

TORONTO DOMINION BANK

Form F-4/A

November 16, 2004

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As filed with the Securities and Exchange Commission on November 16, 2004

Registration Nos. 333-119517/119519

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**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

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**Amendment No. 1**  
**to**  
**Form S-4/ F-4**  
**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

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**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)*

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

**Brendan O Halloran**  
**The Toronto-Dominion Bank,**  
**New York Branch**  
**31 West 52nd Street**  
**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.

**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 transaction contemplated by the 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 transaction contemplated by the 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 merger agreement and proposals to approve the governance and other provisions in 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 a merger agreement with The Toronto-Dominion Bank, or TD. The merger agreement provides that Banknorth will reincorporate in Delaware and then merge with a wholly-owned subsidiary of TD. Upon completion of these transactions, each Banknorth shareholder will be entitled to receive, in exchange for the shares of Banknorth common stock owned by such shareholder, a package of consideration consisting of TD common shares, cash and shares of new Banknorth common stock, plus cash in lieu of fractional share interests. The following table summarizes the package of consideration and the material U.S. federal income tax implications of each component of the consideration:

Type of consideration	Amount of consideration included in package for each Banknorth shareholder, in each case multiplied by the number of shares of Banknorth common stock owned by such shareholder	Summary of material U.S. federal income tax implications
TD common shares	0.2351 of a share	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 you receive and (2) your adjusted tax basis in the 51% of the shares of Banknorth common stock that you are effectively converting into TD common shares and cash.
Cash	\$12.24	
New Banknorth common stock	0.49 of a share	You will not recognize any gain or loss on the shares of new Banknorth common stock.

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 (the latest practicable date prior to the mailing of this document), 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 (\$39.75 per Banknorth share based on the closing price on August 25, 2004, which was the last trading day before public announcement of this 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, which we believe will enhance our ability to implement our growth strategy.

**Your board has approved the merger agreement with TD and the transactions contemplated by the merger agreement, including the governance and other provisions in the post-transaction certificate of incorporation of the new Banknorth, 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 30.**

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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 proposals relating to the governance and other provisions in the post-transaction certificate of incorporation of the new Banknorth. **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 (1) the holders of a majority of our outstanding shares vote to approve the merger agreement and (2) each of the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation is approved by a majority of the votes cast on these proposals 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,

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.

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Investor Relations  
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P.O. Box 9540  
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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 164.**

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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:

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.;

Proposals to approve the governance and other provisions in the post-transaction certificate of incorporation of Banknorth Delaware Inc. (which will be the successor to Banknorth following the completion of the transaction), consisting of the following proposals:

the approval of modifications to the governance rights of Banknorth shareholders;

the approval of modifications to anti-takeover protections and related modifications to the rights of Banknorth shareholders; and

the approval of certain other modifications to the rights of Banknorth shareholders reflecting the structure of the transaction and the terms of the stockholders agreement entered into in connection with the transaction.

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 any of the foregoing proposals; and

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 of the special meeting.

**The Banknorth board of directors recommends that you vote in favor of the above proposals. The approval of the proposal to approve the merger agreement and of each of the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation is a condition to the completion of the transaction. Therefore, if Banknorth shareholders wish to approve the transaction, they must approve all 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 the transaction.

By Order of the Board of Directors

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 a merger agreement entered into by Banknorth Group, Inc. and its wholly-owned subsidiary Banknorth Delaware Inc. with The Toronto-Dominion Bank and its wholly-owned subsidiary Berlin Merger Co. Under the terms of 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 common stock of Banknorth Delaware 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 interest;

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 interest.

You are also being asked to vote to approve certain governance and other provisions in the post-transaction certificate of incorporation of the new Banknorth, consisting of the following proposals:

the approval of modifications to the governance rights of Banknorth shareholders;

the approval of modifications to anti-takeover protections and related modifications to the rights of Banknorth shareholders; and

the approval of certain other modifications to the rights of Banknorth shareholders reflecting the structure of the transaction and the terms of the stockholders agreement entered into in connection with the transaction.

Finally, you are being asked to vote to approve a procedural resolution to adjourn the special meeting if necessary to solicit additional votes to approve any of the foregoing proposals.

**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 each of the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation of the new Banknorth, each of which requires the affirmative vote of a majority of the votes cast on the matter at the special meeting, is a condition to completion of the mergers. As a result, a vote against any of these proposals effectively will be a vote against the transaction. 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 proposals to approve the governance and other provisions in 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 proposals to approve the governance and

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other provisions in the post-transaction certificate of incorporation of the new Banknorth. Banknorth and TD consider the provisions of the post-transaction certificate of incorporation and the resulting modifications to the rights of Banknorth shareholders to be an integral part of the transaction.

**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 Meeting How to Vote Your Shares* beginning on page 37.

**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 generally will 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 39.

**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



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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.**

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

A10: There will be a procedure for you to receive the merger consideration 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 the merger consideration 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 stock certificates. American Stock Transfer & Trust Company can be reached at (800) 937-5449 or (718) 921-8200, or on their website at [www.amstock.com](http://www.amstock.com), 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:

Morrow & Co., Inc.  
445 Park Avenue, 5th Floor  
New York, New York 10022

Banks and Brokerage Firms: (800) 654-2468  
Shareholders: (800) 607-0088  
All others call collect: (212) 754-8000

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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 appendices and exhibits 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 164. All references in this proxy statement/prospectus to dollars or \$ or U.S.\$ are to U.S. dollars and all references to C\$ are to Canadian dollars.*

**The Companies**

*The Toronto-Dominion Bank*

Toronto-Dominion Centre

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

TD is a Canadian chartered bank formed through the amalgamation of The Bank of Toronto (established 1855) and The Dominion Bank (established 1869). TD 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. 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 September 30, 2004, Banknorth, NA had 387 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 September 30, 2004, Banknorth had consolidated assets of \$29.0 billion and consolidated shareholders' equity of \$3.0 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. 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 September 30, 2004, BostonFed had \$1.7 billion of consolidated assets, \$98.7 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



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described in this proxy statement/ prospectus. It has not carried on any activities other than in connection with the merger agreement.

**The Transaction (Page 41)**

The merger agreement provides for TD to acquire 51% of the outstanding common stock of new Banknorth and for Banknorth's current shareholders 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.

First, Banknorth will reincorporate from Maine to Delaware by merging 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 136.

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 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:

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- (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 for Your Shares of Banknorth Common Stock if the Mergers Are Completed (Page 82)**

If the mergers are completed, you will be entitled to receive, in exchange for the shares of Banknorth common stock you own, the following:

a number of TD common shares equal to 0.2351 multiplied by the number of shares of Banknorth common stock you own;

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

a number of shares of Banknorth Delaware common stock equal to 0.49 multiplied by the number of shares of Banknorth common stock you own.

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.

For example, if you own 1,000 shares of Banknorth common stock, when both mergers have been completed you will receive:

235 TD common shares;

490 shares of Banknorth Delaware common stock;

\$12,240.00 in cash; and

for the fractional TD common share, cash in U.S. dollars equal to 0.1 (the remaining fractional interest in a TD common share) 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. In this example, there is no fractional share interest in Banknorth Delaware common stock and thus no payment to be made in lieu of such fractional share interest under the terms of the merger agreement.

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 30.

**Dividend Policies of TD and Banknorth and Possible Share Purchases by TD for Cancellation Following Completion of the Mergers**

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.\$0.30 based on the Canadian dollar/ U.S. dollar exchange rate on November 10, 2004) on its common shares. Banknorth Delaware and TD expect to continue paying dividends at the respective current rates of Banknorth and TD following completion 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. Assuming that Banknorth Delaware and TD continue to pay dividends on their common shares at their respective current rates, the following table sets forth a comparison of the dividend rate per share of Banknorth common stock prior to the transaction and following the completion of the transaction assuming that such share of

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Banknorth common stock has been exchanged for the merger consideration and that the cash portion of the merger consideration has not been invested:

Prior to the transaction:	
<i>Banknorth dividend per share</i>	\$ 0.20
Following the transaction:	
<i>Banknorth Delaware dividend per share × 0.49</i>	\$0.098
<i>TD dividend per share × 0.2351</i>	\$0.071(1)
<i>Total post-transaction dividends per former share of Banknorth common stock</i>	\$0.169(1)

- (1) Based on the Canadian dollar/ U.S. dollar exchange rate on November 10, 2004. Does not give effect to any withholding taxes that may be applicable, as described below under **Material Canadian Federal Income Tax Consequences of the Mergers to Holders of Banknorth Common Stock**.

Following the completion of the mergers, TD may purchase on the Toronto Stock Exchange for cancellation up to C\$500 million in TD common shares, to a maximum of 14 million shares, subject to market conditions and in accordance with U.S. and Canadian securities and other applicable laws. TD has filed with the Superintendent of Financial Institutions of Canada, and intends to file with the Toronto Stock Exchange, an application to conduct a normal course issuer bid to effect these purchases of TD common shares; however, TD does not intend to purchase any of its common shares in a new normal course issuer bid prior to completion of the Banknorth acquisition. TD does not intend to make any share purchases in connection with this normal course issuer bid on the New York Stock Exchange.

**Material U.S. Federal Income Tax Consequences of the Mergers to Holders of Banknorth Common Stock (Page 70)**

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.

