percentage ratio of the indexed weighted average price of the shares of five other major Canadian banks over the same pre-closing measurement period to the indexed price of those banks on August 25, 2004, which was \$39.094.

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If Banknorth elects to terminate the merger agreement based on a decrease in the price of the TD common shares under the above circumstances, TD will have the right to cure, in which case the merger agreement will not be terminated, by electing, during the five business days following TD's receipt of that notice, to increase the number of TD common shares issuable per share of Banknorth Delaware common stock as merger consideration so that the TD exchange ratio is equal to the lesser of:

a number equal to the quotient, rounded to the nearest ten-thousandth, of

\$29.095 multiplied by the exchange ratio for the TD common shares to be issued as merger consideration then in effect; divided by

the weighted average price of the TD common shares during the pre-closing measurement period; and

a number equal to the quotient, rounded to the nearest ten-thousandth, of

the ratio of the indexed weighted average price of the five other major Canadian banks over the pre-closing measurement period to \$39.094 (the indexed weighted average of those banks on August 25, 2004), minus 0.15; multiplied by the exchange ratio for the TD common shares to be issued as merger consideration then in effect; divided by

the ratio of the weighted average price of the TD common shares during the pre-closing measurement period to \$34.23.

The adjustment described in the first bullet point above is intended to provide that the value of the TD shares provided as merger consideration is not less than 15% below the corresponding value based on the pre-announcement price, and the adjustment described in the second bullet point above is intended to provide that the value of the TD shares provided as merger consideration is, on a percentage basis, not less than 15% below the decline in the index of the stock of the five other major Canadian banks in the index group over the corresponding period. All share prices referenced above are based on trading prices on the Toronto Stock Exchange, converted into U.S. dollars at the spot exchange rate for each day as reported by *The Wall Street Journal* on the following business day.

## **Effect of Termination**

If the merger agreement is validly terminated, the agreement will become void without any liability on the part of any of the parties unless a party is in willful breach of the merger agreement. However, the provisions of the merger agreement relating to termination fees and expenses and the confidentiality obligations of the parties will continue in effect notwithstanding termination of the merger agreement.

## **Termination Fees and Expenses**

A termination fee of up to \$150 million will be paid by Banknorth to TD as follows:

if TD terminates the merger agreement because Banknorth's board of directors effected a change in Banknorth recommendation or failed to call a special meeting of Banknorth shareholders to vote on the approval of the merger agreement and the post-transaction certificate of incorporation, then Banknorth will pay TD the full termination fee of \$150 million on the second business day following that termination; or

if

TD terminates the merger agreement because there has been an uncured willful breach by Banknorth of the merger agreement or either party terminates the merger agreement because the mergers have not been completed by June 30, 2005 and a vote of the shareholders of Banknorth with respect to the approval of the merger agreement and the post-transaction certificate of incorporation has not occurred; and

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an acquisition proposal with respect to Banknorth has been publicly announced or otherwise communicated to the senior management or board of directors of Banknorth (or any person has publicly announced, communicated or made known an intention to make an acquisition proposal) at any time prior to the date of termination;

then Banknorth will pay \$15 million on the second business day following such termination and, if within 15 months after such termination, Banknorth or any of its subsidiaries enters into a definitive agreement with respect to, or consummates, an acquisition proposal, then Banknorth will pay the remainder of the \$150 million termination fee on the date of such execution or consummation; and

if

either party terminates the merger agreement because the Banknorth shareholders rejected the merger agreement or the post-transaction certificate of incorporation at the Banknorth special meeting; and

an acquisition proposal with respect to Banknorth has been publicly announced or otherwise communicated to the senior management or board of directors of Banknorth (or any person has publicly announced, communicated or made known an intention to make an acquisition proposal) at any time prior to the date of the Banknorth special meeting;

then Banknorth will pay \$15 million on the second business day following such termination and, if within 15 months after such termination, Banknorth or any of its subsidiaries enters into a definitive agreement with respect to, or consummates, an acquisition proposal, then Banknorth will pay the remainder of the \$150 million termination fee on the date of such execution or consummation.

Except for the payment of a termination fee under the circumstances described above and for the costs and expenses related to the filing, printing and mailing of this proxy statement/prospectus and the registration statement of which this proxy statement/ prospectus forms a part, which will be shared by TD and Banknorth, all costs and expenses incurred in connection with the merger agreement and the mergers will be paid by the party incurring the cost.

**Amendments, Extension and Waivers**

Any provision of the merger agreement may be amended, extended or waived before the completion of the mergers by a written instrument signed, in the case of an amendment, by each party to the merger agreement or, in the case of an extension or waiver, by each party against whom the extension or waiver is to be effective, but after the required approval of the Banknorth shareholders has been obtained, no amendment may be made that requires the approval of the shareholders of Banknorth unless that approval is obtained.

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**PROPOSAL NO. 2: THE POST-TRANSACTION CERTIFICATE OF INCORPORATION**

In connection with the transactions contemplated by the merger agreement, Banknorth and TD agreed to a number of governance, transfer and other rights and restrictions relating to TD's investment in Banknorth Delaware, as set forth in the stockholders agreement. The proposed form of the certificate of incorporation that will govern Banknorth Delaware following the completion of the mergers contains provisions necessary to implement some of the terms of the stockholders agreement, and accordingly differs in material respects from Banknorth's existing articles of incorporation and by-laws. The following is a summary of selected provisions of the form of post-transaction certificate of incorporation, including the governance provisions it contains that differ materially from the corresponding provisions in Banknorth's existing articles of incorporation and by-laws. While TD and Banknorth believe this description covers the material terms of the form of post-transaction certificate of incorporation, it may not contain all of the information that is important to you and is qualified in its entirety by reference to the proposed form of the post-transaction certificate of incorporation, which is attached as Appendix B to this document and is incorporated by reference in this document. We urge you to read the entire form of post-transaction certificate of incorporation carefully.

Because the post-transaction certificate of incorporation contains provisions necessary to implement the stockholders agreement, which itself reflects agreements by Banknorth and TD that are integral to the transaction, completion of the mergers is conditioned on approval of the post-transaction certificate of incorporation.

**Authorized Capital Stock**

For a description of the capital stock authorized by the post-transaction certificate of incorporation, see [Description of Banknorth Delaware Capital Stock](#) and [Comparison of Shareholder Rights - Authorized Capital Stock - Banknorth Delaware](#) beginning on page 121 and 126, respectively.

**Amendment of By-laws and Certificate of Incorporation**

For a description of the provisions of the post-transaction certificate of incorporation relating to the amendment of Banknorth Delaware's by-laws, see [Comparison of Shareholder Rights - Amendments of Governing Instruments - Banknorth Delaware](#) beginning on page 137.

**Shareholder Action Without a Meeting**

For a description of the provisions of the post-transaction certificate of incorporation relating to the ability of Banknorth Delaware's shareholders to take action without a meeting, see [Comparison of Shareholder Rights - Shareholder Action Without a Meeting - Banknorth Delaware](#) beginning on page 137.

**Special Meetings of Shareholders**

For a description of the provisions of the post-transaction certificate of incorporation relating to special meetings of Banknorth Delaware's shareholders to take action without a meeting, see [Comparison of Shareholder Rights - Special Meetings of Shareholders - Banknorth Delaware](#) beginning on page 134.

**Composition of and Action by the Board of Directors**

For a description of the provisions of the post-transaction certificate of incorporation relating to the composition of the board of directors of Banknorth Delaware and its committees, the quorum required for action by the board of directors and the required vote for actions of the board of directors, see [Comparison of Shareholder Rights - Number and Election of Directors - Banknorth Delaware](#), [Comparison of Shareholder Rights - Quorum of the Board of Directors; Action by the Board of Directors - Banknorth Delaware](#), [Comparison of Shareholder Rights - Filling Vacancies on the Board](#)

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of Directors Banknorth Delaware, and Comparison of Shareholder Rights Removal of Directors Banknorth Delaware beginning on pages 127, 128, 128 and 129, respectively.

**Exculpation of Liability**

For a description of the provisions of the post-transaction certificate of incorporation relating to the personal liability of directors, see Comparison of Shareholder Rights Exculpation of Liability Banknorth Delaware beginning on page 131.

**Corporate Opportunities**

For a description of the provisions of the post-transaction certificate of incorporation relating to the allocation of certain corporate opportunities, see The Stockholders Agreement Corporate Opportunities.

**Opt-out of DGCL Section 203**

The post-transaction certificate of incorporation provides that Banknorth Delaware will not be governed by DGCL Section 203, the Delaware statute limiting business combinations with interested shareholders. See Comparison of Shareholder Rights Anti-Takeover and Ownership Provisions Banknorth Delaware.

**Limitation on Adoption of a Shareholder Rights Plan**

For a description of the provisions of the post-transaction certificate of incorporation relating to limitations on Banknorth Delaware's ability to adopt certain provisions in a shareholder rights plan, see Comparison of Shareholder Rights Shareholder Rights Plans Banknorth Delaware.

**Absence of Fair Price Provision**

Unlike the current articles of incorporation of Banknorth, the post-transaction certificate of incorporation does not contain a provision specifying requirements which must be met in order for Banknorth Delaware to engage in a business combination with a beneficial owner of 10% or more of its voting stock. See Comparison of Shareholder Rights Vote on Mergers, Consolidations and Sales of Assets Banknorth beginning on page 140. The stockholders agreement, to which Banknorth Delaware is a party, contains limitations on TD's ability to acquire additional shares of Banknorth Delaware, whether through a business combination or otherwise.

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**THE STOCKHOLDERS AGREEMENT**

In connection with the transactions contemplated by the merger agreement, Banknorth, Banknorth Delaware and TD entered into a stockholders agreement, which will become effective upon the closing of the mergers. The stockholders agreement provides for limitations on TD's acquisition and transfer of Banknorth Delaware securities, governance rights and related matters. The following is a summary of selected provisions of the stockholders agreement. While TD and Banknorth believe this description covers the material terms of the stockholders agreement, it may not contain all the information that is important to you and is qualified in its entirety by reference to the stockholders agreement, a copy of which is included as Appendix D to this document. We urge you to read the entire stockholders agreement carefully.

**Share Ownership**

During the term of the stockholders agreement, TD has generally agreed that neither it nor its affiliates will acquire securities of Banknorth Delaware that are entitled to vote generally in the election of directors of Banknorth Delaware, or securities convertible into such voting securities (which we refer to collectively in this document as voting securities of Banknorth Delaware) if as a result TD and its affiliates would own more than 66 2/3% of the then-outstanding voting securities of Banknorth Delaware. This ownership limitation of 66 2/3% may be increased to up to 70% in connection with share repurchases completed by Banknorth Delaware with the approval of a majority of the four designated independent directors of Banknorth Delaware described below under Corporate Governance Designated Independent Directors. However, if following an increase in the ownership limitation to 70%, TD or its affiliates transfer voting securities of Banknorth Delaware such that it owns 66 2/3% or less of the then-outstanding voting securities of Banknorth Delaware, the ownership limitation will again be reduced to 66 2/3%. We refer to the ownership limitation in effect from time to time as the ownership limitation.

TD and its affiliates may acquire voting securities of Banknorth Delaware in excess of the ownership limitation:

pursuant to a going-private transaction completed in accordance with the terms of the stockholders agreement, as described under Going-Private Transactions ;

in connection with an acquisition by TD or any of its affiliates of an entity that owns shares of Banknorth Delaware, but TD or its affiliate must use reasonable best efforts to dispose of the excess shares concurrently with or promptly following that acquisition, subject to compliance with applicable law; and

in connection with securing or collecting a debt previously contracted in the ordinary course of TD's and its affiliates' banking or brokerage businesses, but TD or its affiliate must promptly dispose of the excess shares, subject to applicable law.

If TD or its affiliates acquire shares in excess of the ownership limitation, they may not exercise any voting rights with respect to those excess shares.

**Going-Private Transactions**

Under the terms of the stockholders agreement, TD has agreed to restrictions on its ability to conduct going-private transactions involving Banknorth Delaware. A going-private transaction for purposes of the stockholders agreement generally means a transaction that would result in the shares of Banknorth Delaware common stock being held of record by fewer than 300 persons or no longer being listed or quoted on a national securities exchange or inter-dealer quotation system. Under the stockholders agreement, TD has agreed that neither it nor its affiliates will propose or initiate any going-private transaction unless that transaction involves the offer to acquire 100% of the common stock of Banknorth Delaware not owned by TD and its affiliates and, if the transaction is to be effected pursuant to a tender offer or exchange offer, includes a commitment by TD or its affiliate to, if permitted under applicable law,

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promptly complete a short-form merger following that offer. Any going-private transaction must also comply with the provisions of the stockholders agreement summarized below.

Before the second anniversary of the completion of the mergers, neither TD nor its affiliates may propose or initiate a going-private transaction unless invited to do so by a majority of the designated independent directors. If TD or its affiliates is invited to propose a going-private transaction, it must also comply with the requirements regarding negotiation with the designated independent directors and the receipt of unaffiliated stockholder approval described in the following paragraph with respect to going-private transactions commenced between the second and the fifth anniversaries of the completion of the mergers.

Between the second and the fifth anniversaries of the completion of the mergers, TD or its affiliates may initiate and hold discussions regarding a going-private transaction with the board of directors of Banknorth Delaware on a confidential basis that would not reasonably be expected to require either Banknorth Delaware or TD to make any public disclosure regarding the possibility of a transaction under applicable securities laws. If a majority of the designated independent directors approve a going-private transaction, TD or its affiliate may publicly announce, commence and, subject to the receipt of unaffiliated stockholder approval, complete the transaction. For purposes of the stockholders agreement, the receipt of unaffiliated stockholder approval means, in the case of a tender or exchange offer, that a majority of the outstanding shares of common stock of Banknorth Delaware not owned by TD and its affiliates have been tendered and not withdrawn at the expiration of the tender or exchange offer and, in the case of a merger or consolidation, that the holders of a majority of the outstanding shares of common stock of Banknorth Delaware not owned by TD and its affiliates have voted (or executed written consents) in favor of the applicable transaction.

Following the fifth anniversary of the completion of the mergers, TD or its affiliates may propose, initiate or effect a going-private transaction by first offering to negotiate confidentially the terms of the transaction with the designated independent directors. If a majority of the designated independent directors request TD or its affiliate to negotiate these terms, TD or its affiliate will use its reasonable best efforts to do so for at least 60 days. If TD and a majority of the designated independent directors agree on terms of a transaction, TD may initiate and complete the transaction. If TD and a majority of the designated independent directors do not agree on terms of a transaction within 60 days, TD or its affiliate may publicly propose the going-private transaction to the shareholders of Banknorth Delaware and, subject to receipt of unaffiliated stockholder approval, complete that transaction.

**TD's Rights to Contribute Capital and to Purchase Securities; Banknorth Delaware's Obligation to Repurchase Stock**

*TD's Right to Contribute Capital.* Until TD and its affiliates no longer own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, whenever Banknorth Delaware seeks to raise additional capital in the form of equity securities or securities convertible into, or exercisable or exchangeable for, equity securities, whether for purposes of expansion of its business or for any other reason, except as noted in the last sentence of this paragraph, TD has the right to provide all or any portion of that additional capital, at TD's option, in the form of an additional investment in shares of common stock or, if Banknorth Delaware proposes to raise the additional capital in the form of other voting securities, in those other voting securities. However, TD may only acquire up to the number of shares of common stock or other voting securities that is permitted in accordance with the ownership limitation described above. The purchase price paid by TD or any of its affiliates for these securities will be the average of the closing prices of the securities on their principal market for the ten consecutive trading days immediately preceding the date on which such issuance is approved by the board of directors of Banknorth Delaware or, if the securities are not publicly listed or quoted, the fair market value of the securities. This right to contribute capital does not apply to the issuance of capital stock by Banknorth Delaware upon the exercise of, or the grant or award of, employee stock options, stock appreciation rights or similar instruments covered by the repurchase obligation of Banknorth Delaware described under Banknorth Delaware's Obligation to Repurchase Stock, the

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issuance by Banknorth Delaware of some types of non-voting preferred stock or of trust preferred securities or the issuance of common stock as consideration for the acquisition by Banknorth Delaware of an entity.

*TD's Right to Purchase Securities.* Until TD and its affiliates no longer own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, if Banknorth Delaware at any time proposes to issue any shares of common stock, other than pursuant to the exercise of employee stock options, stock appreciation rights or similar instruments covered by the repurchase obligation of Banknorth Delaware described under Banknorth Delaware's Obligation to Repurchase Stock, TD will have the option, to the extent it did not previously exercise its rights described under TD's Right to Contribute Capital above, to purchase for cash directly from Banknorth Delaware up to a sufficient number of shares of common stock to maintain its ownership level immediately prior to the issuance, at the same purchase price as the price for the additional shares of common stock to be issued. Until TD and its affiliates no longer own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, in the event that Banknorth Delaware proposes to issue options (other than employee stock options, stock appreciation rights or similar instruments covered by the repurchase obligation of Banknorth Delaware described under Banknorth Delaware's Obligation to Repurchase Stock) or warrants that are exercisable for, or debt or equity securities that are convertible into or exchangeable for, shares of common stock, Banknorth Delaware must offer TD the opportunity to purchase for cash up to the percentage of those options, warrants or convertible debt or equity securities that represents the ownership percentage of TD and its affiliates of voting securities of Banknorth Delaware at the time of that issuance, at the same purchase price as is offered to the other purchasers thereof. TD's rights to purchase securities as described in this paragraph are subject to the ownership limitation described above.

*Banknorth Delaware's Obligation to Repurchase Stock.* Until TD and its affiliates no longer own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, if Banknorth Delaware issues shares of common stock upon exercise of any option, warrant, stock appreciation right or other similar instrument granted to its directors, officers, employees, consultants or others, or in the form of restricted shares or similar instruments, in either case pursuant to any compensation, retention, incentive or similar program or arrangement in effect from time to time, Banknorth Delaware will use its reasonable best efforts to repurchase a corresponding number of shares of its common stock in the open market so that the total number of outstanding shares of Banknorth Delaware common stock are not increased by that issuance. These repurchases generally must be completed within 120 days after the applicable issuance, but Banknorth Delaware's obligation to repurchase shares does not apply until the aggregate issuances of common stock exceed 1% of the outstanding shares of Banknorth Delaware common stock. Banknorth Delaware's obligation to repurchase shares is also subject to the receipt of any required regulatory approval. Banknorth Delaware may meet its repurchase obligations by means of an ongoing regular stock repurchase plan, in which case offsetting repurchases may occur prior to the related issuance of common stock.

**Transfer Restrictions**

Under the terms of the stockholders agreement, TD has agreed that until the second anniversary of the completion of the mergers, neither it nor its affiliates will transfer voting securities except to an affiliate of TD that agrees to be bound by the terms of the stockholders agreement. Between the second and fifth anniversaries of the completion of the mergers, TD and its affiliates may only transfer voting securities:

to an affiliate of TD that agrees to be bound by the terms of the stockholders agreement;

pursuant to the restrictions of Rule 144 under the Securities Act;

subject to the right of first offer described below, to any person who, after giving effect to such transfer, would own less than 5% of the then-outstanding voting securities of Banknorth Delaware and who is an institutional investor purchasing the shares in the normal course of its investment business, for investment purposes only, and with no intention of influencing control of Banknorth Delaware;

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pursuant to an underwritten public offering in which TD uses its commercially reasonable efforts to effect a wide distribution of the voting securities and to not knowingly sell voting securities to any person who would, as a result of the offering, own 5% or more of the then-outstanding voting securities of Banknorth Delaware;

with the consent of a majority of the designated independent directors, in connection with a pledge to a financial institution, provided that the number of voting securities pledged is not more than 19.9% of the then-outstanding voting securities of Banknorth Delaware; or

with the consent of a majority of the designated independent directors.

In addition, following the second anniversary of the completion of the mergers, and for as long as TD and its affiliates own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, TD and its affiliates may, subject to the right of first offer described below, transfer voting securities of Banknorth Delaware to a person that would own voting securities representing more than 10% of the then-outstanding voting securities of Banknorth Delaware. If TD and its affiliates would own voting securities representing less than 50% of the then-outstanding voting securities of Banknorth Delaware as a result of such transfer, the transferee must offer to acquire from shareholders of Banknorth Delaware other than TD and its affiliates, at the same price and otherwise on the same financial terms and conditions as are applicable to TD and/or its affiliates, either:

100% of the voting securities of Banknorth Delaware owned by those shareholders; or

a *pro rata* number of voting securities of Banknorth Delaware owned by those shareholders, based on the percentage of the total number of voting securities owned by TD and its affiliates that TD and/or its affiliate are proposing to transfer.

TD and its affiliates may only make this type of transfer prior to the third anniversary of the completion of the mergers if the chief executive officer of TD advises the board of directors of Banknorth Delaware that he has decided to make the transfer based on his good faith assessment of the requirements of TD's financial or capital situation at that time, exercising his business judgment based on changes in circumstances since the date of the stockholders agreement. If, as a result of this type of transfer, the transferee would own voting securities of Banknorth Delaware representing more than 15% of the then-outstanding voting securities of Banknorth Delaware, but would not own the number of securities required to effect a short-form merger under applicable Delaware law, the transferee must agree to be bound by the terms of the stockholders agreement.

Prior to making any offer to transfer voting securities pursuant to the third bullet point of the first paragraph of this section "Transfer Restrictions" or any transfer of less than 100% of the voting securities owned by TD and its affiliates pursuant to the second paragraph of this section, TD or its applicable affiliate must offer Banknorth Delaware the opportunity to purchase those voting securities. TD or its applicable affiliate must notify Banknorth Delaware of the price and terms on which it proposes to offer the voting securities for transfer. If Banknorth Delaware elects to purchase all of the voting securities within five business days of the receipt of the notice from TD or its applicable affiliate, Banknorth Delaware and TD or its applicable affiliate must use their commercially reasonable efforts to consummate the transfer as promptly as practicable, but in any event not later than 90 days after the delivery by Banknorth Delaware of its election to purchase the voting securities. Banknorth Delaware may transfer this right to purchase voting securities to another person if the number of voting securities to be purchased by it in connection with the right described in this paragraph in any twelve-month period would exceed 4.9% of the total number of voting securities of Banknorth Delaware outstanding at the date of the applicable notice given by TD to Banknorth Delaware regarding its intention to transfer securities in a manner subject to Banknorth Delaware's right of first offer. If Banknorth Delaware does not elect to purchase all of the applicable voting securities (or if, having made an election to purchase the securities, does not complete the purchase within the required time period), then TD or its applicable affiliate may, within the following 90-day period, enter into definitive agreements to transfer the applicable voting securities at a price not less than 95% of the price at which TD or its applicable affiliate offered those securities to Banknorth Delaware and

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on other terms not materially more favorable to the transferee than were offered to Banknorth Delaware. If TD or its applicable affiliate does not enter into definitive agreements within the specified time period, or enters into agreements but does not complete the sale within nine months, the right of first offer described in this paragraph will again apply.

### **Corporate Governance**

*Composition of the Board of Directors.* At the time the mergers are completed, the board of directors of Banknorth Delaware will initially be composed of up to 19 directors consisting of:

up to 14 individuals who were directors of Banknorth prior to the closing of the mergers, who will be designated Class A directors and who will include:

the chief executive officer of Banknorth Delaware; and

four designated independent directors, designated as described below under Designated Independent Directors ; and

up to five individuals designated by TD, who will be designated Class B directors.

Following the completion of the mergers, the board of directors of Banknorth Delaware will include:

the four designated independent directors, designated as described below under Designated Independent Directors ;

the present chief executive officer of Banknorth Delaware, who will serve as a director and as chairman of the board of directors for so long as he remains chief executive officer of Banknorth Delaware; and

a number of Class B directors designated from time to time by TD or its affiliates, as the holder of the Class B common stock, except that the number of Class B directors may not be more than one more than the total number of Class A directors then in office. The number of Class B directors may be further limited as a result of a decrease in the ownership of voting securities of Banknorth Delaware by TD and its affiliates, as described under Suspension; Termination of Certain Provisions below.

*Designated Independent Directors.* During the term of the stockholders agreement, the board of directors of Banknorth Delaware will include four designated independent directors, who are responsible for making a number of determinations relating to the governance arrangements of Banknorth Delaware. The designated independent directors will initially be designated by the board of directors of Banknorth prior to the completion of the mergers from among the independent directors on the Banknorth board of directors. Following the closing, any vacancy in a seat held by a designated independent director will be filled by the remaining designated independent directors, subject to the consent of a majority of the directors on the nominating committee of the board of directors, which (subject to the exercise of the committee members fiduciary duties) will not be unreasonably withheld. Any designated independent director must qualify as an independent director under applicable NYSE rules, with respect to Banknorth Delaware and TD, may not be a Class B director or an affiliate or past or present officer, director or employee of TD and must not have been nominated by TD or its affiliates. If no designated independent directors are in office to fill the vacancies for designated independent directors, a majority of the independent directors who would be qualified as designated independent directors pursuant to the preceding sentence will fill those vacancies, subject to the consent of a majority of the directors on the nominating committee of the board of directors, which (subject to the exercise of the committee members fiduciary duties) will not be unreasonably withheld.

*Board Quorum; Vote Required for Board Action.* Under the terms of the stockholders agreement:

a quorum for any meeting of the board of directors of Banknorth Delaware will require the presence of a majority of the total number of authorized directors then constituting the entire board of directors and a majority of the Class B directors then in office; and

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any determination or other action of or by the board of directors of Banknorth Delaware (other than action by unanimous written consent in lieu of a meeting) will require the affirmative vote or consent, at a meeting at which a quorum is present, of a majority of directors present at that meeting, including a majority of the Class B directors present at that meeting.

*Committees of the Board of Directors.* The stockholders agreement provides that each committee of the board of directors of Banknorth Delaware will consist of a majority of Class B directors and not fewer than two Class A directors, unless restricted by law or stock exchange rule. If applicable law or stock exchange rule prevents any Class B director from serving on a particular committee, at least one Class B director will be entitled to attend committee meetings as an observer. The nominating committee of the board of directors of Banknorth Delaware will consist of four Class B directors and three of the designated independent directors. The number of Class B directors entitled to serve on committees of the board of directors may be further limited as a result of a decrease in the ownership of voting securities of Banknorth Delaware by TD and its affiliates, as described under *Suspension; Termination of Certain Provisions* below.

## **No Inconsistent Actions**

The stockholders agreement provides that none of Banknorth Delaware, its board of directors or any committee of the board will take any action inconsistent with the terms of the stockholders agreement. In particular, Banknorth Delaware has agreed that any shareholder rights plan or other anti-takeover measure it adopts will exclude TD and its affiliates from its operation in all respects, and will not impair in any respect the rights of TD or any of its affiliates under the stockholders agreement, including their rights to transfer securities of Banknorth Delaware.

## **Information Rights**

Banknorth Delaware has agreed to provide TD ongoing access to and information regarding Banknorth Delaware as requested by TD from time to time in order to appropriately manage and evaluate its investment in Banknorth Delaware. During a suspension and following the termination of certain governance provisions as described below under *Suspension; Termination of Certain Provisions*, TD has agreed to customary confidentiality obligations with respect to non-public information it receives regarding Banknorth Delaware.

## **Trade Name**

Banknorth Delaware and its subsidiaries will use the trade name *TD Banknorth* as their brand and marketing name for general application. Following the termination of certain governance provisions as described below under *Suspension; Termination of Certain Provisions*, either TD or Banknorth Delaware may terminate the use of *TD Banknorth* as the company's trade name.

## **Corporate Opportunities**

In recognition that Banknorth Delaware and TD and their respective subsidiaries engage in and may in the future engage in the same or similar activities or lines of business and have an interest in the same areas and types of corporate opportunities, the stockholders agreement and the post-transaction certificate of incorporation provide that, subject to the restrictions described below under *Acquisition of Competing Entities* :

TD will have no duty to refrain from engaging in the same or similar activities or lines of business as Banknorth Delaware;

subject to compliance with the requirements described below, neither TD nor any of its officers or directors will be liable to Banknorth Delaware or its shareholders for breach of any fiduciary duty by reason of any such activities; and

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in the event that TD acquires knowledge of a potential corporate opportunity for both TD and Banknorth Delaware, TD will have no duty to communicate or offer the corporate opportunity to Banknorth Delaware and will not be liable to Banknorth Delaware or its shareholders for breach of any fiduciary duty as a shareholder of Banknorth Delaware by reason of the fact that TD or its affiliate pursues or acquires the corporate opportunity for itself, directs the corporate opportunity to another person, or does not communicate information regarding the corporate opportunity to Banknorth Delaware.

The stockholders agreement and the post-transaction certificate of incorporation establish the following policy with respect to the allocation of potential corporate opportunities about which a director or officer of Banknorth Delaware who is also a director or officer of TD acquires knowledge. If a director or officer of Banknorth Delaware who is also a director or officer of TD acts in a manner consistent with this policy, he or she will have fully satisfied and fulfilled his or her fiduciary duty to Banknorth Delaware and its shareholders with respect to the corporate opportunity.

A corporate opportunity offered to any person who is an officer of Banknorth Delaware, and who is also a director but not an officer of TD, will belong to Banknorth Delaware.

A corporate opportunity offered to any person who is a director but not an officer of Banknorth Delaware, and who is also a director or officer of TD, will belong to Banknorth Delaware if the opportunity is expressly offered to such person in writing solely in his or her capacity as a director of Banknorth Delaware, and otherwise will belong to TD.

A corporate opportunity offered to any person who is an officer of both Banknorth Delaware and TD (other than the chief executive officer of Banknorth Delaware if at the relevant time he is also an officer of TD, with respect to whom opportunities shall be subject to the first bullet point above except if such opportunity is expressly offered to him in writing solely in his capacity as an officer of TD) will belong to Banknorth Delaware if the opportunity is expressly offered to such person in writing solely in his or her capacity as an officer of Banknorth Delaware, and otherwise will belong to TD.

These provisions will apply with respect to TD, Banknorth Delaware and their respective subsidiaries.

## **NYSE Listing**

Under the stockholders agreement, TD has agreed that it will not take any action, or cause Banknorth Delaware to take any action, to delist the Banknorth Delaware common stock from the New York Stock Exchange, except with the consent of a majority of the designated independent directors or following the completion of a going-private transaction conducted in accordance with the terms of the stockholders agreement. This prohibition will not apply to a delisting effected in connection with the establishment of the quotation of the common stock of Banknorth Delaware on the NASDAQ National Market. Moreover, TD and its affiliates are not required to take any affirmative action to prevent the common stock from being delisted by the New York Stock Exchange in the event that it ceases to meet applicable New York Stock Exchange listing standards.

## **Suspension, Termination of Certain Provisions**

The provisions of the stockholders agreement described above under Corporate Governance Board Quorum; Vote Required for Board Action and Corporate Governance Committees of the Board of Directors will be temporarily suspended in the event that TD and its affiliates own voting securities representing in the aggregate less than 50% of the then-outstanding voting securities of Banknorth Delaware:

as a result of transfers of voting securities of Banknorth Delaware by TD and its affiliates, if this minority ownership position continues for at least 30 consecutive days; or

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as a result of dilution or other events other than transfers of voting securities of Banknorth Delaware by TD and its affiliates, except that no suspension will occur due to such a decrease in ownership as a result of dilution or such other events if TD and its affiliates:

do not at any time own voting securities of Banknorth Delaware representing in the aggregate less than 35% of the then-outstanding voting securities;

do not, after owning less than 50% of the then-outstanding voting securities of Banknorth Delaware, transfer any voting securities of Banknorth Delaware other than to an affiliate, unless within 30 days of that transfer TD and its affiliates purchase a number of voting securities at least equal to the number they transferred;

reacquire, before the first anniversary of a particular measurement date (as described below), a number of voting securities representing at least half of the difference between 50% and their percentage ownership of voting securities of Banknorth Delaware on that measurement date; and

regain, prior to the second anniversary of the most recent measurement date, ownership of voting securities representing at least a majority of the then-outstanding voting securities of Banknorth Delaware.

The stockholders agreement provides that, for purposes of determining whether a suspension will occur due to decreases in ownership as a result of dilution or other events other than transfers, a measurement date occurs

on the date on which TD and its affiliates first own voting securities representing less than 50% of the then-outstanding voting securities of Banknorth Delaware; and

any subsequent date on which another event occurs, other than any transfer of voting securities of Banknorth Delaware by TD or its affiliates, that further decreases their ownership by at least 2% of the then-outstanding voting securities since the preceding measurement date.

If at any time during a suspension, TD and its affiliates again own voting securities of Banknorth Delaware representing 50% or more of the then-outstanding voting securities, the suspension will automatically terminate and the provisions of the stockholders agreement described above under Corporate Governance Board Quorum; Vote Required for Board Action and Corporate Governance Committees of the Board of Directors will automatically be reinstated, unless the suspension has continued for more than 12 consecutive months. Generally, if TD's and its affiliates' ownership of voting securities of Banknorth Delaware again decreases below 50% of the then-outstanding voting securities, then a new analysis of whether a suspension will go into effect will apply, and new measurement periods as described above will apply. However, if within six months following a termination of a suspension that had resulted from transfers of voting securities of Banknorth Delaware, another suspension resulting from transfers of voting securities occurs, new measurement periods will not begin and the second suspension will be treated as a continuation of the first suspension.

If a suspension occurs and continues for 12 consecutive months, the provisions of the stockholders agreement described above under Corporate Governance Board Quorum; Vote Required for Board Action and Corporate Governance Committees of the Board of Directors will terminate.

During any suspension, or following a termination, of these provisions:

TD and/or its affiliates, as the holder of the Class B common stock, will have the right to nominate and elect a number of Class B directors to the board of directors of Banknorth Delaware and each committee of the board so that its representation on the board and each committee is proportionate to its ownership of voting securities of Banknorth Delaware, but this number of Class B directors may not

represent 50% or more of the total number of directors then on the board or such committee, as applicable; or

be less than one director.

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During any suspension, or following a termination, of these provisions, TD has agreed that it will not nominate any directors for election other than the number of Class B directors it is entitled to designate as described above.

### **Acquisition of Competing Entities**

Pursuant to the terms of the stockholders agreement, TD has agreed that neither it nor its affiliates will acquire control, as defined under applicable banking regulations, of a retail bank (as described below), except incidentally pursuant to some types of acquisitions of other entities that own a retail bank. Specifically, TD may acquire a retail bank in connection with an acquisition of an entity whose primary business is not retail banking and not more than 50% of whose consolidated assets consist of retail banks, as long as the primary purpose of the acquisition is not to avoid the provisions of the stockholders agreement and as long as TD or its applicable affiliate follows the following procedures:

within six months of the date of the acquisition and at TD's election:

initiate good faith discussions regarding the contribution of the acquired retail bank to Banknorth Delaware on terms agreed to by TD or its affiliate and a majority of the designated independent directors; or

initiate good faith discussions regarding a going-private transaction in accordance with the then-applicable provisions of the stockholders agreement, as summarized above under "Going-Private Transactions," and

if TD or its affiliate and a majority of the designated independent directors approve the terms of the going-private transaction, or

if the approval of a majority of the designated independent directors is not required under the then-applicable provisions of the stockholders agreement, TD or its affiliate otherwise complies with its obligations under the stockholders agreement and then elects to commence a going-private transaction,

then TD or its affiliate will use reasonable best efforts to consummate the going-private transaction as promptly as practicable; or

commence a process to dispose of the acquired retail bank as promptly as commercially practicable, but in any event TD or its applicable affiliate will enter into a definitive agreement with respect to the disposition of the acquired retail bank within two years after the date of consummation of its acquisition, or in certain circumstances described below in the following bullet point, a later time described below.

If TD or its applicable affiliate elect to initiate discussions regarding the contribution of the acquired retail bank or regarding a going-private transaction, as described in the bullet points above, but

is unable to agree on terms with respect to a contribution or a going-private transaction, as the case may be, with a majority of the designated independent directors (if, with respect to a going-private transaction, their consent is required); or

such contribution or going-private transaction is not consummated within nine months of its commencement, whether because unaffiliated stockholder approval was not received, necessary regulatory approvals were not received or for any other reason not within the control of TD and its affiliates,

then TD or its affiliate will then commence a process to dispose of the acquired retail bank as promptly as commercially practicable. If TD or its affiliate commences the process to dispose of the acquired retail bank due to its inability to agree to terms regarding a contribution or going-private transaction, it is required to enter into a definitive agreement with respect to the disposition of the acquired retail bank within two years after the date of consummation of its acquisition. If TD or its

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affiliate commences the process to dispose of the acquired retail bank due to the failure to consummate a contribution or going-private transaction with nine months of its commencement, it is required to enter into a definitive agreement with respect to the disposition by the later of

two years after the consummation of the acquisition of the retail bank; and

six months after the termination of the attempted contribution or going-private transaction.

A retail bank means an FDIC-insured bank that is principally engaged in the business of providing branch-based consumer and commercial banking services in the continental U.S., other than TD Waterhouse Bank, N.A. or similar banks that principally provide banking services to customers of a brokerage, mutual fund, or other similar consumer financial business in the U.S. In addition, any banking or other business conducted by TD through its U.S. branches, agencies, representative offices or subsidiary commercial lending companies will not be considered a retail bank.

**Termination**

The stockholders agreement will terminate when TD and its affiliates own either:

voting securities of Banknorth Delaware representing less than 15% of the then-outstanding voting securities; or

90% or more of each class of capital stock of Banknorth Delaware that would be required in order for TD to effect a short-form merger under Delaware law.

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**UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION OF TD**

The following financial statements set forth selected unaudited pro forma consolidated financial data of TD. The pro forma amounts have been prepared in accordance with Canadian GAAP (except as noted in note 5) and are based on the purchase method of accounting and are presented as if the transaction had occurred (1) as at July 31, 2004 for purposes of the pro forma consolidated balance sheet and (2) as at November 1, 2002 for purposes of the unaudited pro forma consolidated statements of income for the nine months ended July 31, 2004 and the fiscal year ended October 31, 2003. The pro forma amounts below do not include the anticipated financial benefits from such items as cost savings and revenue synergies arising from the transaction, nor do these amounts include restructuring and other costs that may be incurred by TD or Banknorth in connection with the transaction.