**Material Canadian Federal Income Tax Consequences of the Mergers to Holders of Banknorth Common Stock (Page 75)**

In general, neither the exchange of a share of Banknorth common stock for a share of Banknorth Delaware common stock in the migratory merger nor the conversion of Banknorth Delaware common stock into the right to receive the merger consideration in 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.

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In considering the transaction, TD analyzed the potential accretive or dilutive effect that it would have on TD shareholders. While TD expects that the transaction will be dilutive to TD shareholders on an earnings per share basis calculated according to Canadian GAAP for its fiscal years 2005 and 2006, TD expects that the transaction will be accretive to TD's shareholders for those same periods on a per share earnings basis before the amortization of intangible assets and transaction-related and restructuring expenses. The table below presents TD's earnings per share accretion/dilution estimates for TD's fiscal years 2005 and 2006, assuming that the transaction is completed on February 1, 2005. You should note that these estimates are based on a number of assumptions, the most material of which are summarized below, which were made at the time of TD's consideration of the transaction and which are subject to change, in some cases due to factors outside of TD's control. TD has not and does not intend to make publicly available any update or other revision to these estimates.

	<b>Year Ending October 31, 2005</b>	<b>Year Ending October 31, 2006</b>
<b>Accretion/(Dilution): Canadian GAAP Basis</b>		
TD estimated stand-alone earnings per share	C\$ 3.46	C\$ 3.89
TD pro forma earnings per share	C\$ 3.40	C\$ 3.88
Accretion/(dilution) from the transaction	C\$ (0.06)	C\$ (0.01)
<b>Accretion/(Dilution) Before Amortization of Intangible Assets and Transaction-Related and Restructuring Expenses</b>		
TD estimated stand-alone earnings per share before amortization of intangible assets	C\$ 3.99	C\$ 4.31
TD pro forma earnings per share before amortization of intangible assets and transaction-related and restructuring expenses	C\$ 4.02	C\$ 4.38
Accretion/(dilution) from the transaction before amortization of intangible assets and transaction-related and restructuring expenses	C\$ 0.03	C\$ 0.07
Pro forma average shares outstanding (in millions)	692.5	703.4

TD estimated stand-alone earnings per share are based on consensus earnings per share estimates for 2005 and 2006 as reported by Institutional Brokerage Estimate System, or I/B/E/S, as of August 24, 2004. However, these consensus estimates as reported by I/B/E/S typically exclude the amortization of existing intangible assets. Accordingly, in preparing its analysis of the potential accretive or dilutive effect of the transaction, TD adjusted these consensus estimates, as would be required by Canadian GAAP, to reflect the expected amortization of existing intangible assets. The resulting amount is presented in the table above as TD estimated stand-alone earnings per share in accordance with Canadian GAAP.

TD pro forma earnings per share are based on the same consensus earnings per share estimates for TD for 2005 and 2006 as reported by I/B/E/S as of August 24, 2004, and consensus earnings per share estimates for Banknorth for 2005 and 2006 as reported by I/B/E/S as of August 24, 2004. However, because these consensus estimates do not reflect (1) the amortization of intangible assets (either existing or resulting from the transaction), (2) estimated funding costs to be incurred by TD for the cash portion of the merger consideration or (3) transaction related and restructuring expenses, in preparing its analysis of the potential accretive or dilutive effect of the transaction, TD adjusted these consensus estimates to reflect these items, as would be required by Canadian GAAP. The resulting amount is presented in the table above as TD pro forma earnings per share in accordance with Canadian GAAP. Pro forma earnings per share calculations do not include the anticipated financial benefits from such items as cost savings and revenue enhancements arising from the transaction. The Banknorth earnings were translated to Canadian dollars at a currency exchange rate of C\$1.3043 per U.S.\$1.00 (a rate that was quoted on August 25, 2004).

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Accretion/ (dilution) from the transaction before the amortization of intangible assets and transaction-related and restructuring expenses is a non-GAAP financial measure derived by subtracting TD estimated stand-alone earnings per share before such items from pro forma earnings per share before such items. TD believes this measure provides information useful to investors in understanding TD's underlying operational performance, its business and performance trends and its ability to pay cash dividends, as well as facilitating comparison with the performance of other companies in the financial services industry. The following table reconciles the components of the calculation of accretion/(dilution) from the transaction before amortization of intangible assets and transaction-related and restructuring expenses to the most directly comparable financial measures presented in accordance with Canadian GAAP:

	Year Ending October 31, 2005	Year Ending October 31, 2006
TD estimated stand-alone earnings per share before amortization of intangible assets	C\$ 3.99	C\$ 4.31
Impact of amortization of intangible assets	C\$(0.53)	C\$(0.42)
TD estimated stand-alone earnings per share (Canadian GAAP)	<u>C\$ 3.46</u>	<u>C\$ 3.89</u>
TD pro forma earnings per share before amortization of intangible assets and transaction-related and restructuring expenses	C\$ 4.02	C\$ 4.38
Impact of amortization of intangible assets	C\$(0.60)	C\$(0.50)
Impact of transaction-related and restructuring expenses	C\$(0.02)	
TD pro forma earnings per share (Canadian GAAP)	<u>C\$ 3.40</u>	<u>C\$ 3.88</u>
Accretion/ (dilution) from the transaction before amortization of intangible assets and transaction-related and restructuring expenses	<u>C\$ 0.03</u>	<u>C\$ 0.07</u>

Pro forma average shares outstanding assumes an average fully diluted share count for TD on a stand-alone basis of 660 million shares for each of the fiscal periods indicated above plus an additional 43.4 million TD common shares expected to be issued in the transaction.

**Holders of Banknorth Common Stock Do Not Have Dissenters' Rights of Appraisal (Page 80)**

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

**Board of Directors and Executive Management of Banknorth Delaware Following the Mergers (Page 122)**

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 five 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 will continue to hold their current positions at Banknorth Delaware.



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**The Special Meeting of Banknorth Shareholders on \_\_\_\_\_, 2004 (Page 37)**

*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:

A proposal to approve the merger agreement;

Proposals to approve the governance and other provisions in the post-transaction certificate of incorporation of Banknorth Delaware, consisting of the following proposals:

the approval of modifications to the governance rights of Banknorth shareholders;

the approval of modifications to anti-takeover protections and related modifications to the rights of Banknorth shareholders; and

the approval of certain other modifications to the rights of Banknorth shareholders reflecting the structure of the transaction and the terms of the stockholders agreement entered into in connection with the transaction.

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 any of the foregoing proposals; and

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

*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 Votes.* 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 proposals to approve the governance and other provisions in the post-transaction certificate of incorporation, as well as 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 governance and other provisions in the post-transaction certificate of incorporation. The approval of each of these proposals is a condition to the completion of the transaction.

**The Banknorth Board of Directors Recommends Approval of the Merger Agreement and the Proposals to Approve the Governance and Other Provisions in the Post-transaction Certificate of Incorporation (Page 40)**

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 and other provisions contained in that document. Banknorth's board of directors considers the provisions of the post-transaction certificate of incorporation and the resulting modifications to the rights of Banknorth shareholders to be an integral part of the transaction.

**Banknorth's board of directors recommends that you vote FOR approval of the merger agreement and the proposals to approve the governance and other provisions in 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 any of the foregoing proposals.

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**Banknorth's Financial Advisors Have Delivered Opinions that the Merger Consideration is Fair, from a Financial Point of View, to Banknorth Shareholders (Page 47)**

In determining to approve the merger agreement, the Banknorth board of directors considered the oral opinions of its financial advisors, Keefe, Bruyette & Woods, Inc. and Lehman Brothers Inc., 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 Keefe, Bruyette & Woods 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 Keefe, Bruyette & Woods and Lehman Brothers, as well as additional information regarding the compensation paid and to be paid by Banknorth to such firms in connection with the rendering of their opinions. Assuming the transaction is completed, Banknorth has agreed to pay Keefe, Bruyette & Woods an aggregate fee equal to 0.375% of the aggregate market value, determined as of closing, of the consideration paid for 51% of the outstanding shares of Banknorth common stock (approximately \$14.8 million based on the closing sale price of a TD common share on November 5, 2004), and Banknorth has agreed to pay Lehman Brothers an aggregate fee of \$2 million.

**Banknorth Executive Officers and Directors Have Financial and Other Interests in the Transaction that are Different from or in Addition to Your Interests (Page 63)**

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. If the transaction is completed, Banknorth's eight executive officers may be entitled to receive, under employment agreements, retention agreements and incentive plans, approximately \$79.1 million in the aggregate, which amount includes non-competition and retention payments, amounts attributable to the accelerated vesting of restricted stock units, severance payments and amounts attributable to the value of supplemental retirement benefit enhancements. In addition, these eight officers would be entitled to accelerated vesting of their then-unvested stock options. The aggregate amount described above and the right to accelerated vesting of stock options assumes that the executive officers who entered into these employment and retention agreements are terminated without cause immediately following the completion of the transaction, which is not expected to occur. 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.

**The Merger Agreement (Page 82)**

The merger agreement is described beginning on page 82. 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.

*Completion of the Mergers is Subject to Some Conditions.* 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 proposals to approve the governance and other provisions in the post-transaction certificate of incorporation;

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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 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 Proposal No. 1: 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.

*The Merger Agreement May Be Terminated Under Some Circumstances.* 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

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

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the shareholders of Banknorth fail to approve the merger agreement or any of the proposals to approve the governance and other provisions in 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 proposals to approve the governance and other provisions in 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 proposals to approve the governance and other provisions in 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 of Financial Institutions of Canada (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 of Financial Institutions of Canada (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.

*Banknorth May Be Required to Pay a Termination Fee Under Some Circumstances.* 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 101)**

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 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 of Banknorth Delaware.* 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

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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 of Shares of Banknorth Delaware Owned by TD.* 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 in connection with 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 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

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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 Obligation of TD.* 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 of the Stockholders Agreement.* 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.

**Regulatory Approvals Required for the Mergers (Page 77)**

*U.S. Bank Holding Company Act.* TD is required to obtain the approval of the U.S. Federal Reserve System under the Bank Holding Company Act for the acquisition of control of Banknorth as a result of 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 of Financial Institutions of Canada for the indirect acquisition of control, as a result of the transaction, 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 of Financial Institutions of Canada 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, to notify and furnish required information to the Antitrust Division of the U.S. Department of Justice and to the U.S. Federal Trade Commission 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, and have filed, 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, and has filed, 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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**TD Will Account for the Transaction as a Purchase; Banknorth Will Not Change Its Financial Statements (Page 76)**

TD intends to account for the transaction on its financial statements as a purchase of Banknorth Delaware 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.

**Your Rights as a Holder of Banknorth Delaware Common Stock and TD Common Shares Will Be Different from Your Rights as a Holder of Banknorth Common Stock (Page 136)**

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, and Banknorth's organizational documents, to your rights as a Banknorth Delaware shareholder, which generally are governed by the Delaware General Corporation Law 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.

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**COMPARATIVE PER SHARE DATA**

The following tables present, as at the dates and 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 discussion and notes beginning on page 111. See also *Where You Can Find More Information* beginning on page 164. 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 results of operations of TD or Banknorth. 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.

**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 per share and book value per share with respect to (1) Banknorth on a historical basis and (2) 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 Banknorth pro forma equivalent amounts are calculated by multiplying the corresponding TD pro forma amount (which is described and presented under *TD Common Share Data* beginning on page 19) 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. Because Banknorth and TD have different fiscal years, (1) Banknorth historical amounts are presented as at and for the nine months ended September 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 September 30, 2004, and the corresponding TD pro forma amounts as at and for the fiscal 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 September 30, 2004(a)	As at and For the Year Ended December 31, 2003(b)
	(C\$)	
<b>Basic Earnings Per Share</b>		
<i>Banknorth historical (U.S. GAAP)</i>	C\$ 2.23	C\$ 3.03
<i>Banknorth pro forma equivalent (Canadian GAAP)</i>	0.57	0.36
<i>Banknorth pro forma equivalent (U.S. GAAP)</i>	0.54	0.40
<b>Diluted Earnings Per Share</b>		
<i>Banknorth historical (U.S. GAAP)</i>	C\$ 2.19	C\$ 2.99
<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>Dividends Per Share</b>		
<i>Banknorth historical(c)</i>	C\$ 0.78	C\$ 0.97
<i>Banknorth pro forma equivalent</i>	0.24	0.27
<b>Book Value Per Share at Period End</b>		
<i>Banknorth historical (U.S. GAAP)</i>	C\$22.14	C\$20.08
<i>Banknorth pro forma equivalent (Canadian GAAP)</i>	4.83	
<i>Banknorth pro forma equivalent (U.S. GAAP)</i>	4.89	

- (a) 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 September 30, 2004 of 1.3296. 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 September 30, 2004 of 1.2648.
- (b) 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 of 1.3916. 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 of 1.2923.
- (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.

**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 per share and book value per share 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 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 September 30, 2004, and the corresponding TD pro forma amounts as at and for the fiscal 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 September 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>	\$ 0.59	\$ 0.70
<i>Banknorth pro forma equivalent:</i>		
<i>Banknorth historical × 0.49</i>	\$ 0.29	\$ 0.34
<i>TD historical and pro forma × 0.2351</i>	0.18	0.19
<i>Banknorth pro forma equivalent</i>	\$ 0.47	\$ 0.53
<b>Book Value Per Share at Period End</b>		
<i>Banknorth historical</i>	\$17.50	\$15.54
<i>Banknorth pro forma equivalent:</i>		
<i>Banknorth historical × 0.49</i>	\$ 8.58	
<i>TD pro forma (U.S. GAAP) × 0.2351</i>	3.68	
<i>Banknorth pro forma equivalent</i>	\$12.26	

(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 of 1.3305. 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 of 1.3290.

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- (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 of 1.4379. 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.

### **TD Common Share Data**

The following table presents, in Canadian dollars, the earnings per share, dividends per share and book value per share with respect to (1) TD on a historical basis and (2) TD on a pro forma basis giving effect to the transaction. 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 enhancements which may arise from the transaction, and do not include restructuring or integration costs.

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	<b>As at and For the Nine Months Ended July 31, 2004</b>	<b>As at and For the Year Ended October 31, 2003</b>
	(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>TD pro forma (Canadian GAAP)(a)</i>	2.44	1.52
<i>TD pro forma (U.S. GAAP)(a)</i>	2.30	1.68
<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>TD pro forma (Canadian GAAP)(a)</i>	2.42	1.51
<i>TD pro forma (U.S. GAAP)(a)</i>	2.28	1.67
<b>Dividends Per Share</b>		
<i>TD historical and pro forma</i>	C\$ 1.00	C\$ 1.16
<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>TD pro forma (Canadian GAAP)(b)</i>	20.56	
<i>TD pro forma (U.S. GAAP)(b)</i>	20.81	

- (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 estimated transaction-related expenses and other pro forma adjustments.

**Table of Contents****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	36.00	30.49	0.200
Fourth Quarter (through , 2004)			0.36					

(1) Dividends declared during fiscal quarters ended January 31, April 30, 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
May 2004	C\$45.75	C\$43.30	U.S.\$33.57	U.S.\$31.16	U.S.\$32.95	U.S.\$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
October 2004	50.00	46.04	40.28	36.50	35.58	34.49

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			

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The following tables show, for the date or periods indicated, certain information regarding the U.S. dollar/ Canadian dollar exchange rate and the Canadian dollar/ U.S. dollar exchange rate. The information is based on the noon buying rate as reported by the Federal Reserve Board in the City of New York.

	<u>C\$ per U.S.\$1.00</u>	<u>U.S.\$ per C\$1.00</u>
<b>Exchange rate on August 25, 2004 (the last trading day before public announcement of the transaction)</b>	C\$ 1.3047	U.S.\$ 0.7665
<b>Exchange rate on                   , 2004</b>	C\$	U.S.\$
	<b>Average Rate(1)</b>	
	<u>C\$ per U.S.\$1.00</u>	<u>U.S.\$ per C\$1.00</u>
<b>Year Ended October 31,</b>		
1999	C\$ 1.4948	U.S.\$ 0.6690
2000	1.4771	0.6770
2001	1.5411	0.6489
2002	1.5718	0.6362
2003	1.4379	0.6955
2004	1.3147	0.7606
<b>Nine Months Ended July 31,</b>		
2003	C\$ 1.4667	U.S.\$ 0.6818
2004	1.3305	0.7516

- (1) The average rate is calculated as the average of the noon buying rate as reported by the Federal Reserve Board on the last day of each month during the period.

The following table shows the high and low U.S. dollar/ Canadian dollar exchange rates for each of the months indicated. The information is based on the noon buying rate as reported by the Federal Reserve Board in the City of New York.

	<u>High</u>	<u>Low</u>
	<b>(C\$ per U.S.\$1.00)</b>	
May 2004	C\$ 1.3970	C\$ 1.3580
June 2004	1.3772	1.3407
July 2004	1.3353	1.3082
August 2004	1.3323	1.2964
September 2004	1.3071	1.2648
October 2004	1.2726	1.2194

**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 164.

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 to this proxy statement/prospectus from 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 to this proxy statement/prospectus 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 164.

	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	5,932
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	1,035	2,991
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	53
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	0.84	1.69	(0.26)	2.32	1.69	4.68
Net income (fully diluted)	2.48	0.78	1.51	(0.25)	2.05	1.53	4.81
Net income (fully diluted)(U.S. GAAP basis)	2.34	0.84	1.68	(0.26)	2.30	1.66	4.68



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Cash dividends declared(2)	1.00	0.84	1.16	1.12	1.09	0.92	0.72
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 average assets(3)	0.75%	0.25%	0.36%	(0.02)%	0.49%	0.41%	1.43%
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(4)	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(5)(6)	8.5	6.3	7.4	6.2	5.3	4.3	9.0
Tier 1 capital to risk weighted assets(6)	12.3	9.7	10.5	8.1	8.4	7.2	10.1
Total capital to risk-weighted assets(6)	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) Average assets are determined on a monthly basis.

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- (4) Non-interest expenses, as a percentage of the sum of net interest income and other income.
- (5) Common shareholders' equity less net intangible assets and goodwill divided by risk weighted assets.
- (6) Risk-weighted assets are determined in accordance with applicable Canadian bank regulations.

**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 to the consolidated financial statements as filed with the SEC. The information as at and for the nine-month periods ended September 30, 2004 and September 30, 2003 has been derived from the unaudited consolidated financial statements 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 164.