You should read this information in conjunction with, and the information is qualified in its entirety by, the consolidated financial statements and accompanying notes of TD and Banknorth incorporated into this proxy statement/prospectus by reference. See *Where You Can Find More Information* beginning on page 152. The pro forma amounts below are presented for informational purposes only. You should not rely on the pro forma amounts as being necessarily indicative of the financial position or results of operations of TD that would have actually occurred had the transaction been effective during the periods presented or of the future financial position or results of operations of TD. The consolidated financial information as at the date and for the periods presented may have been different had the transaction actually been effective as at such date or during those periods.

**Table of Contents****UNAUDITED PRO FORMA CONSOLIDATED BALANCE SHEET**

**As at July 31, 2004**  
(In millions of Canadian dollars, except where noted)

**BANKNORTH**

	<b>TD</b>	<b>In millions of U.S.\$</b>	<b>C\$</b>	<b>Pro Forma Adjustments</b>	<b>Reference</b>	<b>Pro Forma Consolidated</b>
	<b>As at July 31, 2004</b>	<b>As at June 30, 2004</b>	<b>As at June 30, 2004</b>			<b>As at July 31, 2004</b>
<b>ASSETS</b>						
Cash resources	C\$ 10,236	U.S.\$ 625	C\$ 838	C\$		C\$ 11,074
Securities purchased under resale agreements	25,401					25,401
Securities						
Investment	33,653	8,059	10,805	92	3(a)&(k)	44,550
Trading	67,702					67,702
	<u>101,355</u>	<u>8,059</u>	<u>10,805</u>	<u>92</u>		<u>112,252</u>
Loans						
Residential mortgages	51,528	3,093	4,147	(40)	3(a)	55,635
Consumer, installment and other personal	49,812	5,106	6,846	40	3(a)	56,698
Business and government	23,251	9,912	13,289	(16)	3(a)	36,524
	<u>124,591</u>	<u>18,111</u>	<u>24,282</u>	<u>(16)</u>		<u>148,857</u>
Allowance for credit losses	(1,369)	(248)	(332)			(1,701)
Loans (net of allowance for credit losses)	<u>123,222</u>	<u>17,863</u>	<u>23,950</u>	<u>(16)</u>		<u>147,156</u>
Customer liabilities under acceptances	5,701					5,701
Trading derivatives market revaluation	26,163					26,163
Intangible assets	2,286	54	72	648	3(a)	3,006
Goodwill	2,308	1,365	1,830	2,738	3(a)	6,876
Land, buildings and equipment	1,221	288	386			1,607
Other assets	11,300	1,022	1,370			12,670
<b>Total assets</b>	<b>C\$ 309,193</b>	<b>U.S.\$ 29,276</b>	<b>C\$ 39,251</b>	<b>C\$ 3,462</b>		<b>C\$ 351,906</b>
<b>LIABILITIES AND SHAREHOLDERS EQUITY</b>						
Deposits						
Personal	C\$ 111,564	U.S.\$ 11,825	C\$ 15,854	8	3(a)	C\$ 127,426
Banks	16,501	2	3			16,504
Business and government	83,439	7,510	10,068	1,370	3(a)	94,877
Total deposits	<u>211,504</u>	<u>19,337</u>	<u>25,925</u>	<u>1,378</u>		<u>238,807</u>
Acceptances	5,701					5,701
Obligations related to securities sold short	19,413					19,413
Obligations related to securities sold under repurchase agreements	10,934	4,187	5,614			16,548
	<u>26,556</u>					<u>26,556</u>

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Trading derivatives market revaluation						
Other liabilities and other borrowings	14,490	2,224	2,982	329	3(a),(k)&(j)	17,801
Subordinated notes and debentures	5,671	661	886	1,710	3(a)&(c)	8,267
Non-controlling interest in subsidiaries	1,250			1,929	3(a)&(k)	3,179
<b>Shareholders' equity</b>						
Preferred shares	1,309					1,309
Common shares	3,245	2	3	1,957	3(a)&(b)	5,205
Contributed surplus	17	1,328	1,780	(1,780)	3(a)	17
Foreign currency translation adjustments	(73)					(73)
Retained earnings	9,176	1,537	2,061	(2,061)	3(a)	9,176
	<u>13,674</u>	<u>2,867</u>	<u>3,844</u>	<u>(1,884)</u>		<u>15,634</u>
<b>Total liabilities and shareholders' equity</b>	<b>C\$ 309,193</b>	<b>U.S.\$ 29,276</b>	<b>C\$ 39,251</b>	<b>C\$ 3,462</b>		<b>C\$ 351,906</b>

**Table of Contents****UNAUDITED PRO FORMA CONSOLIDATED STATEMENT OF INCOME**

**For the Nine Months Ended July 31, 2004**  
(In millions of Canadian dollars, except where noted)

	BANKNORTH				Reference	Pro Forma Consolidated
	TD	In millions of U.S.\$	C\$	Pro Forma Adjustments		
	Nine Months Ended July 31, 2004	Nine Months Ended June 30, 2004	Nine Months Ended June 30, 2004			
Interest income						
Loans	C\$5,191	U.S.\$654	C\$ 869	C\$		C\$6,060
Securities	2,778	238	316			3,094
Deposits with banks	343					343
	<u>8,312</u>	<u>892</u>	<u>1,185</u>	<u>    </u>		<u>9,497</u>
Interest expense						
Deposits	2,844	118	157	36	3(f)	3,037
Subordinated notes and debentures	234			57	3(f)	291
Other obligations	784	114	152			936
	<u>3,862</u>	<u>232</u>	<u>309</u>	<u>93</u>		<u>4,264</u>
Net interest income	4,450	660	876	(93)		5,233
Provision for credit losses	(313)	29	39			(274)
Net interest income after credit loss provision	<u>4,763</u>	<u>631</u>	<u>837</u>	<u>(93)</u>		<u>5,507</u>
Other income						
Investment and securities services	1,785	42	56			1,841
Credit fees	263					263
Net investment securities gains	148	10	13			161
Trading income	(78)					(78)
Service charges	503	79	105			608
Loan securitizations	308					308
Card services	152	34	45			197
Insurance, net of claims	418	37	49			467
Trust fees	60					60
Other	224	59	78			302
	<u>3,783</u>	<u>261</u>	<u>346</u>	<u>    </u>		<u>4,129</u>
Net interest and other income	8,546	892	1,183	(93)		9,636
Non-interest expenses						
Salaries and employee benefits	2,871	256	340	23	3(k)	3,234
Occupancy, including depreciation	455	47	62			517
Equipment, including depreciation	401	35	47			448
Amortization of intangible assets	484	6	8	87	3(e)	579
Goodwill impairment and restructuring costs	(7)	7	9			2
Other	1,899	128	170	15	3(g)	2,084
	<u>6,103</u>	<u>479</u>	<u>636</u>	<u>125</u>		<u>6,864</u>
Income before provision for income taxes	2,443	413	547	(218)		2,772

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Provision for income taxes	<u>676</u>	<u>137</u>	<u>182</u>	<u>(79)</u>	3(h)&(m)	<u>779</u>
Income before non-controlling interest in subsidiaries	1,767	276	365	(139)		1,993
Non-controlling interest in net income of subsidiaries	<u>69</u>	<u>—</u>	<u>—</u>	<u>172</u>	3(i)	<u>241</u>
Net income	1,698	276	365	(311)		1,752
Preferred dividends	<u>61</u>	<u>—</u>	<u>—</u>	<u>—</u>		<u>61</u>
Net income applicable to common shares	<u>C\$ 1,637</u>	<u>U.S.\$ 276</u>	<u>C\$ 365</u>	<u>C\$ (311)</u>		<u>C\$ 1,691</u>
Average number of common shares outstanding (millions)						
Basic	654.9					698.5
Diluted	659.7					703.3
Earnings per common share						
Basic	<u>C\$ 2.50</u>				4	<u>C\$ 2.42</u>
Diluted	<u>C\$ 2.48</u>				4	<u>C\$ 2.40</u>

**Table of Contents****UNAUDITED PRO FORMA CONSOLIDATED STATEMENT OF INCOME**

**For the Year Ended October 31, 2003**  
(In millions of Canadian dollars, except where noted)

	BANKNORTH					Pro Forma Consolidated
	TD	In millions of U.S.\$	C\$	Pro Forma Adjustments	Reference	
	Year Ended Oct. 31, 2003	Year Ended Dec. 31, 2003	Year Ended Dec. 31, 2003			
Interest income						
Loans	C\$ 7,542	U.S.\$ 880	C\$ 1,225	C\$		C\$ 8,767
Securities	3,448	313	436			3,884
Deposits with banks	212					212
	<u>11,202</u>	<u>1,193</u>	<u>1,661</u>			<u>12,863</u>
Interest expense						
Deposits	4,202	189	263	48	3(f)	4,513
Subordinated notes and debentures	259			77	3(f)	336
Other obligations	1,125	163	227			1,352
	<u>5,586</u>	<u>352</u>	<u>490</u>	<u>125</u>		<u>6,201</u>
Net interest income	5,616	841	1,171	(125)		6,662
Provision for credit losses	186	42	58			244
Net interest income after credit loss provision	<u>5,430</u>	<u>799</u>	<u>1,113</u>	<u>(125)</u>		<u>6,418</u>
Other income						
Investment and securities services	2,132	48	67			2,199
Credit fees	415					415
Net investment securities gains	23	42	58			81
Trading income	104					104
Service charges	641	97	135			776
Loan securitizations	250					250
Card services	252	42	58			310
Insurance, net of claims	420	46	64			484
Trust fees	70					70
Other	117	92	128			245
	<u>4,424</u>	<u>367</u>	<u>510</u>			<u>4,934</u>
Net interest and other income	9,854	1,166	1,623	(125)		11,352
Non-interest expenses						
Salaries and employee benefits	3,758	327	455	25	3(k)	4,238
Occupancy, including depreciation	656	59	82			738
Equipment, including depreciation	650	47	65			715
Amortization of intangible assets	772	9	13	142	3(e)	927
Goodwill impairment and restructuring costs	716	8	11			727
Other	1,812	191	266	20	3(g)	2,098
	<u>8,364</u>	<u>641</u>	<u>892</u>	<u>187</u>		<u>9,443</u>
Income before provision for income taxes	1,490	525	731	(312)		1,909

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Provision for income taxes	322	174	242	(113)	3(h)&(m)	451
Income before non-controlling interest in subsidiaries	1,168	351	489	(199)		1,458
Non-controlling interest in net income of subsidiaries	92			232	3(i)	324
Net income	1,076	351	489	(431)		1,134
Preferred dividends	87					87
Net income applicable to common shares	C\$ 989	U.S.\$ 351	C\$ 489	C\$ (431)		C\$ 1,047
Average number of common shares outstanding (millions)						
Basic	649.8					693.4
Diluted	653.9					697.5
Earnings per common share						
Basic	C\$ 1.52				4	C\$ 1.51
Diluted	C\$ 1.51				4	C\$ 1.50

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***1. Basis of Presentation***

The unaudited pro forma consolidated financial statements (which we refer to in this document as pro forma financial statements) give effect to the proposed acquisition of Banknorth by TD as if it had occurred (1) as at July 31, 2004 for purposes of the pro forma consolidated balance sheet and (2) as at November 1, 2002 for purposes of the pro forma consolidated statements of income for the nine months ended July 31, 2004 and the fiscal year ended October 31, 2003. The pro forma financial statements have been prepared by TD's management and are based on Banknorth's U.S. GAAP consolidated financial statements and TD's Canadian GAAP consolidated financial information contained within its consolidated financial statements.

The unaudited pro forma consolidated balance sheets as at July 31, 2004 and the unaudited pro forma consolidated statements of income for the nine months ended July 31, 2004 and the year ended October 31, 2003 have been prepared using the following information:

(a) Audited consolidated financial statements of TD for the fiscal year ended October 31, 2003 which are incorporated by reference in this proxy statement/ prospectus.

(b) Unaudited interim consolidated financial statements of TD for the nine months ended July 31, 2004, which are incorporated by reference in this proxy statement/ prospectus.

(c) Audited consolidated financial statements of Banknorth for the fiscal year ended December 31, 2003, which are incorporated by reference in this proxy statement/ prospectus.

(d) Unaudited interim consolidated financial statements of Banknorth for the six months ended June 30, 2004 which are incorporated by reference in this proxy statement/ prospectus, and the three months ended December 31, 2003 compiled from the financial statements publicly filed by Banknorth with the SEC. Accordingly, the pro forma consolidated statements of income for the fiscal year ended October 31, 2003 and for the nine months ended July 31, 2004 both include the results of operations recorded by Banknorth during the three-month period ended December 31, 2003. During the three-month period ended December 31, 2003, Banknorth's total interest income was C\$386 million and its net income was C\$122 million.

(e) Such other supplementary information as was considered necessary to reflect the proposed transaction in these pro forma consolidated financial statements.

The unaudited pro forma consolidated financial statements are not intended to reflect the results of operations or the financial position that would have actually resulted had the transaction been effected on the dates indicated or the results which may be obtained in the future. The pro forma financial statements should be read in conjunction with the other sections of this proxy statement/ prospectus and the consolidated financial statements of TD and Banknorth incorporated by reference in this proxy statement/ prospectus.

Banknorth's U.S. GAAP consolidated financial information has been translated to Canadian dollars using the average rate of exchange in effect during the periods presented, for purposes of the statements of income and the rate of exchange at June 30, 2004 for purposes of the balance sheet.

The pro forma adjustments reflecting the acquisition of Banknorth under the purchase method of accounting are based on certain estimates and assumptions. The actual adjustments to TD's consolidated financial statements upon completion of the transaction and the allocation of the purchase price of Banknorth will depend on a number of factors, including additional financial information available at such time, changes in values and changes in Banknorth's operating results between the date of preparation of these pro forma financial statements and the completion of the transaction. Therefore, it is likely that the actual adjustments will differ from the pro forma adjustments and it is possible the differences may be material. TD's management believes that such assumptions provide a reasonable basis for presenting all of the significant effects of the transaction contemplated and that the pro forma adjustments give appropriate effect to those assumptions and are properly applied in the pro forma financial statements.

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The excess of the purchase price over the estimated fair value of the net assets acquired, including identifiable intangible assets, has been allocated to goodwill. The pro forma financial statements do not include the anticipated financial benefits from such items as cost savings and revenue synergies arising from the transaction.

Certain elements of the Banknorth consolidated financial statements have been reclassified to conform to the presentation used by TD.

**2. Pro Forma Assumptions**

For the purposes of these unaudited pro forma financial statements, the financial position and the results of operations of TD and Banknorth have been combined to give effect to TD's acquisition of 51% of the common stock of the new Banknorth and the related issue of TD common shares, debt securities qualifying as Tier 2 capital and wholesale deposits (described below) as if the transactions had occurred using the following assumptions:

(a) The acquisition of Banknorth will result in the acquisition by TD of 51% of the outstanding common stock of the new Banknorth for C\$5.0 billion in aggregate in cash payments and TD common shares issued at the time of the completion of the transaction. The funding of the purchase will be as follows:

(1) the issue of 43.6 million TD common shares valued at C\$1.96 billion;

(2) C\$1.60 billion gross proceeds from the issue of debt securities and/or similar securities qualifying as Tier 2 capital of the TD; and

(3) C\$1.37 billion gross proceeds from the issue of wholesale deposits.

For purposes of calculating the purchase consideration used in the pro forma financial statements, the price of the TD common shares to be issued is assumed to be C\$44.884 per common share, which represents the average closing price of the TD common shares on the Toronto Stock Exchange, for the period commencing two business days prior to and after the announcement of the proposed transaction on August 26, 2004. In addition to the 172.9 million Banknorth shares outstanding at June 30, 2004, an assumption was made that an additional 12.4 million shares will be issued and that 185.3 million Banknorth shares will thus be outstanding at the completion of the transaction, which do not include shares of Banknorth common stock issuable in connection with Banknorth's pending acquisition of BostonFed Bancorp, Inc. because of its immateriality to Banknorth. The aggregate value of the 43.6 million TD shares assumed to be issued in exchange for all Banknorth shares for purposes of calculating the purchase consideration used in the pro forma financial statements is C\$1.96 billion.

(b) The acquisition of Banknorth has been accounted for using the purchase method of accounting. The purchase equation is as follows:

	<b>July 31, 2004</b>
	<b>(in millions of Canadian dollars)</b>
Purchase consideration <i>(including estimated transaction costs of C\$25 million)</i>	C\$4,955
Less fair value of net tangible assets acquired	839
Net intangible assets and goodwill	C\$4,116

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The excess of the purchase price over the estimated fair value of the net tangible assets acquired has been allocated, as follows:

Core deposit intangible	C\$ 293
Loan intangible	392
Deferred tax liability on intangibles	(240)
Goodwill	3,671
	<u>          </u>
	C\$4,116

The intangible assets will be amortized on an accelerated basis over ten years, based upon their expected lives. Using the balances estimated in these pro forma financial statements, the amortization of the intangible assets for the years ended October 31, 2003 to 2008 would be as follows: C\$142 million, C\$116 million, C\$98 million, C\$80 million, C\$66 million and C\$54 million, respectively. The tax rate used to calculate the deferred tax liability on the intangible assets is 35%. Goodwill will not be amortized but will be subject to an annual impairment assessment.

	<b>July 31, 2004</b>	
	<b>100% of Banknorth</b>	<b>TD s 51% interest</b>
	<b>(in millions of Canadian dollars)</b>	
Fair value of net tangible assets acquired:		
Book value of Banknorth	C\$ 3,844	C\$ 1,960
Less Banknorth s previously recorded intangibles and goodwill	(1,902)	(970)
Less fair value decrements	(598)	(305)
Plus deferred tax on fair value decrements	210	107
Plus Canadian GAAP adjustments	92	47
	<u>          </u>	<u>          </u>
Fair value of net tangible assets	C\$ 1,646	C\$ 839
	<u>          </u>	
TD s 51% interest acquired	C\$ 839	

Purchase accounting requires that the assets and liabilities purchased be recorded at their fair value as at the date of the transaction. The fair value decrements have been estimated based on information available at the current time. The tax rate used to calculate the deferred tax asset on the fair value decrements is 35%.

	<b>July 31, 2004</b>	
	<b>100% of Banknorth</b>	<b>TD s 51% interest</b>
	<b>(in millions of Canadian dollars)</b>	
Fair value decrements:		
Investment securities	C\$ 187	C\$ 95
Loans	31	16
Deposits	16	8
Other liabilities	364	186
	<u>          </u>	<u>          </u>
Fair value of net tangible assets	598	C\$305
	<u>          </u>	
TD s 51% interest acquired	C\$305	

**3. Pro Forma Adjustments**

The pro forma adjustments contained in these unaudited pro forma financial statements are based on estimates and assumptions by management of TD based on available information. The adjustments for the actual transaction may differ as a result of changes arising from the evaluation of the fair value of

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Banknorth's net assets by TD after the completion of the transaction, as well as changes in foreign exchange rates. The following adjustments have been made to reflect the proposed transaction:

(a) TD's acquisition of 51% of the outstanding common stock of the new Banknorth and the related decrease in fair value of purchased assets and liabilities, as described in note 2 above, and the elimination of Banknorth's shareholders' equity and the creation of a non-controlling interest in subsidiaries to reflect the acquisition of Banknorth by TD.

(b) The issuance of TD common shares in the gross amount of C\$1.96 billion, which will satisfy a portion of the purchase price.

(c) The issuance of TD Tier 2 capital in the gross amount of C\$1.6 billion, the proceeds of which will satisfy a portion of the purchase price.

(d) The issuance of wholesale deposits in the gross amount of C\$1.37 billion, the proceeds of which will satisfy a portion of the purchase price.

(e) The amortization of intangible assets, as described in note 2 above.

(f) The interest expense on the Tier 2 capital at an assumed interest rate of 4.75% per annum and the interest expense on the wholesale deposits at an assumed rate of 3.50% per annum. These borrowing rates were estimated based on TD's historical cost of borrowing relative to prevailing interest rates and current interest rates. A 1% increase (decrease) in borrowing costs would increase (decrease) interest expense by C\$30 million per year before tax.

(g) Capital tax expense of C\$20 million owing on the TD common shares and debt securities issued to satisfy a portion of the purchase price.

(h) Withholding taxes owing on the common dividends received by TD from its 51% interest in the new Banknorth at an assumed tax rate of 5.00%.

(i) The 49% portion of the new Banknorth's earnings attributable to non-controlling shareholders.

(j) Liability for investment banker and professional fees and other transaction expenses of C\$25 million. These fees are the total estimated transaction costs included in the purchase price.

(k) Adjustments to conform Banknorth's financial statements to Canadian GAAP. On the consolidated balance sheet, Available for Sale Securities totaling C\$187 million were increased to their historical book value and the loss in comprehensive income was eliminated (refer to note 5(c)). On the consolidated income statements, salaries and employee benefits expense was increased by C\$25 million in 2003 and C\$23 million in the nine months ended July 31, 2004 representing the amortization of the fair value of stock options granted to employees and recognized over the vesting periods of the option grants. The fair value of the options granted was estimated using the Black Scholes option-pricing model, including assumptions described in note 19 to the consolidated financial statements of Banknorth for the fiscal year ended December 31, 2003.

(l) No adjustment has been made for restructuring costs to integrate the operations of the new Banknorth with TD.

(m) Represents the income tax effects, at an assumed rate of 35%, of the above adjustments to the statements of operations.

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**4. Earnings Per Common Share**

Pro forma earnings per common share for the nine months ended July 31, 2004 and for the year ended October 31, 2003 have been calculated using the estimated weighted average number of common shares on a pro forma basis as described below:

(a) The pro forma weighted average number of basic common shares of TD after giving effect to the acquisition merger is 698.5 million for the nine month period ended July 31, 2004 and 693.4 million for the year ended October 31, 2003.

(b) The pro forma weighted average number of diluted common shares after giving effect to the acquisition is 703.3 million for the nine months ended July 31, 2004 and 697.5 million for the year ended October 31, 2003.

The weighted average number of common shares for all pro forma earnings per share calculations in both periods reflect the issuance of the 43.6 million TD common shares as described in note 2(b) above.

**Table of Contents****5. Reconciliation of Canadian GAAP and U.S. GAAP**

The consolidated financial statements of TD are prepared in accordance with Canadian GAAP. The consolidated financial statements of Banknorth are prepared in accordance with U.S. GAAP. For purposes of the unaudited pro forma financial statements, certain adjustments have been made to conform Banknorth's consolidated financial statements to Canadian GAAP. Material differences between the information included in the unaudited pro forma consolidated financial statements, as presented in accordance with Canadian GAAP, and that information as it would be presented in accordance with U.S. GAAP, as at July 31, 2004, and for each of the periods ended July 31, 2004 and October 31, 2003 are described below.

**Pro forma Consolidated Statements of Net Income**

	Nine Months Ended July 31, 2004	Year Ended October 31, 2003
	(In millions of Canadian dollars, except per share data)	
Net income based on Canadian GAAP	C\$ 1,752	C\$ 1,134
Non-controlling interest in TD Mortgage Investment Corporation (note 5(a))	(19)	(23)
Derivative instruments and hedging activities (note 5(b))	(81)	95
Available for sale securities (note 5(c))		81
Other	(29)	(67)
	<hr/>	<hr/>
Net income based on U.S. GAAP	1,623	1,220
Preferred dividends	(42)	(64)
	<hr/>	<hr/>
Net income applicable to common shares U.S. GAAP	C\$ 1,581	C\$ 1,156
	<hr/>	<hr/>
Basic earnings per common share U.S. GAAP	C\$ 2.28	C\$ 1.67
Diluted earnings per common share U.S. GAAP	C\$ 2.27	C\$ 1.66

**Pro forma Consolidated Statements of Comprehensive Income**

	Nine Months Ended July 31, 2004	Year Ended October 31, 2003
	(In millions of Canadian dollars)	
Net income based on U.S. GAAP	C\$ 1,623	C\$ 1,220
Change in net unrealized gains on available for sale securities, net of income taxes (note 5(c))	(180)	16
Change in gains and losses on derivative instruments designated as cash flow hedges, net of income taxes (note 5(b))	(178)	126
Change in unrealized foreign currency translation gains and losses, net of income taxes (note 5(d))	57	(548)
Minimum pension liability adjustment (note 5(e))		114
Other	27	(32)
	<hr/>	<hr/>
Comprehensive income based on U.S. GAAP	C\$ 1,349	C\$ 896
	<hr/>	<hr/>



**Table of Contents***Pro forma Balance Sheet*

As at July 31, 2004

	Canadian GAAP	Adjustments	U.S. GAAP	Note
(In millions of Canadian dollars)				
<b>ASSETS</b>				
Cash resources	C\$ 11,074	C\$	C\$ 11,074	
Securities purchased under resale agreements	25,401		25,401	
Securities	0		0	
Investment	44,550	1,596	46,146	5(c),5(g)
Trading	67,702	126	67,828	5(c)
Loans (net)	147,156	5,881	153,037	5(f)
Derivatives market revaluation	26,163	1,469	27,632	5(b)
Intangible assets	3,006	34	3,040	
Goodwill	6,876	64	6,940	
Other assets	19,978	93	20,071	
	<u>C\$351,906</u>	<u>C\$9,263</u>	<u>C\$361,169</u>	
<b>LIABILITIES</b>				
Deposits	C\$238,807	C\$ 350	C\$239,157	
Derivatives market revaluation	26,556	1,113	27,669	5(b)
Other liabilities	59,463	2,227	61,690	5(f),5(g)
Subordinated notes debentures and other debt	8,267	5,921	14,188	5(f)
Non-controlling interest in subsidiaries	3,179	(51)	3,128	
	<u>C\$336,272</u>	<u>C\$9,560</u>	<u>C\$345,832</u>	
Shareholders' equity				
Preferred shares	C\$ 1,309	C\$ (350)	C\$ 959	5(a)
Common shares	5,205	(204)	5,001	5(a)
Contributed surplus	17	3	20	
Foreign currency translation adjustments	(73)	117	44	5(d)
Retained earnings	9,176	138	9,314	
Accumulated other comprehensive income:			0	
Net unrealized gains on available for sale securities		192	192	5(c)
Foreign currency translation adjustments		(117)	(117)	5(d)
Derivative instruments		(76)	(76)	5(b)
Minimum pension liability adjustment			0	
	<u>C\$ 15,634</u>	<u>C\$ (297)</u>	<u>C\$ 15,337</u>	
Total liabilities and shareholders' equity	<u>C\$351,906</u>	<u>C\$9,263</u>	<u>C\$361,169</u>	

*(a) Non-controlling interest in TD Mortgage Investment Corporation*

Under U.S. GAAP, preferred shares of TD's subsidiary, TD Mortgage Investment Corporation, are presented as a noncontrolling interest on the consolidated balance sheet, and the net income applicable to the non-controlling interest is presented separately on the consolidated statements of income. Under Canadian GAAP, these preferred shares are included within the total preferred shares presented on the consolidated

balance sheet.

**Table of Contents*****(b) Derivative instruments and hedging activities***

U.S. GAAP requires that all derivative instruments be reported on the consolidated balance sheet at their fair values, with changes in the fair value for derivatives that are not hedges reported through the consolidated statement of income. U.S. GAAP provides specific guidance on hedge accounting, including the measurement of hedge ineffectiveness, limitations on hedging strategies and hedging with intercompany derivatives. The ineffective portion of hedging derivative instruments' changes in fair values are immediately recognized in income. Under Canadian GAAP, prior to November 1, 2003, TD recognized only derivatives used in trading activities at fair value on the consolidated balance sheet, with changes in fair value included in income. Subsequent to November 1, 2003, non-trading derivatives not designated in a hedging relationship, or part of an ineffective hedging relationship, are also carried at fair value and included in income.

***(c) Available for sale securities***

U.S. GAAP requires that investment securities be classified as either available for sale or held to maturity, and requires available for sale securities to be reported on the consolidated balance sheet at their estimated fair values. Unrealized gains and losses arising from changes in the fair value of available for sale securities are reported net of income taxes in other comprehensive income. Other than temporary declines in fair value are recorded by transferring the unrealized loss from other comprehensive income to the consolidated statements of operations. For U.S. GAAP, TD accounts for the majority of its investment securities as available for sale. Under Canadian GAAP, investment securities are carried at cost or amortized cost, with other than temporary declines in value recognized based upon expected net realizable values.

***(d) Foreign currency translation adjustments***

U.S. GAAP requires foreign currency translation adjustments arising from subsidiaries where the functional currency is other than the Canadian dollar to be presented net of taxes in other comprehensive income. Under Canadian GAAP, TD presents foreign currency translation adjustments as a separate component of shareholders' equity.

***(e) Minimum Pension Liability Adjustment***

U.S. GAAP requires an additional minimum liability to be recorded if the accumulated benefit obligation is greater than the fair value of plan assets. In fiscal 2002 a liability was established. In fiscal 2003, TD's contribution to its principal pension plan, The Pension Fund Society of The Toronto-Dominion Bank, increased the fair value of plan assets such that they exceeded the accumulated benefit obligation. Therefore the minimum pension liability was reversed in fiscal 2003. Canadian GAAP has no such requirement.

***(f) Variable Interest Entities Balance Sheet Adjustments***

Under U.S. GAAP TD consolidates variable interest entities (which we refer to in this document as VIEs) where it is the primary beneficiary of such entities. As at July 31, 2004, TD consolidated C\$6 billion of multiseller conduits used to securitize clients' financial assets. TD consolidated these VIEs because it absorbs the majority of expected losses through its provision of liquidity, credit enhancement and swap facilities as well as through the variability of certain fees received. The creditors have recourse to all assets in the VIEs but not the general credit of TD. The net income impact of this adjustment was not significant. Under Canadian GAAP, TD will start to consolidate VIEs where it is the primary beneficiary of such entities in the fiscal year commencing November 1, 2004.

***(g) Investment securities - non-cash collateral***

Under U.S. GAAP, certain non-cash collateral received in securities lending transactions is recognized as an asset and a liability is recorded for obligations to return the collateral. Under Canadian GAAP, non-cash collateral received as part of a securities lending transaction is not recognized in the Consolidated Balance Sheet.

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**DIRECTORS AND MANAGEMENT OF BANKNORTH DELAWARE**

**FOLLOWING THE MERGERS**

**Banknorth Delaware's Board of Directors and Executive Officers Following the Mergers**

It is expected that all of the current directors of Banknorth will become directors of Banknorth Delaware upon completion of the mergers. Biographical and other information concerning Banknorth's directors is included in Banknorth's proxy statement for its 2004 annual meeting of shareholders. See "Where You Can Find More Information" beginning on page 152.

As of the date of this proxy statement/prospectus, TD had not yet determined the identities of its nominees to the board of directors of Banknorth Delaware.

**DIRECTORS AND MANAGEMENT OF TD**

**TD's Board of Directors and Executive Officers**

Biographical and other information concerning TD's board of directors is included in TD's Form 40-F for the year ended October 31, 2003 and proxy statement for its 2004 annual meeting of shareholders. See "Where You Can Find More Information" beginning on page 152. The completion of the mergers will not affect the composition of TD's board of directors or executive management, except that TD has agreed in the merger agreement that William J. Ryan will be elected or appointed as a member of the TD board of directors upon completion of the mergers. In addition, on May 26, 2004, TD appointed William E. Bennett to its board of directors. Mr. Bennett, who is 57 years of age, is also a member of the Board of Advisors of Alpha Capital Partners, Ltd. and a Member of Rational Expectations, L.L.C.

***Biographical Information Regarding Executive Officers of TD***

- |                            |  |
|----------------------------|--|
| <i>W. Edmund Clark</i>     | Mr. Clark is the President and Chief Executive Officer of TD. Prior to December 20, 2002, he was President and Chief Operating Officer of TD. Mr. Clark joined TD with its acquisition of CT Financial Services on February 1, 2000, where he was the President and Chief Executive Officer of CT Financial Services Inc., Canada Trustco Mortgage Company and The Canada Trust Company. |
| <i>Andrea S. Rosen</i>     | Ms. Rosen has served as Vice Chair of TD since May, 2002. In addition, Ms. Rosen is President of TD Canada Trust. She has previously served as Executive Vice President of Commercial Banking for TD Canada Trust. Prior to this, she was Vice Chair - Global Institutional Equities for TD Securities and Senior Vice President of TD.  |
| <i>Fredric J. Tomczyk</i>  | Mr. Tomczyk has served as Vice Chair - Corporate Operations since May 2002. He has previously served as Executive Vice President - Retail Distribution for TD. Prior to this, he was Executive Vice President - Core Banking and Wealth Management.  |
| <i>Robert E. Dorrance</i>  | Mr. Dorrance has served as Vice Chair - Wholesale Banking since November 2003. In addition, Mr. Dorrance is Chairman and Chief Executive Officer of TD Securities. Mr. Dorrance has previously held various positions at TD and TD Securities. Prior to joining TD, Mr. Dorrance was President and Chief Executive Officer of Newcrest Capital Inc.                                      |
| <i>William H. Hatanaka</i> | Mr. Hatanaka has served as Executive Vice President - Wealth Management since January 2003. Prior to his current position, he was with The Royal Bank of Canada as Chief Operating Officer of RBC Investments.   |

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*Robert F. MacLellan*

Mr. MacLellan is Executive Vice President and Chief Investment Officer, where he has served since January 2003. In addition, Mr. MacLellan is Chief Executive Officer of TD Asset Management. Prior to his current position, he was Executive Vice President, Wealth Management.

*Frank J. Petrilli*

Mr. Petrilli has served as Executive Vice President of TD and President and Chief Executive Officer of TD Waterhouse USA since August 1999.

*Bernard T. Dorval*

Mr. Dorval was appointed Executive Vice President of Business Banking and Insurance in November 2003. In addition, Mr. Dorval is Deputy Chair for TD Canada Trust. Prior to his current position, he was Executive Vice President Retail Product Group for TD.

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**Table of Contents****BENEFICIAL OWNERSHIP OF BANKNORTH COMMON STOCK**

The following table sets forth information as to the Banknorth common stock beneficially owned as of September 30, 2004 by (1) each person or entity, including any group as that term is used in Section 13(d)(3) of the Exchange Act known to Banknorth to be the beneficial owner of 5% or more of the outstanding Banknorth common stock, (2) each director of Banknorth, (3) each executive officer of Banknorth named in the Summary Compensation Table contained in its annual proxy statement and (4) all directors and executive officers of Banknorth as a group.

Name of Beneficial Owner	Shares Beneficially Owned as of September 30, 2004(1)	
	Amount	Percent
<b>5% Holders:</b>		
Private Capital Management, L.P. 8889 Pelican Bay Blvd Naples, Florida 34108	15,272,363(2)	8.8%
<b>Directors:</b>		
Gary G. Bahre	32,500(3)	
Robert G. Clarke	7,403(3)	
P. Kevin Condron	61,187(3)(4)	
John Otis Drew	20,272(4)	
Colleen A. Khoury	7,401(3)	
Dana S. Levenson	50,636(3)	
Steven T. Martin	75,700(3)	
John M. Naughton	56,250(3)	
Malcolm W. Philbrook, Jr.	105,528(3)(5)	
Angelo P. Pizzagalli	155,667(3)	
Irving E. Rogers, III	18,969(3)	
William J. Ryan	1,031,238(6)(7)	
Curtis M. Scribner	38,277(3)	
Gerry S. Weidema	18,569(3)	
<b>Named executive officers who are not directors:</b>		
Peter J. Verrill	462,085(6)(7)	
David J. Ott	153,686(6)(7)	
Andrew W. Greene	81,833(6)(7)	
Wendy Suehrstedt	202,350(6)	
All directors and executive officers of Banknorth as a group (21 persons)	2,782,007(7)(8)	1.6%

- (1) The number of shares beneficially owned by the persons set forth above is determined under rules under Section 13 of the Exchange Act, and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rules, an individual is considered to beneficially own any shares of Banknorth common stock if he or she directly or indirectly has or shares: (i) voting power, which includes the power to vote or to direct the voting of the shares, or (ii) investment power, which includes the power to dispose or direct the disposition of the shares. Unless otherwise indicated, an individual has sole voting power and sole investment power with respect to the indicated shares and all individual holdings amount to less than 1% of the issued and outstanding Banknorth common stock.
- (2) Based on a Schedule 13D filed by Private Capital Management, L.P. ( PCM ), a registered investment adviser, on September 23, 2004, Bruce S. Sherman and Gregg J. Powers, chief executive officer and president of PCM, respectively, exercise in these capacities shared voting power and shared

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dispositive power with respect to the shares of Banknorth common stock held by PCM's clients and managed by PCM.

- (3) Includes options to purchase shares of Banknorth common stock pursuant to Banknorth's 1995 Director Plan, as follows:

Name	No. of Shares
Gary G. Bahre	10,000
Robert G. Clarke	4,500
P. Kevin Condron	14,500
John Otis Drew	0
Colleen A. Khoury	6,000
Dana S. Levenson	4,000
Steven T. Martin	20,500
John M. Naughton	12,000
Malcom W. Philbrook, Jr.	20,500
Angelo P. Pizzagalli	8,000
Irving E. Rogers, III	6,000
Curtis M. Scribner	18,500
Gerry S. Weidema	15,000

Also includes (i) in the case of Mr. Condron, substitute options to purchase 10,872 shares of Banknorth common stock granted in connection with the acquisition of CFX Corporation; (ii) in the case of Mr. Pizzagalli, substitute options to purchase 1,825 shares of Banknorth common stock, respectively, granted in connection with the acquisition of Banknorth Group, Inc. (Vermont); (iii) in the case of Mr. Naughton, substitute options to purchase 4,500 shares of Banknorth common stock granted in connection with the acquisition of SIS Bancorp Inc.; (iv) in the case of Mr. Martin, substitute options to purchase 45,880 shares of Banknorth common stock granted in connection with the acquisition of American Financial Holdings, Inc.; and (v) in the case of Mr. Drew, substitute options to purchase 14,092 shares of Banknorth common stock granted in connection with the acquisition of CCBT Financial Companies, Inc.