	September 30, 2004	December 31,				
		2003	2002	2001	2000	1999
(U.S. \$ in millions, except per share data)						
<b>Balance Sheet Data:</b>						
Total assets	\$28,986	\$26,454	\$23,419	\$21,077	\$18,234	\$18,508
Securities(1)	7,463	7,247	6,948	6,157	5,881	6,873
Total loans and leases, net(2)	18,168	16,114	13,848	12,525	10,692	9,700
Goodwill and other intangibles	1,422	1,163	695	467	186	184
Deposits	19,370	17,901	15,665	14,221	12,107	11,711
Borrowings	6,357	5,883	5,433	4,602	4,659	5,466
Shareholders' equity	3,046	2,521	2,063	1,789	1,331	1,192
Nonperforming assets	68	63	69	81	67	69
Book value per share	17.50	15.54	13.70	11.83	9.42	8.22
Tangible book value per share	9.34	8.37	9.09	8.75	8.11	6.95

	Nine Months Ended September 30,		Year Ended December 31,				
	2004	2003	2003	2002	2001	2000	1999
(U.S. \$ in millions, except per share data)							
<b>Operations Data:</b>							
Interest and dividend income	\$927	\$903	\$1,193	\$1,235	\$1,264	\$1,330	\$1,227
Interest expense	240	275	352	439	584	726	613
Net interest income	687	628	841	796	680	604	614
Provision for loan and lease losses	30	32	42	44	42	24	24
Net interest income after provision for loan and lease losses	657	596	799	752	638	580	590
Net securities gains (losses)	10	40	42	7	1	(15)	1
Other noninterest income	259	243	325	267	239	226	191
Noninterest expense (excluding merger and consolidation costs and prepayment penalties on borrowings)	486	449	603	565	502	459	460
Merger and consolidation costs(3)	11	7	8	14	7	43	28
Prepayment penalties on borrowings		30	30		6		
Income before income tax expense	429	393	525	447	363	289	294
Income tax expense	145	134	174	148	124	97	97

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Net income before extraordinary item and cumulative effect of change in accounting principle	284	259	351	299	239	192	197
Cumulative effect of change in accounting principle, net of tax							
Net income	\$284	\$259	\$ 351	\$ 299	\$ 239	\$ 192	\$ 197

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	Nine Months Ended September 30,		Year Ended December 31,				
	2004	2003	2003	2002	2001	2000	1999
(U.S. \$ in millions, except per share data and ratios)							
Net income per share before extraordinary item and cumulative effect of change in accounting principle:							
Basic	\$ 1.68	\$ 1.61	\$ 2.18	\$ 2.01	\$ 1.73	\$ 1.33	\$ 1.35
Diluted	1.65	1.59	2.15	1.99	1.71	1.32	1.34
Net income per share:							
Basic	1.68	1.61	2.18	2.01	1.70	1.33	1.35
Diluted	1.65	1.59	2.15	1.99	1.68	1.32	1.34
Dividends per share	0.59	0.51	0.70	0.58	0.53	0.50	0.47

	At or For the Nine Months Ended September 30,		Year Ended December 31,				
	2004	2003	2003	2002	2001	2000	1999
<b>Other Data:</b>							
Return on average assets	1.35%	1.36%	1.37%	1.39%	1.29%	1.05%	1.12%
Return on average equity	13.61	14.45	14.51	16.25	16.48	15.69	16.42
Average equity to average assets	9.94	9.42	9.44	8.56	7.82	6.66	6.81
Interest rate spread(4)	3.44	3.40	3.41	3.69	3.43	3.05	3.33
Net interest margin(4)	3.67	3.67	3.66	4.07	3.99	3.60	3.80
Tier 1 leverage capital ratio at end of period	6.95	6.56	6.65	7.13	7.14	7.02	6.75
Dividend payout ratio	35.18	31.12	31.90	28.76	30.27	36.91	33.19
Efficiency ratio(5)	52.04	53.35	53.09	54.10	55.34	61.67	60.57
Nonperforming assets as a percent of total assets at end of period	0.23	0.27	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. Pro forma earnings per share does not include the anticipated financial benefits from such items as cost savings and revenue enhancements arising from the transaction, or restructuring and other costs that may be incurred 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 111. See *Where You Can Find More Information* beginning on page 164. 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\$ 349,174	
Total assets (U.S. GAAP basis)	358,490	
Loans (net of allowances for credit losses)	146,186	
Loans (net of allowances for credit losses) (U.S. GAAP basis)	152,067	
Total deposits	238,971	
Total deposits (U.S. GAAP basis)	239,321	
Total shareholders equity	15,624	
Total shareholders equity (U.S. GAAP basis)	15,327	
	<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\$ 1,764	C\$ 1,143
Net income (U.S. GAAP basis)	1,635	1,229
Net income (basic) per common share	2.44	1.52
Net income (basic) per common share (U.S. GAAP basis)	2.30	1.68
Net income (diluted) per common share	2.42	1.51
Net income (diluted) per common share (U.S. GAAP basis)	2.28	1.67

**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 of Financial Institutions of Canada. TD's Tier 1 ratio at July 31, 2004 was 12.3%.

Pro forma capitalization ratios include Banknorth's September 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 9.1%, which remains above the Superintendent of Financial Institutions of Canada'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\$ 1,703	C\$ 1,056
Impact of intangibles amortization expense (tax effected)	447	592
Earnings before amortization of intangibles	C\$ 2,150	C\$ 1,648
Diluted average common shares outstanding ( <i>millions</i> )	703.1	697.3
Diluted net income per common share, before amortization of intangibles	C\$ 3.06	C\$ 2.36



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**RISK FACTORS**

In addition to the other information included or incorporated by reference in this proxy statement/ prospectus, you should carefully consider the matters described below relating to the proposed transaction in deciding whether to vote for approval of the merger agreement and the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation. While TD and Banknorth believe that the matters described below cover all material risks related to the transaction, they may not contain all of the information that is important to you in evaluating the transaction. Accordingly, we urge you to read the entire proxy statement/prospectus, including the appendices and the information included or incorporated by reference in this document.

***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 you 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/

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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;
- 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 Maine Business Corporation Act. 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 Maine Business Corporation Act. In addition, the shareholders of Banknorth and Banknorth Delaware will not have the opportunity to obtain the fair value of their shares, under Section 1110 of the Maine Business Corporation Act, 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.

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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 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 101.

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 136.

***Some directors and executive officers of Banknorth have interests in the transaction that may differ from the interests of shareholders including, if the mergers are completed, the receipt of financial and other benefits.***

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. If the transaction is completed, Banknorth's eight executive officers may be entitled to receive, under these agreements and incentive plans, approximately \$79.1 million in the aggregate, which amount includes non-competition and retention payments, amounts attributable to the accelerated vesting of restricted stock units, severance payments and amounts attributable to the value of supplemental retirement benefit enhancements. In addition, these eight officers would be entitled to accelerated vesting of their then-unvested stock options. The aggregate amount described above and the right to accelerated vesting of stock options assumes that the executive officers who entered into employment and retention agreements are terminated without cause immediately following the completion of the transaction, which is not expected to occur. 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 63.

***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

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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 (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 a pro rata portion of their 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

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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 and may in the future control others, Banknorth Delaware's subsidiary bank, Banknorth, NA, could be assessed for losses suffered or anticipated by the Federal Deposit Insurance Corporation as a result of a default by, or assistance provided by the Federal Deposit Insurance Corporation 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 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. At September 30, 2004, Banknorth, NA had \$689.3 million available for dividends that could be paid without prior regulatory approval. At November 1, 2004, TD would be able to pay dividends of approximately C\$0.5 billion without prior regulatory approval. 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 130, 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 134.

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 of Financial Institutions of Canada 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 77 and Proposal No. 1: The Merger Agreement Conditions to the Mergers beginning on page 92.

***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, or 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

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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.

***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 164.

***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. Under the terms of 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. 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 de facto control 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, or Securities Act. Without limiting the generality of the preceding sentence, statements contained in the sections The Transaction, Banknorth's Reasons for the Transaction, Opinions of Banknorth's Financial Advisors, TD Projections and TD's Reasons for the Transaction 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 beginning on page 30 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;

proposals to approve the governance and other provisions in the post-transaction certificate of incorporation of Banknorth Delaware, consisting of the following proposals:

the approval of modifications to the governance rights of Banknorth shareholders;

the approval of modifications to anti-takeover protections and related modifications to the rights of Banknorth shareholders; and

the approval of certain other modifications to the rights of Banknorth shareholders reflecting the structure of the transaction and the terms of the stockholders agreement.

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 any of the foregoing proposals; and

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

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 the proposal to approve the merger agreement and of each of the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation is a condition to the completion of the transaction. Therefore, if Banknorth shareholders wish to approve the transaction, they must approve all 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





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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.**

**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.

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 each of the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation, and **FOR** the proposal to adjourn the special meeting if necessary to permit further solicitation of proxies on any of the foregoing proposals.

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.

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Proxies solicited may be voted only at the special meeting and any adjournment or postponement of the special meeting 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 proposal to approve the merger agreement, the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation and the proposal 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 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 governance and other provisions in the post-transaction certificate of incorporation and the proposal 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 governance and other provisions in the post-transaction certificate of incorporation. The approval of each of the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation is a condition to completion of the mergers, and thus a vote against any of these proposals effectively will be a vote against the transaction. 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 any of the foregoing proposals 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). See *Beneficial Ownership of Banknorth Common Stock* on page 124. 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 proposals to approve the governance and other provisions in the post-transaction certificate of incorporation.

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.

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**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.