- (4) Includes 1,517 shares held by a trust of which Mr. Drew is the sole trustee. Does not include an aggregate of 594,812 shares owned by another trust of which Mr. Drew is a beneficiary; Mr. Drew disclaims any voting or investment power over the shares held by this trust. Also does not include 2,200 shares held by a spouse and a child, beneficial ownership of which is disclaimed by Mr. Drew.
- (5) Includes 29,666 shares held by a 501(c)(3) foundation and/or a trust for which Mr. Philbrook shares voting rights but for which he has no pecuniary interest.
- (6) Includes shares over which an officer has voting power under Banknorth's 401(k) Plan and Profit Sharing Employee Stock Ownership Plan and options to purchase shares of Banknorth common stock granted pursuant to Banknorth's stock option plans which are exercisable within 60 days of September 30, 2004, as follows:

	401(k) Plan	Currently Exercisable Options
William J. Ryan	73,573	900,022
Peter J. Verrill	12,526	418,542
David J. Ott	20,286	193,917
Andrew W. Greene	2,653	82,247
Wendy Suehrstedt	5,402	179,533

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- (7) Messrs. Ryan, Verrill, Ott and Greene and certain other executive officers of Banknorth have established pre-arranged stock trading plans under Rule 10b5-1 under the Exchange Act, which provide for the exercise of stock options and sale of the underlying stock at pre-determined times. Accordingly, the beneficial ownership of Banknorth common stock for these executive officers is likely to change prior to consummation of the mergers.
- (8) Includes a total of 136,263 shares of Banknorth common stock which are held by the trusts established pursuant to Banknorth's 401(k) Plan on behalf of executive officers of Banknorth as a group. Also includes 2,037,827 shares of Banknorth common stock which may be acquired by directors and executive officers of Banknorth as a group upon the exercise of outstanding stock options which are exercisable within 60 days of September 30, 2004; shares subject to the foregoing stock options are deemed to be outstanding for the purpose of computing the percentage of Banknorth common stock beneficially owned by directors and executive officers of Banknorth as a group.

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**DESCRIPTION OF TD SHARE CAPITAL**

The following is a summary of the material provisions of the Bank Act of Canada and the TD by-laws as they relate to TD's capital stock. The following summary is qualified in its entirety by reference to the Bank Act of Canada and TD's by-laws.

**TD Capital Stock**

The authorized capital of TD consists of an unlimited number of TD common shares, without par value, and an unlimited number of Class A First Preferred Shares, without par value, issuable in series.

As of August 31, 2004, there were outstanding the following shares of TD capital stock: 654,713,401 TD common shares; 16,065 shares of Non-Cumulative Redeemable Class A First Preferred Shares, Series I; 16,383,935 shares of Non-Cumulative Redeemable Class A First Preferred Shares, Series J; 14,000,000 shares of Non-Cumulative Redeemable Class A First Preferred Shares, Series M; and 8,000,000 shares of Non-Cumulative Redeemable Class A First Preferred Shares, Series N.

**TD Common Shares**

*Voting.* Holders of TD common shares are entitled to one vote per share on all matters to be voted on by holders of TD common shares. Unless otherwise required by the Bank Act of Canada, any matter to be voted on by holders of TD common shares shall be decided by a majority of the votes cast on the matter.

*Size of Board of Directors.* The Bank Act of Canada requires that the number of directors of TD's board of directors be at least seven. All directors of TD are elected annually. The Bank Act of Canada also requires that at least 75% of the directors on TD's board of directors must be, at the time of each director's election, resident Canadians. See *Comparison of Shareholder Rights - Number and Election of Directors* - TD beginning on page 127.

*Liquidation Rights.* Upon the liquidation, dissolution or winding up of TD, whether voluntary or involuntary, the holders of TD common shares are entitled to receive ratably the net assets of TD available after the payment of all debts and other liabilities and subject to the prior rights of holders of any outstanding preferred shares.

*Preemptive, Subscription, Redemption and Conversion Rights.* Holders of TD common shares, as such, have no preemptive, subscription, redemption or conversion rights.

*Dividends.* The holders of TD common shares are entitled to receive dividends as and when declared by board of directors of TD, subject to the preference of the holders of the preferred shares of TD. TD dividends have historically been declared on a quarterly basis in Canadian dollars. If and when a dividend is declared, U.S. holders of TD common shares will receive dividends in U.S. dollars. The declaration and payment of dividends and the amount thereof is subject to the discretion of the TD board of directors, and will be dependent upon the results of operations, financial condition, cash requirements and future prospects of, and regulatory restrictions on the payment of dividends by, TD and other factors deemed relevant by the TD board of directors. See *Risk Factors - The ability of TD and Banknorth Delaware to pay dividends to their shareholders is subject to regulatory requirements* beginning on page 30 and *Comparison of Shareholder Rights - Dividends and Other Distributions* beginning on page 143.

**TD Preferred Shares**

*General.* TD has a single class of authorized preferred shares, Class A First Preferred Shares, which is without par value and issuable in series (which we refer to collectively in this document as preferred shares). Four series of Class A First Preferred Shares are currently outstanding, namely, 16,065 shares of Non-Cumulative Redeemable Class A First Preferred Shares, Series I; 16,383,935 shares of Non-Cumulative Redeemable Class A First Preferred Shares, Series J; 14,000,000 shares of Non-Cumulative Redeemable Class A First Preferred Shares, Series M; and 8,000,000 shares of Non-Cumulative Redeemable Class A First Preferred Shares, Series N.

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The board of directors of TD is authorized, without shareholder approval, to divide the unissued preferred shares into series and to fix the number of shares of each series and the rights, privileges, restrictions and conditions thereof, provided that no rights, privileges, restrictions or conditions attached to a series confer on a series a priority in respect of dividends or distribution of assets over any series of preferred shares then outstanding, and provided that TD shall not, without the prior approval of the holders of the preferred shares, create or issue any shares ranking in priority to or pari passu with the preferred shares unless all cumulative dividends and any declared and unpaid non-cumulative dividends shall have been paid or set apart for payment.

*Priority.* The preferred shares rank prior to the TD common shares and to any other shares of TD ranking junior to the preferred shares with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of TD. Each series of preferred shares ranks on a parity with every other series of preferred shares.

*Restriction.* Pursuant to the Bank Act of Canada, the approval of the holders of the preferred shares is required for the creation of any class of shares ranking prior to or on a parity with the preferred shares.

*Voting.* Except as required under the Bank Act of Canada, the holders of TD preferred shares are not entitled to vote at any meeting of the shareholders of TD.

*Amendment of Class Provisions.* Approval of by-law amendments to the provisions of the preferred shares as a class may be given in writing by the holders of all the outstanding preferred shares or by a resolution carried by an affirmative vote of at least two-thirds of the votes cast at a meeting at which the holders of a majority of the outstanding preferred shares are present or represented by proxy or, if no quorum is present at such meeting, at an adjourned meeting at which the shareholders then present or represented by proxy may transact the business for which the meeting was originally called.

*Priority on Liquidation, Dissolution or Winding Up.* In the event of the liquidation, dissolution or winding-up of TD, before any amounts are paid to or any assets are distributed among the holders of the common shares or shares of any other class of TD ranking junior to the preferred shares, the holder of a preferred share of a series shall be entitled to receive to the extent provided for with respect to such preferred shares by the conditions attaching to such series: (1) an amount equal to the amount paid up thereon; (2) such premium, if any, as has been provided for with respect to the preferred shares of such series; and (3) all unpaid cumulative dividends, if any, on such preferred shares and, in the case of non-cumulative preferred shares, all declared and unpaid non-cumulative dividends. After payment to the holders of the preferred shares of the amounts so payable to them, they shall not be entitled to share in any further distribution of the property or assets of TD. Each series of preferred shares ranks on a parity with every other series of preferred shares.

*Creation and Issue of Additional Preferred Shares.* TD may not, without the prior approval of the holders of the preferred shares, create or issue any shares ranking in priority to or on a parity with the preferred shares or any additional series of preferred shares unless all cumulative dividends and any declared and unpaid non-cumulative dividends shall have been paid or set apart for payment.

*Dividends.* Each series of preferred shares is entitled to receive a quarterly, non-cumulative preferential cash dividend, as and when declared by the TD board of directors, on the last day of January, April, July and October in each year calculated quarterly at a specified rate. If, within 30 days after the expiration of any fiscal year of TD, the board of directors has not declared the dividends or any part thereof on such series of preferred shares for such year, then the rights of the holders of such series of

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preferred shares to such dividend for such quarter shall be extinguished. The amount of the quarterly dividend for each outstanding series of preferred shares is set forth in the table below:

	<b>Amount of Quarterly Dividend</b>
Series I	C\$0.01000
Series J	C\$0.31875
Series M	C\$0.29375
Series N	C\$0.28750

*Redemption.* Each outstanding series of preferred shares is redeemable, with the prior approval of the Superintendent, on and after the date specified in the table below, at TD's option and at specified prices. The redemption price may be paid, in the case of the Series I by payment of cash, and in the case of the other series, by either payment of cash or the issuance of TD common shares.

	<b>Earliest Redemption Date</b>
Series I	November 1, 2004
Series J	April 30, 2005
Series M	April 30, 2009
Series N	April 30, 2009

*Retirement of Preferred Shares.* Subject to the prior approval of the Superintendent and to the provisions described below governing restrictions on dividends and retirement of shares, TD may at any time purchase any outstanding series of preferred shares for cancellation.

*Conversion into Common Shares at TD's Option.* On and after the date specified in the table below for the applicable series of preferred shares, TD may, subject to the approval, if required, of the stock exchange upon which any shares of TD are listed, convert all, or from time to time any part, of the outstanding shares of such series into the number of whole fully-paid and freely tradable TD common shares determined by dividing the then applicable redemption price per share of such series, together with declared and unpaid dividends to the date fixed for conversion, by the greater of (1) C\$2.00 and (2) 95% of the weighted average trading price of such TD common shares on the Toronto Stock Exchange for the 20 trading days ending on the last trading day ending on or before the fourth day prior to the date fixed for conversion. Fractional TD common shares will not be issued on any conversion of such preferred shares but in lieu thereof TD will make cash payments. Notice of any conversion will be given by TD not more than 60 days and not less than 40 days prior to the date fixed for conversion. If less than all of the outstanding shares of such series of preferred shares are at any time to be converted, the shares to be converted will be selected by lot or pro rata disregarding fractions or in such other manner as TD may determine.

	<b>First Conversion Date</b>
Series J	April 30, 2005
Series M	April 30, 2009
Series N	April 30, 2009

*Conversion into Common Shares at the Option of the Holder of Preferred Shares.* Subject to the rights of TD described below, on and after the date specified below for the applicable series of preferred shares, each share of such series will be convertible at the option of the holder on the last business day of each of January, April, July and October in each year on not more than 90 and not less than 65 days' notice (which notice shall be irrevocable) into that number of whole fully-paid and freely tradable TD common shares determined in the manner described above.

	<b>First Conversion Date</b>
Series J	January 29, 2010
Series M	October 31, 2013
Series N	January 31, 2014



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TD, subject to the provisions of the Bank Act of Canada, including the requirement of the prior consent of the Superintendent, and to the provisions described above governing restrictions on dividends and retirement of shares, as applicable, may by notice given not later than 40 days before the date fixed for conversion to all holders who have been given a conversion notice either (1) redeem on the business day after the date fixed for conversion all but not less than all of the shares of such series of preferred shares which are the subject of the conversion notice; or (2) cause the holder of such shares of the series of preferred shares to sell on the business day after the date fixed for conversion such series to another purchaser or purchasers in the event that a purchaser or purchasers willing to purchase all but not less than all of such shares of the series of preferred shares is or are found. Any such redemption or purchase shall be made by the payment of an amount in cash of C\$25.00 per share, together with declared and unpaid dividends to the date fixed for redemption or purchase. The shares of such series of preferred shares to be so redeemed or purchased shall not be converted on the date set forth in the conversion notice.

### **Limitations Affecting Holders of TD Common Shares**

Under the Bank Act of Canada, TD cannot redeem or purchase any of its shares, including the common shares, unless the consent of the Superintendent has been obtained. In addition, the Bank Act of Canada prohibits the payment to purchase or redeem any shares or the payment of a dividend if there are reasonable grounds for believing that TD is, or the payment would cause TD to be, in contravention of certain capital and liquidity requirements of the Bank Act of Canada.

The Bank Act of Canada contains restrictions on the purchase or other acquisition, issue, transfer and voting of the shares of TD. Under these restrictions, no person is permitted to acquire any shares of TD if the acquisition would cause the person to have a significant interest in any class of shares of TD unless the prior approval of the Minister of Finance is obtained. In addition, TD is not permitted to record any transfer or issue of any shares of TD if the transfer or issue would cause the person to have a significant interest in TD, unless the prior approval of the Minister of Finance is obtained. No person who has a significant interest in TD may exercise any voting rights attached to the shares held by that person, unless the prior approval of the Minister of Finance is obtained. For these purposes, a person has a significant interest in a class of shares of TD where the aggregate of any shares of that class beneficially owned by that person, any entity controlled by that person and by any person acting jointly or in concert with that person exceeds 10% of all of the outstanding shares of that class of shares of TD. If a person contravenes any of these restrictions, the Minister of Finance may, by order, direct that person to dispose of all or any portion of those shares.

In addition, under the Bank Act of Canada, the Minister of Finance may only approve the acquisition of up to 30% of the shares of any class of non-voting shares and up to 20% of the shares of a class of voting shares and provided, in each case, that the person acquiring those shares does not have direct or indirect influence over TD that, if exercised, would result in that person having control in fact of TD. For these purposes, the shares beneficially owned by that person, any entity controlled by that person and by any person acting jointly or in concert with that person with respect to TD common shares are aggregated. In addition, the Bank Act of Canada prohibits banks, including TD, from recording a transfer or issuing shares of any class to Her Majesty in right of Canada or of a province, an agent of Her Majesty, a foreign government or an agent of a foreign government.

The government of Canada has placed a temporary moratorium on mergers among Canada's largest financial institutions, including TD and its peers. The government has stated that it will lift this moratorium once it has had the opportunity to complete a policy review of its merger review guidelines. No precise timetable for the completion of this review has been announced.

The restrictions contained in the Bank Act of Canada and the Canadian government's policies may deter, delay or prevent a future acquisition of a significant interest in TD and will prevent the acquisition of control of TD, including transactions that could be perceived as advantageous to TD's shareholders.

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**Amendments to the Rights, Privileges, Restrictions and Conditions of TD's Share Capital**

Under the Bank Act of Canada, the rights of holders of TD's shares can be changed by the board of directors of TD by making, amending or repealing the by-laws of TD. The board of directors of TD must submit such a by-law, or amendment to or repeal of a by-law, to the shareholders of TD in accordance with the procedures of the Bank Act of Canada and the TD by-laws, and the shareholders must approve the by-law, amendment to or repeal of the by-law by special resolution to be effective. Under the Bank Act of Canada, a special resolution is a resolution passed by a majority of not less than two thirds of the votes cast by or on behalf of the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution. In some circumstances, the Bank Act of Canada mandates that holders of shares of a class or a series are entitled to vote separately as a class or series on a proposal to amend the by-laws of TD.

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**DESCRIPTION OF BANKNORTH DELAWARE CAPITAL STOCK**

Following the completion of the mergers, Banknorth Delaware will be authorized to issue three classes of stock to be designated, respectively, common stock, Class B common stock and preferred stock. Following the completion of the mergers, Banknorth Delaware will be authorized to issue 400,000,000 shares of common stock, one share of Class B common stock and 5,000,000 shares of preferred stock. The capital stock of Banknorth Delaware does not represent or constitute a deposit account and is not insured by the FDIC.

The following describes the material provisions of the Banknorth Delaware capital stock following the completion of the mergers. It is subject to, and qualified in all respects by reference to, the post-transaction certificate of incorporation and the by-laws of Banknorth Delaware following the completion of the mergers, the forms of which are attached as Appendices B and C to, and are incorporated by reference in, this document; the stockholders agreement, which is attached as Appendix D to, and incorporated by reference in, this document; and the DGCL.

**Banknorth Delaware Common Stock**

*General.* Each share of Banknorth Delaware common stock has the same relative rights and is identical in all respects with each other share of Banknorth Delaware common stock. The Banknorth Delaware common stock is not subject to call for redemption. The outstanding shares of Banknorth Delaware stock are, and the shares offered by Banknorth Delaware pursuant to the mergers will be, when issued and paid for, fully paid and nonassessable.

*Voting Rights.* Each holder of Banknorth Delaware common stock has one vote in respect of each share of the common stock held by such holder on each matter voted upon by the shareholders. The holders of the common stock are not entitled, however, to vote in the election of the Class B Directors or, except as otherwise required by law, to vote on any amendment to the certificate of incorporation (including any certificate of designations relating to any series of preferred stock) that relates solely to the terms of the Class B common stock or one or more outstanding series of preferred stock if the holders of such affected series or class are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the certificate of incorporation (including any certificate of designations relating to any series of preferred stock) or pursuant to the DGCL.

*Dividends.* Subject to the rights of the holders of any series of Banknorth Delaware preferred stock, the holders of the Banknorth Delaware common stock are entitled to such dividends as may be declared from time to time by the Banknorth Delaware board of directors out of funds legally available therefor. The ability of Banknorth Delaware to declare dividends is subject to regulatory limitations. See Risk Factors The ability of TD and Banknorth Delaware to pay dividends to their shareholders is subject to regulatory requirements beginning on page 30 and Regulatory Limitations beginning on page 123.

*TD Purchase Rights.* The stockholders agreement provides that, until TD and its affiliates no longer own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, if Banknorth Delaware at any time proposes to issue any shares of common stock, other than pursuant to the exercise of employee stock options, stock appreciation rights or similar instruments covered by the repurchase obligation of Banknorth Delaware described in The Stockholders Agreement TD's Rights to Contribute Capital and to Purchase Securities; Banknorth Delaware's Obligation to Repurchase Stock Banknorth Delaware's Obligation to Repurchase Stock beginning on page 91, TD will have the option, to the extent it did not previously exercise its rights described in The Stockholders Agreement TD's Rights to Contribute Capital and to Purchase Securities; Banknorth Delaware's Obligation to Repurchase Stock TD's Right to Contribute Capital beginning on page 90 to purchase for cash directly from Banknorth Delaware up to a sufficient number of shares of common stock to maintain its ownership level immediately prior to the issuance, at the same purchase price as the price for the additional shares of common stock to be issued. Until TD and its affiliates no longer own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, in the event that Banknorth Delaware proposes to

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issue options (other than employee stock options, stock appreciation rights or similar instruments covered by the repurchase obligation of Banknorth Delaware) or warrants that are exercisable for, or debt or equity securities that are convertible into or exchangeable for, shares of common stock, Banknorth Delaware must offer TD the opportunity to purchase for cash up to the percentage of those options, warrants or convertible debt or equity securities that represents the ownership percentage of TD and its affiliates of voting securities of Banknorth Delaware at the time of that issuance, at the same purchase price as is offered to the other purchasers thereof. Holders of Banknorth Delaware common stock do not have any preemptive rights with respect to any shares which may be issued by Banknorth Delaware in the future, except for those rights granted to TD pursuant to the stockholders agreement. TD's rights to purchase securities are subject to the ownership limitations described in the stockholders agreement.

*Liquidation.* In the event of any liquidation, dissolution or winding up of Banknorth Delaware, the holders of the Banknorth Delaware common stock would be entitled to receive, after payment of all debts and liabilities of Banknorth Delaware, all assets of Banknorth Delaware available for distribution, subject to the rights of the holders of any Banknorth Delaware preferred stock which may be issued with a priority in liquidation or dissolution over the holders of the Banknorth Delaware common stock.

**Banknorth Delaware Class B Common Stock**

*Ownership.* The single share of Class B common stock authorized by the post-transaction certificate of incorporation may be owned only by TD or one of its affiliates and may not be transferred to any other person.

*Voting Rights.* The holder of the Class B common stock has no right to vote on any matters in respect of which the holders of the common stock are entitled to vote, except for (1) for the nomination and election of Class B directors, (2) voting rights with respect to amendment, alteration or repeal (including by merger, consolidation or otherwise by operation of law) of the certificate of incorporation, or (3) as may otherwise be required by law or the certificate of incorporation.

*Directors.* Pursuant to the post-transaction certificate of incorporation and the stockholders agreement, prior to the termination of certain provisions of the post-transaction certificate of incorporation and the stockholders agreement as a result of TD owning less than a majority of the voting securities of Banknorth for a specified period of time, and except during a suspension of those provisions for the same reason, the holder of the Class B common stock has the right, voting separately as a class, at each meeting of the holder of the Class B common stock held for the purpose of electing Class B directors to nominate and elect a number of directors of Banknorth Delaware determined from time to time by the holder of the Class B common stock, except that the number of Class B directors may not be more than one more than the total number of Class A directors then in office. Following the termination, or during the suspension, of such provisions, the holder of the Class B common stock will have the right to nominate and elect a number of Class B directors to the board of directors of Banknorth Delaware so that its representation on the board is proportionate to its ownership of voting securities of Banknorth Delaware, but this number of Class B directors may not (1) represent 50% or more of the total number of directors then on the board or (2) be less than one director. The holder of the Class B common stock also has the right to designate Class B directors to the committees of Banknorth Delaware's board of directors, as described in The Stockholders Agreement Corporate Governance Committees of the Board of Directors. No shareholder of Banknorth Delaware other than the holder of the Class B common stock is entitled to vote with respect to the election or the removal without cause of the Class B directors. See Comparison of Shareholder Rights Number and Election of Directors Banknorth Delaware, Comparison of Shareholder Rights Filling Vacancies on the Board of Directors Banknorth Delaware and Comparison of Shareholder Rights Removal of Directors Banknorth Delaware beginning on pages 127, 128 and 129, respectively.

*Dividends.* Except as required by applicable law, the holder of the Class B common stock is not entitled to receive dividends or distributions of Banknorth Delaware, whether payable in cash, property or in shares of capital stock of Banknorth Delaware.

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*Liquidation.* In the event of any liquidation, dissolution or winding up of Banknorth Delaware, the holder of the Class B common stock is not entitled to receive any assets of Banknorth Delaware available for distribution to its shareholders.

### **Banknorth Delaware Preferred Stock**

The Banknorth Delaware board of directors may issue preferred stock from time to time in one or more series. The board of directors is authorized, in the resolution or resolutions providing for the issuance of any wholly unissued series of preferred stock, to fix, state and express the powers, rights, designations and preferences, and the qualifications, limitations and restrictions thereof, of the shares of each such series. The board of directors is also expressly authorized to fix the number of shares constituting such series and to increase or decrease the number of shares of any series prior to the issuance of shares of that series and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not to decrease such number below the number of shares of such series then outstanding.

### **Transfer Agent**

TD and Banknorth expect that the transfer agent and registrar for the Banknorth Delaware common stock will be American Stock Transfer & Trust Company.

### **Regulatory Limitations**

*Distributions.* Banknorth Delaware will derive funds for cash distributions to its shareholders primarily from dividends received from its banking subsidiary, Banknorth, NA, which is subject to various regulatory requirements relating to the payment of dividends. In addition, Banknorth, NA's primary federal regulator, the Comptroller of the Currency, is authorized to determine under certain circumstances relating to the financial condition of the bank that the payment of dividends would be an unsafe or unsound practice and to prohibit such payment.

In addition to the foregoing, the ability of Banknorth Delaware and Banknorth, NA to pay dividends may be affected by the various minimum capital requirements and the capital and other standards established by U.S. federal banking agencies under applicable laws and regulations. Banknorth Delaware's right and the rights of its shareholders and creditors to participate in any distribution of the assets or earnings of the subsidiaries of Banknorth Delaware is further subject to the prior claims of creditors of such subsidiaries.

*Repurchases of Capital Stock.* A bank holding company generally is required to give the Federal Reserve Board prior written notice and obtain its approval before purchasing or redeeming its equity securities if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such repurchases or redemptions during the preceding 12 months, is equal to 10% or more of the company's consolidated net worth. A bank holding company is not required to obtain prior approval of the Federal Reserve Board for the redemption or purchase of its equity securities if (1) both before and immediately after the redemption, the bank holding company is well capitalized under applicable regulations, (2) the bank holding company is well managed and (3) the bank holding company is not the subject of any unresolved supervisory issues.

*Source of Strength Policy and Cross Guarantee-Requirements.* According to Federal Reserve Board regulations, bank/financial holding companies are expected to act as a source of financial strength to each subsidiary bank and to commit resources to support each such subsidiary. This support may be required at times when a bank/financial holding company may not be able to provide such support. Similarly, under the cross-guarantee provisions of the Federal Deposit Insurance Act, in the event of a loss suffered or anticipated by the FDIC either as a result of default of a banking subsidiary of a bank/financial holding company such as Banknorth Delaware or related to FDIC assistance provided to a banking subsidiary in danger of default the other banking subsidiaries of such bank/financial holding company may be assessed for the FDIC's loss, subject to certain exceptions.

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*U.S. Limitations on Acquisitions of Common Stock.* The U.S. Change in Bank Control Act prohibits a person or group of persons from acquiring control of a bank holding company unless the Federal Reserve Board has been given 60 days prior written notice of such proposed acquisition and within that time period the Federal Reserve Board has not issued a notice disapproving the proposed acquisition or extending for up to another 30 days the period during which such a disapproval may be issued. An acquisition may be made prior to expiration of the disapproval period if the Federal Reserve Board issues written notice of its intent not to disapprove the action. Under a rebuttable presumption established by the Federal Reserve Board, the acquisition of more than 10% of a class of voting stock of a bank holding company with a class of securities registered under Section 12 of the Exchange Act would, under the circumstances set forth in the presumption, constitute the acquisition of control.

In addition, any acquiring entity would be required to obtain the approval of the Federal Reserve Board under the BHC Act before acquiring 25% (5% in the case of an acquiror that is a bank holding company) or more of the outstanding common stock of, or such lesser number of shares as constitute control over, Banknorth Delaware.

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**COMPARISON OF SHAREHOLDER RIGHTS**

The rights of holders of Banknorth common stock are currently governed principally by:

the laws of Maine, particularly the MBCA;

Banknorth's amended and restated articles of incorporation (which we refer to in this document as Banknorth's articles of incorporation); and

Banknorth's by-laws.

As a result of the mergers, holders of Banknorth common stock will receive both Banknorth Delaware common stock and TD common shares. The rights and privileges of those shares will be governed principally by:

In the case of Banknorth Delaware common stock:

The laws of Delaware, particularly the DGCL;

The post-transaction certificate of incorporation; and

Banknorth Delaware's amended by-laws as they will be in effect after the completion of the mergers, the form of which are attached as Appendix C to this proxy statement/prospectus.

In the case of TD common shares:

The Bank Act of Canada, which is TD's charter; and

TD's by-laws.

Although the rights and privileges of shareholders of a Maine corporation, the rights and privileges of shareholders of a Delaware corporation and the rights and privileges of shareholders of a bank chartered under the Bank Act of Canada are, in many instances, comparable, there are material differences. The following is a summary of the material differences among the rights of holders of Banknorth common stock as of the date of this document, the rights of holders of Banknorth Delaware common stock following the completion of the mergers and the rights of holders of TD common shares as of the date of this document. These differences arise principally from differences among the MBCA, the DGCL and the Bank Act of Canada, and among Banknorth's articles of incorporation and by-laws, Banknorth Delaware's post-transaction certificate of incorporation and by-laws and TD's charter and by-laws.

While TD and Banknorth believe that this summary describes all material differences among the rights of holders of Banknorth common stock as of the date of this document, the rights of holders of Banknorth Delaware common stock following the completion of the mergers and the rights of holders of TD common shares as of the date of this document, it may not contain all of the information that is important to you and is qualified in its entirety by reference to the MBCA, the DGCL and the Bank Act of Canada, and the respective articles of incorporation, certificate of incorporation or charter, as applicable, and by-laws of Banknorth, Banknorth Delaware and TD.

**Authorized Capital Stock**

***Banknorth***

Banknorth's articles of incorporation authorize the issuance of up to 400,000,000 shares of Banknorth common stock, \$0.01 par value per share, of which 172,545,567 shares were outstanding as of June 30, 2004, and up to 5,000,000 shares of Banknorth preferred stock, \$0.01 par value per share, of which no shares are issued and outstanding. The Banknorth preferred stock is issuable in series, each series having such rights and preferences as the Banknorth board of directors may fix and determine by resolution.



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### ***Banknorth Delaware***

Banknorth Delaware's post-transaction certificate of incorporation authorizes the issuance of three classes of stock, consisting of common stock, Class B common stock and preferred stock. The post-transaction certificate of incorporation authorizes 400,000,000 shares of common stock, one share of Class B common stock and 5,000,000 shares of preferred stock which may be issued in series. Each series of preferred stock will have such rights and preferences as the Banknorth Delaware board of directors may fix and determine by resolution. As of the date of this proxy statement/prospectus, all outstanding shares of Banknorth Delaware common stock were owned by Banknorth.

### ***TD***

TD's charter and by-laws permit TD to issue common shares without nominal or par value and Class A First Preferred Shares issuable in one or more series without nominal or par value. There is no limit on the number of TD common shares or Class A First Preferred Shares that TD can issue. As of August 31, 2004, 654,713,401 TD common shares and 38,400,000 Class A First Preferred Shares (Series I, J, M and N) were issued and outstanding and no other TD Class A First Preferred Shares were issued and outstanding.

## **Voting Rights**

### ***Banknorth***

Each share of Banknorth common stock is entitled to one vote per share on all matters properly presented at meetings of shareholders of Banknorth, and shareholders of Banknorth do not have the right to cumulate votes in an election of directors.

### ***Banknorth Delaware***

The post-transaction certificate of incorporation provides that each holder of Banknorth Delaware common stock has one vote in respect of each share of the common stock held by such holder on each matter voted upon by the shareholders, except that (1) the holders of the common stock are not entitled to vote in the election of the Class B Directors and (2) except as otherwise required by law, holders of common stock, as such, are not entitled to vote on any amendment to the certificate of incorporation (including any certificate of designations relating to any series of preferred stock) that relates solely to the terms of the Class B common stock or one or more outstanding series of preferred stock if the holders of such affected series or class are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the post-transaction certificate of incorporation (including any certificate of designations relating to any series of preferred stock) or pursuant to the DGCL.

### ***TD***

Under the Bank Act of Canada, if voting rights are attached to any share of a bank, the voting rights may confer only one vote in respect of that share. The TD by-laws provide that holders of TD common shares are entitled to one vote per share on all matters to be voted on by holders of TD common shares. Except as required under the Bank Act of Canada, the holders of TD preferred shares are not entitled to vote at any meeting of the shareholders of TD.

## **Number and Election of Directors**

### ***Banknorth***

The articles of incorporation of Banknorth provide that the Banknorth board of directors may increase or decrease the number of directors of Banknorth by resolution, and that the shareholders of Banknorth may increase or decrease the number of directors by the affirmative vote of the holders of two-thirds of the shares entitled to vote generally in an election of directors, provided in each case that the minimum number of directors will be three and the maximum number of directors will be 25, and further provided

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that no decrease in the number of directors will have the effect of shortening the term of any incumbent director. Currently, the number of directors of Banknorth is 14.

Pursuant to the articles of incorporation and by-laws of Banknorth, the Banknorth board of directors is divided into three classes as nearly equal in number as possible and one-third of the directors are elected annually to serve three-year terms.

### ***Banknorth Delaware***

The DGCL provides that the minimum number of directors is one. The number of directors is fixed by or in the manner provided in the by-laws, unless the certificate of incorporation fixes the number of directors. If the certificate of incorporation fixes the number of directors, a change in the number may only be made by amendment to the certificate of incorporation.

The board of directors of Banknorth Delaware will consist of Class B directors, who will be nominated and elected by the holder of the Class B common stock, and Class A directors, who are all directors other than Class B directors. Directors will be elected annually. The post-transaction certificate of incorporation provides that prior to the termination of certain provisions of the post-transaction certificate of incorporation and the stockholders agreement as a result of TD owning less than a majority of the voting securities of Banknorth for a specified period of time, the total number of authorized directors constituting the entire board of directors will be fixed by the board of directors, provided that such total number of authorized directors will include the number of Class B Directors as determined from time to time in accordance with the terms of the Class B common stock and provided further that such total number of authorized directors will be no less than 9. Following such termination of certain provisions of the stockholders agreement, the total number of authorized directors constituting the entire board of directors will be no more than 20 and no less than 9. Except as provided in the certificate of incorporation, the total number of authorized directors constituting the entire board of directors may be fixed and changed from time to time within the then-applicable limits by resolution of the board of directors.

Pursuant to the post-transaction certificate of incorporation, the committees of the board of directors must include a certain number of Class B directors. See [The Stockholders Agreement](#) [Corporate Governance](#) [Committees of the Board of Directors](#).

### ***TD***

Under the Bank Act of Canada, the TD board must have at least seven members and TD may establish by by-law a minimum and maximum number of directors. The Bank Act of Canada also requires that no more than two-thirds of the directors may be affiliated with TD, as specified by the Bank Act of Canada, and no more than 15% of the directors may be employees of TD or a subsidiary of TD, except that up to four of these employees may be directors if they constitute not more than 50% of the directors. Under the Bank Act of Canada, at least two-thirds of the directors of TD must be resident Canadians and, except in limited circumstances, directors may not transact business at a meeting of directors or a committee of directors at which a majority of the directors present are not resident Canadians. The Bank Act of Canada also requires the directors of a company to appoint from their members a chief executive officer who must ordinarily be resident in Canada. Under the TD by-laws, the minimum number of directors is 12 and the maximum number of directors is 22. The TD by-laws provide that the number of directors to be elected at any annual meeting of shareholders of TD will be fixed by the TD board of directors before the meeting and all directors are elected to one year terms. Currently, the number of directors of TD is 16.

## **Quorum of the Board of Directors; Action by the Board of Directors**

### ***Banknorth***

Banknorth's by-laws provide that a majority of the number of directors fixed by or pursuant to Banknorth's articles of incorporation will constitute a quorum for the transaction of business at any

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meeting of the board of directors, and that the affirmative vote of a majority of the directors present at a meeting at which a quorum is present will be the act of the board of directors.

### ***Banknorth Delaware***

The post-transaction certificate of incorporation provides that

a quorum for any meeting of the board of directors of Banknorth Delaware will require the presence of a majority of the total number of authorized directors then constituting the entire board of directors and a majority of the Class B directors then in office; and

any determination or other action of or by the board of directors of Banknorth Delaware (other than action by unanimous written consent in lieu of a meeting) will require the affirmative vote or consent, at a meeting at which a quorum is present, of a majority of directors present at that meeting, including a majority of the Class B directors present at that meeting.

### ***TD***

The Bank Act of Canada permits a bank to establish by by-law the quorum requirement for meetings of directors, provided that such quorum may never be less than four directors. The TD by-laws provide that seven directors constitute a quorum. In addition, under the Bank Act of Canada, the directors of a bank may not transact business at a meeting of directors unless at least one director who is not affiliated with the bank is present and a majority of the directors present are resident Canadians. The TD by-laws provide that at meetings of directors every matter shall be decided by a majority of the votes cast on the matter.

## **Filling Vacancies on the Board of Directors**

### ***Banknorth***

Any vacancy occurring in the Banknorth board of directors by reason of an increase in the number of directors may be filled by the Banknorth board of directors, and any directors so chosen will hold office until the next election of directors by the shareholders of Banknorth. Any other vacancy in the Banknorth board of directors, whether by reason of death, resignation, removal or otherwise, may be filled by the remaining directors of Banknorth, or by a sole remaining director, and any directors so chosen will hold office until the next election of the class for which such directors will have been chosen and until their successors are elected and qualified.

### ***Banknorth Delaware***

The DGCL provides that vacancies in the board of directors and newly created directorships may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, unless otherwise provided in the certificate of incorporation or by-laws. If the certificate of incorporation directs that a particular class of stock is to elect one or more directors, however, vacancies or newly created directorships of that class may be filled only by a majority of the directors elected by that class then in office, or by a sole remaining director elected by that class. If, at the time of filling any vacancy or newly created directorship, the directors then in office constitute less than a majority of the entire board, the Delaware Court of Chancery may, upon application of shareholders holding at least 10% of the outstanding shares having the right to vote for these directors, order an election to be held to fill any vacancy or newly created directorship or to replace the directors chosen by the directors then in office.

The post-transaction certificate of incorporation provides that prior to the termination of certain provisions of the post-transaction certificate of incorporation and the stockholders agreement as a result of TD owning less than a majority of the voting securities of Banknorth for a specified period of time and except during a suspension of those provisions for the same reason, in the case of any newly created directorships that result from an increase in the total number of authorized Class A directors and any vacancy occurring among the Class A directors (other than a designated independent director), such

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vacancy must be filled by the affirmative vote of a majority of the directors then in office and a majority of the Class B Directors then in office.

If any vacancy results from the resignation, retirement or other removal from office of any designated independent director, such vacancy must be filled by the approval of the remaining designated independent directors (or, if no designated independent directors are then in office, a majority of the independent directors), subject to the consent of the nominating committee. The nominating committee will consist of four Class B directors and three of the designated independent directors. Any designated independent director must qualify as an independent director, under applicable NYSE rules, with respect to Banknorth Delaware and TD, may not be a Class B director or an affiliate or past or present officer, director or employee of TD and must not have been nominated by TD or its affiliates.

The post-transaction certificate of incorporation also provides that in the case of any newly created directorships that result from an increase in the total number of authorized Class B directors and any vacancy occurring among the Class B directors, such vacancy will only be filled by a majority of the remaining Class B directors or the sole remaining Class B director (as the case may be) or by the holder of the outstanding Class B common stock, voting separately as a class. If at any time the offices of all Class B directors will be vacant, then the holder of the outstanding Class B common stock, voting separately as a class, may elect successors to hold office for the unexpired terms of the Class B directors whose places will be vacant.