Banknorth has retained Morrow & Co., Inc., a professional proxy solicitation firm, to assist it in the solicitation of proxies for the special meeting. Banknorth will pay Morrow & Co. a fee of \$125,000 in connection with the transaction, plus reimbursement for reasonable out-of-pocket 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 and other provisions contained in that document. Based on Banknorth's reasons for the merger described in this document, including the fairness opinions of Keefe, Bruyette & Woods and Lehman Brothers, the board of directors of Banknorth believes that the merger agreement and the transactions contemplated by the merger agreement 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 45. The Banknorth board of directors also recommends that you vote FOR approval of each of the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation, and FOR approval of the proposal to adjourn the special meeting if necessary to solicit additional proxies to vote in favor of any of the foregoing proposals.

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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 Keefe, Bruyette & Woods Inc., or 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.

In considering a potential transaction with TD, the board of directors of Banknorth evaluated the ability and interest of other potential acquirors of Banknorth. This evaluation took into account information presented by Banknorth's financial advisors regarding potential acquirors, the above-referenced discussions with other larger financial institutions in recent years and a recent confirmation by KBW that a particular potential acquiror did not currently have an interest in pursuing a business combination with Banknorth. Based on this evaluation, Banknorth determined that it was unlikely that another company had the ability and interest to acquire Banknorth at this time and decided to proceed to negotiate a merger agreement with TD without formally soliciting other potential acquirors.

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. At this initial meeting, Mr. Clark outlined his views of a potential transaction between TD and Banknorth. At this time and throughout the discussions and negotiations that followed, TD proposed a transaction involving the acquisition of 51% of the outstanding stock of Banknorth. TD determined that this structure was preferable to the acquisition of 100% of Banknorth because TD would be able to retain greater capital resources to fund potential future acquisitions by Banknorth, which was a key reason for TD's interest in acquiring Banknorth. In addition, the proposed structure would maintain a U.S. share currency for potential future acquisitions by Banknorth and would provide additional options for management and employee incentive compensation. For the reasons described in greater detail under Banknorth's Reasons for the Transaction beginning on page 45, Banknorth's board and management concluded that the structure offered several significant benefits for Banknorth and its shareholders, and accordingly determined to continue discussions with TD on a possible transaction based on this structure.

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.

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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.

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 shares 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

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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 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.

In the evening of 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 transaction, 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 and Toronto, Canada. 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

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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 by these agreements, 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 by these agreements.

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 by these agreements, 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 by these agreements.

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 transaction. 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 under the 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



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Interests of Banknorth's Executive Officers and Directors in the Transaction (beginning on page 63), 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 by the merger agreement are fair to, and in the best interests of, Banknorth and its shareholders. In approving the merger agreement and the transactions contemplated by the merger agreement, 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 by these agreements 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.

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 transaction was reasonably likely to enhance Banknorth's strategic goal of expanding its operations geographically, which would reduce Banknorth's exposure to regional economic conditions and enhance 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 approval with respect to acquisitions and other significant corporate 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

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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 Opinions of Banknorth's Financial Advisors beginning on page 47.

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

The structure of the transaction and its 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.

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 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 following the mergers.

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 that 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 different from, or in addition to, their interests as shareholders of Banknorth, including the employment and retention agreements described in the preceding paragraph. See Interests of Banknorth's Executive Officers and Directors in the Transaction beginning on page 63.

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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.

Banknorth agreed to the majority ownership structure proposed by TD because it determined that the proposed transaction would provide the best value currently available to shareholders of Banknorth and was fair to such shareholders from a financial point of view. In addition, Banknorth believed that the proposed structure, which would permit TD to preserve additional capital that could facilitate the funding of future acquisitions by Banknorth Delaware, would be beneficial to Banknorth's plan to enhance shareholder value in future periods. The structure therefore had the benefit of providing Banknorth shareholders with the opportunity to realize a substantial premium for a majority of their shares while also retaining a significant equity stake in a company with enhanced growth potential. TD and Banknorth agreed to effect the reincorporation of Banknorth in Delaware because the majority of publicly-traded U.S. corporations are incorporated in that state and, as a result, there is a substantially larger body of judicial precedent in Delaware which provides guidance to corporations and their directors and officers than is available under Maine law. In addition, most of TD's U.S. subsidiaries are Delaware corporations, so reincorporating Banknorth as a Delaware corporation would facilitate a consistent corporate structure. Finally, reincorporation under Delaware law was more consistent with the structure of the transaction the parties were negotiating because, without an amendment to Banknorth's articles of incorporation, Maine law would grant each shareholder a put right with respect to its shares, requiring a buyer of 51% of Banknorth to offer to acquire the shares of shareholders exercising such right.

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 transaction. In view of the wide variety of factors considered by Banknorth's board of directors in connection with its evaluation of the transaction 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 advisors, and reached a consensus that the transaction was 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 transaction. See below under Opinions of Banknorth's Financial Advisors.

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 36.

**For the reasons set forth above, Banknorth's board of directors has approved the merger agreement and the transactions contemplated by the merger agreement 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 certificate of incorporation and recommends that Banknorth shareholders vote for approval of each of the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation.**

## **Opinions of Banknorth's Financial Advisors**

*Opinion of Keefe, Bruyette & Woods, Inc.* Banknorth engaged KBW to act as a financial advisor in connection with a possible transaction with TD. Under 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

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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 into this proxy statement/prospectus 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 to the merger agreement.**

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;

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



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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.

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 TD common shares or shares of Banknorth Delaware common stock when issued under the terms of the merger agreement or the prices at which the TD common shares or Banknorth Delaware common 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 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.

*Opinion of 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 Banknorth shareholders in the transaction. 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.

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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;

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. Lehman Brothers was not provided financial projections for TD, but did discuss with KBW the reasonableness of relying on outstanding consensus analysts' estimates of earnings of TD in future periods, on which both KBW and Lehman Brothers relied for purposes of their joint presentation to the board of directors of Banknorth.

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

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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.

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.



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**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, as depicted in the following table.

Discount Rate	Terminal Multiple				
	13.0x	14.0x	15.0x	16.0x	17.0x
10.0%	\$30.95	\$33.05	\$35.14	\$37.24	\$39.33
11.0	29.65	31.65	33.65	35.66	37.66
12.0	28.42	30.33	32.24	34.16	36.07

**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.

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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 the remaining 33.3% of Banknorth Delaware's outstanding shares 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 the remaining 33.3% of Banknorth Delaware's outstanding shares 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:

	Value Received for 51% of One Share at \$40.00 Value	Value Received for 49% of One Share at Banknorth Base Case Discounted Cash Flow Value	Value Received for 15.7% of One Share at Banknorth Base Case Discounted Cash Flow Value	Value Received for 33.3% of One Share with Premium Applied to Discounted Cash Flow Terminal Value	Blended Total Value Received Per Share
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

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

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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;
- (c) 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;
- (d) the First Call mean estimated earnings per share of the acquired company for the next four quarters as of the announcement of the transaction;
- (e) 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;
- (f) 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;
- (g) the closing market price of the acquired company, if publicly traded or listed, on the day preceding the announcement of the transaction; and
- (h) 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.

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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.

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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
- Zions Bancorporation
- 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.



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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%

**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





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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	16.30%	19.40%	19.00%
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%

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 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 fiscal 2005 and 2006. Furthermore, the analysis indicated



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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 of Financial Institutions of Canada. This analysis was based on independent research analysts' estimates published by I/B/E/S for TD and internal projections of Banknorth provided by Banknorth's senior management.

The following table sets forth the estimated effect of the proposed transaction on TD's earnings per share and cash earnings per share under U.S. GAAP for the periods indicated.

	Year Ending October 31, 2005	Year Ending October 31, 2006
Earnings per share (U.S. GAAP)	1.0%	1.0%
Cash earnings per share (U.S. GAAP)	1.0	1.2

The assumptions used by KBW and Lehman Brothers do not necessarily reflect assumptions which may be used by TD in evaluating the estimated effects of the transaction on its operations.

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, as depicted in the following table.

Discount Rate	Terminal Multiple		
	11.0x	12.0x	13.0x
11.0%	\$32.33	\$34.79	\$37.26
12.0	31.00	33.36	35.72
13.0	29.75	32.00	34.25

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, as depicted in the following table.

Cash EPS Growth	Terminal Multiple		
	11.0x	12.0x	13.0x
6.0%	\$29.25	\$31.46	\$33.67

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7.0	30.27	32.56	34.86
8.0	31.31	33.70	36.08
9.0	32.39	34.86	37.33
10.0	33.50	36.06	38.62

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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, as depicted in the following table.

Cash EPS Growth	Discount Rate		
	11.0%	12.0%	13.0%
6.0%	\$32.71	\$31.36	\$30.09
7.0	33.86	32.46	31.14
8.0	35.04	33.59	32.23
9.0	36.25	34.76	33.34
10.0	37.50	35.95	34.48

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.

**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, or 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.

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

	<b>Pre Buy-In Ownership of Buyer</b>	<b>1 Day Market Premium</b>	<b>5 Day Market Premium</b>	<b>1 Month Market Premium</b>	<b>Adjusted One Day Premium</b>
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.

The Banknorth board of directors retained KBW as an independent contractor to act as financial advisor 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. Assuming the transaction is consummated and based on the value, as of November 5, 2004, of the consideration payable for 51% of the shares of Banknorth common stock outstanding as of September 30, 2004, KBW would be entitled to receive an aggregate fee of approximately \$14.8 million. If the transaction is not consummated, KBW would be entitled to receive the aggregate fee of \$2 million payable in connection with the execution of the merger agreement, the delivery of KBW's fairness opinion and the mailing of this proxy statement/ prospectus, as described above. Under the KBW engagement agreement, Banknorth also agreed to indemnify KBW and its affiliates against certain liabilities, including liabilities under the federal securities laws.