### ***TD***

Under the Bank Act of Canada, a quorum of directors may appoint one or more directors to fill a vacancy among the directors and any director so appointed will hold office for the unexpired term of the director's predecessor in office provided that the directors may not appoint a person to fill a vacancy resulting from a change in the minimum number of directors established by TD by-laws or from a failure to elect the minimum number of directors required by TD's by-laws. Under TD's by-laws, the directors of TD may otherwise increase the number of directors and appoint one or more additional directors who will hold office for a term expiring not later than the close of the next annual meeting of shareholders. Under the Bank Act of Canada, the total number of additional directors appointed by the directors may not exceed one-third of the number of directors elected at the previous annual meeting of shareholders.

## **Removal of Directors**

### ***Banknorth***

Pursuant to Banknorth's articles of incorporation, directors of Banknorth may be removed, with or without cause, by the holders of two-thirds of the shares entitled to vote for directors at a meeting of shareholders called expressly for such purpose. Directors of Banknorth also can be removed for cause in a judicial proceeding commenced by Banknorth under provisions of the Maine Business Corporation Act.

### ***Banknorth Delaware***

Under the DGCL, directors generally may be removed, with or without cause, by a majority of the shareholders entitled to vote at an election of directors. The post-transaction certificate of incorporation provides that no shareholders of Banknorth Delaware other than the holder of the Class B common stock are entitled to vote for the removal without cause of any Class B director.

### ***TD***

Under the Bank Act of Canada, the shareholders of TD may by resolution at a special meeting remove any director or directors from office. This resolution must be passed by a vote of not less than a majority of the votes cast by shareholders who voted in respect of the resolution.

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**Transactions with Directors and Officers**

***Banknorth***

Under the MBCA, a transaction between a corporation and a director will not be enjoined or set aside because the director has a personal, economic or other association in the transaction unless the director has a conflicting interest in the transaction, as defined in the statute. A transaction between a corporation and a director in which the director has a conflicting interest in the transaction will not be enjoined, set aside or give rise to an award of damages or other sanctions if:

the transaction is approved by a majority (but no fewer than two) of the directors disinterested in the transaction or a committee of the board (that is made up of only disinterested directors or directors that are appointed by a majority vote of the disinterested directors) after disclosure of the existence and nature of the conflicting interest and all facts known to the director that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction;

the transaction is approved by shareholders of the corporation after proper notice and disclosure of the existence and nature of the conflicting interest and all facts known to the director that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction; or

the transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

***Banknorth Delaware***

Under the DGCL, no contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other entity of which one or more of its directors or officers are directors or officers, or in which one or more of its directors or officers have a financial interest, is void or voidable solely because of that relationship or because that director or officer participates in the authorization of the contract or transaction, if:

the material facts regarding the director's or officer's relationship or interest with respect to the contract or transaction are disclosed to or known by the board of directors and a majority of the disinterested directors authorize the contract or transaction in good faith, even though the disinterested directors are less than a quorum;

the material facts regarding the director's or officer's relationship or interest and the contract or transaction are disclosed to or known by the shareholders entitled to vote on the contract or transaction and the contract or transaction is specifically approved in good faith by the shareholders; or

the contract or transaction is fair to the corporation as of the time it is authorized, approved or ratified by the board of directors or the shareholders.

***TD***

Under the Bank Act of Canada, no material contract between TD and one or more of its directors or officers or between TD and another entity of which a director or officer of TD is a director or officer or in which one or more of its directors or officers has a material interest, is void or voidable as a result solely of that relationship or solely because that director is present at or is counted to determine the presence of a quorum at a meeting of directors or a committee of directors that authorized the material contract if:

the director or officer disclosed the interest;

the contract was approved by the directors or shareholders; and

the contract was reasonable and fair to TD at the time the contract was approved.

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Under the Bank Act of Canada, all transactions between TD and its directors and senior officers must, except in specified limited circumstances, be on terms and conditions at least as favorable to TD as market terms and conditions. The Bank Act of Canada also contains additional restrictions on transactions between TD and its directors and senior officers.

### **Exculpation of Liability**

#### ***Banknorth***

The MBCA provides that the articles of incorporation of a Maine corporation incorporated prior to July 1, 2003, such as Banknorth, are automatically deemed to include a provision eliminating the personal liability of directors for monetary damages to the fullest extent permitted under the new law unless and until such provision is repealed or restricted by the corporation and its shareholders. Under this law, a director of such a corporation will not be liable to the corporation or its shareholders for monetary damages for an action taken or a failure to take an action as a director, except liability for (1) the amount of a financial benefit received by a director to which the director is not entitled, (2) an intentional infliction of harm on the corporation or its shareholders, (3) a violation of the provision of the new law dealing with unlawful distributions by a corporation and (4) an intentional violation of criminal law.

#### ***Banknorth Delaware***

Pursuant to the DGCL, the Banknorth Delaware certificate of incorporation provides that a director of the corporation shall not be personally liable to the corporation or its shareholders for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to Banknorth Delaware or its shareholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL (dealing with unlawful distributions by the corporation), or (4) for any transaction from which the director derived any improper personal benefit. If the DGCL is amended in the future to authorize, with the approval of a corporation's shareholders, further reductions in the liability of a corporation's directors for breach of fiduciary duty, then a director of Banknorth Delaware will not be liable for any such breach to the fullest extent permitted by the DGCL as so amended. Any repeal or modification of these provisions by the shareholders of Banknorth Delaware will not adversely affect any right or protection of a director of Banknorth Delaware existing at the time of such repeal or modification.

#### ***TD***

Under the Bank Act of Canada, a bank may not, by contract, resolution or by-law, limit the liability of its directors for breaches of their duty to act in accordance with the Bank Act of Canada. However, under the Bank Act of Canada, directors and officers are not liable in respect of certain of their duties imposed under the Bank Act of Canada, including their duty of care, if they relied in good faith on financial statements represented to the directors or officers by an officer of the bank or the bank's auditors to reflect fairly the financial condition of the bank or on a report of an accountant, lawyer, notary or other professional whose profession lends credibility to a statement made by the professional.

### **Director and Officer Indemnification**

#### ***Banknorth***

Under the MBCA, a corporation generally may indemnify an individual who is a party to a proceeding because that individual is a director of the corporation against liability incurred in the proceeding if the individual's conduct was in good faith and the individual reasonably believed (1) in the case of conduct in the individual's capacity as director, that the individual's conduct was in the best interests of the corporation (or participants in an employee benefit plan of the corporation with respect to service thereto); (2) in all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation; and (3) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful. Unless ordered by a court to do so,

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however, a corporation may not indemnify one of its directors (1) in connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct set forth above; or (2) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity. Under the MBCA, a corporation will indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. Under the MBCA, a corporation generally may indemnify and advance expenses to an officer of the corporation who is a party to a proceeding because that officer is an officer of the corporation to the same extent as a director and, in the case of an officer who is not a director, to such further extent as may be provided the corporation's articles of incorporation, by-laws, a resolution of the corporation's board of directors or a contract, except no indemnification may be made to such a person for (1) liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding or (2) liability arising out of conduct that constitutes (1) receipt by the officer of a financial benefit to which the officer is not entitled; (2) an intentional infliction of harm on the corporation or its shareholders; or (3) an intentional violation of criminal law.

Banknorth's by-laws provide that Banknorth will indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a director, officer, employee or agent of Banknorth, or is or was serving at the request of Banknorth as a director, officer, trustee, partner, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other entity, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding to the full extent provided by the MBCA, provided that Banknorth will not be liable for any amount which may be due to any person in connection with a settlement of any action, suit or proceeding effected without its prior written consent or any action, suit or proceeding initiated by an indemnified person without its prior written consent, other than an action or proceeding seeking indemnification from Banknorth under its by-laws.

Banknorth's by-laws provide that Banknorth will pay the expenses incurred by an indemnified person in advance of a final disposition of an action or proceeding upon receipt by Banknorth of (1) a written undertaking by or on behalf of the indemnified person to repay such amount if the indemnified person is ultimately determined not to have acted in the manner required under the MBCA in order to permit indemnification and (2) a written affirmation by the indemnified person that the person has met the requisite standard of conduct for indemnification.

In accordance with the MBCA, Banknorth's bylaws authorize it to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of Banknorth or its subsidiaries against liabilities incurred by such person in such capacity or arising out of their status as such, whether or not Banknorth would have the power to indemnify that person against such liability. Banknorth currently maintains such insurance.

***Banknorth Delaware***

Under the DGCL, a corporation generally may indemnify directors and officers:

for actions taken in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interests of the corporation;  
and

with respect to any criminal proceeding, to the extent they had no reasonable cause to believe that their conduct was unlawful.

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In addition, the DGCL provides that a corporation may advance to a director or officer expenses incurred in defending any action upon receipt of an undertaking by the director or officer to repay the amount advanced if it is ultimately determined that he or she is not entitled to indemnification.

Banknorth Delaware's by-laws provide that Banknorth Delaware will indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a director or officer of Banknorth Delaware, or while a director or officer of Banknorth Delaware, is or was serving at the request of Banknorth Delaware as a director, officer, trustee or partner of another corporation, partnership, joint venture, trust, employee benefit plan or other entity, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding to the full extent permitted by the DGCL, provided that Banknorth Delaware will not be liable for any amount which may be due to any person in connection with a settlement of any action, suit or proceeding effected without its prior written consent or any action, suit or proceeding initiated by an indemnified person without its prior written consent, other than an action or proceeding seeking indemnification from Banknorth Delaware under its by-laws.

Banknorth Delaware's by-laws provide that Banknorth Delaware will pay the expenses incurred by an indemnified person in advance of a final disposition of an action or proceeding upon receipt by Banknorth Delaware of a written undertaking by or on behalf of the indemnified person to repay such amount if the indemnified person is ultimately determined not to have acted in the manner required under the DGCL in order to permit indemnification.

In accordance with the DGCL, Banknorth Delaware's bylaws authorize it to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of Banknorth Delaware or its subsidiaries against liabilities incurred by such person in such capacity or arising out of their status as such, whether or not Banknorth Delaware would have the power to indemnify that person against such liability. Banknorth Delaware will maintain such insurance following the mergers.

### ***TD***

Under the Bank Act of Canada, except in respect of an action by or on behalf of the bank to procure a judgment in its favor, a bank may indemnify a director or officer, a former director or officer or a person who acts or acted at the bank's request as a director or officer of an entity of which the bank is or was a shareholder or creditor, and his or her heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him or her because of any civil, criminal or administrative action or proceeding to which he or she is made a party by reason of being or having been a director or officer of the bank or the entity, if: (1) that person acted honestly and in good faith with a view to the best interests of the bank; and (2) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, that person had reasonable grounds for believing that his or her impugned conduct was lawful.

These individuals are entitled to an indemnity from the bank if the person was substantially successful on the merits of his or her defense of the action or proceeding and fulfilled the conditions set out in (1) and (2) above. Under TD's by-laws, TD has indemnified its directors and officers to the full extent permitted by the Bank Act of Canada. A bank may, with the approval of a court, also indemnify that person regarding an action by or on behalf of the bank or entity to procure a judgment in its favor, to which the person is made a party by reason of being or having been a director or officer of the company or entity, if he or she fulfills the conditions set out in (1) and (2) above.

## **Annual Meeting of Shareholders**

### ***Banknorth***

Under the MBCA, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with its bylaws. The applicable court may order an annual meeting to be held on

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application of any shareholder of the corporation if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or 15 months after its last annual meeting.

The Banknorth by-laws provide that the annual meeting of shareholders of Banknorth for the election of directors and for the transaction of such other business as may properly come before the meeting will be held either (1) at 10:00 A.M. on the fourth Tuesday of April of each year, if not a legal holiday, and if a legal holiday then on the next succeeding day not a legal holiday, or (2) at such other time as the board of directors of Banknorth will designate.

### ***Banknorth Delaware***

Under the DGCL, if a corporation does not hold an annual meeting for the election of directors on the date, if any, designated in the corporation's certificate of incorporation or by-laws, the directors must hold the meeting as soon after that date as may be convenient. If a corporation fails to hold the meeting for a period of thirty days after the designated date, or, if no date is designated, for a period of thirteen months after the last annual meeting or written consent to elect directors in lieu of an annual meeting, the Delaware Court of Chancery may summarily order a meeting to be held upon application of any shareholder or director. The shares of stock represented at a meeting called by the Delaware Court of Chancery either in person or by proxy and entitled to vote at the meeting constitute a quorum for the purposes of the meeting, even if the corporation's certificate of incorporation or by-laws provide for a different quorum requirement. The DGCL does not permit a shareholder to call an annual meeting other than by application to the Delaware Court of Chancery. Banknorth Delaware's by-laws provide that the time and date of the annual meeting are designated by the board of directors or by the chairman of the board.

### ***TD***

Under the Bank Act of Canada, the directors of TD must call an annual meeting of shareholders not later than six months after the end of TD's financial year. If for any reason an annual meeting is not called at the required time by the directors, the Bank Act of Canada provides an alternative means by which shareholders holding not less than 5% of the issued and outstanding TD shares that carry a right to vote may call the meeting. See also Special Meetings of Shareholders below. If for any reason it is impracticable to call a meeting or to conduct a meeting in the manner in which it is otherwise to be called or as prescribed by TD's by-laws or the Bank Act of Canada, any director or shareholder entitled to vote at that meeting may apply to a court for an order calling the meeting and setting forth the manner to hold and conduct the meeting. The Bank Act of Canada also requires meetings of shareholders to be held in Canada.

## **Special Meetings of Shareholders**

### ***Banknorth***

Pursuant to Banknorth's articles of incorporation, special meetings of shareholders of Banknorth may be called by the chairman, the president or a majority of the Banknorth board of directors, and will be called by the chairman, the president or the clerk upon the written request of the holders of not less than 50% of the issued and outstanding capital stock of Banknorth entitled to vote on the matter for which the meeting is called, voting together as a single class, provided, however, that under the MBCA special meetings of shareholders of Banknorth also may be called by the Superior Court of Cumberland County, Maine upon the petition of certain holders entitled to vote at the meeting.

### ***Banknorth Delaware***

Under the DGCL, special meetings of shareholders may be called only by the board of directors or other persons authorized by the certificate of incorporation or by-laws. The post-transaction certificate of

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incorporation permits the following persons to call a special meeting of the shareholders of Banknorth Delaware:

the chairman of the board of directors,

the president,

the chairman or the secretary at the written request of the board of directors, or

the holders of at least a majority of the then-outstanding shares of common stock.

Special meetings of the holder of Class B Common Stock may be called only by the holder of the share of Class B Common Stock.

### ***TD***

Under the Bank Act of Canada, special meetings of shareholders may be called at any time by the board of directors. In addition, subject to certain provisions of the Bank Act of Canada, the holders of not less than 5% of the issued and outstanding shares of TD that carry the right to vote at the meeting may request that the directors call a meeting of shareholders for the purpose stated in the request. If the directors do not call a meeting within 21 days after receiving the requisition, any shareholder who signed the requisition requesting the directors to call the meeting may call the meeting.

## **Quorum of Shareholders**

### ***Banknorth***

Pursuant to the Banknorth by-laws, shares entitled to vote as a separate voting group may take action on a matter at a meeting of shareholders only if a quorum of those shares exists. A majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

### ***Banknorth Delaware***

Under the DGCL, a quorum consists of a majority of the shares entitled to vote present in person or represented by proxy, unless the certificate of incorporation or by-laws provide otherwise. The Banknorth Delaware by-laws provide that, at any meeting held for the purpose other than the election of directors, the holders of a majority in voting power of the shares of capital stock of Banknorth Delaware issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, will constitute a quorum for the transaction of business.

At any meeting held for the purpose of electing directors (1) the presence in person or by proxy of the holders of at least a majority in voting power of the outstanding shares of capital stock of Banknorth Delaware entitled to vote in the election of Class A directors at such meeting will be required and be sufficient to constitute a quorum for the election of Class A directors and (2) the presence in person or by proxy of the holder of the outstanding share of Class B common stock will be required and be sufficient to constitute a quorum of such class for the election of Class B directors by such class. At any such meeting or adjournment thereof the absence of a quorum of the holders of Class B common stock will not prevent the election of the Class A directors, and the absence of a quorum of the holders of voting shares other than Class B common stock will not prevent the election of Class B directors.

### ***TD***

The Bank Act of Canada permits a bank to establish by by-law the quorum requirement for meetings of shareholders. TD's by-laws provide that a quorum at any meeting of shareholders will be two persons



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present in person and each entitled to vote at the meeting and representing either in their own right or by proxy at least 10% of the issued and outstanding shares of TD that carry a right to vote.

### **Shareholder Nominations**

#### ***Banknorth***

Banknorth's by-laws provide that nominations by shareholders for election as a director must be made in writing and delivered or mailed to the clerk of Banknorth not later than (1) 90 days prior to the anniversary date of the immediately preceding annual meeting, and (2) with respect to an election of directors to be held at a special meeting of shareholders for the election of directors, the close of business on the tenth day following the date on which notice of such meeting is first given to shareholders. Each such notice shall set forth information concerning the nominee, the nominating shareholder and other information specified in Banknorth's by-laws.

#### ***Banknorth Delaware***

Banknorth Delaware's by-laws provide that nominations by shareholders for election as a director must be made in writing and delivered or mailed to the clerk of Banknorth Delaware

not less than 90 days nor more than 120 days prior to the first anniversary of the immediately preceding annual meeting, except that if the date of the annual meeting is advanced by more than 20 days, or delayed by more than 70 days, from such anniversary date, notice by the shareholder must be delivered or mailed not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such annual meeting is first made, and

with respect to an election of Class A directors to be held at a special meeting of shareholders for the election of directors, not earlier than 120 days prior to such special meeting and not later than the close of business on the later of 90 days prior to such special meeting or the tenth day following the day on which a public announcement is first made of the date of the special meeting.

Each such notice must set forth information concerning the nominee, the nominating shareholder and other information specified in Banknorth Delaware's by-laws. These advance notice provisions do not apply to the nomination of Class B directors or to nominations made by TD so long as the Class B common stock is outstanding.

#### ***TD***

Under the Bank Act of Canada, nominations by shareholders for election of a director may be submitted to an annual meeting provided that they are signed by holders of not less than 5% of the issued and outstanding shares that carry a right to vote, or not less than 5% of the issued and outstanding shares of a class of shares entitled to vote at the meeting, and are submitted at least 90 days before the anniversary date of the last annual meeting.

### **Shareholder Proposals**

#### ***Banknorth***

Banknorth's by-laws provide that a proposal by shareholders for submission to a vote of shareholders at an annual meeting must be made in writing and delivered or mailed to the clerk of Banknorth not less than 90 days prior to the anniversary date of the immediately preceding annual meeting. Each such notice shall set forth information concerning the proposal, the proposing shareholder and the information specified in Banknorth's by-laws.

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***Banknorth Delaware***

Banknorth Delaware's by-laws provide that proposals of business to be conducted at an annual meeting must be made in writing and delivered or mailed to the clerk of Banknorth Delaware not less than 90 days nor more than 120 days prior to the first anniversary date of the immediately preceding annual meeting, provided, however, that in the event that the date of the annual meeting is advanced by more than 20 days, or delayed by more than 70 days, from such anniversary date, notice by the shareholder must be delivered or mailed not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. Each such notice must set forth information concerning the proposal, the proposing shareholder and the information specified in Banknorth Delaware's by-laws. These advance notice provisions do not apply to TD for so long as the Class B common stock is outstanding.

***TD***

Under the Bank Act of Canada, shareholder proposals may be submitted only at annual meetings of shareholders. A shareholder entitled to vote at an annual meeting of shareholders may submit to TD notice of any matter that the shareholder proposes to raise at the meeting provided that the proposal is submitted to TD at least 90 days before the anniversary date of TD's previous annual meeting of shareholders. Shareholders may also requisition special meetings as described under "Special Meetings of Shareholders" above.

**Shareholder Action Without a Meeting**

***Banknorth***

The by-laws of Banknorth provide that any action to be taken or which may be taken at any annual or special meeting of shareholders may be taken without a meeting if a consent in writing, setting forth the actions so taken, is given by the holders of all outstanding shares of capital stock of Banknorth entitled to vote thereon.

***Banknorth Delaware***

As permitted by the DGCL, the post-transaction certificate of incorporation provides that prior to the termination of certain provisions of the stockholders agreement as a result of TD owning less than a majority of the voting securities of Banknorth for a specified period of time, any action required or permitted to be taken by the holders of any class or series of Banknorth Delaware common stock may be effected at a duly called annual or special meeting of the holders of such class or series or by written consent of the holders of such class or series in lieu of a meeting. Following such termination of certain provisions of the stockholders agreement, any action required or permitted to be taken by the holders of the common stock can only be effected at a duly called annual or special meeting of such holders and may not be effected by written consent of such holders in lieu of a meeting.

***TD***

Under the Bank Act of Canada, shareholder action may be taken without a meeting by written resolution signed by all shareholders who would be entitled to vote on the matter at a meeting except with respect to a meeting called for the purpose of (1) removing a director or the auditor of TD or (2) electing or appointing a director or auditor of TD following the resignation, removal or expiration of the term of office of a director or auditor of TD where, in either case, the director or auditor has submitted a written statement giving the reasons why he opposes the proposed action or resolution.

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### **Shareholder s Right to Examine Books and Records**

#### ***Banknorth***

The by-laws of Banknorth provide that a list of shareholders will be available for inspection by any shareholder entitled to vote for a period of not less than 10 days before and during each meeting of shareholders.

Under the MBCA, a shareholder of a Maine corporation (including in all cases a shareholder who holds shares in a voting trust or through a nominee) may inspect and copy at the corporation s principal or registered office, during regular business hours, the following records of the corporation if a written request is provided to the corporation at least five business days before the desired inspection date: articles of incorporation, by-laws, resolutions of the board of directors establishing a class or series of stock, minutes of all shareholders meetings and other actions by shareholders in the last three years, all written communications to shareholders generally in the last three years, a list of the names and business addresses of the corporation s current directors and officers and the corporation s most recent annual report under Maine law. In addition, a shareholder of a corporation who meets the requirements set forth below generally is entitled to inspect and copy during regular business hours at a reasonable location specified by the corporation, following the provision of the same five days written notice to the corporation, the following records: (1) minutes of meetings of the board of directors, records of any committee of the board while acting in place of the board on behalf of the corporation, minutes of any meeting of the shareholders of the corporation and records of any action taken by directors and shareholders without a meeting, (2) accounting records of the corporation and (3) the record of shareholders. A shareholder generally may inspect and copy the records set forth in the preceding sentence only if (1) the shareholder s demand is for a proper purpose, (2) the shareholder describes with reasonable particularity such purpose and the records the shareholder desires to inspect and (3) the records are directly connected with the shareholder s purpose. The MBCA authorizes a shareholder of a Maine corporation which refuses to permit an authorized inspection to bring a legal action for a court order directing the corporation to permit such inspection and, if successful, to be awarded costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

#### ***Banknorth Delaware***

The by-laws of Banknorth Delaware provide that a list of shareholders will be available for inspection by any shareholder entitled to vote for a period before each meeting of shareholders, as may be required by applicable law. Under the DGCL, a corporation must make a shareholder list available for inspection by any shareholder entitled to vote for a period of not less than 10 days before each meeting of shareholders.

Under the DGCL, any shareholder may for any proper purpose inspect a corporation s stock ledger, a list of its shareholders and its other books and records, and may make copies of and extracts from the record. A shareholder may exercise this right only upon written demand under oath. The inspection must occur during regular business hours.

#### ***TD***

Under the Bank Act of Canada, a bank is required to make available to its shareholders and creditors and their personal representatives, specified books and records during usual business hours of the bank. These persons may take extracts from these books and records free of charge or have copies made upon payment of a reasonable fee. If the bank has distributed securities to the public, any other person may examine, take extracts from, or make copies of, these books and records upon payment of a reasonable fee. The Bank Act of Canada also requires that specified books and records be kept at a bank s head office (which head office is required to be in Canada) or elsewhere in Canada as the directors think fit. Under the Bank Act of Canada, these specified books and records must also be maintained and processed in Canada unless an exemption is obtained from the Superintendent. A TD shareholder may also obtain a list

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of TD's shareholders by paying a reasonable fee and submitting an affidavit certifying that the list will only be used for the purposes set out in the Bank Act of Canada. Also, in the case of a bank such as TD, creditors and their personal representatives, and any other person, upon payment of a reasonable fee and submitting an affidavit, may require the bank to furnish a list of shareholders. In addition, directors of a bank are entitled to examine additional records, documents and instruments of the bank.

## **Presentation of Financial Statements**

### ***Banknorth***

Banknorth prepares its financial statements that it files with the SEC in accordance with U.S. GAAP.

### ***Banknorth Delaware***

Banknorth Delaware will prepare its financial statements that it will file with the SEC in accordance with U.S. GAAP.

### ***TD***

TD will furnish to U.S. holders of TD common shares annual reports containing audited consolidated financial statements prepared in accordance with Canadian GAAP, with such changes as may be specified by the Superintendent, with an opinion thereon by TD's external auditors, and quarterly reports containing unaudited interim condensed consolidated financial information prepared in accordance with Canadian GAAP. These reports will include a reconciliation of certain financial information contained therein to amounts determined in accordance with U.S. GAAP.

## **Amendments of Governing Instruments**

### ***Banknorth***

No amendment to the articles of incorporation of Banknorth generally may be made unless it is first adopted by the affirmative vote of a majority of the board of directors of Banknorth then in office and thereafter approved by the holders of at least a majority of all outstanding shares entitled to vote thereon, provided that the affirmative vote of the holders of at least 75% of the shares of Banknorth entitled to vote generally in an election of directors, voting together as a single class, is required to approve any amendment to the provisions in the Banknorth articles of incorporation dealing with preemptive rights, convertible debt securities, actions by shareholders, by-laws, the required vote for business combinations involving a related person and amendments to the articles of incorporation unless the amendment is approved by the affirmative vote of at least two thirds of the whole Banknorth board of directors (the total number of directors that Banknorth would have if there were no vacancies) and a majority of the Banknorth directors who are not affiliated with a related person (which generally is defined in the articles of incorporation to mean any person which holds 10% or more of the voting shares of Banknorth). Notwithstanding the foregoing, the fair price provision in the articles of incorporation of Banknorth may not be amended except in the manner set forth therein.

The articles of incorporation and by-laws of Banknorth provide that the Banknorth board of directors will have the exclusive power to adopt, amend or repeal the by-laws of Banknorth.

### ***Banknorth Delaware***

Under the DGCL, unless its certificate of incorporation otherwise provides, amendments to a corporation's certificate of incorporation generally require the approval of the holders of a majority of the outstanding stock entitled to vote following approval of the amendment by the board of directors of the corporation. In addition, if an amendment would adversely affect certain rights of holders of a particular class of stock, the approval of a majority of the outstanding stock of that class is required.

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The post-transaction certificate of incorporation provides that the affirmative vote of the holder of the outstanding Class B Common Stock will be required for any amendment, alteration or repeal of any provisions of the certificate of incorporation or the by-laws that would adversely affect the powers, preferences, privileges or rights of the Class B Common Stock or of the holder thereof in such capacity. Furthermore, except as otherwise required by law, holders of Banknorth Delaware common stock, as such, are not entitled to vote on any amendment to the Banknorth Delaware certificate of incorporation that relates solely to the terms of the Class B Common Stock or one or more outstanding series of preferred stock if the holders of such affected series or class are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the post-transaction certificate of incorporation or pursuant to the DGCL.

Under the DGCL, the power to adopt, amend or repeal by-laws is vested in the voting shareholders, although a corporation's certificate of incorporation may also confer this power upon the board of directors to be shared with the shareholders. The post-transaction certificate of incorporation and Banknorth Delaware's by-laws provide that the by-laws may be altered, amended or repealed or new by-laws may be adopted by the board of directors or by the affirmative vote of the holders of at least a majority in voting power of the shares of the capital stock of Banknorth Delaware issued and outstanding and entitled to vote at any regular meeting of shareholders, or at any special meeting of shareholders; provided, that any amendment to the by-laws that would adversely affect the powers, preferences, privileges or rights of the Class B common stock will require the approval of the holder of the Class B common stock.

### ***TD***

Under the Bank Act of Canada, any amendment to a bank's incorporating instrument requires approval by special resolution. This resolution must be passed by a vote of not less than two-thirds of the votes cast by shareholders who voted in respect of the resolution. Any amendment to a bank's incorporating instrument also requires the approval of the Minister of Finance.

The TD board of directors may, by resolution, make, amend or repeal any by-laws that regulate the business or affairs of TD. Any change to the by-laws made by the board of directors remains in effect until it is approved or rejected by the shareholders by a majority of the votes cast at the next meeting of shareholders following the change. Certain changes of a substantial nature to the TD by-laws must be approved by special resolution of the shareholders before going into effect. This resolution must be passed by a vote of not less than two-thirds of the votes cast by shareholders who voted in respect of the resolution. Certain changes entitle the holders of each class of shares (and each series of a class, if the shares of that series are affected differently by the amendment from other shares of that class) to vote separately as a class or series, with each share carrying the right to vote whether or not it otherwise carries the right to vote. Substantial by-law changes requiring approval by special resolution include creating new classes of shares, changing the designation or attributes of any class or series of shares, dividing any class of shares into series, increasing or decreasing the number of directors (including the maximum or minimum number of directors), changing the place in Canada where TD's head office is situated or changing the name of the bank. The Superintendent must also approve any change in the name of the bank.

A shareholder entitled to vote at an annual meeting of shareholders of TD may make a proposal to make, amend or repeal a by-law in accordance with the shareholder proposal requirements of the Bank Act of Canada.

## **Vote on Mergers, Consolidations and Sales of Assets**

### ***Banknorth***

The MBCA generally requires the approval of the Banknorth board of directors and the holders of at least a majority of the outstanding Banknorth common stock for mergers, consolidations and share exchanges in which Banknorth is a participating corporation and for sales of all or substantially all of Banknorth's property and assets. The MBCA allows the board of directors of a Maine corporation to

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require a greater vote, as well as provides that the corporation's articles of incorporation may provide that a plan of merger or a plan of share exchange may be approved by a lesser vote, but in no case less than a majority of the votes cast at a meeting at which there exists a quorum of at least a majority of the votes to be cast on the plan by the voting group entitled to vote on the plan.

Notwithstanding the foregoing, unless the corporation's articles otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

the corporation will survive the merger or is the acquiring corporation in a share exchange;

the corporation's articles of incorporation will not be changed, except for amendments permitted by the MBCA;

each shareholder of the corporation whose shares are outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations and relative rights, immediately after the effective date of the change;

the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.

Under the MBCA, a corporation that owns shares of a Maine or foreign subsidiary corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into the parent corporation or another such subsidiary or may merge the parent corporation into the subsidiary without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

The articles of incorporation of Banknorth contain a provision which requires that mergers and certain other business combinations with a related person, as defined in the articles of incorporation, be approved by the holders of not less than 80% of the outstanding voting stock of Banknorth and an independent majority of shareholders, as defined in the articles of incorporation, unless certain price and procedural requirements are met or the Banknorth board, including a majority of the continuing directors, as defined in the articles of incorporation, approves the merger or other business combination in the manner provided therein. A related person generally is defined to include any person, firm or entity which is the beneficial owner of 10% or more of the voting shares of Banknorth, and a continuing director generally is defined as any director who was a director of Banknorth prior to the time the related person became such and who is not an affiliate or associate of a related person.

***Banknorth Delaware***

Under the DGCL, the Banknorth Delaware board may, if authorized by a resolution adopted by the holders of a majority of the outstanding shares of Banknorth Delaware stock entitled to vote, sell, lease or exchange all or substantially all of its property and assets. However, the DGCL may require a super-majority vote for any of those transactions if an interested shareholder is involved. Banknorth Delaware has elected in its certificate of incorporation not to be governed by the DGCL provision that requires a super-majority vote for any of those interested shareholder transactions.

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The DGCL also provides that mergers or consolidations require the approval of the holders of at least a majority of the outstanding stock of the corporation entitled to vote on the transaction unless a greater percentage is required by its certificate of incorporation. However, unless required by its certificate of incorporation, approval is not required by the holders of a corporation surviving a merger if:

the merger will not result in the issuance of shares representing more than 20% of its common stock outstanding immediately prior to the merger;

each share of its stock outstanding prior to the merger will be an identical share of stock following the merger; and

the merger agreement does not amend in any respect its certificate of incorporation.

Shareholder approval is not required for either the acquired or, in most cases, the acquiring corporation in a merger if the corporation surviving the merger is at least the 90% parent of the acquired corporation. If the 90% parent is not the surviving corporation, however, the otherwise required vote of at least a majority of the parent's outstanding stock entitled to vote is required to approve the merger. No vote of the holders of the subsidiary's outstanding stock is required in these circumstances. In addition, unless required by its certificate of incorporation, approval of the holders of a corporation will not be required to approve a holding company reorganization of the corporation pursuant to the merger of that corporation with or into a single direct or indirect wholly-owned subsidiary of that corporation, if the merger complies with certain provisions of the DGCL applicable to holding company mergers.

The DGCL provides that mergers or consolidations with interested shareholders may require a super-majority shareholder vote. However, Banknorth Delaware has elected in its certificate of incorporation not to be governed by the DGCL provision that requires such super-majority shareholder vote.

### ***TD***

Under the Bank Act of Canada, TD may sell all or substantially all its assets to another financial institution incorporated in Canada or to an authorized foreign bank in respect of its business in Canada provided that the purchaser assumes all or substantially all of the liabilities of the bank. The sale must also be approved by the shareholders by special resolution passed by a vote of not less than two-thirds of the votes cast by shareholders who voted in respect of the resolution, with each share carrying the right to vote whether or not it otherwise carries the right to vote. The holders of each class or series of shares which is affected differently by the transaction from the shares of any other class or series are entitled to vote separately as a class or series. The Minister of Finance must also approve the sale of all or substantially all the assets of TD.

Under the Bank Act of Canada, certain other extraordinary corporate actions require authorization by special resolution of the shareholders. Such a resolution must be passed by a vote of not less than two-thirds of the votes cast by shareholders who voted in respect of the resolution. These extraordinary corporate actions include amalgamations (other than an amalgamation between a bank and a wholly-owned subsidiary of that bank), continuances, amendments to the letters patent of incorporation, liquidations and dissolutions. In certain of these extraordinary corporate actions, each share carries the right to vote on the relevant resolution whether or not it otherwise carries the right to vote. In addition, certain extraordinary corporate actions entitle the holders of each class of shares (and each series of a class, if the shares of that series are affected differently by the action from other shares of that class) to vote separately as a class or series on the relevant resolution.

## **Preemptive Rights**

### ***Banknorth***

Under the MBCA, the shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent that the articles of incorporation so provide. The articles of incorporation of Banknorth provide that no holder of the capital stock of Banknorth is entitled as such,

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as a matter of right, to subscribe for or purchase any part of any new or additional issue of stock of any class whatsoever of Banknorth, or of securities convertible into stock of any class whatsoever, whether issued for cash or other consideration or by way of a dividend.

### ***Banknorth Delaware***

The DGCL provides that security holders of a corporation incorporated after July 3, 1967 only have preemptive rights if these rights are specifically provided in the corporation's certificate of incorporation. The Banknorth Delaware certificate of incorporation does not provide for preemptive rights.

Pursuant to the stockholders agreement, however, until TD and its affiliates no longer own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, if Banknorth Delaware at any time proposes to issue any shares of common stock, other than pursuant to the exercise of employee stock options, stock appreciation rights or similar instruments covered by the repurchase obligation of Banknorth Delaware described under *Stock Repurchases Banknorth Delaware* below, TD will have the option, to the extent it did not previously exercise its rights described in *The Stockholders Agreement TD's Right to Contribute Capital and to Purchase Securities; Banknorth Delaware's Obligation to Repurchase Stock TD's Right to Contribute Capital* beginning on page 90, to purchase for cash directly from Banknorth Delaware up to a sufficient number of shares of common stock to maintain its ownership level immediately prior to the issuance, at the same purchase price as the price for the additional shares of common stock to be issued. Until TD and its affiliates no longer own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, in the event that Banknorth Delaware proposes to issue options (other than employee stock options, stock appreciation rights or similar instruments covered by the repurchase obligation of Banknorth Delaware described under *Stock Repurchases* beginning on page 145) or warrants that are exercisable for, or debt or equity securities that are convertible into or exchangeable for, shares of common stock, Banknorth Delaware must offer TD the opportunity to purchase for cash up to the percentage of those options, warrants or convertible debt or equity securities that represents the ownership percentage of TD and its affiliates of voting securities at the time of that issuance, at the same purchase price as is offered to the other purchasers thereof. TD's rights to purchase securities as described in this paragraph are subject to the ownership limitations described in the stockholders agreement.

### ***TD***

The Bank Act of Canada provides that shareholders may have a preemptive right if this right is specifically provided in the bank's by-laws. The TD by-laws do not provide for preemptive rights.

## **Dividends and Other Distributions**

The following discussion of dividends and other distributions is subject to applicable regulatory requirements, which in the case of TD are discussed under *Description of TD Share Capital Limitations Affecting Holders of TD Common Shares*, and in the case of Banknorth Delaware (which limitations also are applicable to Banknorth) are discussed under *Description of Banknorth Delaware Capital Stock Regulatory Limitations*.

### ***Banknorth***

Under the MBCA a board of directors of a corporation may authorize, and the corporation may make, distributions to its shareholders, subject to any restrictions in the corporation's articles of incorporation and provided that the distribution, after giving effect thereto, may not have the following effects:

the corporation would not be able to pay its debts as they become due in the usual course of business; or

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the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation provide otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

Under the MBCA, distributions include, in addition to dividends, a corporation's purchase, redemption or other acquisition of the corporation's capital stock.

Pursuant to the Banknorth articles of incorporation, subject to any rights and preferences of any class or series of stock having preference over the Banknorth common stock, holders of Banknorth common stock are entitled to such dividends as may be declared by the board of directors out of funds lawfully available therefor, which funds will include the corporation's capital surplus.

### ***Banknorth Delaware***

Under the DGCL, subject to any restriction contained in a corporation's certificate of incorporation, the board of directors may declare, and the corporation may pay, dividends upon the shares of its capital stock either:

out of surplus; or

if there is no surplus, out of the net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year, subject to certain limitations.

Surplus is defined as the excess of the net assets of the corporation over the amount determined to be the capital of the corporation by the board of directors. The capital of the corporation cannot be less than the aggregate par value of all issued shares of capital stock. Net assets equals total assets minus total liabilities.

Except as required by applicable law, the holder of the Class B common stock will not be entitled to receive dividends or distributions from Banknorth Delaware, whether payable in cash, property or in shares of capital stock of Banknorth Delaware.

### ***TD***

Under the Bank Act of Canada, TD is prohibited from declaring dividends on its preferred or common shares if there are reasonable grounds for believing that TD is, or the payment would cause TD to be, in contravention of the capital adequacy and liquidity regulations of the Bank Act of Canada or any capital or liquidity directions of the Superintendent. In addition, the Superintendent administers a restriction under the Bank Act of Canada on TD's ability to pay dividends on common and preferred shares based on an assessment of the ongoing maintenance by TD of satisfactory regulatory capital and liquidity. TD does not anticipate that these conditions will restrict it from paying dividends in the normal course of business.

TD is also restricted from paying dividends on its preferred or common shares in the event that either of its subsidiaries that have issued capital trust securities fails to pay semi-annual distributions in full to holders of their capital trust securities. In addition, the ability to pay dividends on TD's common shares without the approval of the holders of the outstanding preferred shares is restricted unless all dividends on the preferred shares have been declared and paid or set apart for payment. Currently, these limitations do not restrict the payment of dividends on preferred or common shares.

## **Appraisal and Dissent Rights**

### ***Banknorth***

Under the MBCA, a shareholder of a Maine corporation generally has the right to dissent from, and obtain the fair value of his or her shares in the event of, a merger, share exchange, disposition of assets required to be approved by shareholders and other specified circumstances, subject to specified procedural



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requirements. The MBCA generally does not confer appraisal rights, however, with respect to any class of shares that:

is listed on the New York Stock Exchange or the American Stock Exchange or is designated as a national market stock on the Nasdaq National Market or

has at least 2,000 shareholders and a market value of at least \$20 million, exclusive of shares held by the corporation's subsidiaries, senior executives, directors and shareholders who beneficially own more than 10% of such shares.

Even if a corporation's stock meets either of the foregoing requirements, however, the MBCA provides that appraisal rights will be permitted if shareholders are required to accept for their stock, by the terms of a corporate action requiring appraisal rights, anything other than cash or shares of a corporation that satisfies either of the requirements set forth in the preceding sentence at the time that the corporate action becomes effective, as well as under other specified circumstances.

### ***Banknorth Delaware***

Shareholders of a Delaware corporation are entitled to appraisal rights in connection with certain mergers and consolidations. Appraisal rights entitle the holder to receive in cash the fair value of his or her shares as appraised by the Delaware Chancery Court. However, shareholders do not have appraisal rights if the shares of stock they hold, at the record date for determination of shareholders entitled to vote at the meeting of shareholders to act upon the merger or consolidation, or on the record date with respect to action by written consent, are either:

listed on a national securities exchange or designated as a Nasdaq National Market security; or

held of record by more than 2,000 shareholders.

Those shareholders, however, will have appraisal rights if the merger agreement requires that they receive for their shares of stock anything other than:

stock of the surviving corporation;

stock of another corporation which is either listed on a national securities exchange or designated as a Nasdaq National Market security or held of record by more than 2,000 shareholders;

cash in lieu of fractional shares; or

some combination of the foregoing.

### ***TD***

The only circumstance under which the Bank Act of Canada extends appraisal or dissent rights to shareholders is in respect of a compulsory acquisition of shares following a takeover bid through which an acquiror has acquired not less than 90% of the shares of the class that were the subject of the bid. Due to the ownership restrictions applicable to TD under the Bank Act of Canada, the shares of TD may not be the subject of such a bid. See Description of TD Share Capital Limitations Affecting Holders of TD Common Shares beginning on page 119.

### **Stock Repurchases**

The following discussion of stock repurchases is subject to applicable regulatory requirements, which in the case of TD are discussed under Description of TD Share Capital Limitations Affecting Holders of TD Common Shares, and in the case of Banknorth Delaware (which limitations also are applicable to Banknorth) are discussed under Description of Banknorth Delaware Capital Stock Regulatory Limitations.

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### ***Banknorth***

Under the MBCA, a corporation may acquire its own shares, subject to the limitations described under Dividends and Other Distributions Banknorth above.

The articles of incorporation of Banknorth provide that it may purchase its capital stock out of funds lawfully available therefor, which funds include Banknorth's unreserved and unrestricted capital surplus.

### ***Banknorth Delaware***

Under the DGCL, a corporation may not purchase or redeem its shares of capital stock when the capital of the corporation is impaired or if the purchase or redemption would cause any impairment of the capital of the corporation, provided that a corporation may purchase or redeem out of capital any of its own preferred shares (or any of its own shares if no preferred shares are outstanding) if the shares will be retired upon acquisition, the capital of the corporation will be reduced and the remaining assets of the corporation are sufficient to pay any debts of the corporation for which payment has not been otherwise provided.

Pursuant to the stockholders agreement, until TD and its affiliates no longer own voting securities of Banknorth Delaware representing at least 25% of the then-outstanding voting securities of Banknorth Delaware, if Banknorth Delaware issues shares of common stock upon exercise of any option, warrant, stock appreciation right or other similar instrument granted to its directors, officers, employees, consultants or others, or in the form of restricted shares or similar instruments, in either case pursuant to any compensation, retention, incentive or similar program or arrangement in effect from time to time, Banknorth Delaware will use its reasonable best efforts to repurchase a corresponding number of shares of its common stock in the open market so that the total number of outstanding shares of Banknorth Delaware common stock are not increased by that issuance. These repurchases generally must be completed within 120 days after the applicable issuance, but Banknorth Delaware's obligation to repurchase shares does not apply until the aggregate issuances of common stock exceed 1% of the outstanding shares of Banknorth Delaware common stock. Banknorth Delaware's obligation to repurchase shares is also subject to the receipt of any required regulatory approval. Banknorth Delaware may meet its repurchase obligations by means of an ongoing regular stock repurchase plan, in which case offsetting repurchases may occur prior to the related issuance of common stock.

### ***TD***

Under the Bank Act of Canada, TD may, with the prior consent of the Superintendent, redeem or purchase its shares for cancellation unless there are reasonable grounds for believing that TD is, or the redemption or purchase would cause TD to be, in contravention of any regulation made under the Bank Act of Canada regarding the maintenance by banks of adequate capital and adequate and appropriate forms of liquidity, or any direction to TD made by the Superintendent pursuant to subsection 485(3) of the Bank Act of Canada regarding its capital or liquidity. No direction of the Superintendent has been made to date.

## **Derivative Actions**

### ***Banknorth***

Under the MBCA, a shareholder of a Maine corporation may not commence or maintain a civil suit in the right of a Maine corporation, or a derivative proceeding, unless the shareholder (1) was a shareholder of the corporation at the time of the alleged improper action or omission, or become a shareholder through transfer by operation of law from one who was a shareholder at that time, and (2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation. Such a shareholder may not commence a derivative proceeding until (1) a written demand has been made on the corporation to take suitable action and (2) 90 days have expired from the date the demand was made (unless the demand is earlier rejected by the corporation or irreparable injury to the

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corporation would occur by waiting for such period). A court, on motion by the corporation, shall dismiss a derivative proceeding if one of three specified groups determines, in good faith, after conducting a reasonable inquiry, that the maintenance of the derivative proceeding is not in the best interests of the corporation. The specified groups consist of (1) a panel of one or more independent persons appointed by a court on motion by the corporation, (2) a majority of the independent directors of the corporation at a meeting if they constitute a quorum and (3) a majority of a committee consisting of two or more independent directors appointed by a majority vote of independent directors at a meeting, regardless whether they constitute a quorum. If a derivative proceeding is commenced after the corporation has rejected a shareholder demand to commence an action, the complaint must allege with particularity facts establishing either that a majority of the board of directors of the corporation did not consist of independent directors at the time the determination was made or the demand was not rejected in the manner specified above.

***Banknorth Delaware***

A shareholder may bring a derivative action in Delaware on behalf of the corporation. The DGCL requires a shareholder to state in the complaint that he or she was a shareholder of the corporation at the time of the transaction of which he or she complains. To bring a derivative action, a shareholder must make a demand on the corporation that it bring suit and the demand must have been refused, unless the shareholder can show that the demand would have been futile.

***TD***

Under the Bank Act of Canada, certain persons, including a shareholder, may apply to the applicable court for leave to bring an action under the Bank Act of Canada in the name of and on behalf of a bank or any subsidiary, or to intervene in an existing action under the Bank Act of Canada to which the bank or a subsidiary is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the bank or the subsidiary. Under the Bank Act of Canada, no action may be brought and no intervention in an action may be made unless the court is satisfied that:

the person has given reasonable notice to the directors of the bank or its subsidiary of the person's intention to apply to the court if the directors of the bank or its subsidiary do not bring, diligently prosecute or defend or discontinue the action;

the person is acting in good faith; and

it appears to be in the interests of the bank or its subsidiary that the action be brought, prosecuted, defended or discontinued.

Under the Bank Act of Canada, the court in a derivative action may make any order it thinks fit, except that the court may not make any order in relation to any matter that would require the approval of the Minister of Finance or the Superintendent under the Bank Act of Canada. Additionally, under the Bank Act of Canada a court may order a bank or its subsidiary to pay reasonable legal fees incurred by the person in connection with the action.

**Anti-Takeover and Ownership Provisions**

***Banknorth***

Section 1109 of the MBCA generally provides that a Maine corporation which has a class of voting stock registered or traded on a national securities exchange or under the Exchange Act, such as Banknorth, may not engage in any business combination for five years following an interested shareholder's share acquisition date unless the business combination is (1) approved by the corporation's board of directors prior to that interested shareholder's share acquisition date or (2) approved, subsequent to that interested shareholder's share acquisition date, by the board of directors of the corporation and authorized by the holders of a majority of the outstanding voting stock of the corporation not beneficially owned by that interested shareholder or any affiliate or associate thereof

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or by persons who are either directors or officers and also employees of the corporation. An interested shareholder is defined to include any person, firm or entity that is directly or indirectly the beneficial owner of 25% or more of the outstanding voting stock of the corporation, other than by reason of a revocable proxy given in response to a proxy solicitation conducted in accordance with the Exchange Act which is not then reportable on a Schedule 13D under the Exchange Act, and share acquisition date is defined to mean the date that any person, firm or entity first becomes an interested shareholder of that corporation.

Section 1110 of the MBCA generally provides shareholders of a Maine corporation which has a class of voting shares registered or traded on a national securities exchange or registered under the Exchange Act with the right to demand payment of an amount equal to the fair value of each voting share in the corporation held by the shareholder from a person or group of persons which become a controlling person, which generally is defined to mean an individual, firm or entity (or group thereof) which has voting power over at least 25% of the outstanding voting shares of the corporation. Such a demand must be submitted to the controlling person within 30 days after the controlling person provides required notice to the shareholders of the acquisition or transactions which resulted in such person or group becoming a controlling person. Section 1110 could be interpreted to provide that a person or group of persons could become a controlling person for purposes of such section by soliciting and acquiring revocable proxies to vote at least 25% of the voting shares of a corporation.

### ***Banknorth Delaware***

Section 203 of the DGCL generally restricts the ability of an interested shareholder of certain corporations to merge with or enter into other business combinations with the corporation for a period of three years after becoming an interested shareholder. A person is generally deemed to be an interested shareholder upon acquiring 15% or more of the outstanding voting stock of the corporation.

Section 203 applies to a Delaware corporation if its stock is (1) listed on a national securities exchange, (2) authorized for quotation on The Nasdaq Stock Market or (3) held of record by more than 2,000 shareholders, but Section 203 does not apply if, among other things, the corporation's original certificate of incorporation contains a provision expressly electing not to be governed by Section 203. Pursuant to its original certificate of incorporation and the post-transaction certificate of incorporation, Banknorth Delaware has elected not to be governed by Section 203 of the DGCL.

### ***TD***

Rules and policies of certain Canadian securities regulatory authorities, including Rule 61-501 of the Ontario Securities Commission and Policy Statement Q-27 of the Autorité des marchés financiers of Québec, contain requirements in connection with related party transactions. A related party transaction means, generally, any transaction by which an issuer directly or indirectly:

acquires, sells, leases or transfers an asset;

acquires or issues treasury securities;

assumes or transfers a liability; or

borrow money or lends money;

from or to, as the case may be, a related party by any means in any one or any combination of transactions.

Related Party is defined in Rule 61-501 and Policy Statement Q-27 and includes directors, senior officers and holders of more than 10% of the voting rights attached to all outstanding voting securities of the issuer or holders of a sufficient number of any securities of the issuer to materially affect control of the issuer.

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Rule 61-501 and Policy Statement Q-27 require, subject to certain exceptions:

more detailed disclosure in the proxy material sent to security holders in connection with related party transaction;

the preparation of a formal valuation of: (1) non-cash assets involved in a related party transaction (pursuant to Rule 61-501); and (2) the subject matter of the related party transaction and any non-cash consideration offered for the subject matter (pursuant to Policy Statement Q-27); and

inclusion of a summary of the valuation in the proxy material.

Rule 61-501 and Policy Statement Q-27 also require, subject to certain exceptions, that an issuer not engage in a related party transaction unless the shareholders of the issuer, other than the related parties, approve the transaction by a simple majority of the votes cast.

The Bank Act of Canada also contains restrictions on the purchase or other acquisition, issue, transfer and voting of TD shares. See Description of TD Share Capital Limitations Affecting Holders of TD Common Shares beginning on page 119.

## **Shareholder Rights Plans**

### ***Banknorth***

Banknorth has adopted a shareholder rights plan. Pursuant to the Banknorth rights agreement, each share of Banknorth common stock has attached to it one preferred stock purchase right (a Banknorth right). Each Banknorth right entitles the registered holder to purchase from Banknorth a unit consisting of one-hundredth of a share of Series A Junior Participating Preferred Stock, par value \$.01 per share, of Banknorth at a purchase price of \$80, subject to adjustment. Unless the Banknorth rights are earlier redeemed or expire in accordance with their terms, in the event that any person or group of affiliated or associated persons, other than employee benefit plans of Banknorth, acquires beneficial ownership of 15% or more of the outstanding shares of Banknorth common stock, each holder of a Banknorth right, other than rights beneficially owned by an acquiring person (which will thereafter be null and void), will thereafter have the right to receive upon exercise that number of shares of Banknorth common stock having a market value of two times the exercise price of the Banknorth right. The Banknorth rights may have certain anti-takeover effects. The Banknorth rights would cause substantial dilution to a person or group that acquires 15% or more of the outstanding shares of Banknorth common stock if a triggering event thereafter occurs without the Banknorth rights having been redeemed. However, the Banknorth rights should not interfere with any merger or other business combination approved by the Banknorth board of directors because the Banknorth rights are redeemable under certain circumstances. In connection with the execution of the merger agreement, Banknorth amended its shareholder rights plan to exclude the merger agreement and the transactions contemplated thereby from its terms.

### ***Banknorth Delaware***

Banknorth Delaware does not have, and does not currently anticipate adopting, a shareholder rights plan. The stockholders agreement and related provisions of the post-transaction certificate of incorporation prohibit Banknorth Delaware from adopting a shareholder rights plan unless it excludes TD and its affiliates from its operation in all respects, and does not impair in any respect the rights of TD or any of its affiliates under the stockholders agreement, including their rights to transfer securities of Banknorth Delaware.

### ***TD***

TD does not have, and does not currently anticipate adopting, a shareholder rights plan.

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**PROPOSAL NO. 3: ADJOURNMENT OF THE SPECIAL MEETING**

In the event that there are not sufficient votes to constitute a quorum or approve the adoption of the merger agreement and the post-transaction certificate of incorporation at the time of the special meeting, these proposals could not be approved unless the meeting was adjourned to a later date or dates in order to permit further solicitation of proxies. Under Banknorth's bylaws, written notice of an adjourned meeting need not be given to shareholders if the date, place and time thereof are announced at the special meeting before adjournment and a new record date is not fixed for the adjourned meeting, which need not be done unless the new meeting date is more than 120 days after the original date of the special meeting.

In order to allow proxies that have been received by Banknorth at the time of the special meeting to be voted for an adjournment, if necessary, Banknorth has submitted the question of adjournment to its shareholders as a separate matter for their consideration. The board of directors of Banknorth recommends that shareholders vote FOR the adjournment proposal.

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**EXPERTS**

The consolidated financial statements of Banknorth as of December 31, 2003 and 2002, and for each of the years in the three-year period ended December 31, 2003, have been incorporated by reference herein from Banknorth's annual report on Form 10-K for the year ended December 31, 2003 in reliance upon the report of KPMG LLP, an independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing. The audit report covering the December 31, 2003 consolidated financial statements refers to a change in accounting for goodwill and other intangible assets and a change in accounting for acquisitions of certain financial institutions.

The consolidated financial statements of TD and its subsidiaries at October 31, 2003 and 2002 and for the years then ended included in TD's Form 40-F for the year ended October 31, 2003 filed with the SEC, which is incorporated by reference in this proxy statement/ prospectus, have been audited by Ernst & Young LLP and PricewaterhouseCoopers LLP, independent auditors, as set forth in their reports appearing therein, and are included in reliance upon such reports, given upon the authority of such firms as experts in accounting and auditing.

**LEGAL MATTERS**

The legality of the TD common shares offered hereby will be passed upon for TD by Osler, Hoskin & Harcourt LLP, Canadian counsel to TD. The legality of the Banknorth Delaware common stock offered hereby will be passed upon for Banknorth Delaware by Elias, Matz, Tiernan & Herrick L.L.P., U.S. counsel to Banknorth Delaware. Simpson Thacher & Bartlett LLP, U.S. counsel to TD, and Elias, Matz, Tiernan & Herrick L.L.P., U.S. counsel to Banknorth and Banknorth Delaware, have each issued an opinion concerning the U.S. federal income tax consequences of the mergers, and Osler, Hoskin & Harcourt LLP, Canadian counsel to TD, has issued an opinion concerning the Canadian income tax consequences of the mergers. In connection with the closing of the mergers, Elias, Matz, Tiernan & Herrick L.L.P., U.S. counsel to Banknorth and Banknorth Delaware, will deliver an opinion concerning the U.S. federal income tax consequences of the migratory merger.

**SHAREHOLDER PROPOSALS**

Whether or not the mergers are completed, we will hold our regular annual meeting of shareholders in 2005. We must receive any proposals of shareholders intended to be presented at our annual meeting of shareholders in 2005 on or before November 22, 2004 in order for the proposals to be eligible for inclusion in our proxy statement and proxy for that meeting. Any shareholder proposals received after November 22, 2004 but on or before January 27, 2005 may be considered for presentation at our annual meeting of shareholders in 2005, although not included in our proxy statement and proxy for that meeting, in accordance with the requirements set forth in our bylaws. Shareholder proposals should be sent to Banknorth Group, Inc., Two Portland Square, P.O. Box 9540, Portland, Maine 04112-9540, Attention: Carol L. Mitchell, Esq., Executive Vice President, General Counsel, Secretary and Clerk. We urge that any shareholder proposals be sent certified mail, return-receipt requested.

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**WHERE YOU CAN FIND MORE INFORMATION**

Banknorth files reports, proxy statements and other information with the SEC as required under the Exchange Act. TD is a foreign private issuer and, under the rules adopted under the Exchange Act, is exempt from some of the requirements of that Act, including the proxy and information provisions of Section 14 of the Exchange Act and the reporting and liability provisions applicable to officers, directors and significant shareholders under Section 16 of the Exchange Act.

You may read and copy any reports, statements or other information filed by TD or Banknorth at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. You can also inspect reports, proxy statements and other information about TD and Banknorth at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

You may also obtain copies of this information by mail from the Public Reference Section of the SEC, 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, at prescribed rates, or from commercial document retrieval services.

The SEC maintains a website that contains reports, proxy statements and other information, including those filed by TD and Banknorth, at <http://www.sec.gov>. You may also access the SEC filings and obtain other information about TD and Banknorth through the websites maintained by TD and Banknorth, which are <http://www.td.com> and <http://www.banknorth.com>, respectively. The information contained in those websites is not incorporated by reference in, or in any way part of, this proxy statement/prospectus.

TD files reports, statements and other information with the Canadian provincial securities administrators, which are available at various of the Canadian provincial securities administrators' public reference rooms. TD filings are also electronically available to the public from the Canadian System for Electronic Document Analysis and Retrieval, the Canadian equivalent of the SEC's EDGAR system, at <http://www.sedar.com>.

After the mergers, TD will furnish to you the same periodic reports that it currently furnishes to TD shareholders in the same manner, including audited annual consolidated financial statements and unaudited quarterly consolidated financial statements, unless you notify TD of your desire not to receive these reports, as well as proxy statements and related materials for annual and special meetings of shareholders. In addition, you will be able to request TD's Form 40-F.

After the mergers, Banknorth Delaware will furnish the same periodic reports that Banknorth currently furnishes to Banknorth shareholders, including audited annual consolidated financial statements and unaudited quarterly consolidated financial statements, unless you notify Banknorth Delaware of your desire not to receive these reports, as well as proxy statements and related materials for annual and special meetings of shareholders. In addition, you will be able to request Banknorth Delaware's Form 10-K.

Banknorth Delaware and TD filed a combined registration statement on Form S-4/F-4 to register with the SEC the TD common shares and Banknorth Delaware common stock to be issued in the mergers. This document is a part of that registration statement and constitutes the prospectus of TD and Banknorth Delaware in addition to being a proxy statement for the Banknorth shareholders.

As allowed by SEC rules, this proxy statement/prospectus does not contain all the information you can find in the registration statement on Form S-4/F-4 filed by Banknorth Delaware and TD and the exhibits to the registration statement. In addition, the SEC allows us to incorporate by reference information into this proxy statement/prospectus, which means that we can disclose important information to you by referring you to other documents filed separately with the SEC. The information incorporated by reference is deemed to be part of this proxy statement/prospectus, except for any information superseded by information in this proxy statement/prospectus. This proxy statement/prospectus incorporates by

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reference the documents set forth below that TD and Banknorth have previously filed with the SEC. These documents contain important information about the companies and their financial condition.

<b>TD FILINGS WITH THE SEC</b> (File No. 001-14446)	<b>PERIOD AND/OR FILING DATE</b>
Annual Report on Form 40-F Report of Foreign Issuer on Form 6-K	Year ended October 31, 2003, as filed December 15, 2003 Filed September 3, 2004, August 26, 2004, May 27, 2004, March 5, 2004, February 27, 2004, February 26, 2004, February 17, 2004, January 23, 2004, January 20, 2004, January 13, 2004 and November 26, 2003
<b>BANKNORTH FILINGS WITH THE SEC</b> (File No. 001-31251)	<b>PERIOD AND/OR FILING DATE</b>
Annual Report on Form 10-K Quarterly Reports on Form 10-Q  Current Reports on Form 8-K	Year ended December 31, 2003, as filed March 2, 2004 For the quarter ended June 30, 2004, as filed August 4, 2004, and for the quarter ended March 31, 2004, as filed on May 5, 2004 and amended May 6, 2004 Filed on October 4, 2004, September 29, 2004, September 24, 2004, September 21, 2004, September 10, 2004, August 31, 2004, July 19, 2004, June 22, 2004, May 5, 2004, May 3, 2004, April 27, 2004, April 26, 2004, April 22, 2004, March 15, 2004, March 3, 2004, February 26, 2004, January 20, 2004, and January 2, 2004 (in each case other than those portions furnished under Item 2.02 or 7.01 of Form 8-K, or their predecessors)

All documents filed by TD and Banknorth pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act from the date of this proxy statement/ prospectus to the date of the Banknorth special meeting will also be deemed to be incorporated herein by reference.

In addition, the description of TD common shares contained in TD's registration statements under Section 12 of the Exchange Act is incorporated by reference, and the description of Banknorth's common stock contained in Banknorth's registration statements under Section 12 of the Exchange Act is incorporated by reference.

You may also obtain copies of any document incorporated in this proxy statement/ prospectus, without charge, by requesting them in writing or by telephone from the appropriate company at the following addresses:

**Banknorth Group, Inc.**  
Investor Relations  
Two Portland Square  
P.O. Box 9540  
Portland, Maine 04112-9540  
(207) 761-8517

**The Toronto-Dominion Bank**  
Investor Relations  
TD Bank Financial Group  
66 Wellington Street West  
Toronto, Ontario, Canada M5K 1A2  
(416) 308-9030

Neither TD nor Banknorth has authorized anyone to give any information or make any representation about the mergers that is different from, or in addition to, that contained in this proxy statement/ prospectus or in any of the materials that are incorporated by reference in this proxy statement/ prospectus.

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Therefore, if anyone does give you information of this sort, you should not rely on it. If you are in a jurisdiction where offers to exchange or sell, or solicitations of offers to exchange or purchase, the securities offered by this proxy statement/ prospectus are unlawful, or if you are a person to whom it is unlawful to make these types of offers, then the offer presented in this proxy statement/ prospectus does not extend to you. The information contained in this proxy statement/ prospectus speaks only as of the date of this document unless the information specifically indicates that another date applies.

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**APPENDIX A**

**AMENDED AND RESTATED**  
**AGREEMENT AND PLAN OF MERGER**  
**among**  
**THE TORONTO-DOMINION BANK,**  
**BERLIN MERGER CO.,**  
**BANKNORTH GROUP INC.**  
**and**  
**BANKNORTH DELAWARE INC.**  
**Dated as of August 25, 2004**

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**AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER**

This AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER, dated as of August 25, 2004 (as amended, supplemented, restated or otherwise modified from time to time, this *Agreement* ), is entered into by and among The Toronto-Dominion Bank, a Canadian chartered bank ( *TD* ), Berlin Merger Co., a Delaware corporation and a wholly owned subsidiary of TD ( *Berlin Mergerco* ), Banknorth Group, Inc., a Maine corporation ( *Banknorth* ), and Banknorth Delaware Inc., a Delaware corporation and wholly owned subsidiary of Banknorth ( *Banknorth Delaware* ).

WHEREAS, TD, Berlin Mergerco, Banknorth and Banknorth Delaware have entered into an Agreement and Plan of Merger dated as of August 25, 2004 (the *Original Agreement* ).

WHEREAS, in accordance with Section 8.3 thereof, TD, Berlin Mergerco, Banknorth and Banknorth Delaware wish to amend and restate the Original Agreement in its entirety.

WHEREAS, the respective Boards of Directors of each of TD and Banknorth have determined that it is in the best interests of their respective companies and shareholders to consummate the business combination transactions provided for herein.

WHEREAS, it is proposed that in the first step of the transactions contemplated by this Agreement, in accordance with Article I of this Agreement, Banknorth will effect a migratory merger by merging with and into Banknorth Delaware (the *Migratory Merger* ). Banknorth Delaware shall be the surviving corporation in the Migratory Merger, and shall continue its corporate existence under the laws of the State of Delaware. The parties intend (i) to treat the Migratory Merger as a transaction qualifying as a tax-free reorganization under Section 368 of the Internal Revenue Code of 1986, as amended (the *Code* ) and (ii) for this Agreement to constitute a plan of reorganization within the meaning of Sections 354 and 368 of the Code.

WHEREAS, in the second step of the transactions contemplated by this Agreement, immediately after consummation of the Migratory Merger and in accordance with Article II of this Agreement, Berlin Mergerco will merge with and into Banknorth Delaware, with Banknorth Delaware being the surviving corporation in such merger (the *Acquisition Merger* and, together with the Migratory Merger, the *Mergers* ).

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I

THE MIGRATORY MERGER

SECTION 1.1. *The Migratory Merger.* Subject to the terms and conditions of this Agreement, in accordance with the Maine Business Corporation Act (the *MBCA* ) and the Delaware General Corporation Law (the *DGCL* ), at the Migratory Merger Effective Time (as defined in Section 1.2), Banknorth shall be merged with and into Banknorth Delaware. Banknorth Delaware shall continue as the surviving corporation of the Migratory Merger and shall continue its corporate existence under the laws of the State of Delaware. Upon consummation of the Migratory Merger, the separate corporate existence of Banknorth shall terminate.

SECTION 1.2. *Effective Time of the Migratory Merger.* The Migratory Merger shall become effective as set forth in the certificate of merger relating to the Migratory Merger as contemplated by the DGCL (the *Certificate of Migratory Merger* ), which shall be filed with the Secretary of State of the State of Delaware, and the articles of merger relating to the Migratory Merger as contemplated by the MBCA (the *Articles of Migratory Merger* and, together with the Certificate of Migratory Merger, the *Migratory Merger Certificates* ), which shall be filed with the Secretary of State of the State of Maine. The *Migratory Merger Effective Time* shall mean the time at which the Migratory Merger becomes effective, as set forth in the Migratory Merger Certificates.

SECTION 1.3. *Effects of the Migratory Merger.* At and after the Migratory Merger Effective Time, the Migratory Merger shall have the effects set forth in the MBCA and the DGCL.

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SECTION 1.4. *Closing of the Migratory Merger.* Subject to the terms and conditions of this Agreement, the closing of the Migratory Merger will occur immediately prior to, on the same day as, and at the same location as the Closing (as defined in Section 2.4).

SECTION 1.5. *Certificate of Incorporation.* At the Migratory Merger Effective Time, the Certificate of Incorporation of Banknorth Delaware, as in effect immediately prior to the Migratory Merger Effective Time, in the form thereof set forth in Exhibit A, shall be the Certificate of Incorporation of Banknorth Delaware as the surviving corporation of the Migratory Merger until thereafter amended as provided by this Agreement, the DGCL and such Certificate of Incorporation.

SECTION 1.6. *By-laws.* At the Migratory Merger Effective Time, the By-laws of Banknorth Delaware, as in effect immediately prior to the Migratory Merger Effective Time, in the form thereof set forth as Exhibit B, shall be the By-laws of Banknorth Delaware as the surviving corporation until thereafter amended as provided by the DGCL, its Certificate of Incorporation and such By-laws.

SECTION 1.7. *Board of Directors.* Subject to Section 2.7, the directors of Banknorth immediately prior to the Migratory Merger Effective Time shall be the directors of Banknorth Delaware as the surviving corporation in the Migratory Merger.

SECTION 1.8. *Effect on Capital Stock.* At the Migratory Merger Effective Time, by virtue of the Migratory Merger and without any action on the part of Banknorth, Banknorth Delaware, or the holders of any of the following securities:

(a) Each share of common stock, par value \$0.01, of Banknorth ( *Banknorth Common Stock* ) either issued and outstanding or owned directly by Banknorth as treasury stock, in each case, immediately prior to the Migratory Merger Effective Time, will be converted into one fully paid and nonassessable share of common stock, \$0.01 par value, of Banknorth Delaware ( *Banknorth Delaware Common Stock* ).

(b) Each share of capital stock of Banknorth Delaware issued and outstanding immediately prior to the Migratory Merger Effective Time shall be cancelled and cease to be outstanding, without payment of any consideration therefor, and shall cease to exist.

ARTICLE II

THE ACQUISITION MERGER

SECTION 2.1. *The Acquisition Merger.* Subject to the terms and conditions of this Agreement, in accordance with the DGCL, at the Effective Time (as defined in Section 2.2 hereof), Berlin Mergerco shall merge with and into Banknorth Delaware. Banknorth Delaware shall be the surviving corporation (hereinafter sometimes referred to as the *Surviving Corporation* ) in the Acquisition Merger, and shall continue its corporate existence under the laws of the State of Delaware. Upon consummation of the Acquisition Merger, the separate corporate existence of Berlin Mergerco shall terminate.

SECTION 2.2. *Effective Time of the Acquisition Merger.* The Acquisition Merger shall become effective as set forth in the certificate of merger relating to the Acquisition Merger (the *Certificate of Merger* ) which shall be filed with the Secretary of State of the State of Delaware. The term *Effective Time* shall mean the time when the Acquisition Merger becomes effective, as set forth in the Certificate of Merger.

SECTION 2.3. *Effects of the Acquisition Merger.* At and after the Effective Time, the Acquisition Merger shall have the effects set forth in the DGCL.

SECTION 2.4. *Closing of the Acquisition Merger.* Subject to the terms and conditions of this Agreement, the closing of the Acquisition Merger (the *Closing* ) will take place at 10:00 a.m. Eastern time on the date that is the second Business Day after the satisfaction or waiver (subject to applicable law) of the conditions set forth in Article VII hereof, other than conditions which by their terms are to be satisfied at Closing, or such other date or time as the parties may mutually agree (the *Closing Date* ). The Closing shall be held at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York

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10017, unless another place is agreed upon in writing by the parties. For purposes of this Agreement, a *Business Day* shall mean any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in Portland, Maine, USA or Toronto, Ontario, Canada.

SECTION 2.5. *Certificate of Incorporation.* At the Effective Time, the Certificate of Incorporation of Banknorth Delaware as in effect immediately prior to the Effective Time shall be amended so as to read in its entirety in the form thereof set forth in Exhibit C, and shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended as provided by the DGCL and such Certificate of Incorporation.

SECTION 2.6. *By-laws.* At the Effective Time, the By-laws of Banknorth Delaware as in effect immediately prior to the Effective Time shall be amended and restated so as to read in their entirety in the form set forth in Exhibit D, and shall be the By-laws of the Surviving Corporation until thereafter amended as provided by the DGCL, the Certificate of Incorporation and such By-laws.

SECTION 2.7. *Board of Directors.* As of the Effective Time, the Board of Directors of Banknorth Delaware (the *Board*) shall initially be composed of up to 19 Directors consisting of (a) the individuals constituting the Board of Directors of Banknorth on the date of the Closing (provided that such number does not exceed 14, in which case Banknorth shall take all requisite action to designate no more than 14 of such individuals to become directors of Banknorth Delaware pursuant to this Section 2.7), including the Chief Executive Officer of Banknorth, who shall be Class A Directors, and (b) up to five individuals designated by TD (and, to the extent not directors or executive officers of TD or its affiliates as of the date hereof, reasonably acceptable to Banknorth) in writing to Banknorth Delaware not less than 15 days prior to the expected date of Closing, (or, if such period of notice is not practicable under the circumstances because an individual who has been so designated is no longer available for such service, such prior notice as is practicable), who shall be Class B Directors.

SECTION 2.8. *Effect on Capital Stock.* At the Effective Time, by virtue of the Acquisition Merger and without any action on the part of TD, Banknorth Delaware, Berlin Mergerco or the holders of any of the following securities:

(a) Subject to Section 2.9(g), the shares of Banknorth Delaware Common Stock issued and outstanding immediately prior to the Effective Time after giving effect to the Migratory Merger (other than any shares of Banknorth Delaware Common Stock to be canceled pursuant to Section 2.8(c)) with respect to each holder of record of such shares, shall be converted into the right to receive the following (together, the *Merger Consideration*):

(i) a number of fully paid and nonassessable common shares, without par value, of TD ( *TD Common Shares* ) equal to (x) 0.2351 (the *TD Exchange Ratio* ) multiplied by (y) the number of shares of Banknorth Delaware Common Stock held by such holder of record (the *TD Stock Consideration* );

(ii) an amount in cash equal to (x) \$12.24 in cash multiplied by (y) the number of shares of Banknorth Delaware Common Stock held by such holder of record (the *Cash Consideration* and, together with the TD Stock Consideration, the *TD Consideration* ); and.

(iii) a number of fully paid and non-assessable shares of Banknorth Delaware Common Stock equal to (x) 0.49 multiplied by (y) the number of shares of Banknorth Delaware Common Stock held by such holder of record (the *Banknorth Delaware Consideration* ).

(b) All of the shares of common stock, par value \$0.01 per share, of Berlin Mergerco (the *Berlin Mergerco Common Stock* ) issued and outstanding immediately prior to the Effective Time shall be converted into and become one fully paid and nonassessable share of Banknorth Delaware Common Stock.

(c) Each share of Banknorth Delaware Common Stock owned by Banknorth Delaware or TD (other than, in each case, shares in trust accounts, managed accounts and the like for the benefit of customers or shares held in satisfaction of a debt previously contracted), in each case immediately prior to

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the Effective Time, shall be cancelled and retired and shall cease to exist, without payment of any consideration therefor, and no Merger Consideration or other consideration shall be delivered in exchange therefor.

(d) If at any time between the date of this Agreement and the Effective Time, TD shall pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, the TD Common Shares, the TD Exchange Ratio shall be multiplied by a fraction, the numerator of which shall be the number of TD Common Shares outstanding immediately after, and the denominator of which shall be the number of such shares outstanding immediately before, the occurrence of such event, and the resulting product shall from and after the date of such event be the TD Exchange Ratio, subject to further adjustment in accordance with this sentence.

(e) In exchange for, and in consideration of, the initial deposit of the aggregate Cash Consideration and the certificates representing TD Shares for the benefit of Banknorth Delaware pursuant to this Agreement, as required by Section 2.9(b), and the payment of \$10 by TD to Banknorth Delaware, Banknorth Delaware will issue to TD, at the Effective Time, (x) the number of shares of Banknorth Delaware Common Stock (after taking into account the share of Banknorth Delaware Common Stock issuable to TD pursuant to Section 2.8(b)) equal to the product of (A) the number of shares of Banknorth Delaware Common Stock issued and outstanding immediately prior to the Effective Time, after giving effect to the Migratory Merger, multiplied by (B) 0.51 and (y) one share of Class B Common Stock, par value \$0.01 per share, of Banknorth Delaware (the *Class B Common Stock* ).

SECTION 2.9. *Surrender of Shares.* (a) TD shall appoint an agent designated by TD and approved by Banknorth (which approval shall not be unreasonably withheld) (the *Exchange Agent* ) for the purpose of exchanging certificates that immediately prior to the Migratory Merger Effective Time represented shares of Banknorth Common Stock ( *Certificates* ) and delivering the Merger Consideration, as described below.