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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. Under the terms of 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.

During the two years ended September 30, 2004, Banknorth paid KBW and Lehman Brothers \$2.4 million and \$1.2 million, respectively, in fees for services rendered to Banknorth (and in the case of KBW to an institution acquired by Banknorth), which are in addition to the fees relating to the proposed transaction with TD described above.

**TD Projections**

In the course of discussions regarding the proposed transaction, TD provided to Banknorth, and Banknorth subsequently provided to KBW, certain internal projections for TD summarized below. TD does not publicly disclose internal management projections of the type provided to Banknorth in connection with its review of the mergers. As a result, these projections were not prepared with a view towards public disclosure.

These projections were prepared by the management of TD in April 2004 for internal use and for assistance in budgeting, planning, capital allocation and other management decisions and not in connection with the proposed transaction. The projections were originally prepared as part of a preliminary medium-term planning process and reflect initial expectations of business unit leaders on various aspects of their respective business plans based on information available at that time. The individual business unit leaders' expectations reflected in the projections summarized below do not reflect a rigorous or consistent application of TD's overall corporate planning and forecasting methodology that it uses in developing its annual plan.

The projections summarized below were not prepared in compliance with Canadian GAAP, the published guidelines of the SEC, the guidelines established by the American Institute of Certified Public Accountants regarding forecasts and projections or the guidelines of the Canadian Institute of Chartered Accountants regarding future-oriented financial information. In addition, the projections are based on numerous assumptions, and those we believe to be material are summarized below. The projections and assumptions may not be realized and are subject to contingencies and uncertainties, many of which are beyond the control of TD. For example, TD's business, and the basis for the preparation of TD's projections, depends on conditions in the financial markets, including the level of interest rates and the performance of the equity and debt markets. Because the projections were prepared in April 2004, some of these assumptions may now be outdated. Moreover, the projections do not take into account the mergers or the benefits described above under "Banknorth's Reasons for the Transaction" and below under "TD's Reasons for the Transaction." In light of the foregoing, the inclusion of these projections should not be interpreted as an indication that TD considers this information a reliable prediction of future results, and this information should not be relied upon for this purpose. Actual results may differ materially from those set forth below. For a discussion of some of the factors that could cause actual results to differ from the projections, see "Cautionary Statement Concerning Forward-Looking Statements" on page 36. TD does not intend to make publicly available any update or other revision to these projections.

While TD is providing these projections in this document because they were provided by TD to Banknorth, the projections were used by KBW solely to confirm that it was reasonable to rely on consensus analysts' estimates of earnings of TD in future periods for purposes of its fairness analysis.

The information TD provided to Banknorth, and that Banknorth subsequently provided to KBW, included, among other things, projected revenue of C\$11,622 million, C\$12,457 million and

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C\$13,469 million for fiscal years 2005, 2006 and 2007, respectively; projected net income after tax but before amortization of intangibles of C\$2,599 million, C\$2,920 million and C\$3,319 million for fiscal years 2005, 2006 and 2007, respectively; diluted earnings per share before amortization of goodwill and other intangible assets of C\$3.90, C\$4.53 and C\$5.26 for fiscal years 2005, 2006 and 2007, respectively; and a Tier 1 capital ratio of 11.5%, 11.7% and 11.8%, respectively, for fiscal years 2005, 2006 and 2007. The projections were prepared using assumptions considered to be representative of market conditions over the periods presented in certain cases, such as Canadian and U.S. gross domestic product growth rates, inflation rates and interest rates, and using static assumptions in other cases, such as foreign exchange rates, cost of capital and corporate tax rates. The underlying interest rate assumptions were consistent with the implied forward short-term and long-term rate scenarios, and generally these scenarios reflected a rising rate environment. Growth in the equity markets was assumed to be 8% per year. Additional assumptions were made relating to capital requirements, dividend payout ratios, share repurchases, preferred shares and subordinated debt issuances and redemptions.

The projections and other information outlined above should be read in conjunction with the audited and unaudited consolidated financial statements of TD, including the accompanying notes. See *Where You Can Find More Information* beginning on page 164.

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

As noted in *Background of the Transaction* beginning on page 41, 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 47.

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 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



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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 transaction. 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. In addition, TD would be able to retain greater capital resources to fund potential future acquisitions by Banknorth, which was a key reason for TD's interest in acquiring Banknorth.

## **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.

*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, which provided that 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 two or three 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 and any of the three immediately

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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 two or three 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 the date of termination. In addition, upon a qualifying termination, each covered officer would be entitled to continued welfare benefits coverage at Banknorth Delaware's expense 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 two or three years (in the case of other officers) following termination of employment or the date the officer has commenced new employment which provides comparable benefits. In addition, 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, or the Internal Revenue 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 officers. Upon completion of the mergers, these agreements will become effective and will supersede the existing severance agreements between Banknorth and the officers named 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 Delaware consistent with the executive's position prior to the mergers.

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 his or her base salary 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 completion of the mergers, each executive will receive any unpaid portion of a pro-rata long-term incentive award in an amount as provided in Section 5 of Banknorth's Executive Incentive Plan.

Mr. Ryan's

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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 total insurance premiums for this policy are currently estimated to amount to \$1.3 million.

Under the terms of 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 vest prior to the third anniversary of the completion of the mergers, payment of the awards will be delayed until that third anniversary 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 shares on the third anniversary of the completion of the mergers, unless the executive elects to defer the cash payment under the terms of 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) may not increase by more than 10% annually and (2) will 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. The non-competition and retention amount consists of a lump sum cash payment and 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 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.

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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 Banknorth Delaware's expense 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

his annual base salary,

his average annual bonus for the last three years,

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

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 three or the number of years and portions of a year 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 his termination occurs prior to a change in control of either TD or Banknorth Delaware) or two years (if his 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 and after the term of each applicable agreement, the executives will not disclose confidential information of Banknorth or Banknorth Delaware. 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 Delaware, the executive may not hire or solicit any employees or consultants of Banknorth Delaware and may not solicit certain clients of Banknorth Delaware or compete with Banknorth Delaware.

If any amounts or benefits received under the new agreements or otherwise are subject to the excise tax imposed under Section 4999 of the Internal Revenue 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 Internal Revenue 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 after the completion of the mergers 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 Internal Revenue Code, because it is not currently anticipated that this tax will be applicable, 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 Internal Revenue 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 under the terms of 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, each 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. 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, will 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

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the right to acquire shares of Banknorth common stock and will become a right to acquire shares of Banknorth Delaware common stock. See Treatment of Banknorth Stock Options and Other Equity-Based Awards beginning on page 80. Under 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 November 10, 2004, the eight executive officers of Banknorth as a group held options to acquire an aggregate of 795,707 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 approximately 30 days following completion of the mergers in the following amounts, assuming such officers are still actively employed at such time: stock options for 72,500 shares to Mr. Ryan, 40,000 shares to Mr. Verrill, 32,500 shares to Mr. Ott, 27,500 shares to each of Mr. Greene, Ms. Suehrstedt, Mr. Fridlington and Ms. Mitchell, and 13,500 shares to Mr. Boyle; and restricted stock awards for 19,725 shares to Mr. Ryan, 10,883 shares to Mr. Verrill, 8,842 shares to Mr. Ott, 7,482 shares to each of Mr. Greene, Ms. Suehrstedt, Mr. Fridlington and Ms. Mitchell, and 3,673 shares to Mr. Boyle. The stock options will have an exercise price equal to the fair market value of the Banknorth Delaware common stock at the time of grant. The stock options will vest over a period of three years, and the restricted stock awards will become 100% vested on the third anniversary of the date of grant, subject to earlier vesting in the event of death, disability, retirement in certain circumstances, change in control or involuntary termination without cause.

Shares of Banknorth common stock issued under Banknorth's Restricted Stock Plan for Non-Employee Directors may not be transferred except upon the death, disability or retirement of the director, termination of the director's service with the 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 November 10, 2004, the non-employee directors of Banknorth held an aggregate of 23,971 shares of Banknorth common stock under this plan.

*Deferred Compensation Plan.* Under Banknorth's Deferred Compensation Plan, directors and executive officers of Banknorth may defer specified compensation in accordance with the terms set forth in this plan. In connection with deferral elections, a participant may elect one or more specified measurement funds, including a fund based on units of Banknorth's common stock, to determine amounts earned on deferrals. Under the Deferred Compensation Plan, the compensation committee of the board of directors of Banknorth is authorized to make appropriate adjustments to the number of Banknorth common stock units credited to a participant's account in the event of a merger or similar event affecting Banknorth. Under the terms of the merger agreement, 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 number of shares of Banknorth Delaware common stock equal to the number of shares of Banknorth common stock previously subject to such account. The Deferred Compensation Plan also provides that in the event of a change in control of Banknorth, which would include the proposed transaction with TD, each participant will become entitled to receive his or her vested account balance under the plan in a single lump payment on the ninetieth day following the change in control, unless the participant has affirmatively elected not to receive such distribution prior to the change in control.

Banknorth currently is evaluating the Deferred Compensation Plan in light of the recently-enacted American Jobs Creation Act of 2004, which generally imposes new requirements with respect to compensation deferred under deferred compensation plans after December 31, 2004, as well as under the

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terms of an existing deferred compensation plan in the event that the plan is materially modified after October 3, 2004, other than as permitted by the American Jobs Creation Act. Under new Section 409A of the Internal Revenue Code, the U.S. Treasury Department is directed to issue regulations by December 21, 2004 that will provide a limited period during which a deferred compensation plan may be amended to allow a participant that does not wish to comply with the new requirements of Section 409A to (i) terminate his or her participation in the plan or (ii) cancel an outstanding deferral election with regard to amounts to be deferred after December 31, 2004.

Banknorth currently is evaluating the requirements of the new legislation and whether, upon issuance of regulations under Section 409A, to adopt amendments to the Deferred Compensation Plan which permit participants to terminate participation or cancel a deferral election as described above. It is anticipated that any such alternatives provided to participants would be able to be exercised in 2004. Distributions of amounts based on units of Banknorth common stock prior to a change in control of Banknorth would be based on the fair market value of the Banknorth common stock at the time of the distribution. Banknorth also is considering whether the number of Banknorth common stock units allocated to deferred accounts should be appropriately adjusted to reflect the proposed transaction with TD, which would require approval of TD.

At September 30, 2004, non-employee directors had an aggregate account balance of \$1.5 million of directors' fees under the Deferred Compensation Plan, which was deemed to be invested in part in 32,152 units of Banknorth common stock. At the same date, the total account balances and Banknorth common stock units of executive officers under the Deferred Compensation Plan were as follows: Mr. Ryan: \$477,660 and 0 units; Mr. Verrill: \$63,336 and 1,796 units; Mr. Ott: \$415,247 and 3,548 units; Mr. Greene, \$808,269 and 20,114 units; Ms. Suehrstedt: \$0 and 0 units; Mr. Boyle: \$0 and 0 units; Mr. Fridlington: \$353,952 and 0 units; and Ms. Mitchell: \$474,631 and 0 units.

*Indemnification and Insurance.* The merger agreement provides that Banknorth's directors and officers will be entitled to continuing indemnification against certain liabilities. Under the terms of 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 completion 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 August 25, 2004. 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 on August 25, 2004 with respect to matters occurring prior to the completion of the mergers will survive the mergers and will continue in full force and effect after the completion of the mergers.

Under the terms of the merger agreement, Banknorth Delaware agreed to maintain in effect, for six years following 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 August 25, 2004, with respect to matters occurring prior to the completion of the mergers. TD may elect to substitute TD policies of at least the same coverage, which may be tail policies, for all or any part of the six-year period.

Under the terms of 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' 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

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case of changes to such policies or practices relating to director's and officer's liability 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 124.

**Material U.S. Federal Income Tax Consequences**

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 in 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 in the migratory merger will generally not be taxable. This discussion is based upon the Internal Revenue 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 U.S. state 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 Internal Revenue 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;

a mutual fund;



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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 Internal Revenue Code. It is a condition to the completion 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 Internal Revenue Code. This opinion will be based on representation letters provided by Banknorth and Banknorth Delaware to be delivered at the time of the completion of the mergers, 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 in this proxy statement/prospectus.

Assuming the migratory merger qualifies as a reorganization within the meaning of Section 368 (a) of the Internal Revenue 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 Internal Revenue 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 in the migratory merger; 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 merger (with your remaining shares of Banknorth Delaware common stock being retained by you). The



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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.

For example, assuming that:

you own a total of 1,000 shares of Banknorth Delaware common stock (which you received in the migratory merger in exchange for the same number of shares of Banknorth common stock owned by you);

500 of the original shares of Banknorth common stock had been purchased by you for \$1.00 per share (for an aggregate tax basis amount of \$500); and

500 of the original shares of Banknorth common stock had been purchased by you for \$2.00 per share (for an aggregate tax basis amount of \$1,000)

then, in the acquisition merger:

with respect to the shares of Banknorth Delaware common stock received in the migratory merger in exchange for the block of Banknorth common stock purchased for \$1.00 per share:

you would recognize gain or loss equal to the difference between

the sum of the cash consideration of \$6,120.00 and the fair market value of the 117 TD common shares received and the cash received in lieu of the fractional TD common share interest, and

\$255 (51% of your basis in this block); and

your aggregate tax basis in the retained portion of this block would be \$245 (49% of your basis in this block) and your holding period in this block would not change as a result of the acquisition merger.

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with respect to the shares of Banknorth Delaware common stock received in the migratory merger in exchange for the block of Banknorth common stock purchased for \$2.00 per share:

you would recognize gain or loss equal to the difference between

the sum of the cash consideration of \$6,120.00 and the fair market value of the 117 TD common shares received and the cash received in lieu of the fractional TD common share interest, and

\$510 (51% of your basis in this block); and

your aggregate tax basis in the retained portion of this block would be \$490 (49% of your basis in this block) and your holding period in this block would not change as a result of the acquisition merger.

*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.

***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. Because TD is not a U.S. corporation, 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 (currently 15%). 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 under Section 163(d)(4) of the Internal Revenue 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.

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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, as described under **Material Canadian Federal Income Tax Consequences – Dividends on TD Common Shares** beginning on page 76, 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 adjusted basis of the TD common shares (which increases the amount of gain, or decreases 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

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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**

The following discussion is a summary of the principal Canadian federal income tax considerations under the Income Tax Act (Canada) 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 in the acquisition merger generally applicable to holders of Banknorth common stock who, for purposes of the Income Tax Act (Canada) 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.

This summary is based upon the current provisions of the Income Tax Act (Canada), the regulations under the Income Tax Act (Canada), all specific proposals to amend the Income Tax Act (Canada) 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 of this document. 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 in this proxy statement/prospectus.

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, you should consult your own tax advisors with respect to your 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 in 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

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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 Income Tax Act (Canada).

***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 Income Tax Act (Canada) 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 Income Tax Act (Canada).

***Disposition of TD Common Shares***

A non-resident holder will not be subject to tax under the Income Tax Act (Canada) 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 Income Tax Act (Canada) and the non-resident holder is not entitled to relief under an applicable income tax convention. As long as, at the time of disposition, the TD common shares are listed on a prescribed stock exchange (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 the time of disposition unless, at any time during the 60-month period that ends at the time of disposition, 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 Income Tax Act (Canada), 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 Income Tax Act (Canada) 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 Income Tax Act (Canada) 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 Delaware 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

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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 has filed an application with the Federal Reserve Board under the Bank Holding Company Act requesting approval of the acquisition merger. TD has provided copies of the application to the U.S. Department of Justice. The application describes the terms of the acquisition merger and the parties involved and includes 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 TD and Banknorth Delaware after the mergers.

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.



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

The acquisition merger will be subject to review by the Antitrust Division of the U.S. Department of Justice or the U.S. Federal Trade Commission, to determine whether it complies with applicable antitrust law. Under the provisions of the Hart-Scott-Rodino Act and 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 Federal Trade Commission and the specified waiting periods have expired or been terminated. Banknorth and TD will file a pre-merger notification and report forms under the Hart-Scott-Rodino Act in the near future. The waiting period will expire thirty days after the filing of such notification unless we receive notice from the Antitrust Division or the Federal Trade Commission 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 Federal Trade Commission 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 of Financial Institutions of Canada will be required in order to consummate the acquisition merger. Consent of the Superintendent of Financial Institutions of Canada 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.

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 of Financial Institutions of Canada in respect of the issuance by TD of its common shares in the acquisition merger.

TD has requested all required consents from the Superintendent of Financial Institutions of Canada.

***Other Approvals***

TD and Banknorth Delaware are also required to file, and have filed, 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, and has filed, an application with and obtain the approval of the certain 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.

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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 of such challenge. 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 92.

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 94.

## **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 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

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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 the merger consideration 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. For additional information, see [Interests of Banknorth's Executive Officers and Directors in the Transaction - Deferred Compensation Plan](#) beginning on page 68.

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

The Maine Business Corporation Act 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 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 Maine Business Corporation Act to holders of Banknorth common shares in connection with the migratory merger.

The Delaware General Corporation Law 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 Delaware General Corporation Law 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.

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**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 completion 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 under the terms of 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 under Rules 144 and 145 of the Securities Act.

*Canadian Resale Restrictions.* The TD common shares issued under the terms of 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 shares of Banknorth common stock such shareholder held immediately prior to the migratory merger), plus cash in lieu of any fractional share interest;

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, plus cash in lieu of any fractional share interest.

*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 of the shares of Berlin Merger Co. common stock outstanding immediately prior to the effective time of the acquisition merger will be converted into one share of Banknorth Delaware common stock in total.

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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 Proposals Nos. 2A-C: The Post-Transaction Certificate of Incorporation beginning on page 96 and Comparison of Shareholder Rights beginning on page 136.

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 Proposals Nos. 2A-C: The Post-Transaction Certificate of Incorporation beginning on page 96 and The Stockholders Agreement Corporate Governance beginning on page 105.

### **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 92.

### **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, 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:

as a result of 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 by the merger agreement 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 by the merger agreement 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 Internal Revenue 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 proposals to approve the governance and other provisions in 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 proposals to approve the governance and other provisions in 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 below under "No Solicitation";

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 in connection with 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

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with its financial 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:

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 proposals to approve the governance and other provisions in 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



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efforts to enforce any standstill, confidentiality or similar agreement relating to any acquisition proposal, 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 93.