(b) At or prior to the Effective Time, (i) TD shall deposit, or shall cause to be deposited, with the Exchange Agent (A) an estimated amount of cash sufficient to pay the aggregate Cash Consideration and any cash that may be payable in lieu of any fractional shares pursuant to Section 2.9(g) and (B) certificates representing the TD Common Shares issuable in accordance with the terms of Section 2.8(a)(i) in exchange for shares of Banknorth Delaware Common Stock, and (ii) Banknorth Delaware shall deposit, or cause to be deposited, with the Exchange Agent certificates representing the Banknorth Delaware Consideration. The Exchange Agent shall invest such deposited cash as directed by TD; *provided* that such investments shall be in obligations of or guaranteed by the United States of America, in commercial paper obligations rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, respectively, or in certificates of deposit, bank repurchase agreements or banker's acceptances of commercial banks with capital exceeding \$500 million. Any net profit resulting from, or interest or income produced by, such investments will be payable to TD.

(c) As soon as reasonably practicable after the Effective Time, and in no event more than five Business Days thereafter, the Exchange Agent shall mail to each holder of record of Certificates a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and have such other provisions as TD and Banknorth shall reasonably specify) and instructions for use in effecting the surrender of the Certificates in exchange for payment of the Merger Consideration therefor. Upon proper surrender of a Certificate for exchange and cancellation to the Exchange Agent, together with a letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to such instructions, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration for each share formerly represented by such Certificate and such Certificate so surrendered shall forthwith be cancelled; *provided, however*, that the holders of such Certificates shall be permitted to specifically identify on such letter of transmittal those shares of Banknorth Delaware Common Stock that are to be converted into the TD Consideration and those shares of Banknorth Delaware Common Stock that are to be converted into the Banknorth Delaware Consideration. No interest will be paid or accrued

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for the benefit of holders of the Certificates on the Merger Consideration payable upon the surrender of the Certificates. Until so surrendered, each such Certificate, following the Effective Time, shall represent for all purposes only the right to receive the Merger Consideration.

(d) No dividends or other distributions with respect to Banknorth Delaware Common Stock or TD Common Shares with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to shares of Banknorth Delaware Common Stock or TD Common Shares, as applicable, that such holder would be entitled to receive upon surrender of such Certificate and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.9(g) until such holder shall surrender such Certificate in accordance with this Article II. After the surrender of a Certificate in accordance with this Article II, such holder thereof entitled to receive Banknorth Delaware Common Stock or TD Common Shares shall be entitled to receive any such dividends or other distributions, without any interest thereon, with a record date after the Effective Time and which theretofore had become payable with respect to whole shares of Banknorth Delaware Common Stock or TD Common Shares, as applicable, that such holder is entitled to receive pursuant to Section 2.8(a).

(e) If the payment of the Merger Consideration is to be made to a person other than the registered holder of the Certificate surrendered in exchange therefor, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed (or accompanied by an appropriate instrument of transfer) and otherwise in proper form for transfer, and that the person requesting such payment shall pay to the Exchange Agent in advance any applicable stock transfer or other Taxes or shall establish to the reasonable satisfaction of the Exchange Agent that such Taxes have been paid or are not payable.

(f) At and after the Migratory Merger Effective Time, no further transfers of shares of Banknorth Common Stock that were issued and outstanding immediately prior to the Migratory Merger Effective Time shall be recorded on the stock transfer books of Banknorth or Banknorth Delaware. If, after the Effective Time, Certificates are presented for transfer to the Exchange Agent, they shall be cancelled and exchanged for the Merger Consideration as provided in this Article II.

(g) Notwithstanding any other provision of this Agreement, neither certificates nor scrip for fractional Banknorth Delaware Common Stock or TD Common Shares shall be issued in the Acquisition Merger. Each holder of Banknorth Delaware Common Stock who otherwise would have been entitled to a fraction of a share of Banknorth Delaware Common Stock or a fraction of a TD Common Share, as the case may be, shall receive in lieu thereof cash (without interest) in an amount determined by multiplying the fractional share interest to which such holder would otherwise be entitled (after taking into account all shares of Banknorth Delaware Common Stock owned by such holder immediately prior to the Effective Time and converted into the Banknorth Delaware Consideration or the TD Consideration, as applicable) by (i) in the case of a fractional interest in a share of Banknorth Delaware Common Stock, the Banknorth Closing Average Price or (ii) in the case of a fractional interest in a TD Common Share, the TD Weighted Average Share Price. The *Banknorth Closing Average Share Price* shall mean the average of the closing sale prices for the Banknorth Delaware Common Stock on the New York Stock Exchange, based on information reported in *The Wall Street Journal*, for the five trading days immediately following the Closing Date. The *TD Weighted Average Share Price* shall mean the average of the daily weighted average prices for the TD Common Shares on the Toronto Stock Exchange, based on the trading data reported in *The Toronto Stock Exchange Daily Record*, for the five trading days ending on the second trading day prior to the Closing Date (rounded to the nearest one-thousandth and converted into United States dollars using the spot exchange rate reported in *The Wall Street Journal* (or such other publication as may be mutually agreed to by TD and Banknorth) on the next Business Day (such conversion rate, the *Conversion Rate*)). No such holder shall be entitled to dividends, voting rights or any other rights in respect of any fractional share of Banknorth Delaware Common Stock or any fractional TD Common Share.

(h) At any time following the date which is twelve months after the Effective Time, TD shall be entitled to require the Exchange Agent to deliver to it any TD Common Shares or funds (including any interest received with respect thereto) which have been made available to the Exchange Agent and which

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have not been disbursed to holders of Certificates and thereafter such holders shall be entitled to look to TD and the Surviving Corporation (subject to abandoned property, escheat or other similar laws) only as general creditors thereof with respect to the applicable Merger Consideration (and any unpaid dividends or distributions with respect to TD Common Shares or Banknorth Delaware Common Stock, as the case may be) payable upon due surrender of their Certificates. TD and the Surviving Corporation shall share equally all charges and expenses, including those of the Exchange Agent, in connection with the exchange of shares of Banknorth Delaware Common Stock for the Merger Consideration.

(i) In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by TD, the posting by such person of a bond in such amount as TD may determine is reasonably necessary as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration deliverable in respect thereof pursuant to this Agreement.

(j) TD or the Exchange Agent will be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Banknorth Delaware Common Stock such amounts as TD or the Exchange Agent are required to deduct and withhold with respect to the making of such payment under the Code, or any applicable provision of any other U.S. federal, state, local or non-U.S. tax law. To the extent that such amounts are properly withheld by TD or the Exchange Agent, such withheld amounts will be treated for all purposes of this Agreement as having been paid to the holder of the Banknorth Delaware Common Stock in respect of whom such deduction and withholding were made by TD or the Exchange Agent.

(k) Upon the delivery of the certificates that immediately prior to the Acquisition Merger represented shares of Berlin Mergerco Common Stock, duly endorsed in blank or otherwise in form acceptable for transfer on the books of Banknorth Delaware, and the deposit of cash and certificates representing TD Common Shares as contemplated by Section 2.9(b), Banknorth Delaware shall deliver to TD in exchange therefor the number of shares of Banknorth Delaware Common Stock and the share of Class B Common Stock to which TD is entitled pursuant to Sections 2.8(b) and 2.8(e).

SECTION 2.10. *Treatment of Equity-Based Compensation.* (a) At the Migratory Merger Effective Time, each option granted by Banknorth to purchase shares of Banknorth Common Stock (each, a *Banknorth Option* ) which is outstanding and unexercised immediately prior thereto, whether vested or unvested, shall cease to represent a right to acquire shares of Banknorth Common Stock and shall be converted into an option to acquire, on the same terms and conditions as were applicable under the Banknorth Option, the number of shares of Banknorth Delaware Common Stock equal to the number of shares of Banknorth Common Stock subject to such Banknorth Option, at the per share exercise price specified in such Banknorth Option; *provided, however*, that in the case of any Banknorth Option to which Section 421 of the Code applies by reason of its qualification under Section 422 of the Code, the option price, the number of shares subject to such option and the terms and conditions of exercise of such option shall be determined in a manner consistent with the requirements of Section 424(a) of the Code.

(b) At the Migratory Merger Effective Time, each stock account under the Banknorth deferred compensation plan shall cease to represent shares of Banknorth Common Stock and shall represent the number of shares of Banknorth Delaware Common Stock equal to the number of shares of Banknorth Common Stock subject to such stock account.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BANKNORTH

Prior to the execution and delivery of this Agreement, Banknorth has delivered to TD a schedule (the *Banknorth Disclosure Schedule* ) setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more of Banknorth's representations or warranties contained in this Article III, or to one of

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Banknorth's covenants contained in Article V. Except as set forth in the corresponding section of the Banknorth Disclosure Schedule, Banknorth hereby represents and warrants to TD as follows:

SECTION 3.1. *Corporate Organization.*

(a) Banknorth is a corporation duly organized, validly existing and in good standing under the laws of the State of Maine. Banknorth is a bank holding company and a financial holding company registered under the United States Bank Holding Company Act of 1956, as amended (the *BHC Act*). Banknorth has all requisite corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted. Banknorth is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not have nor reasonably be expected to have a Material Adverse Effect (as defined below) on Banknorth. As used in this Agreement, the term *Material Adverse Effect* means, with respect to Banknorth or TD, as the case may be, (A) a material adverse effect on the business, results of operations or financial condition of such party and its Subsidiaries taken as a whole or (B) a material adverse effect on such party's ability to consummate the transactions contemplated hereby on a timely basis; provided, however, that in determining whether a Material Adverse Effect has occurred, there shall be excluded any effect on the referenced party the cause of which is (i) any change after the date of this Agreement in (w) laws, rules or regulations of general applicability or published interpretations thereof by courts or governmental authorities, (x) accounting principles generally accepted in the U.S. ( *U.S. GAAP* ), (y) in the case of TD only, Canadian generally accepted accounting principles ( *Canadian GAAP* ) or (z) regulatory accounting requirements, in any such case applicable to banks or their holding companies generally, (ii) the announcement of this Agreement or any action or omission of either party or any Subsidiary thereof required under this Agreement or taken or omitted to be taken with the express written permission of the other party, (iii) any changes after the date of this Agreement in general economic or capital market conditions affecting banks or their holding companies generally, or (iv) changes or events, after the date hereof, affecting the financial services industry generally and not specifically relating to TD or Banknorth or their respective Subsidiaries, as the case may be; *provided*, that a decrease in the trading or market prices of a party's capital stock shall not be considered, by itself, to constitute a Material Adverse Effect.

(b) Banknorth Delaware is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Banknorth Delaware was formed solely for the purpose of engaging in the transactions contemplated hereby and has engaged in no other business other than in connection with the transactions contemplated by this Agreement.

(c) The copies of the amended and restated articles of incorporation (the *Amended Articles*) and the by-laws of Banknorth (the *Banknorth By-Laws*) and the certificate of incorporation and by-laws of Banknorth Delaware that have previously been made available to TD are true, complete and correct copies of such documents as in effect as of the date of this Agreement.

(d) Except as set forth in Section 3.1(d) of the Banknorth Disclosure Schedule, each Subsidiary of Banknorth (i) is duly organized and validly existing as a national bank, corporation or partnership and is in good standing under the laws of its jurisdiction of organization, (ii) is duly licensed or qualified to do business and is in good standing in all jurisdictions (whether federal, state, local or foreign) where its ownership or leasing of property or the conduct of its business requires it to be so licensed or qualified and in which the failure to be so qualified would have or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Banknorth and (iii) has all requisite corporate or other power and authority to own or lease its properties and assets and to carry on its business as now conducted. The articles of incorporation, by-laws and similar governing documents of each Subsidiary of Banknorth, copies of which have been made available to TD, are true, complete and correct as of the date of this Agreement. *Subsidiary* means, with respect to any person, any corporation, partnership, joint venture, limited liability company or any other entity (i) of which such person or a subsidiary of such person is a general partner or (ii) at least a majority of the securities or other interests

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of which having by their terms ordinary voting power to elect a majority of the Board of Directors or persons performing similar functions with respect to such entity is directly or indirectly owned by such person and/or one or more subsidiaries thereof.

(e) Except for its ownership of Banknorth, NA, Banknorth does not own, either directly or through its Subsidiaries, any stock or equity interest in any depository institution (as defined in 12 U.S.C. Section 1813(c)(1)). The deposits of Banknorth, NA are insured by the Federal Deposit Insurance Corporation (the *FDIC*) through the Bank Insurance Fund and the Savings Association Insurance Fund to the fullest extent permitted by law.

SECTION 3.2. *Capitalization.*

(a) As of the date of this Agreement, the authorized capital stock of Banknorth consists of 400,000,000 shares of Banknorth Common Stock and 5,000,000 shares of preferred stock, par value \$0.01 per share, of Banknorth (the *Banknorth Preferred Stock*). As of the date of this Agreement, there were 173,538,386 shares of Banknorth Common Stock outstanding, no shares of Banknorth Preferred Stock outstanding and 18,735,160 shares of Banknorth Common Stock held in Banknorth's treasury. No other shares of Banknorth Common Stock or Banknorth Preferred Stock were issued or outstanding. As of the date of this Agreement, no shares of Banknorth Common Stock or Banknorth Preferred Stock were reserved for issuance, except for (i) an aggregate of 17,545,922 shares of Banknorth Common Stock reserved for issuance upon the exercise of stock options pursuant to Banknorth's 2003 Equity Incentive Plan, 1996 Equity Incentive Plan and 1995 Stock Option Plan for Non-employee Directors (the *Banknorth Stock Option Plans*), (ii) an aggregate of 1,137,057 shares of Banknorth Common Stock reserved for issuance pursuant to Banknorth's Employee Stock Purchase Plan and (iii) an aggregate of 6,147,658 shares of Banknorth Common Stock reserved for issuance pursuant to an Agreement and Plan of Merger, dated as of June 20, 2004, between Banknorth and BostonFed Bancorp, Inc. (the *BostonFed Merger Agreement*). As of the date of this Agreement, the authorized capital stock of Banknorth Delaware consisted of 1,000 shares of Banknorth Delaware Common Stock, all of which were issued, outstanding and owned beneficially and of record by Banknorth. All of the issued and outstanding shares of Banknorth Capital Stock and of Banknorth Delaware Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof. No Subsidiary of Banknorth owns any shares of Banknorth Common Stock (other than shares in trust accounts, managed accounts and the like for the benefit of customers or shares held in satisfaction of a debt previously contracted).

(b) As of the date of this Agreement, except as set forth above or in Section 3.2(b) of the Banknorth Disclosure Schedule and except for the Amended and Restated Rights Agreement, dated as of September 12, 1989 and amended and restated as of July 27, 1999 and as of July 25, 2000 (the *Banknorth Rights Agreement*), between Banknorth and American Stock Transfer and Trust Company, as Rights Agent, Banknorth does not have and is not bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase or issuance of any shares of Banknorth Common Stock or Banknorth Preferred Stock or any other equity securities of Banknorth or any securities representing the right to purchase or otherwise receive any shares of Banknorth capital stock (including any rights plan or agreement). Section 3.2(b) of the Banknorth Disclosure Schedule contains a list setting forth as of the date of this Agreement all outstanding stock options pursuant to the Banknorth Stock Option Plans, the names of the optionees, the date each such option was granted, the number of shares subject to each such option, the expiration date of each such option, any vesting schedule with respect to an option which is not yet fully vested, and the price at which each such option may be exercised.

(c) Section 3.2(c) of the Banknorth Disclosure Schedule lists the name, jurisdiction of incorporation, authorized and outstanding shares of capital stock and record and beneficial owners of such capital stock for each Subsidiary of Banknorth. Except as set forth in Section 3.2(c) of the Banknorth Disclosure Schedule, Banknorth owns, directly or indirectly, all of the issued and outstanding shares of capital stock of or all other equity interests in each of Banknorth's Subsidiaries, free and clear of any liens, charges,

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encumbrances, adverse rights or claims and security interests whatsoever ( *Liens* ), and all of such shares are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof (except, in the case of Banknorth, NA, as provided in 12 U.S.C. Section 55). Neither Banknorth nor any Subsidiary thereof has or is bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase, sale or issuance of any shares of capital stock or any other equity security of any Subsidiary of Banknorth or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of any such Subsidiary.

(d) Except (i) as disclosed in Section 3.2(d) of the Banknorth Disclosure Schedule, (ii) for Banknorth's ownership in its Subsidiaries set forth in Section 3.2(c) of the Banknorth Disclosure Schedule, (iii) for securities held for the benefit of third parties in trust accounts, managed accounts and the like for the benefit of customers, (iv) for securities acquired after the date of this Agreement in satisfaction of debts previously contracted in good faith and (v) as would result from the consummation of the transactions contemplated by the BostonFed Merger Agreement, neither Banknorth nor any of its Subsidiaries beneficially owns or controls, directly or indirectly, any shares of stock or other equity interest in any corporation, firm, partnership, joint venture or other entity.

(e) No bonds, debentures, notes or other indebtedness having the right to vote on any matters on which Banknorth shareholders may vote ( *Voting Debt* ) are outstanding.

SECTION 3.3. *Authority; No Violation.*

(a) Each of Banknorth and Banknorth Delaware has full corporate power and authority to execute and deliver this Agreement and the Amended and Restated Stockholders Agreement which was entered into by Banknorth, Banknorth Delaware and TD concurrently with the execution and delivery of this Agreement, in the form of Exhibit E hereto (as amended, supplemented, restated or otherwise modified from time to time, the *Stockholders Agreement* ), and the agreements and instruments contemplated hereby and thereby, and to perform its obligations hereunder and thereunder and, subject to (i) the approval of this Agreement with respect to the Migratory Merger by the affirmative vote of the holders of a majority of the outstanding shares of Banknorth Common Stock (the *Required Banknorth Vote* ) and (ii) the adoption of this Agreement with respect to the Mergers by Banknorth as the sole stockholder of Banknorth Delaware at a meeting of such sole stockholder (the *Banknorth Delaware Required Vote* ), to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement, the Stockholders Agreement and the agreements and instruments contemplated hereby and thereby and the performance and consummation of the transactions contemplated hereby and thereby have been duly and validly approved by all requisite corporate and stockholder action of Banknorth and Banknorth Delaware, subject to (i) the approval of this Agreement with respect to the Migratory Merger by the Required Banknorth Vote in the case of the consummation of the Migratory Merger and (ii) the adoption of this Agreement with respect to the Mergers by the Banknorth Delaware Required Vote in the case of the consummation of the Mergers, and no other corporate or stockholder proceedings on the part of either Banknorth or Banknorth Delaware are necessary pursuant to the Amended Articles, the Banknorth By-laws or the MBCA to approve this Agreement, the Stockholders Agreement or the agreements and instruments contemplated hereby or thereby or to perform and consummate the transactions so contemplated. This Agreement has been duly and validly executed and delivered by Banknorth and Banknorth Delaware and (assuming due authorization, execution and delivery by TD and Berlin Mergerco) constitutes a valid and binding obligation of Banknorth and Banknorth Delaware, enforceable against Banknorth and Banknorth Delaware in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

(b) Except as set forth in Section 3.3(b) of the Banknorth Disclosure Schedule, neither the execution and delivery of this Agreement or the Stockholders Agreement by Banknorth and Banknorth Delaware nor the performance and consummation by Banknorth and Banknorth Delaware of the transactions contemplated hereby or thereby, nor compliance by Banknorth and Banknorth Delaware with any of the terms or provisions hereof or thereof, will (i) violate any provision of the Amended Articles or the Banknorth By-laws or any of

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the similar governing documents of any of its Subsidiaries or (ii) assuming that the consents and approvals referred to in Section 3.4 are duly obtained, (x) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Banknorth, any of its Subsidiaries or any of their respective properties or assets, or (y) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Banknorth or any of its Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Banknorth or any of its Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound or affected, except (in the case of clause (y) above) for such violations, conflicts, breaches, defaults or other events which, either individually or in the aggregate, will not have and would not reasonably be expected to have a Material Adverse Effect on Banknorth.

(c) Banknorth and its Board of Directors have taken all action necessary, including by executing and delivering Amendment No. 1 to the Banknorth Rights Agreement in the form set forth in Exhibit F hereto, to (i) render the preferred stock purchase rights issued pursuant to the Banknorth Rights Agreement (the *Banknorth Rights*) inapplicable to this Agreement, the Stockholders Agreement and the transactions contemplated hereby and thereby, including, without limitation, the Migratory Merger, and (ii) ensure that (A) neither TD nor any of its Affiliates or Associates (as defined in the Banknorth Rights Agreement) is or will become an Acquiring Person (as defined in the Banknorth Rights Agreement) by reason of or as a result of the approval, execution, delivery or adoption of this Agreement or the Stockholders Agreement or the approval, adoption or consummation of the Mergers or any other transaction contemplated hereby or thereby, (B) neither a Shares Acquisition Date nor a Distribution Date (in each case as defined in the Banknorth Rights Agreement) shall occur by reason of or as a result of the approval, execution, delivery or adoption of this Agreement or the Stockholders Agreement or the approval, adoption or consummation of the Mergers or any other transaction contemplated hereby or thereby, (C) the Banknorth Rights shall not become exercisable or separate from the shares of Banknorth Common Stock to which they are attached by reason of or as a result of the approval, execution, delivery or adoption of this Agreement or the Stockholders Agreement or the approval, adoption or consummation of the Mergers or any other transaction contemplated hereby or thereby and (D) the Banknorth Rights shall expire immediately prior to the Migratory Merger Effective Time.

(d) Amendment No. 1 to the Banknorth Rights Agreement has been duly and validly executed and delivered by Banknorth and constitutes the valid and binding obligation of Banknorth enforceable against Banknorth in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally, and such amendment shall remain in full force and effect at all times from and after the date hereof.

(e) The Stockholders Agreement has been duly and validly executed and delivered by Banknorth and Banknorth Delaware and (assuming due authorization, execution and delivery by TD) constitutes a valid and binding obligation of Banknorth and Banknorth Delaware enforceable against Banknorth and Banknorth Delaware in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

(f) No holder of any shares of capital stock of Banknorth will be entitled to any dissenters or appraisal rights pursuant to Chapter 13 of the Maine Business Corporation Act in connection with the Mergers or the other transactions contemplated hereby.

SECTION 3.4. *Consents and Approvals.* Except for (i) the approval of this Agreement with respect to the Migratory Merger by the Required Banknorth Vote, (ii) the adoption of this Agreement with respect to the Mergers by the Banknorth Delaware Required Vote, (iii) approval of the listing of the TD Common Shares to be issued in the Acquisition Merger on the Toronto Stock Exchange and the New

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York Stock Exchange, (iv) approval of the listing of the Banknorth Delaware Common Stock to be issued in the Migratory Merger on the New York Stock Exchange, (v) the filing of applications and notices, as applicable, with the Federal Reserve Board under the BHC Act and approval of such applications and notices; (vi) the filing with the United States Securities and Exchange Commission (the *SEC*) of a proxy statement in definitive form relating to the meeting of the shareholders of Banknorth to be held to vote on the adoption of this Agreement with respect to the Migratory Merger (the *Proxy Statement/ Prospectus*) and the filing with, and declaration of effectiveness by, the SEC of the combined registration statement on Form F-4 relating to the TD Common Shares to be issued in the Acquisition Merger and on Form S-4 with respect to the shares of Banknorth Delaware Common Stock to be issued in the Migratory Merger (the *Registration Statement*) in which the Proxy Statement/ Prospectus will be included as a prospectus, and any related filings or approvals under applicable state securities or blue sky laws, (vii) the filing of the Migratory Merger Certificates and the Certificate of Merger with the Secretaries of State of the States of Maine and Delaware, as applicable, pursuant to the MBCA and the DGCL, as applicable, (viii) the consents and approvals set forth in Section 3.4 of the Banknorth Disclosure Schedule, (ix) any notices or filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the *HSR Act*), (x) approval by the Superintendent of Financial Institutions (Canada) under the Bank Act (Canada) of (1) the acquisition by TD of a substantial investment in each direct subsidiary of Banknorth that carries on a financial services activity and (2) the issuance of the TD Common Shares constituting the aggregate TD Stock Consideration (the *OSFI Approval*), (xi) such applications, filings, authorizations, orders and approvals as may be required under the banking laws of the states listed in Section 3.4 of the Banknorth Disclosure Schedule (the *State Banking Approvals*), (xii) consents, authorizations, approvals, filings or exemptions in connection with compliance with the applicable provisions of federal or state securities laws relating to the regulation of broker-dealers, investment companies and investment advisors, (xiii) such filings, notifications and approvals as are required under the Small Business Investment Act of 1958 (*SBIA*) and the rules and regulations of the Small Business Administration (*SBA*) thereunder and (xiv) the consents and approvals of third parties which are not Governmental Entities (as hereinafter defined), the failure of which to be obtained will not have and would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on Banknorth or TD, no consents or approvals of, or filings or registrations with, any court, administrative agency or commission or other governmental authority or instrumentality or self-regulatory organization (each, a *Governmental Entity*) or with any other third party are necessary in connection with (A) the execution, delivery and performance by Banknorth and Banknorth Delaware of this Agreement and the Stockholders Agreement and (B) the consummation by Banknorth and Banknorth Delaware of the Migratory Merger, the consummation by Banknorth Delaware of the Acquisition Merger and the other transactions contemplated hereby and thereby.

SECTION 3.5. *SEC Documents; Other Reports; Internal and Disclosure Controls.* (a) Banknorth has filed all required reports, schedules, registration statements and other documents, together with amendments thereto, with the SEC since December 31, 2000 (the *Banknorth Reports*). As of their respective dates of filing with the SEC (or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of such subsequent filing), the Banknorth Reports complied, and each such Banknorth Report filed subsequent to the date hereof will comply, in all material respects with the applicable requirements of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the *Securities Act*), the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the *Exchange Act*) and the Sarbanes-Oxley Act of 2002 and the related rules and regulations promulgated under such act or the Exchange Act (the *Sarbanes-Oxley Act*), and did not or will not, as the case may be, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. There are no outstanding comments from, or unresolved issues raised by, the SEC with respect to any of the Banknorth Reports. None of Banknorth's Subsidiaries is required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. No executive officer of Banknorth has failed in any respect to make the certifications required of him or her under Sections 302 or 906 of the Sarbanes-Oxley Act and no

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enforcement action has been initiated against Banknorth by the SEC relating to disclosures contained in any Banknorth Report.

(b) Banknorth and each of its Subsidiaries have timely filed all reports, registrations and statements, together with any amendments required to be made with respect thereto, that they were required to file since December 31, 2000 with any Governmental Entity (other than the SEC) and have paid all fees and assessments due and payable in connection therewith. Except for normal examinations conducted by a Governmental Entity in the regular course of the business of Banknorth and its Subsidiaries or as set forth in Section 3.5(b) of the Banknorth Disclosure Schedule, no Governmental Entity has initiated any proceeding or, to the best knowledge of Banknorth, threatened an investigation into the business or operations of Banknorth or any of its Subsidiaries since December 31, 2000. Except as set forth in Section 3.5(b) of the Banknorth Disclosure Schedule, there is no material unresolved violation, criticism or exception by any Governmental Entity with respect to any report, registration or statement filed by, or relating to any examinations by any such Governmental Entity of, Banknorth or any of its Subsidiaries.

(c) Except as set forth in Section 3.5(c) of the Banknorth Disclosure Schedule, the records, systems, controls, data and information of Banknorth and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of Banknorth or its Subsidiaries or accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a materially adverse effect on the system of internal accounting controls described in the following sentence. Banknorth and its Subsidiaries have devised and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. GAAP, including that (i) transactions are executed only in accordance with management's authorization; (ii) transactions are recorded as necessary to permit preparation of the financial statements of Banknorth and to maintain accountability for Banknorth's assets; (iii) access to Banknorth's assets is permitted only in accordance with management's authorization; (iv) the reporting of Banknorth's assets is compared with existing assets at regular intervals; and (v) accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. Banknorth (A) has designed disclosure controls and procedures (within the meaning of Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information relating to Banknorth and its Subsidiaries is made known to the management of Banknorth by others within those entities as appropriate to allow timely decisions regarding required disclosure and to make the certifications required by the Exchange Act with respect to the Banknorth Reports, and (B) has disclosed, based on its most recent evaluation prior to the date hereof, to Banknorth's auditors and the audit committee of Banknorth's Board of Directors (1) any significant deficiencies in the design or operation of internal controls which could adversely affect in any material respect Banknorth's ability to record, process, summarize and report financial data and have identified for Banknorth's auditors any material weaknesses in internal controls and (2) any fraud, whether or not material, that involves management or other employees who have a significant role in Banknorth's internal controls. Banknorth has made available to TD a summary of any such disclosure made by management to Banknorth's auditors and audit committee since January 1, 2002. Banknorth has initiated its process of compliance with Section 404 of the Sarbanes-Oxley Act and expects to be in full compliance therewith by the SEC mandated compliance date.

(d) Except as set forth in Section 3.5(d) of the Banknorth Disclosure Schedule, since July 30, 2002, (x) neither Banknorth nor any of its Subsidiaries nor, to the knowledge of Banknorth, any director, officer, employee, auditor, accountant or representative of Banknorth or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Banknorth or any of its Subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that Banknorth or any of its Subsidiaries has engaged in questionable accounting or auditing practices, and (y) no attorney representing Banknorth or any of its

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Subsidiaries, whether or not employed by Banknorth or any of its Subsidiaries, has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by Banknorth or any of its officers, directors, employees or agents to the Board of Directors of Banknorth or any committee thereof or to any director or officer of Banknorth.

SECTION 3.6. *Financial Statements; Undisclosed Liabilities.* (a) The financial statements of Banknorth (including any related notes thereto) included in the Banknorth Reports filed on or prior to the date hereof complied, and the financial statements of Banknorth (including any related notes thereto) included in any Banknorth Reports filed after the date hereof will comply, as to form, as of their respective dates of filing with the SEC (or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of such subsequent filing), in all material respects, with all applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC), have been or will be, as the case may be, prepared in accordance with U.S. GAAP applied on a consistent basis during the periods involved (except as may be disclosed therein), and fairly present, in all material respects, the consolidated financial position of Banknorth and its consolidated Subsidiaries and the consolidated results of operations, changes in stockholders' equity and cash flows of such companies as of the dates and for the periods shown. The books and records of Banknorth and its Subsidiaries have been, and are being, maintained in all material respects in accordance with U.S. GAAP and any other applicable legal and accounting requirements and reflect only actual transactions.

(b) Except for (i) those liabilities that are fully reflected or reserved for in the consolidated financial statements of Banknorth included in its Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2004, as filed with the SEC or (ii) liabilities incurred since June 30, 2004 in the ordinary course of business consistent with past practice, neither Banknorth nor any of its Subsidiaries has incurred any material liability of any nature whatsoever (whether absolute, accrued or contingent or otherwise and whether due or to become due), and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in such a liability other than pursuant to or as contemplated by this Agreement.

SECTION 3.7. *Broker's Fees.* Except for Keefe, Bruyette & Woods, Inc. ( *KBW* ) and Lehman Brothers Inc. ( *Lehman* ), neither Banknorth nor any Subsidiary thereof nor any of their respective officers or directors has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with any of the transactions contemplated by this Agreement. True, complete and correct copies of all agreements with KBW and Lehman relating to any such fees have previously been furnished to TD.

SECTION 3.8. *Absence of Certain Changes or Events.* Except as publicly disclosed in the Banknorth Reports filed with the SEC prior to the date hereof, or as set forth in Section 3.8 of the Banknorth Disclosure Schedule, since December 31, 2003, (a) no event has occurred which has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Banknorth and (b) prior to the date hereof, neither Banknorth nor any of its Subsidiaries has (i) effected or authorized any adjustment, split, combination or reclassification of any of its capital stock, or redeemed, purchased or otherwise acquired, any shares of its capital stock or any securities or obligations convertible into or exchangeable for any shares of its capital stock or stock appreciation rights (except pursuant to the exercise of stock options); (ii) declared, set aside or paid any dividend other than regular quarterly cash dividends on Banknorth Common Stock and dividends paid to the holders of trust preferred securities issued by affiliated trusts in accordance with the terms of such securities; (iii) sold, licensed, leased, encumbered, mortgaged, transferred, assigned or otherwise disposed of any of its material assets, properties or other rights or agreements other than in the ordinary course of business consistent with past practice; (iv) increased the compensation or fringe benefits of any present or former director or officer of Banknorth or its Subsidiaries (except for increases in salary or wages of nonexecutive officers or employees in the ordinary course of business consistent with past practice), or granted any severance or termination pay to any present or former director, officer or employee of Banknorth or its Subsidiaries except in connection with terminations of employment of non-officer employees in the ordinary course of business consistent with past practice;

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(v) made any material change in its policies and practices with respect to (x) underwriting, pricing, originating, acquiring, selling, servicing, or buying or selling rights to service Loans or (y) hedging its Loan positions or commitments; (vi) made any changes in its accounting methods or method of Tax accounting, practices or policies; (vii) made or changed any material Tax election or settled or compromised any material Tax liability as defined in (Section 5.2(u)) of Banknorth or any of its Subsidiaries; or (viii) agreed to, or made any commitment to, take any of the foregoing actions.

SECTION 3.9. *Legal Proceedings.*

(a) Except as publicly disclosed in the Banknorth Reports filed with the SEC prior to the date hereof or as disclosed in Section 3.9(a) of the Banknorth Disclosure Schedule, neither Banknorth nor any of its Subsidiaries is a party to any, and there are no pending or, to the best of Banknorth's knowledge, threatened legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any nature against Banknorth or any of its Subsidiaries (including under or in respect of the Sarbanes-Oxley Act, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the *USA Patriot Act*), the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act or any other fair lending law or other law relating to discriminatory banking practices or the Bank Secrecy Act) or challenging the validity or propriety of the transactions contemplated by this Agreement and the agreements and instruments contemplated hereby as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, would, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect on Banknorth.

(b) There is no injunction, order, judgment, decree or regulatory restriction specifically imposed upon Banknorth, any of its Subsidiaries or the assets of Banknorth or any of its Subsidiaries that has had, or would reasonably be expected to have, a Material Adverse Effect on Banknorth.

SECTION 3.10. *Taxes.*

(a) Except as set forth in Section 3.10(a) of the Banknorth Disclosure Schedule: (x) each of Banknorth and its Subsidiaries has (i) duly and timely filed (including pursuant to any extension of the filing deadline) all material Tax Returns (as hereinafter defined) required to be filed by it, and such Tax Returns are true, correct and complete in all material respects, and (ii) paid in full or made adequate provision in the financial statements included in the Banknorth Reports (in accordance with U.S. GAAP) for all material Taxes (as hereinafter defined), whether or not shown as due on such Tax Returns; (y) no material deficiencies for any Taxes have been proposed, asserted or assessed in writing against or with respect to any Taxes due by or Tax Returns of Banknorth or any of its Subsidiaries, except for any such deficiencies that have been fully reflected or reserved for in the financial statements included in the Banknorth Reports; and (z) there are no material Liens for Taxes upon the assets of either Banknorth or any of its Subsidiaries except for statutory liens for current Taxes not yet due or Liens for Taxes that are being contested in good faith by appropriate proceedings or for which adequate reserves in accordance with U.S. GAAP have been provided in the financial statements included in the Banknorth Reports.

(b) Neither Banknorth nor any of its Subsidiaries (i) is or has ever been a member of an affiliated group (other than a group the common parent of which is Banknorth) filing a consolidated tax return or (ii) has any material liability for Taxes of any person arising from the application of Treasury Regulation Section 1.1502-6 or any analogous provision of state, local or foreign law, or as a transferee or successor, by contract, or otherwise.

(c) None of Banknorth or any of its Subsidiaries is a party to, is bound by or has any obligation under any Tax sharing or Tax indemnity agreement or similar contract or arrangement, other than with each other.

(d) Except as set forth in Section 3.10(d) of the Banknorth Disclosure Schedule, no closing agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or foreign law) has been entered into by or with respect to Banknorth or any of its Subsidiaries.

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(e) None of Banknorth or any of its Subsidiaries has been either a distributing corporation or a controlled corporation in a distribution occurring during the last two years in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable.

(f) All material Taxes required to be withheld, collected or deposited by or with respect to Banknorth and each Subsidiary have been timely withheld, collected or deposited as the case may be, and to the extent required, have been paid to the relevant taxing authority.

(g) Except as set forth in Section 3.10(g) of the Banknorth Disclosure Schedule, neither Banknorth nor any of its Subsidiaries has granted any waiver of any U.S. federal, state, local or non-U.S. statute of limitations with respect to, or any extension of a period for the assessment of, any Tax.

(h) Neither Banknorth nor any of its Subsidiaries has filed a consent to the application of Section 341(f) of the Code for tax years beginning before December 31, 2002.

(i) For purposes of this Agreement, *Taxes* shall mean all taxes, charges, levies, penalties or other assessments imposed by any United States federal, state, local or non-U.S. taxing authority, including, but not limited to income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other similar taxes, including any interest or penalties attributable thereto.

(j) For purposes of this Agreement, *Tax Return* shall mean any return, report, information return or other document (including any related or supporting information) required to be filed with any taxing authority with respect to Taxes, including all information returns relating to Taxes of third parties, any claims for refunds of Taxes and any amendments or supplements to any of the foregoing.

SECTION 3.11. *Employees; Employee Benefit Plans.*

(a) Section 3.11 of the Banknorth Disclosure Schedule contains a true and complete list of each employee benefit plan (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ( *ERISA* ), including multiemployer plans within the meaning of ERISA Section 3(37)), stock purchase, stock option, severance, employment, loan, change-in-control, fringe benefit, collective bargaining, bonus, incentive, deferred compensation and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transaction contemplated by this Agreement or otherwise) under which any current or former employee, director or independent contractor of Banknorth or any of its Subsidiaries has any present or future right to benefits and under which Banknorth or any of its Subsidiaries has any present or future liability. All such plans, agreements, programs, policies and arrangements shall be collectively referred to as the *Banknorth Benefit Plans* .

(b) With respect to each Banknorth Benefit Plan, Banknorth has delivered to TD a current, accurate and complete copy (or, to the extent no such copy exists, an accurate description) thereof and, to the extent applicable: (i) any related trust agreement or other funding instrument; (ii) the most recent determination letter, if applicable; (iii) any summary plan description provided by Banknorth or any of its Subsidiaries to their employees concerning the extent of the benefits provided under a Banknorth Benefit Plan; and (iv) for the most recent year (A) the Form 5500 and attached schedules, (B) audited financial statements and (C) actuarial valuation reports.

(c) Except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Banknorth, (i) each of the Banknorth Benefit Plans has been established and administered in accordance with its terms, and in compliance with the applicable provisions of ERISA, the Code and other applicable laws, rules and regulations; (ii) each Banknorth Benefit Plan which is intended to be qualified within the meaning of Code Section 401(a) has received a favorable determination letter as to its qualification, and nothing has occurred, whether by action or failure to act, that would reasonably be expected to cause the loss of such qualification; (iii) no reportable event (as such term is defined in ERISA Section 4043), prohibited transaction (as such term is defined in ERISA Section 406 and Code Section 4975) or accumulated funding deficiency (as such term is defined in ERISA section 302 and

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Code Section 412 (whether or not waived)) has occurred with respect to any Banknorth Benefit Plan; (iv) except as set forth in Section 3.11(c) of the Banknorth Disclosure Schedule, no Banknorth Benefit Plan provides retiree welfare benefits and neither Banknorth nor any of its Subsidiaries have any obligation to provide any retiree welfare benefits other than as required by Section 4980B of the Code; and (v) neither Banknorth nor any *ERISA Affiliate* (defined as any organization which is a member of a controlled group of organizations within the meaning of Code Sections 414(b), (c), (m) or (o)) has engaged in, or is a successor or parent corporation to an entity that has engaged in, a transaction described in Sections 4069 or 4212(c) of ERISA.

(d) None of the Banknorth Benefit Plans is a multiemployer plan (within the meaning of ERISA section 4001(a)(3)) and none of Banknorth, its Subsidiaries or any ERISA Affiliate has any liability with respect to a multiemployer plan that remains unsatisfied.

(e) With respect to any Banknorth Benefit Plan, except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Banknorth, or as set forth in Section 3.11(e) of the Banknorth Disclosure Schedule, (i) no actions, suits or claims (other than routine claims for benefits in the ordinary course) are pending or, to the knowledge of Banknorth or any of its Subsidiaries, threatened, (ii) no written communication has been received from the Pension Benefit Guaranty Corporation (the *PBGC*) in respect of any Banknorth Benefit Plan subject to Title IV of ERISA concerning the funded status of any such plan or any transfer of assets and liabilities from any such plan in connection with the transactions contemplated herein and (iii) no administrative investigation, audit or other administrative proceeding by the Department of Labor, the PBGC, the Internal Revenue Service or other governmental agencies are pending, in progress (including any routine requests for information from the PBGC), or to the knowledge of Banknorth, threatened.

(f) Except as set forth in Section 3.11(f) of the Banknorth Disclosure Schedule, no Banknorth Benefit Plan exists that could result in the payment to any present or former employee, director or independent consultant of Banknorth or any of its Subsidiaries of any money or other property or accelerate or provide any other rights or benefits to any present or former employee of Banknorth or any of its Subsidiaries as a result of the transaction contemplated by this Agreement. Except as set forth in Section 3.11(f) of the Banknorth Disclosure Schedule, there is no contract, plan or arrangement (written or otherwise) covering any current or former employee or director of Banknorth or any of its Subsidiaries that, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to the terms of Sections 280G or 162(m) of the Code.

(g) In connection with the transactions contemplated by this Agreement or otherwise, no current or former employee or director of Banknorth or its Subsidiaries has the right to compel Banknorth or any of its Subsidiaries to fund (by reason of, or pursuant to, a grantor trust or any other funding mechanism) any benefit provided, or to be provided, to such employee or director.

SECTION 3.12. *Board Approval.* (a) On or prior to the date hereof, the Board of Directors of Banknorth, at a meeting duly called and held, duly (i) determined that this Agreement, the Stockholders Agreement, the Migratory Merger and the Acquisition Merger are fair to and in the best interests of Banknorth and its shareholders and declared the Migratory Merger and the Acquisition Merger to be advisable, (ii) approved this Agreement, the Stockholders Agreement, the Migratory Merger and the Acquisition Merger, (iii) recommended that the shareholders of Banknorth approve this Agreement with respect to the Migratory Merger and directed that such matter be submitted for consideration by Banknorth shareholders at the Banknorth Shareholders Meeting referred to below, and (iv) authorized and directed that Banknorth, in its capacity as sole stockholder of Banknorth Delaware, give its affirmative vote to adopt this Agreement with respect to the Mergers at a meeting of such sole stockholder. Banknorth has taken any action required to be taken by it in order to exempt this Agreement, the Stockholders Agreement and the transactions contemplated hereby and thereby, including the Mergers, from the requirements of Article 9 of the Amended Articles.

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(b) The Board of Directors of Banknorth Delaware, at a meeting duly called and held, duly (i) determined that this Agreement, the Stockholders Agreement, the Migratory Merger and the Acquisition Merger are fair to and in the best interests of Banknorth Delaware and its stockholder and declared the Migratory Merger and the Acquisition Merger to be advisable, (ii) approved this Agreement, the Stockholders Agreement, the Migratory Merger and the Acquisition Merger, and (iii) recommended that the sole stockholder of Banknorth Delaware adopt this Agreement with respect to the Mergers and directed that such matter be submitted for consideration by the sole stockholder of Banknorth Delaware at a meeting thereof.

SECTION 3.13. *Takeover Statutes.* No fair price, moratorium, control share acquisition or other similar anti-takeover statute or regulation (each, a *Takeover Statute* ) is applicable to Banknorth or is applicable to this Agreement, the Stockholders Agreement or the transactions contemplated hereby and thereby.

SECTION 3.14. *Compliance With Applicable Law.* (a) Each of Banknorth and its Subsidiaries is in compliance with, and is not in violation of, its respective articles of incorporation and by-laws or equivalent constituent documents. Except as disclosed in Section 3.14(a) of the Banknorth Disclosure Schedule, Banknorth and each of its Subsidiaries hold, and have at all times held, all licenses, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses and ownership of their respective properties and assets, under and pursuant to all, and have complied with and are not in violation in any material respect under any applicable law, statute, order, rule, regulation, policy or guideline of any Governmental Entity relating to Banknorth or any of its Subsidiaries (including, without limitation, the Sarbanes-Oxley Act, the USA Patriot Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act or any other fair lending law or other law relating to discriminatory banking practices), except where the failure to hold such license, franchise, permit or authorization or such noncompliance or violation would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect on Banknorth, and neither Banknorth nor any of its Subsidiaries knows of, or has received notice of, any violations of any of the above which, individually or in the aggregate, would have or would reasonably be expected to have a Material Adverse Effect on Banknorth. Banknorth, NA is in compliance with the United States Community Reinvestment Act of 1977 and the regulations promulgated thereunder (collectively, *CRA* ) and Banknorth, NA received a CRA rating of outstanding from the Office of the Comptroller of the Currency in its most recently completed exam.

(b) Except as set forth in Section 3.14(a) of the Banknorth Disclosure Schedule, Banknorth and each of its Subsidiaries has properly administered all accounts for which it acts as a fiduciary, including accounts for which it serves as a trustee, agent, custodian, personal representative, guardian, conservator or investment advisor, in accordance with the terms of the documents governing such accounts, applicable state and federal law and regulation and common law, except where the failure to so administer such accounts would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Banknorth. None of Banknorth, any of its Subsidiaries, or any director, officer or employee of Banknorth or of any of its Subsidiaries, has committed any breach of trust or fiduciary duty with respect to any such fiduciary account that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Banknorth, and, except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Banknorth, the accountings for each such fiduciary account are true and correct and accurately reflect the assets of such fiduciary account.

SECTION 3.15. *Certain Contracts.* (a) Except as publicly disclosed in the Banknorth Reports filed prior to the date hereof or as set forth in Section 3.15(a) of the Banknorth Disclosure Schedule, neither Banknorth nor any of its Subsidiaries is a party to or is bound by any contract, arrangement, commitment or understanding (whether written or oral) (i) which is a material contract (as defined in Item 601(b)(10) of Regulation S-K of the SEC) to be performed in whole or in part after the date of this Agreement, (ii) which relates to the incurrence of indebtedness (other than deposit liabilities, advances and loans from the Federal Home Loan Bank of Boston and sales of securities subject to repurchase, in each case incurred in the ordinary course of business) by Banknorth or any of its

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Subsidiaries in the principal amount of \$10.0 million or more, including any sale and leaseback transactions, capitalized leases and other similar financing transactions, (iii) which grants any right of first refusal, right of first offer or similar right with respect to any material assets or properties of Banknorth and its Subsidiaries, (iv) which provides for material payments to be made by Banknorth or any of its Subsidiaries upon a change in control thereof, (v) which is a consulting agreement (including data processing, software programming and licensing contracts) not terminable on 60 days or less notice and involving the payment of more than \$5.0 million per annum, (vi) which (A) limits the freedom of Banknorth or any of its Subsidiaries to compete in any line of business, in any geographic area or with any person, (B) requires referrals of business or requires Banknorth or any of its Subsidiaries to make available investment opportunities to any person on a priority or exclusive basis, or (C) requires Banknorth or any of its Subsidiaries to use any product or service of another person on an exclusive basis or (vii) which involved payments by, or to, Banknorth or any of its Subsidiaries in fiscal year 2003 of more than \$10 million or which could reasonably be expected to involve payments during fiscal year 2004 of more than \$10 million (other than pursuant to Loans originated or purchased by Banknorth and its Subsidiaries in the ordinary course of business consistent with past practice). Each contract, arrangement, commitment or understanding of the type described in this Section 3.15(a), whether or not publicly disclosed in the Banknorth Reports filed prior to the date hereof or set forth in Section 3.15(a) of the Banknorth Disclosure Schedule, is referred to herein as a *Banknorth Contract*.

(b) Except as set forth in Section 3.15(b) of the Banknorth Disclosure Schedule, (i) each Banknorth Contract is valid and binding on Banknorth or its applicable Subsidiary and in full force and effect, and, to the knowledge of Banknorth, is valid and binding on the other parties thereto, (ii) Banknorth and each of its Subsidiaries and, to the knowledge of Banknorth, each of the other parties thereto, has in all material respects performed all obligations required to be performed by such party to date under each Banknorth Contract, and (iii) no event or condition exists which constitutes or, after notice or lapse of time or both, would constitute a material breach or default on the part of Banknorth or any of its Subsidiaries or, to the knowledge of Banknorth, any other party thereto, under any such Banknorth Contract, except, in each case, where such invalidity, failure to be binding, failure to so perform or breach or default, individually or in the aggregate, would not have or reasonably be expected to have a Material Adverse Effect on Banknorth.

(c) Section 3.15(c) of the Banknorth Disclosure Schedule contains a schedule showing the present value of the monetary amounts payable as of the date specified in such schedule, whether individually or in the aggregate (including good faith estimates of all amounts not subject to precise quantification as of the date of this Agreement, such as tax indemnification payments in respect of income or excise taxes), under any employment, change-in-control, severance or similar contract with any present or former employee, director or consultant of Banknorth or any of its Subsidiaries and identifying the types and estimated amounts of the in-kind benefits due under any Banknorth Benefit Plans or Banknorth Contract (other than a tax-qualified plan) for each such person, specifying the assumptions in such schedule.

SECTION 3.16. *Agreements With Regulatory Agencies.* Except as set forth in Section 3.16 of the Banknorth Disclosure Schedule, neither Banknorth nor any of its Subsidiaries is subject to any cease-and-desist or other order issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is a recipient of any extraordinary supervisory letter from, or is subject to any order or directive by, or has adopted any board resolutions at the request of (each, whether or not set forth in Section 3.16 of the Banknorth Disclosure Schedule, a *Banknorth Regulatory Agreement*), any Governmental Entity that currently restricts or by its terms will in the future restrict the conduct of its business or relates to its capital adequacy, its credit or risk management policies, its dividend policies, its management or its business, nor has Banknorth or any of its Subsidiaries been advised by any Governmental Entity that it is considering issuing or requesting any Banknorth Regulatory Agreement.

SECTION 3.17. *Banknorth Information.* The information relating to Banknorth and its Subsidiaries to be provided by Banknorth for inclusion in the Proxy Statement/ Prospectus, the Registration Statement, any filing pursuant to Rule 165 or Rule 425 under the Securities Act or Rule 14a-12 under the Exchange

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Act, or in any other document filed with any other Governmental Entity in connection herewith, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. The Proxy Statement/ Prospectus (except for such portions thereof as relate only to TD or any of its Subsidiaries) will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder. The Registration Statement (except for such portions thereof as relate only to TD or any of its Subsidiaries) will comply as to form in all material respects with the provisions of the Securities Act and the rules and regulations thereunder.

SECTION 3.18. *Title to Property.*

(a) *Real Property.* Except as set forth in Section 3.18(a) of the Banknorth Disclosure Schedule, Banknorth and its Subsidiaries have good, valid and marketable title to all real property owned by them free and clear of all Liens, except Liens for current Taxes not yet due and payable and other standard exceptions commonly found in title policies in the jurisdiction where such real property is located, and such encumbrances and imperfections of title, if any, as do not materially detract from the value of the properties and do not materially interfere with the present or proposed use of such properties or otherwise materially impair such operations. All real property and fixtures material to the business, operations or financial condition of Banknorth and its Subsidiaries are in good condition and repair except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Banknorth.

(b) *Personal Property.* Banknorth and its Subsidiaries have good, valid and marketable title to all tangible personal property owned by them, free and clear of all Liens except as disclosed in the Banknorth Reports filed prior to the date hereof or as set forth in Section 3.18(b) of the Banknorth Disclosure Schedule or as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Banknorth.

(c) *Leased Property.* All leases of real property and all other leases material to Banknorth and its Subsidiaries under which Banknorth or a Subsidiary, as lessee, leases personal property are valid and binding in accordance with their respective terms, there is not under such lease any material existing default by Banknorth or such Subsidiary or, to the knowledge of Banknorth, any other party thereto, or any event which with notice or lapse of time would constitute such a default, and, in the case of leased premises, Banknorth or such Subsidiary quietly enjoys the premises provided for in such lease, except in any such case as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Banknorth.

SECTION 3.19. *Insurance.* (a) Banknorth and its Subsidiaries are insured with reputable insurers against such risks and in such amounts as constitute reasonably adequate coverage against all risks customarily insured against by bank holding companies and their subsidiaries of comparable size and operations to Banknorth and its subsidiaries. Section 3.19(a) of the Banknorth Disclosure Schedule contains a true and complete list and a brief description (including name of insurer, agent, coverage and expiration date) of all insurance policies in force on the date hereof with respect to the business and assets of Banknorth and its Subsidiaries (other than insurance policies under which Banknorth or any Subsidiary thereof is named as a loss payee, insured or additional insured as a result of its position as a secured lender on specific loans and mortgage insurance policies on specific loans or pools of loans). Banknorth and its Subsidiaries are in material compliance with their insurance policies and are not in default under any of the material terms thereof. Each such policy is outstanding and in full force and effect and, except as set forth in Section 3.19(a) of the Banknorth Disclosure Schedule and except for policies insuring against potential liabilities of officers, directors and employees of Banknorth and its Subsidiaries, Banknorth or the relevant Subsidiary thereof is the sole beneficiary of such policies. All premiums and other payments due under any such policy have been paid, and all claims thereunder have been filed in due and timely fashion.

(b) The value of all company-owned and bank-owned life insurance policies owned by Banknorth or its Subsidiaries is fairly and accurately reflected in accordance with U.S. GAAP in the financial statements of Banknorth and its Subsidiaries included in the Banknorth Reports.

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SECTION 3.20. *Environmental Liability.* Except as set forth in Section 3.20 of the Banknorth Disclosure Schedule, there are no legal, administrative, arbitral or other proceedings, claims, actions, causes of action, private environmental investigations or remediation activities or governmental investigations of any nature seeking to impose, or that reasonably could be expected to result in the imposition, on Banknorth or any of its Subsidiaries of any liability or obligation arising under common law standards relating to environmental protection, human health or safety, or under any local, state or federal environmental statute, regulation or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (collectively, the *Environmental Laws* ), pending or, to the knowledge of Banknorth, threatened against Banknorth or any of its Subsidiaries, which liability or obligation would have or would reasonably be expected to have a Material Adverse Effect on Banknorth. To the knowledge of Banknorth, there is no reasonable basis for any such proceeding, claim, action or governmental investigation that would impose any liability or obligation that would have or would reasonably be expected to have a Material Adverse Effect on Banknorth. To the knowledge of Banknorth, during or prior to the period of (i) its or any of its Subsidiaries' ownership or operation of any of their respective current properties, (ii) its or any of its Subsidiaries' participation in the management of any property, or (iii) its or any of its Subsidiaries' holding of a security interest or other interest in any property, there were no releases or threatened releases of hazardous, toxic, radioactive or dangerous materials or other materials regulated under Environmental Laws (each, a *Hazardous Substance* ) in, on, under or affecting any such property which would reasonably be expected to have a Material Adverse Effect on Banknorth. Neither Banknorth nor any of its Subsidiaries is subject to any agreement, order, judgment, decree, letter or memorandum by or with any court, governmental authority, regulatory agency or third party imposing any material liability or obligation pursuant to or under any Environmental Law that would have or would reasonably be expected to have a Material Adverse Effect on Banknorth.

SECTION 3.21. *Opinions of Financial Advisors.* Banknorth has received the opinion of each of KBW and Lehman, dated as of the date of this Agreement, to the effect that, as of such date, the Merger Consideration is fair from a financial point of view to the holders of Banknorth Common Stock.

SECTION 3.22. *Patents, Trademarks, Etc.*

Banknorth and each of its Subsidiaries owns or possesses, or is licensed or otherwise has the right to use, all proprietary rights, including all trademarks, trade names, service marks and copyrights, that are material to the conduct of their existing businesses. Except for the agreements set forth in Section 3.22 of the Banknorth Disclosure Schedule, neither Banknorth nor any of its Subsidiaries is bound by or a party to any licenses or agreements of any kind with respect to any trademarks, service marks or trade names which it claims to own. Neither Banknorth nor any of its Subsidiaries has received any communications alleging that any of them has violated any of the patents, trademarks, service marks, trade names, copyrights or trade secrets or other proprietary rights of any other person or entity.

SECTION 3.23. *Labor Matters.* Neither Banknorth nor any of its Subsidiaries is a party to or is bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization, nor is Banknorth or any of its Subsidiaries the subject of a proceeding asserting that it or any such Subsidiary has committed an unfair labor practice (within the meaning of the United States National Labor Relations Act) or seeking to compel Banknorth or any such Subsidiary to bargain with any labor organization as to wages or conditions of employment, nor is there any labor strike, slowdown or work stoppage or other material labor dispute or disputes involving it or any of its Subsidiaries pending, or to Banknorth's knowledge, threatened against Banknorth or any of its Subsidiaries, nor is Banknorth aware of any activity involving its or any of its Subsidiaries' employees seeking to certify a collective bargaining unit or engaging in other organizational activity.

SECTION 3.24. *Derivative Instruments and Transactions.* (a) Except as would not be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect on Banknorth, (i) all Derivative Transactions (as defined below) whether entered into for the account of Banknorth or any of its Subsidiaries or for the account of a customer of Banknorth or any of its Subsidiaries, were entered into in the ordinary course of business consistent with past practice and in accordance with prudent banking practice and

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applicable rules, regulations and policies of all applicable Governmental Entities and with counterparties believed to be financially responsible at the time and are legal, valid and binding obligations of Banknorth or one of its Subsidiaries and, to the knowledge of Banknorth, each of the counterparties thereto, and are enforceable in accordance with their terms, and are in full force and effect, (ii) Banknorth or its Subsidiaries and, to the knowledge of Banknorth, the counterparties thereto, have duly performed their obligations thereunder to the extent that such obligations to perform have accrued, and (iii) to Banknorth's knowledge, there are no breaches, violations or defaults or allegations or assertions of such by any party thereunder.

(b) Except as set forth in Section 3.24(b) of the Banknorth Disclosure Schedule, as of July 31, 2004, no Derivative Transaction, were it to be a Loan (as hereinafter defined) held by Banknorth or any of its Subsidiaries, would be classified as Special Mention, Substandard, Doubtful, Loss, Classified, Criticized, Credit Risk Assets, Concerned Loans, Watch List or words of similar import. The financial position of Banknorth and its Subsidiaries on a consolidated basis under or with respect to each such Derivative Transaction has been reflected in the books and records of Banknorth and such Subsidiaries in accordance with U.S. GAAP consistently applied.

(c) For purposes of this Agreement, the term *Derivative Transaction* means any swap transaction, option, warrant, forward purchase or sale transaction, futures transaction, cap transaction, floor transaction or collar transaction relating to one or more currencies, commodities, bonds, equity securities, loans, interest rates, catastrophe events, weather-related events, credit-related events or conditions or any indexes, or any other similar transaction (including any option with respect to any of these transactions) or combination of any of these transactions, including collateralized mortgage obligations or other similar instruments or any debt or equity instruments evidencing or embedding any such types of transactions, and any related credit support, collateral or other similar arrangements related to such transactions.

SECTION 3.25. *Investment Adviser Subsidiaries.* (a) Except as set forth in Section 3.25(a) of the Banknorth Disclosure Schedule, neither Banknorth nor any of its Subsidiaries is an investment company as defined under the Investment Company Act of 1940, as amended.

(b) Each of the Subsidiaries of Banknorth or divisions of Banknorth, NA listed in Section 3.25(b) of the Banknorth Schedule (collectively, the *Banknorth Investment Adviser Subsidiaries*) is duly registered with the SEC as an investment adviser under the Investment Advisers Act of 1940, as amended (the *Investment Advisers Act*), and has filed the appropriate notice filings in each state in which it is required to make a notice filing.

(c) Each of the Banknorth Investment Adviser Subsidiaries has filed, and Banknorth has made available to TD, in the form as filed, a true and complete copy of each such Banknorth Investment Adviser Subsidiary's currently effective Form ADV, all state and federal forms, all prior Form ADV filings and all material reports filed by it or any such Banknorth Investment Adviser Subsidiary with the SEC under the Investment Advisers Act or otherwise and under similar state or federal laws within the last two years and will file and make available to TD in the form as filed such material forms and reports as are filed from and after the date hereof and prior to the Closing Date. The information contained in such forms and reports was (or will be, in the case of filings made after the date hereof) true and complete as of the time of filings, except where the failure to be true and complete, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect on Banknorth.

(d) The accounts of each client of any Banknorth Investment Adviser Subsidiary subject to ERISA have been managed by the applicable Subsidiary of Banknorth in compliance in all material respects with the applicable requirements of ERISA, except for any failure to so manage as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Banknorth.

(e) As of the date of this Agreement, except as disclosed on an SEC Form ADV which has been filed by each Banknorth Investment Adviser Subsidiary with the SEC prior to the date hereof, no Banknorth Investment Adviser Subsidiary, nor any of its officers, directors or employees, has been convicted of any crime or has been the subject of any disciplinary proceedings or orders of any Governmental Entity, and, to the knowledge of Banknorth or any of its Subsidiaries, no such disciplinary

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proceeding or order is pending or threatened; and no Banknorth Investment Adviser Subsidiary, nor any persons affiliated with such Banknorth Investment Adviser Subsidiary, or, to the knowledge of Banknorth or any of its Subsidiaries, any of such Banknorth Investment Adviser Subsidiary's officers, directors or employees or any associated person (as defined in the Exchange Act) thereof, is or has been subject to any disqualification that would be a basis for denial, suspension or revocation of registration of an investment adviser under Section 203(e) of the Investment Advisers Act or Rule 206(4)-4(b) thereunder, or any disqualification as an investment adviser for any client of any Banknorth Investment Adviser Subsidiary.

SECTION 3.26. *Loan Matters.* (a)(i) Section 3.26(a) of the Banknorth Schedule sets forth a list of all extensions of credit (including commitments to extend credit) ( *Loans* ) as of July 31, 2004 by Banknorth and its Subsidiaries to any directors, executive officers and principal stockholders (as such terms are defined in Regulation O of the Board of Governors of the Federal Reserve System (12 CFR Part 215)) of Banknorth or any of its Subsidiaries; (ii) except as listed in Section 3.26(a) of the Banknorth Schedule, there are no employee, officer, director or other affiliate Loans on which the borrower is paying a rate other than that reflected in the note or the relevant credit agreement or on which the borrower is paying a rate which was below market at the time the Loan was made; and (iii) all such Loans are and were made in compliance in all material respects with all applicable laws and regulations, except for such exceptions as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Banknorth.

(b) Each outstanding Loan (including Loans held for resale to investors) has been solicited and originated and is administered and, where applicable, serviced, and the relevant Loan files are being maintained, in all material respects in accordance with the relevant loan documents, Banknorth's underwriting standards (and, in the case of Loans held for resale to investors, the underwriting standards, if any, of the applicable investors) and with all applicable requirements of federal, state and local laws, regulations and rules, except for such exceptions as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Banknorth.

(c) Except as set forth in Section 3.26(c) of the Banknorth Schedule, none of the agreements pursuant to which Banknorth or any of its Subsidiaries has sold Loans or pools of Loans or participations in Loans or pools of Loans contains any obligation to repurchase such Loans or interests therein solely on account of a payment default by the obligor on any such Loan.

(d) Section 3.26(d) of the Banknorth Schedule identifies (A) each Loan that as of July 31, 2004 was classified as Special Mention, Substandard, Doubtful, Loss, Classified, Criticized, Credit Risk Assets, Concerned Loans, Watch List or words of similar import by any of its Subsidiaries or any bank examiner, together with the principal amount of and accrued and unpaid interest on each such Loan and the identity of the borrower thereunder, and (B) each asset of Banknorth or any of its Subsidiaries that as of July 31, 2004 was classified as other real estate owned ( *OREO* ) and the book value thereof as of such date.

(e) Each Loan (i) is evidenced by notes, agreements or other evidences of indebtedness that are true, genuine and what they purport to be, (ii) to the extent secured, has been secured by valid Liens which have been perfected and (iii) to Banknorth's knowledge, is a legal, valid and binding obligation of the obligor named therein, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent conveyance and other laws of general applicability relating to or affecting creditors' rights and to general equity principles. The loan documents with respect to each loan were in compliance with applicable laws and regulations at the time of origination or purchase by Banknorth or its Subsidiaries and are complete and correct in all material respects.

SECTION 3.27. *Approvals.* As of the date of this Agreement, Banknorth knows of no reason relating to it why (a) all regulatory approvals from any Governmental Entity required to consummate the transactions contemplated hereby should not be obtained on a timely basis without the imposition of a condition or restriction of the type referred to in Section 7.2(c) or (b) the opinion of tax counsel referred to in Section 7.3(c) should not be obtained on a timely basis.

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ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF TD

Prior to the execution and delivery of this Agreement, TD has delivered to Banknorth a schedule (the *TD Disclosure Schedule*) setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more of TD's representations or warranties contained in this Article IV, or to one of TD's covenants contained in Article V. Except as set forth in the corresponding section of the TD Disclosure Schedule, TD hereby represents and warrants to Banknorth as follows:

SECTION 4.1. *Corporate Organization.*

(a) TD is duly organized and validly existing as a bank under the laws of Canada. TD has the requisite corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now conducted. The charter of TD is the Bank Act (Canada). TD is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not have nor reasonably be expected to have a Material Adverse Effect on TD. The copy of the by-laws of TD that has previously been made available to Banknorth is a true, complete and correct copy of such document as in effect as of the date of this Agreement.

(b) Berlin Mergerco is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Berlin Mergerco was formed solely for the purpose of engaging in the transactions contemplated hereby and has engaged in no other business other than in connection with the transactions contemplated by this Agreement. Berlin Mergerco is a wholly owned Subsidiary of TD.

(c) Each Significant Subsidiary of TD (i) is duly organized and validly existing as a corporation, partnership or other entity and (to the extent the concept of good standing is applicable to such Significant Subsidiary) is in good standing under the laws of its jurisdiction of organization, (ii) is duly licensed or qualified to do business and is in good standing in all jurisdictions (whether provincial, territorial, federal, state, local or foreign) where its ownership or leasing of property or the conduct of its business requires it to be so licensed or qualified and in which the failure to be so qualified would have or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on TD and (iii) has all requisite corporate or other power and authority to own or lease its properties and assets and to carry on its business as now conducted.

(d) Except as set forth in Section 4.1(d) of the TD Disclosure Schedule, TD does not own, either directly or through its Subsidiaries, any stock or equity interest in any insured depository institution (as defined in 12 U.S.C. Section 1813(c)(2)).

SECTION 4.2. *Capitalization.* (a) The authorized capital stock of TD consists of an unlimited number of TD Common Shares and an unlimited number of Class A First Preferred Shares without par value (the *TD Preferred Stock*). As of the date of this Agreement, there were 654,699,101 TD Common Shares outstanding and a total of 38,400,000 shares of TD Preferred Stock (Series H, I, J, M and N) outstanding, and no other TD Common Shares or shares of TD Preferred Stock were issued or outstanding. As of the date of this Agreement, no TD Common Shares or shares of TD Preferred Stock were reserved for issuance, except as set forth in Section 4.2(a) of the TD Disclosure Schedule. The TD Common Shares to be issued pursuant to the Acquisition Merger have been duly authorized and, when issued pursuant to the Acquisition Merger, all such shares will be validly issued, fully paid, nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof. As of the date of this Agreement, the authorized capital stock of Berlin Mergerco consisted of 1,000 shares of Berlin Mergerco Common Stock, all of which were issued, outstanding and owned beneficially and of record by TD. All of the issued and outstanding shares of capital stock of TD and of Berlin Mergerco Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof.

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(b) As of the date of this Agreement, except as set forth above or in Section 4.2(b) of the TD Disclosure Schedule or as disclosed in TD Reports filed prior to the date hereof, TD does not have and is not bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase or issuance of any shares of TD Common Shares or TD Preferred Stock or any other equity securities of TD or any securities representing the right to purchase or otherwise receive any shares of TD capital stock (including any rights plan or agreement).

(c) Section 4.2(c) of the TD Disclosure Schedule lists the name, jurisdiction of incorporation, authorized and outstanding shares of capital stock and record and beneficial owners of such capital stock for each Significant Subsidiary of TD. Except as set forth in Section 4.2(c) of the TD Disclosure Schedule, TD owns, directly or indirectly, all of the issued and outstanding shares of capital stock of or all other equity interests in each of TD's Significant Subsidiaries, free and clear of any Liens, and all of such shares are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof. As of the date of this Agreement, neither TD nor any Significant Subsidiary thereof has or is bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase, sale or issuance of any shares of capital stock or any other equity security of any Significant Subsidiary of TD or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of any such Significant Subsidiary.

(d) No bonds, debentures, notes or other indebtedness having the right to vote on any matters on which TD shareholders may vote are outstanding.

SECTION 4.3. *Authority; No Violation.*

(a) Each of TD and Berlin Mergerco has full corporate power and authority to execute and deliver this Agreement and, in the case of TD, the Stockholders Agreement, and the agreements and instruments contemplated hereby and thereby, and to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and, in the case of TD, the Stockholders Agreement, and the agreements and instruments contemplated hereby and thereby, and the performance and consummation of the transactions contemplated hereby and thereby have been duly and validly approved by all requisite corporate and stockholder action of TD and Berlin Mergerco, and no other corporate or stockholder proceedings on the part of TD or Berlin Mergerco are necessary to approve this Agreement or, in the case of TD, the Stockholders Agreement, or the agreements and instruments contemplated hereby or thereby, or to perform or to consummate the transactions contemplated hereby and thereby, except that TD, as sole stockholder of Berlin Mergerco, shall adopt this Agreement in respect of the Acquisition Merger prior to the Acquisition Merger Effective Time. This Agreement has been duly and validly executed and delivered by TD and Berlin Mergerco and (assuming due authorization, execution and delivery by Banknorth and Banknorth Delaware) constitutes a valid and binding obligation of TD and Berlin Mergerco, enforceable against TD and Berlin Mergerco in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

(b) Except as set forth in Section 4.3(b) of the TD Disclosure Schedule, neither the execution and delivery of this Agreement by TD and Berlin Mergerco, nor the execution and delivery of the Stockholders Agreement by TD, nor the consummation by TD and Berlin Mergerco of the transactions contemplated hereby or thereby, nor compliance by TD and Berlin Mergerco with any of the terms or provisions hereof or thereof, will (i) violate any provision of the charter or By-laws of TD or the certificate of incorporation or By-laws of Berlin Mergerco or (ii) assuming that the consents and approvals referred to in Section 4.4 are duly obtained, (x) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to TD or Berlin Mergerco or any of their respective Subsidiaries or any of their respective properties or assets, or (y) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, result in the termination of or a right of termination or cancellation

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under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of TD or Berlin Mergerco or any of their respective Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which TD or Berlin Mergerco or any of their respective Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound or affected, except (in the case of clause (y) above) for such violations, conflicts, breaches, defaults or other events which either individually or in the aggregate will not have and would not reasonably be expected to have a Material Adverse Effect on TD.

(c) The Stockholders Agreement has been duly and validly executed and delivered by TD and (assuming due authorization, execution and delivery by Banknorth and Banknorth Delaware) constitutes a valid and binding obligation of TD enforceable against TD in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

SECTION 4.4. *Consents and Approvals.* Except for (i) the approval of this Agreement with respect to the Migratory Merger by the Required Banknorth Vote, (ii) the adoption of this Agreement with respect to the Mergers by the Banknorth Delaware Required Vote, (iii) approval of the listing of the TD Common Shares to be issued in the Acquisition Merger on the Toronto Stock Exchange and the New York Stock Exchange, (iv) approval of the listing of the Banknorth Delaware Common Stock to be issued in the Migratory Merger on the New York Stock Exchange, (v) the filing of applications and notices, as applicable, with the Federal Reserve Board under the BHC Act and approval of such applications and notices; (vi) the filing with the SEC of the Proxy Statement/ Prospectus and the filing with, and declaration of effectiveness by, the SEC of the Registration Statement in which the Proxy Statement/ Prospectus will be included as a prospectus and any related filings or approvals under applicable state securities or blue sky laws, (vii) the filing of the Migratory Merger Certificates and the Certificate of Merger with the Secretaries of State of the States of Maine and Delaware, as applicable, pursuant to the MBCA and the DGCL, as applicable, (viii) the consents and approvals set forth in Section 4.4 of the TD Disclosure Schedule, (ix) any notices or filings under the HSR Act, (x) the OSFI Approval, (xi) the State Banking Approvals, (xii) consents, authorizations, approvals, filings or exemptions in connection with compliance with the applicable provisions of federal or state securities laws relating to the regulation of broker-dealers, investment companies and investment advisors, (xiii) such filings, notifications and approvals as are required under the SBIA and the rules and regulations of the SBA thereunder and (xiv) the consents and approvals of third parties which are not Governmental Entities, the failure of which to be obtained will not have and would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on Banknorth or TD, no consents or approvals of, or filings or registrations with, any Governmental Entity or with any other third party are necessary in connection with (A) the execution and delivery by TD and Berlin Mergerco of this Agreement and the execution, delivery and performance by TD of the Stockholders Agreement and (B) the consummation by TD and Berlin Mergerco of the Acquisition Merger and the other transactions contemplated hereby.

SECTION 4.5. *Public Documents; Other Reports.*

(a) TD has filed all required reports, schedules, registration statements and other documents, together with amendments thereto, with the SEC and Canadian securities regulatory authorities since December 31, 2000 (the *TD Reports* ). As of their respective dates of filing (or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of such subsequent filing), the TD Reports filed on or prior to the date of this Agreement complied, and each TD Report filed subsequent to the date hereof will comply, in all material respects with the applicable requirements of the Securities Act, the Exchange Act, the Sarbanes-Oxley Act, and applicable Canadian securities laws, as the case may be, and none of the TD Reports when filed contained or will contain, as the case may be, any untrue statement of a material fact or omitted or will omit, as the case may be, to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Except as set forth in Section 4.5(a) of the TD Disclosure Schedule, there are no outstanding comments from or unresolved issues raised by the SEC or any Canadian securities regulatory

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authority, as the case may be, with respect to any of the TD Reports. None of TD's Subsidiaries is required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. No executive officer of TD has failed in any respect to make the certifications required of him or her under Sections 302 or 906 of the Sarbanes-Oxley Act and no enforcement action has been initiated against TD by the SEC relating to disclosures contained in any TD Report.

(b) TD and each of its Subsidiaries have timely filed all reports, registrations and statements, together with any amendments required to be made with respect thereto, that they were required to file since December 31, 2000 with any Governmental Entity (other than the SEC and Canadian securities regulatory authorities) and have paid all fees and assessments due and payable in connection therewith. Except for normal examinations conducted by a Governmental Entity in the regular course of the business of TD and its Subsidiaries or as set forth in Section 4.5(b) of the TD Disclosure Schedule, no Governmental Entity has initiated any proceeding or, to the knowledge of TD, threatened an investigation into the business or operations of TD or any of its Subsidiaries since December 31, 2000. Except as set forth in Section 4.5(b) of the TD Disclosure Schedule, there is no material unresolved violation, criticism or exception by any Governmental Entity with respect to any report, registration or statement filed by, or relating to any examinations by any such Governmental Entity of, TD or any of its Subsidiaries.

(c) The records, systems, controls, data and information of TD and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of TD or its Subsidiaries or accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a materially adverse effect on the system of internal accounting controls described in the following sentence. TD and its Subsidiaries have devised and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with Canadian GAAP, including that (i) transactions are executed only in accordance with management's authorization; (ii) transactions are recorded as necessary to permit preparation of the financial statements of TD and to maintain accountability for TD's assets; (iii) access to TD's assets is permitted only in accordance with management's authorization; (iv) the reporting of TD's assets is compared with existing assets at regular intervals; and (v) accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. TD (A) has designed disclosure controls and procedures (within the meaning of Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information relating to TD and its Subsidiaries is made known to the management of TD by others within those entities as appropriate to allow timely decisions regarding required disclosure and to make the certifications required by the Exchange Act with respect to the TD Reports, and (B) has disclosed, based on its most recent evaluation prior to the date hereof, to TD's auditors and the audit committee of TD's Board of Directors (1) any significant deficiencies in the design or operation of internal controls which could adversely affect in any material respect TD's ability to record, process, summarize and report financial data and have identified for TD's auditors any material weaknesses in internal controls and (2) any fraud, whether or not material, that involves management or other employees who have a significant role in TD's internal controls. TD has made available to Banknorth a summary of any such disclosure made by management to TD's auditors and audit committee since January 1, 2002. TD has initiated its process of compliance with Section 404 of the Sarbanes-Oxley Act and expects to be in full compliance therewith by the SEC mandated compliance date.

(d) Except as set forth in Section 4.5(d) of the TD Disclosure Schedule, since July 30, 2002, (i) neither TD nor any of its Subsidiaries nor, to the knowledge of TD, any director, officer, employee, auditor, accountant or representative of TD or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of TD or any of its Subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that TD or any of its Subsidiaries has engaged in questionable accounting or auditing

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practices, and (ii) no attorney representing TD or any of its Subsidiaries, whether or not employed by TD or any of its Subsidiaries, has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by TD or any of its officers, directors, employees or agents to the Board of Directors of TD or any committee thereof or to any director or officer of TD.

SECTION 4.6. *Financial Statements; Undisclosed Liabilities.* (a) The financial statements of TD (including any related notes thereto) included in the TD Reports filed on or prior to the date hereof complied, and the financial statements of TD (including any related notes thereto) included in any TD Reports filed after the date hereof will comply, as to form, as of their respective dates of filing with the SEC or any Canadian securities regulatory authority, as the case may be (or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of such subsequent filing), in all material respects, with all applicable accounting requirements and with the published rules and regulations of the SEC or such Canadian securities regulatory authority with respect thereto, have been, or will be, as the case may be, prepared in accordance with Canadian GAAP (except, in the case of unaudited statements, as otherwise permitted by the rules of the applicable Canadian securities regulatory authorities) applied on a consistent basis during the periods involved (except as may be disclosed therein), and fairly present, in all material respects, the consolidated financial position of TD and its consolidated Subsidiaries and the consolidated results of operations, changes in stockholders' equity and cash flows of such companies as of the dates and for the periods shown. The books and records of TD and its Subsidiaries have been, and are being, maintained in all material respects in accordance with Canadian GAAP and any other applicable legal and accounting requirements and reflect only actual transactions.

(b) Except for (i) those liabilities that are fully reflected or reserved for in the consolidated financial statements of TD included in its Annual Report on Form 40-F for the fiscal year ended October 31, 2003, as filed with the SEC (the *TD Annual Report*) or otherwise disclosed in TD Reports filed subsequent to the date of the TD Annual Report and prior to the date hereof, (ii) liabilities incurred since October 31, 2003 in the ordinary course of business consistent with past practice, (iii) those liabilities set forth in Section 4.6(b) of the TD Disclosure Schedule and (iv) liabilities that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on TD, neither TD nor any of its Subsidiaries has incurred any material liability of any nature whatsoever (whether absolute, accrued or contingent or otherwise and whether due or to become due) and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in such a liability other than pursuant to or as contemplated by this Agreement.

SECTION 4.7. *Absence of Certain Changes or Events.* Except as disclosed in the TD Reports filed prior to the date of this Agreement, since October 31, 2003, no event has occurred which had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on TD.

SECTION 4.8. *Brokers.* Except for Goldman, Sachs & Co. and TD Securities Inc., whose fees and expenses will be paid by TD, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of TD or Berlin Mergerco.

SECTION 4.9. *Legal Proceedings.* (a) Except as publicly disclosed in the TD Reports filed prior to the date of this Agreement, neither TD nor any of its Subsidiaries is a party to any, and there are no pending or, to the best of TD's knowledge, threatened legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any nature against TD or any of its Subsidiaries (including under or in respect of the Sarbanes-Oxley Act, the USA Patriot Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act or any other fair lending law or other law relating to discriminatory banking practices or the Bank Secrecy Act, as well as any comparable Canadian laws) or challenging the validity or propriety of the transactions contemplated by this Agreement and the agreements and instruments contemplated hereby as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, would, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect on TD.

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(b) There is no injunction, order, judgment, decree, or regulatory restriction specifically imposed upon TD, any of its Subsidiaries or the assets of TD or any of its Subsidiaries which has had, or would reasonably be expected to have, a Material Adverse Effect on TD.

SECTION 4.10. *Compliance With Applicable Law.* Each of TD and its Subsidiaries is in compliance with, and is not in violation of, its respective articles of incorporation and by-laws or equivalent constituent documents. Except as disclosed in Section 4.10 of the TD Disclosure Schedule, TD and each of its Subsidiaries hold, and have at all times held, all licenses, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses and ownership of their respective properties and assets, under and pursuant to all, and have complied with and are not in violation in any material respect under any, applicable law, statute, order, rule, regulation, policy and/or guideline of any Governmental Entity relating to TD or any of its Subsidiaries (including under or in respect of the Sarbanes-Oxley Act, the USA Patriot Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act or any other fair lending law or other law relating to discriminatory banking practices, as well as any comparable Canadian laws), except where the failure to hold such license, franchise, permit or authorization or such noncompliance or violation would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect on TD, and neither TD nor any of its Subsidiaries knows of, or has received notice of, any violations of any of the above which, individually or in the aggregate, would have or reasonably be expected to have a Material Adverse Effect on TD.

SECTION 4.11. *Agreements With Regulatory Agencies.* Except as set forth in Section 4.11 of the TD Disclosure Schedule, neither TD nor any of its Subsidiaries is subject to any cease-and-desist or other order issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is a recipient of any extraordinary supervisory letter from, or is subject to any order or directive by, or has adopted any board resolutions at the request of (each, whether or not set forth in Section 4.11 of the TD Disclosure Schedule, a *TD Regulatory Agreement* ), any Governmental Entity that currently restricts or by its terms will in the future restrict the conduct of its business or relates to its capital adequacy, its credit or risk management policies, its dividend policy, its management or its business, nor has TD or any of its Subsidiaries been advised by any Governmental Entity that it is considering issuing or requesting any TD Regulatory Agreement.

SECTION 4.12. *TD Information.* The information relating to TD and its Subsidiaries to be provided by TD for inclusion in the Proxy Statement/ Prospectus, the Registration Statement, any filing pursuant to Rule 165 or Rule 425 under the Securities Act or Rule 14a-12 under the Exchange Act, or in any other document filed with any other Governmental Entity in connection herewith, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. The Proxy Statement/ Prospectus (except for such portions thereof as relate only to Banknorth or any of its Subsidiaries) will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder. The Registration Statement (except for such portions thereof as relate only to Banknorth or any of its Subsidiaries) will comply as to form in all material respects with the provisions of the Securities Act and the rules and regulations thereunder.

SECTION 4.13. *Taxes.* Except as set forth in Section 4.13 of the TD Disclosure Schedule: (a) each of TD and its Significant Subsidiaries has (i) duly and timely filed (including pursuant to any extension of the filing deadline) all material Tax Returns required to be filed by it, and such Tax Returns are true, correct and complete in all material respects, and (ii) paid in full or made adequate provision in the financial statements included in the TD Reports (in accordance with Canadian GAAP) for all material Taxes, whether or not shown as due on such Tax Returns; (b) no material deficiencies for any Taxes have been proposed, asserted or assessed in writing against or with respect to any Taxes due by or Tax Returns of TD or any of its Significant Subsidiaries, except for any such deficiencies that have been fully reflected or reserved for in the financial statements included in the TD Reports and (c) there are no material Liens for Taxes upon the assets of either TD or any of its Significant Subsidiaries except for statutory liens for current Taxes not yet due or Liens for Taxes that are being contested in good faith by appropriate

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proceedings or for which adequate reserves in accordance with Canadian GAAP have been provided in the financial statements included in the TD Reports.

SECTION 4.14. *Financing.* As of the Closing Date, TD will have all funds necessary to pay on the Closing Date the aggregate Cash Consideration and the consideration payable in respect of fractional TD Common Shares and all fees and expenses to be paid by TD pursuant to this Agreement, and will have the financial capacity to perform all of its other obligations under this Agreement and the agreements and instruments contemplated hereby.

SECTION 4.15. *Approvals.* As of the date of this Agreement, TD knows of no reason why all regulatory approvals from any Governmental Entity required to consummate the transactions contemplated hereby should not be obtained on a timely basis without the imposition of a condition or restriction of the type referred to in Section 7.2(c).

ARTICLE V

COVENANTS RELATING TO CONDUCT OF BUSINESS

SECTION 5.1. *Conduct of Business Prior to the Effective Time.* Except as otherwise expressly contemplated or permitted by this Agreement, during the period from the date of this Agreement to the Effective Time, Banknorth shall, and shall cause each of its Subsidiaries to, (i) conduct its business in the usual, regular and ordinary course consistent with past practice, (ii) use reasonable best efforts to maintain and preserve intact its business organization, and its rights, authorizations, franchises and other authorizations issued by Governmental Entities, preserve its advantageous business relationships with customers, vendors and others doing business with it and retain the services of its officers and key employees and (iii) take no action which would reasonably be expected to adversely affect or delay the receipt of any approvals of any Governmental Entity required to consummate the transactions contemplated hereby or to consummate the transactions contemplated hereby.

SECTION 5.2. *Banknorth Forbearances.* Except as set forth in the Banknorth Schedule or expressly contemplated or permitted by this Agreement or for actions required to be taken by Banknorth pursuant to the BostonFed Merger Agreement, and subject to applicable laws, during the period from the date of this Agreement to the Effective Time, Banknorth shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of TD:

(a) (i) adjust, split, combine or reclassify any capital stock; (ii) set any record or payment dates for the payment of any dividends or distributions on its capital stock or make, declare or pay any dividend or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock or any securities or obligations convertible into or exchangeable for any shares of its capital stock or stock appreciation rights, other than (A) regular quarterly cash dividends on Banknorth Common Stock equal to the rate paid during the fiscal quarter immediately preceding the date hereof with record and payment dates consistent with past practice, provided, however, that no dividend shall be paid by Banknorth on Banknorth Common Stock if Banknorth shall be required to borrow funds to do so; (B) dividends paid by any of the Subsidiaries of Banknorth so long as such dividends are only paid to Banknorth or any of its other wholly owned Subsidiaries; *provided* that no such dividend shall cause Banknorth, NA to cease to qualify as a well-capitalized institution under the prompt corrective action provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 and the applicable regulations thereunder; and (C) dividends paid to the holders of trust preferred securities issued by affiliated trusts, in each case in accordance with the terms of such securities; (iii) or issue or commit to issue any additional shares of capital stock, Voting Debt or any securities convertible into or exercisable for, or any rights, warrants or options to acquire, any additional shares of capital stock or Voting Debt, except (x) pursuant to the exercise of stock options outstanding as of the date hereof and disclosed in Section 3.2(a) of the Banknorth Schedule, (y) stock options and restricted stock granted under the Banknorth Stock Option Plans in the ordinary course of business, *provided* that the number of shares of Banknorth

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common stock subject to stock options does not exceed 4,500,000 (the *Option Shares* ); *provided*, further, that the number of shares of Banknorth common stock subject to restricted stock or restricted stock units shall not exceed 1,500,000 (the *Restricted Shares* ) and (A) the number of Options Shares available shall be reduced by three shares for each Restricted Share granted and (B) the number of Restricted Shares available shall be reduced by one-third of a share for each Option Share subject to an Option granted; *provided*, further, that Banknorth shall take all actions necessary to provide that the vesting of any awards granted under this Section 5.2(a)(iii)(y) shall not accelerate as a result of the transactions contemplated by this Agreement, and (z) shares of Banknorth Common Stock issued in the ordinary course of business consistent with past practice pursuant to Banknorth's Employee Stock Purchase Plan, 401(k) Plan and Restricted Stock Plan for Non-employee Directors; *provided*, that Banknorth shall take all actions necessary to provide that the vesting of any awards granted under any plan referred to in this clause (z) after the date hereof and prior to the Effective Time shall not, to the extent not vested upon grant or prior to the Effective Time in accordance with the terms of such plan, accelerate as a result of the transactions contemplated by this Agreement; or (iv) amend or waive any provision of, or redeem the rights issued under, the Banknorth Rights Agreement or otherwise take any action to exempt any person (other than TD and its Subsidiaries) or any action taken by any person (other than TD and its Subsidiaries) from the Banknorth Rights Agreement or any Takeover Statute or similar restrictive provision of its organizational documents;

(b) enter into any new material line of business or change its lending, investment, risk and asset-liability management and other material banking or operating policies in any material respect, except as required by law or by policies imposed by a Governmental Entity;

(c) sell, license, lease, encumber, mortgage, transfer, assign or otherwise dispose of, or abandon or fail to maintain, any of its material assets, properties or other rights or agreements, provided that in no event shall Banknorth or any of its Subsidiaries sell, license, lease, encumber, mortgage, transfer, assign or otherwise dispose of any Subsidiary, business division, branch or other operating business without, in any such case, receiving TD's prior written consent;

(d) make any acquisition of or investment in any other person, by purchase or other acquisition of stock or other equity interests (other than in a fiduciary capacity in the ordinary course of business), by merger, consolidation, asset purchase or other business combination, or by formation of any joint venture or other business organization or by contributions to capital; or make any purchases or other acquisitions of any debt securities, property or assets (including any investments or commitments to invest in real estate or any real estate development project) in or from any other individual, corporation, joint venture or other entity other than a wholly owned Subsidiary of Banknorth, except for (i) foreclosures, settlements in lieu of foreclosures, troubled debt or Loan restructurings and other similar acquisitions in connection with securing or collecting debts previously contracted in the ordinary course of business, (ii) purchases of investment securities in the ordinary course of business consistent with past practice, and (iii) Loans originated or acquired as permitted by Section 5.2(k);

(e) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse or otherwise become responsible for the obligations of any person, except in the ordinary course of business consistent with past practice;

(f) create, renew, amend or terminate, fail to perform any obligations under, waive or release any rights under or give notice of a proposed renewal, amendment, waiver, release or termination of, any material contract, agreement or lease to which Banknorth or any of its Subsidiaries is a party or by which Banknorth or any of its Subsidiaries or their respective properties is bound, including any contract or agreement of the type described in Section 3.15(a)(vi), other than any of the foregoing arising in the ordinary course of business consistent with past practice;

(g) foreclose on or take a deed or title to any commercial real estate without first conducting a Phase I environmental assessment of the property, or foreclose on or take a deed or title to any

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commercial real estate if such environmental assessment indicates the presence of a Hazardous Substance;

(h) other than as required pursuant to existing agreements or as otherwise required by applicable law, (i) increase the compensation or fringe benefits of any present or former director, officer or employee of Banknorth or its Subsidiaries (except for increases in salary or wages of nonexecutive officers or employees in the ordinary course of business consistent with past practice); (ii) grant any severance or termination pay to any present or former director, officer or employee of Banknorth or its Subsidiaries except (A) as required pursuant to the terms of any plan Banknorth Benefit Plan or (B) for severance or termination pay, consistent with past practice, to any employee of Banknorth or its Subsidiaries (other than any officer) in connection with terminations of employment in the ordinary course of business; (iii) loan or advance any money or other property to, or sell, transfer or lease any properties or assets (real, personal or mixed, tangible or intangible) to, any director, officer or employee of Banknorth or its Subsidiaries, other than in the ordinary course of business consistent with past practice and consistent with loans made in the ordinary course of the business of Banknorth and its Subsidiaries; (iv) establish, adopt, enter into, amend or terminate any Banknorth Benefit Plan or any plan, agreement, program, policy, trust, fund or other arrangement that would be a Banknorth Benefit Plan if it were in existence as of the date of this Agreement; (v) increase the funding obligation or contribution rate of any Banknorth Benefit Plan subject to Title IV of ERISA, except as required by U.S. GAAP or the terms of any such plan; or (vi) increase the size of the Banknorth Board of Directors.

(i) make any capital expenditures in excess of \$25 million in the aggregate, other than expenditures budgeted in the capital expenditure budget delivered to TD prior to the date of this Agreement;

(j) make application for the opening, relocation or closing of any, or open, relocate or close any, branch office or loan production or servicing facility;

(k) except for Loans or commitments for Loans that have previously been approved by Banknorth prior to the date of this Agreement, make or acquire any Loan or issue a commitment for any Loan except for Loans and commitments that are made in the ordinary course of business consistent with past practice and with a principal balance of \$40 million or less;

(l) except as otherwise expressly permitted elsewhere in this Section 5.2, engage or participate in any material transaction or incur or sustain any material obligation, in each case other than in the ordinary course of business consistent with past practice;

(m) except pursuant to agreements or arrangements in effect on the date hereof, pay, loan or advance any amount to, or sell, transfer or lease any properties or assets (real, personal or mixed, tangible or intangible) to, or enter into any agreement or arrangement with, any of its officers or directors or any of their immediate family members or any affiliates or associates (as such terms are defined under the Exchange Act) of any of its officers or directors other than in the ordinary course of business consistent with past practice and consistent with loans made in the ordinary course of the business of Banknorth and its subsidiaries, and, in the case of any such agreements or arrangements relating to compensation, fringe benefits, severance or termination pay or related matters, only as otherwise permitted pursuant to this Section 5.2;

(n) pay, discharge, settle, compromise or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), including taking any action to settle or compromise any litigation, in each case, (i) relating to this Agreement or the transactions contemplated hereby or (ii) that is otherwise material to Banknorth and its Subsidiaries, other than, in the case of matters covered by clause (ii), the payment, discharge, settlement, compromise or satisfaction, in the ordinary course of business consistent with past practice or in accordance with their terms, of liabilities reflected or reserved against in, or contemplated by, the most recent consolidated financial statements (or the notes thereto) included in the Banknorth Reports filed prior to the date hereof, or incurred since June 30, 2004 in the ordinary course of business consistent with past practice;

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(o) amend its certificate of incorporation, by-laws or similar governing documents, or enter into a plan of consolidation, merger, share exchange, reorganization or complete or partial liquidation with any person (other than consolidations, mergers or reorganizations solely among wholly-owned subsidiaries of Banknorth), or a letter of intent or agreement in principle with respect thereto;

(p) restructure or materially change its investment securities portfolio policy or the manner in which the portfolio is classified or reported; or invest in any mortgage-backed or mortgage related securities which would be considered high-risk securities under applicable regulatory pronouncements;

(q) make any material change in its policies and practices with respect to underwriting, pricing, originating, acquiring, selling, servicing, or buying or selling rights to service Loans;

(r) take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in Section 7.1 or 7.2 not being satisfied or in a Requisite Regulatory Approval not being obtained without imposition of a condition of the type referred to in Section 7.2(c) or which would reasonably be expected to disqualify the Migratory Merger as a reorganization under Section 368(a) of the Code;

(s) make any changes in its accounting methods or method of Tax accounting, practices or policies, except as may be required under law, rule, regulation or U.S. GAAP, in each case as concurred in by Banknorth's independent public accountants;

(t) enter into any securitizations of any Loans or create any special purpose funding or variable interest entity;

(u) make or change any material Tax election (unless required by applicable law), file any material amended Tax Returns, settle or compromise any material Tax liability of Banknorth or any of its Subsidiaries or surrender any right to claim a material Tax refund, in each case other than in the ordinary course of business consistent with past practice (for purposes of this clause (u), material means \$10 million or more of Taxes); or

(v) agree to, or make any commitment to, take, or authorize or adopt any resolution of its board of directors in support of, any of the actions prohibited by this Section 5.2.

**SECTION 5.3. No Fundamental TD Changes.** Except as expressly contemplated or permitted by this Agreement, or as required by applicable law, rule or regulation, during the period from the date of this Agreement to the Effective Time, TD shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of Banknorth, (a) amend, repeal or otherwise modify its by-laws in a manner that would materially and adversely affect the economic benefits of the Acquisition Merger to the holders of Banknorth Common Stock, (b) take any action that is intended or would reasonably be expected to result in any of the conditions to the Mergers set forth in Section 7.1 or 7.3 not being satisfied or in a Requisite Regulatory Approval not being obtained without imposition of a condition of the type referred to in Section 7.2(c), or in a material violation of any provision of this Agreement, (c) declare or pay any extraordinary or special dividends on or make any other extraordinary or special distributions in respect of any of its capital stock; *provided, however*, that nothing contained herein shall prohibit TD from increasing the regular quarterly cash dividend on TD Common Shares, or (d) agree to, or make any commitment to, take, or authorize or adopt any resolution of its board of directors in support of, any of the actions prohibited by this Section 5.3.

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ARTICLE VI

ADDITIONAL AGREEMENTS

Section 6.1. *Regulatory Matters.*

(a) Banknorth Delaware and TD shall promptly prepare and file with the SEC the Registration Statement (which shall contain therein the Proxy Statement/ Prospectus). Each of TD, Banknorth and Banknorth Delaware shall use its reasonable best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing, and thereafter Banknorth shall mail the Proxy Statement/ Prospectus to its shareholders. If at any time prior to the Effective Time any information relating to any of the parties, or their respective affiliates, officers or directors, should be discovered by any party which should be set forth in an amendment or supplement to either the Registration Statement or the Proxy Statement/ Prospectus so that such documents would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and, to the extent required by law, rules or regulations, an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and disseminated to the shareholders of Banknorth.

(b) Subject to the other provisions of this Agreement, the parties hereto shall cooperate with each other and use their reasonable best efforts to promptly prepare and file all necessary documentation, to effect all applications, notices, petitions and filings, and to obtain as promptly as practicable all permits, consents, approvals and authorizations of all third parties and Governmental Entities which are necessary or advisable to consummate the transactions contemplated by this Agreement (including the Mergers) and to comply with the terms and conditions of all such permits, consents, approvals and authorizations of all such third parties and Governmental Entities. The parties shall promptly inform each other of any material communication from, and shall give the other parties a reasonable opportunity to review in advance any material communication intended to be given by it to, any Governmental Entity regarding any of the transactions contemplated by this Agreement (other than any confidential portion thereof that relates solely to the party receiving such communication from or providing such communication to such Governmental Entity).

(c) TD and Banknorth shall, upon request, furnish each other with all information concerning themselves, their Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the preparation of the Proxy Statement/ Prospectus, the Registration Statement or any other statement, filing, notice or application made by or on behalf of TD, Banknorth or any of their respective Subsidiaries to any Governmental Entity in connection with the Mergers and the other transactions contemplated by this Agreement.

SECTION 6.2. *Access to Information.*

(a) Upon reasonable notice and subject to applicable laws relating to the exchange of information, Banknorth shall, and shall cause each of its Subsidiaries to, afford to the officers, employees, accountants, counsel and other representatives of TD access, during normal business hours during the period prior to the Effective Time, to all its properties, books, contracts, commitments and records, and to its officers, employees, accountants, counsel and other representatives, in each case in a manner not unreasonably disruptive to the operation of the business of Banknorth and its Subsidiaries, and, during such period, Banknorth shall, and shall cause its Subsidiaries to, make available to TD (i) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of Federal securities laws or Federal or state banking, mortgage lending, real estate or consumer finance or protection laws (other than reports or documents which Banknorth is not permitted to disclose under applicable law) and (ii) all other information concerning its business, properties and personnel as TD may reasonably request. Neither Banknorth nor any of its Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would jeopardize the attorney-client privilege of the institution in possession or control of such information or contravene any

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law, rule or regulation applicable to the institution in possession or control of such information. The parties hereto will make appropriate substitute disclosure arrangements under circumstances in which the restrictions of the preceding sentence apply.

(b) TD agrees that upon reasonable notice and subject to applicable laws relating to the exchange of information, it shall afford Banknorth and its authorized Representatives such access to executive officers and such appropriate information relating to TD and its Subsidiaries as may be reasonably necessary to confirm the accuracy of the representations and warranties of TD herein as Banknorth may reasonably request.

(c) Each of TD and Banknorth shall hold all non-public information furnished by Banknorth or TD, as the case may be, pursuant to Section 6.2(a) or (b) or Section 6.9, or furnished by Banknorth or TD, as the case may be, prior to the date of this Agreement in connection with the transactions contemplated hereby (the *Confidential Information*) in confidence and shall not, without Banknorth's or TD's, as the case may be, prior written consent, disclose such Confidential Information to any person or entity, and shall not use such Confidential Information other than in connection with the transactions contemplated by this Agreement; *provided, however*, that TD or Banknorth, as the case may be, may disclose any of such Confidential Information to its affiliates, directors, executives, officers, employees, agents, or legal, financial, accounting or other advisors (collectively, *Representatives*) who need to know such Confidential Information in connection with the transactions contemplated by this Agreement and who are advised of the provisions of this Section 6.2(c). Each of TD and Banknorth, as the case may be, shall be responsible for any breach of its obligations under this Section 6.2(c) by its Representatives (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy Banknorth or TD, as the case may be, may have against such Representatives with respect to any such breach). Notwithstanding the foregoing, the term *Confidential Information* shall not include, and the provisions of this Section 6.2(c) shall not apply to, information that (i) is or becomes publicly available other than as a result of a breach of this Section 6.2(c) by TD or its Representatives or Banknorth or its Representatives, as the case may be; (ii) was within the possession of TD or any of its Representatives or Banknorth or any of its Representatives, as the case may be, prior to its being furnished to TD by or on behalf of Banknorth, or to Banknorth by or on behalf of TD, as the case may be, provided that the source of such information was not known by TD or Banknorth, as the case may be, to be bound by a confidentiality agreement with, or other contractual or legal obligation of confidentiality to, Banknorth or TD, as the case may be, with respect to such information; or (iii) is or becomes available to TD or any of its Representatives or Banknorth or any of its Representatives, as the case may be, on a non-confidential basis from a source other than Banknorth or any of its Representatives, or TD or any of its Representatives, as the case may be; provided that such source was not known to TD or Banknorth, as the case may be, to be bound by a confidentiality agreement with, or other contractual or legal obligation of confidentiality to, Banknorth or TD, as the case may be, with respect to such information; or (iv) is independently developed by or on behalf of TD or Banknorth, as the case may be, without violating any of its respective obligations under this Section 6.2(c). In the event that TD or Banknorth, as the case may be, or anyone to whom it transmits the Confidential Information pursuant to this Section 6.2(c) is requested or required (by oral questions, interrogatories, requests for information or documents in any legal proceeding, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, TD will provide Banknorth or Banknorth will provide TD, as the case may be, with prompt written notice of such requirement (unless prohibited by law or court order from doing so). Each party further agrees that, (i) to the extent practicable, it will consult the other party so that the other party, at the other party's own expense, may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 6.2(c) and (ii) if it must disclose any of the Confidential Information pursuant to applicable law or legal process or pursuant to any rule, regulation or disclosure obligation of a securities exchange, securities market or self-regulatory agency on which such party's securities are then listed or admitted for trading, a bank regulatory authority, the SEC or any applicable Canadian securities regulatory authority, and no injunction has been granted restraining such disclosure, it may do so without violating this Section 6.2(c) provided that it furnishes only (a) that portion of the Confidential Information which it determines is legally required after consultation with

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counsel (which may be its internal counsel) and exercises its reasonable efforts (at the other party's expense) to obtain reliable assurance that the Confidential Information will be treated as confidential or (b) such Confidential Information to which Banknorth or TD, as the case may be, agrees in writing. The provisions of this Section 6.2(c) shall survive any termination of this Agreement and shall survive the Effective Time.

(d) No investigation by TD or its representatives or Banknorth or its representatives, as the case may be, shall constitute a waiver of or otherwise affect the representations, warranties, covenants or agreements of Banknorth or TD, as the case may be, set forth herein.

SECTION 6.3. *Shareholder Approval.*

(a) Banknorth shall duly take all lawful action to call, give notice of, convene and hold a meeting of its shareholders as promptly as practicable following the date upon which the Registration Statement becomes effective (the *Banknorth Shareholders Meeting*) for the purpose of obtaining the Required Banknorth Vote and the Additional Votes (as defined in Section 6.15) and, subject to Section 6.3(b), shall take all lawful action to solicit the approval of this Agreement (with respect to the Migratory Merger) and the Additional Proposals by such shareholders. The Board of Directors of Banknorth shall recommend approval of this Agreement and the Additional Proposals by the shareholders of Banknorth (the *Banknorth Recommendation*) and shall not (x) withdraw, modify or qualify in any manner adverse to TD such recommendation or (y) take any other action or make any other public statement in connection with the Banknorth Shareholders Meeting inconsistent with such recommendation (collectively, a *Change in Banknorth Recommendation*), except as and to the extent expressly permitted by Section 6.3(b). Notwithstanding any Change in Banknorth Recommendation, this Agreement and the Additional Proposals shall be submitted to the shareholders of Banknorth at the Banknorth Shareholders Meeting for the purpose of approving this Agreement with respect to the Migratory Merger and nothing contained in this Section 6.3 or Section 6.4 shall be deemed to relieve Banknorth of such obligation. In addition to the foregoing, Banknorth shall not submit to the vote of its shareholders any Acquisition Proposal other than the Mergers.

(b) Notwithstanding the foregoing, prior to obtaining the Required Banknorth Vote and the Additional Votes, Banknorth and its Board of Directors may effect a Change in Banknorth Recommendation if and only to the extent that:

(i) Banknorth has complied in all material respects with its obligations under Section 6.4,

(ii) its Board of Directors, after consultation with its outside counsel, determines in good faith that failure to take such action would result in a violation of its fiduciary duties under applicable law, and

(iii) it (A) has received an unsolicited *bona fide* written Acquisition Proposal from a third party which its Board of Directors concludes in good faith constitutes a Superior Proposal (as defined below) after giving effect to all of the adjustments which may be offered by TD pursuant to clause (C) below, (B) has notified TD, at least five Business Days in advance, of its intention to effect a Change in Banknorth Recommendation, specifying the material terms and conditions of any such Superior Proposal and furnishing to TD a copy of the relevant proposed transaction agreements, if such exist, with the party making such Superior Proposal and (C) during the period of not less than five Business Days following Banknorth's delivery of the notice referred to in clause (B) above and prior to effecting such a Change in Banknorth Recommendation, has negotiated, and has used reasonable best efforts to cause its financial and legal advisors to negotiate, with TD in good faith (to the extent that TD desires to negotiate) to make such adjustments in the terms and conditions of this Agreement so that such Acquisition Proposal ceases to constitute a Superior Proposal.

(c) As promptly as practicable after the execution of this Agreement, Banknorth, acting as the sole stockholder of Banknorth Delaware, shall, at a meeting of the sole stockholder of Banknorth Delaware which meeting Banknorth shall cause Banknorth Delaware to hold, (i) adopt this Agreement in respect of the Migratory Merger and the Acquisition Merger and (ii) irrevocably waive any right of appraisal with respect to the Acquisition Merger or the right to dissent from the Acquisition Merger that Banknorth may have.

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SECTION 6.4. *Acquisition Proposals.* (a) Banknorth agrees that neither it nor any of its Subsidiaries nor any of the officers and directors of it or its Subsidiaries shall, and that it shall use its reasonable best efforts to cause its and its Subsidiaries' employees, agents and representatives (including any investment banker, attorney or accountant retained by it or any of its Subsidiaries) not to, directly or indirectly, (i) initiate, solicit or knowingly encourage or facilitate any inquiries or the making of any proposal or offer with respect to, or a transaction to effect, a merger, reorganization, share exchange, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving it or any of its Significant Subsidiaries (as defined below), or any purchase or sale of 10% or more of the consolidated assets (including stock of its Subsidiaries) of it and its Subsidiaries, taken as a whole, or any purchase or sale of, or tender or exchange offer for, its voting securities that, if consummated, would result in any person (or the stockholders of such person) beneficially owning securities representing 10% or more of the total voting power of Banknorth (or of the surviving parent entity in such transaction) or any of its Significant Subsidiaries (any such proposal, offer or transaction (other than a proposal or offer made by TD or an affiliate thereof) being hereinafter referred as an *Acquisition Proposal* ), (ii) have any discussions with or provide any confidential information or data to any person relating to an Acquisition Proposal, or engage in any negotiations concerning an Acquisition Proposal, or knowingly facilitate any effort or attempt to make or implement an Acquisition Proposal, (iii) approve or recommend, or propose to approve or recommend, any Acquisition Proposal or (iv) approve or recommend, or propose to approve or recommend, or execute or enter into, any letter of intent, agreement in principle, merger agreement, asset purchase or share exchange agreement, option agreement or other similar agreement related to any Acquisition Proposal or propose or agree to do any of the foregoing. Notwithstanding the foregoing provisions of this Section 6.4(a), in the event that, prior to obtaining the Required Banknorth Vote and the Additional Votes, Banknorth receives an unsolicited *bona fide* Acquisition Proposal and its board of directors concludes in good faith that such Acquisition Proposal constitutes or is reasonably likely to result in a Superior Proposal, Banknorth may, and may permit its Subsidiaries and its and their representatives to, furnish or cause to be furnished confidential information or data to the person making such Acquisition Proposal and participate in negotiations or discussions with such person regarding such Acquisition Proposal to the extent that Banknorth's Board of Directors concludes in good faith (after consultation with its outside counsel) that failure to take such actions would result in a violation of its fiduciary duties under applicable law; *provided* that prior to providing (or causing to be provided) any confidential information or data permitted to be provided pursuant to this sentence, Banknorth shall have entered into a confidentiality agreement with such third party on terms no less favorable to Banknorth than the confidentiality agreement previously entered into between TD and Banknorth; and *provided further*, that Banknorth shall also provide to TD a copy of any such confidential information or data that it is providing to any third party pursuant to this Section 6.4 to the extent not previously provided or made available to TD. The term *Significant Subsidiary* shall have the meaning ascribed thereto in Rule 1-02 of Regulation S-X.

(b) For purposes of this Agreement, *Superior Proposal* with respect to Banknorth means a bona fide written Acquisition Proposal which the Board of Directors of Banknorth concludes in good faith, after consultation with its financial advisors and legal advisors, taking into account all legal, financial, regulatory and other aspects of the proposal and the person making the proposal (including any break-up fees, expense reimbursement provisions and conditions to consummation), (i) is more favorable to the stockholders of Banknorth, from a financial point of view, than the transactions contemplated by this Agreement and (ii) is fully financed or reasonably capable of being fully financed and otherwise reasonably capable of being completed on the terms proposed; *provided* that, for purposes of this definition of *Superior Proposal*, the term Acquisition Proposal shall have the meaning assigned to such term in Section 6.4(a), except that the reference to 10% or more in the definition of Acquisition Proposal shall be deemed to be a reference to a majority and Acquisition Proposal shall only be deemed to refer to a transaction involving voting securities of Banknorth or all or substantially all of the consolidated assets of Banknorth and its Subsidiaries.

(c) Banknorth will, and will cause its Subsidiaries and its and their employees, agents and representatives to, immediately cease and cause to be terminated any activities, discussions or negotiations conducted before the date of this Agreement with any persons other than TD with respect to any

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Acquisition Proposal and will use its reasonable best efforts to enforce (and will not release any third party from its obligations under) any standstill, confidentiality or similar agreement relating to an Acquisition Proposal, including by requiring the other parties thereto to promptly return or destroy any confidential information previously furnished by Banknorth thereunder and by using its reasonable best efforts to obtain injunctions or other equitable remedies to prevent or restrain any breaches of such agreements and to enforce specifically the terms and provisions thereof in a court of competent jurisdiction. Banknorth will promptly (within one Business Day) following receipt of any Acquisition Proposal advise TD of the substance thereof (including the identity of the person making such Acquisition Proposal), and will keep TD apprised of any related developments, discussions and negotiations (including the terms and conditions of the Acquisition Proposal) on a current basis (and, in any event, within 48 hours of the occurrence of such developments, discussions or negotiations).

(d) Nothing contained in this Agreement shall prevent Banknorth or its Board of Directors from complying with Rule 14d-9 and Rule 14e-2 under the Exchange Act with respect to an Acquisition Proposal, *provided* that such Rules will in no way eliminate or modify the effect that any action pursuant to such Rules would otherwise have under this Agreement; and *provided, further*, that any such disclosure (other than a stop, look and listen or similar communication of the type contemplated by Rule 14-9(f) under the Exchange Act) shall be deemed to be a Change in Recommendation for purposes of Article VIII hereof unless the Banknorth Board of Directors expressly reaffirms the Banknorth Recommendation in such disclosure.

(e) Banknorth agrees that any violation of the restrictions set forth in this Section 6.4 by any director, officer, employee, agent or representative (including any investment banker, financial advisor, attorney, accountant or other retained representative) of Banknorth or its Subsidiaries, at the direction or with the consent or prior knowledge of Banknorth or its Subsidiaries, shall be deemed to be a breach of this Section 6.4 by Banknorth.

SECTION 6.5. *Legal Conditions to Merger.* (a) Subject to the terms and conditions of this Agreement, each of TD and Banknorth shall, and shall cause their respective Subsidiaries to, use their reasonable best efforts (i) to take, or cause to be taken, all actions necessary, proper or advisable to comply promptly with all legal requirements which may be imposed on such party or its Subsidiaries with respect to the Migratory Merger or the Acquisition Merger, subject to the conditions set forth in Article VII hereof, to consummate the transactions contemplated by this Agreement and (ii) to obtain (and to cooperate with the other party to obtain) any consent, authorization, order or approval of, or any exemption by, any Governmental Entity and any other third party which is required to be obtained by Banknorth or TD or any of their respective Subsidiaries in connection with the Mergers and the other transactions contemplated by this Agreement; *provided, however*, that no party shall be required to take any action pursuant to the foregoing sentence if the taking of such action or the obtaining of such consents, authorizations, orders, approvals or exemptions is reasonably likely to result in a condition or restriction having an effect of the type referred to in Section 7.2(c).

(b) Subject to the terms and conditions of this Agreement (including the proviso in Section 6.5(a)), each of TD and Banknorth agrees to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective, as soon as practicable after the date of this Agreement, the transactions contemplated hereby, including using reasonable best efforts to (i) modify or amend any contracts, plans or arrangements to which TD or Banknorth is a pa