*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 64.

As described in The Transaction Interests of Banknorth's Executive Officers and Directors in the Transaction Executive Incentive Plan, beginning on page 67, 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 69.

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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 each of the proposals to approve the governance and other provisions in 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 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 beginning on page 77) 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.

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*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 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 and the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation 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 proposals to approve the governance and other provisions in 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 proposals to approve the governance and other provisions in the post-transaction certificate of incorporation (see Covenants and Agreements Banknorth Shareholder Meeting and Duty to Recommend beginning on page 89);

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

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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.

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 proposals to approve the governance and other provisions in 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

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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 proposals to approve the governance and other provisions in the post-transaction certificate of incorporation has not occurred; 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 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 any of the proposals to approve the governance and other provisions in 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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**PROPOSALS NOS. 2A-C: 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. At the special meeting you will be asked to consider and vote on three separate proposals relating to the governance and other provisions in the post-transaction certificate of incorporation, consisting of the following:

the approval of modifications to the governance rights of Banknorth shareholders;

the approval of modifications to anti-takeover protections and related modifications to the rights of Banknorth shareholders; and

the approval of certain other modifications to the rights of Banknorth shareholders reflecting the structure of the transaction and the terms of the stockholders agreement.

The following is a summary of selected provisions of the form of post-transaction certificate of incorporation, including the governance and other provisions covered by the proposals described above. While TD and Banknorth believe this description covers the material terms of the form of the post-transaction certificate of incorporation which differ materially from Banknorth's existing articles 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 each of the proposals to approve the governance and other provisions in the post-transaction certificate of incorporation.**

**Summary of Terms 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 132 and 137, 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 151.

*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 148.

*Special Meetings of Shareholders.* For a description of the provisions of the post-transaction certificate of incorporation relating to the calling and holding of special meetings of Banknorth Delaware's shareholders, see Comparison of Shareholder Rights Special Meetings of Shareholders Banknorth Delaware beginning on page 146.

*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

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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 of Directors Banknorth Delaware, and Comparison of Shareholder Rights Removal of Directors Banknorth Delaware* beginning on pages 138, 139, 139 and 140, respectively.

*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* beginning on page 107.

*Opt-out of Delaware General Corporation Law Section 203.* The post-transaction certificate of incorporation provides that Banknorth Delaware will not be governed by Delaware General Corporation Law Section 203, the Delaware statute limiting business combinations with interested shareholders. See *Comparison of Shareholder Rights Anti-Takeover and Ownership Provisions Banknorth Delaware* beginning on page 159.

*Limitation on Adoption of a Shareholder Rights Plan and Other Defensive Measures.* For a description of the provisions of the post-transaction certificate of incorporation relating to limitations on Banknorth Delaware's ability to adopt a shareholder rights plan or other defensive measures that are not consistent with the stockholders agreement, see *Comparison of Shareholder Rights Shareholder Rights Plans Banknorth Delaware* beginning on page 161.

*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 152. 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.

*Absence of Other Constituencies Provision.* As described below under *Proposal No. 2C: Approval of Certain Other Modifications to the Rights of Banknorth Shareholders*, unlike the articles of incorporation of Banknorth, the post-transaction certificate of incorporation does not contain a provision requiring directors of Banknorth Delaware, in discharging their duties, to consider the best interests of constituencies other than shareholders.

**Proposals Regarding Modifications of Rights of Banknorth Shareholders: Proposals 2A-C**

The proposals relating to the post-transaction certificate of incorporation consist of the following:

the approval of modifications to the governance rights of Banknorth shareholders;

the approval of modifications to anti-takeover protections and related modifications to the rights of Banknorth shareholders; and

the approval of certain other modifications to the rights of Banknorth shareholders reflecting the structure of the transaction and the terms of the stockholders agreement.

These are discussed in greater detail below.

***Proposal No. 2A: Approval of Modifications to the Governance Rights of Banknorth Shareholders***

As a result of the transaction, TD will become the majority shareholder of Banknorth Delaware. The stockholders agreement establishes the agreement between Banknorth and TD relating to TD's rights as Banknorth Delaware's majority shareholder, as well as protections for Banknorth Delaware's minority shareholders. The post-transaction certificate of incorporation reflects certain provisions of the

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stockholders agreement. These provisions, which include the provisions summarized below, materially modify the existing governance rights of Banknorth shareholders.

*Creation of the Class B Common Stock, Class B Directors and Related Rights.* The post-transaction certificate of incorporation establishes a special class of common stock of Banknorth Delaware, the Class B common stock. TD, as the sole holder of the Class B common stock, will have the right to determine the number of Class B directors included on the Banknorth Delaware board of directors from time to time (subject to some limitations specified in the post-transaction certificate of incorporation) and to elect and remove all of the Class B directors.

TD generally will be able to exercise the rights of a majority stockholder through the Class B directors, and accordingly the post-transaction certificate of incorporation will contain provisions relating to the voting and quorum requirements applicable to the board of directors, procedures for the election and removal of directors and similar matters that are different from Banknorth's existing articles of incorporation. For a description of the provisions of the post-transaction certificate of incorporation relating to the Class B common stock and Class B directors and the changes in the rights of Banknorth shareholders resulting from these provisions, see Description of Banknorth Delaware Capital Stock Banknorth Delaware Class B Common Stock, beginning on page 133 and the subsections of Comparison of Shareholder Rights, which begins on page 136, captioned Voting Rights, Number and Election of Directors, Filling Vacancies on the Board of Directors, Removal of Directors, Special Meetings of Shareholders, Quorum of Shareholders and Amendments of Governing Instruments. For additional information about the rights of Class B directors with respect to action taken by the board of directors of Banknorth Delaware, see Comparison of Shareholder Rights Quorum of the Board of Directors; Action by the Board of Directors.

*Creation of Class A Directors and Designated Independent Directors.* The post-transaction certificate of incorporation provides that directors not elected by TD, as the holder of the Class B common stock, will be designated as Class A directors. Four Class A directors will serve as designated independent directors, who will be vested with certain powers to protect the rights of the minority shareholders of Banknorth Delaware. In order to maintain these separate classes of directors, the post-transaction certificate of incorporation will contain provisions which, among other things, limit the number of Class B directors. For a description of the provisions of the certificate of incorporation relating to the Class A directors and the designated independent directors, see the subsections of Comparison of Shareholder Rights captioned Number and Election of Directors beginning on page 137 and Filling Vacancies on the Board of Directors beginning on page 139. For more information on the powers vested in the designated independent directors, see The Stockholders Agreement Corporate Governance Designated Independent Directors beginning on page 105.

***Proposal No. 2B: Approval of Modifications to Anti-takeover Protections and Related Modifications to the Rights of Banknorth Shareholders***

The post-transaction certificate of incorporation eliminates certain provisions of Banknorth's articles of incorporation, and adds certain new provisions, that result in the modification of Banknorth's existing anti-takeover protections. Because TD will hold a majority of the outstanding stock of Banknorth Delaware and the stockholders agreement contains specific negotiated provisions limiting TD's actions as a majority shareholder, TD and Banknorth determined that some of the anti-takeover protections included in Banknorth's articles of incorporation either were no longer necessary or were inconsistent with various provisions of the stockholders agreement, and that certain other provisions should be added to the post-transaction certificate of incorporation to reflect TD's ownership position. These modifications include:

The elimination of Banknorth's classified board structure, which provided for the division of Banknorth's board of directors into three classes and the annual election of one-third of the directors for three-year terms. A classified board structure is designed to, among other things, protect against the replacement of all or a majority of the existing members of a board of directors by a single shareholder action. This protection is no longer necessary because the post-transaction



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certificate of incorporation contains provisions regarding when and how TD can fill a majority of the board seats, and also sets requirements for a minimum number of independent directors not selected by or affiliated with TD. See [Comparison of Shareholder Rights - Number and Election of Directors](#) beginning on page 137.

The modification of the provisions of Banknorth's articles of incorporation regarding action by written consent of shareholders. Because TD, as Banknorth Delaware's majority shareholder, will generally have the ability to control the outcome of any matter submitted for the vote or consent of Banknorth Delaware's shareholders, the post-transaction certificate of incorporation facilitates the taking of shareholder action by written consent, 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 Delaware for a specified period of time. For a comparison of the provisions of Banknorth's articles of incorporation and the post-transaction certificate of incorporation relating to action by written consent of shareholders, see [Comparison of Shareholder Rights - Shareholder Action Without a Meeting](#) beginning on page 148.

The inclusion of a provision by which Banknorth Delaware elects not to be governed by Delaware General Corporation Law Section 203. This provision (which is optional for Delaware corporations) imposes restrictions on business combinations with holders of 15% or more of a corporation's voting stock. Since the terms of TD's acquisition of 51% of the outstanding stock of Banknorth Delaware, and the terms upon which it may acquire additional shares, have been negotiated by Banknorth and TD in connection with the transaction, Banknorth and TD agreed that Banknorth Delaware would opt out of this provision, as it is inconsistent with the stockholders agreement. For a description of this provision of the Delaware General Corporation Law, see [Comparison of Shareholder Rights - Anti-Takeover and Ownership Provisions - Banknorth Delaware](#) beginning on page 159.

The elimination of the fair price provision of Banknorth's articles of incorporation. This provision, which is summarized under [Comparison of Shareholder Rights - Vote on Mergers, Consolidations and Sales of Assets - Banknorth](#) beginning on page 152, provides for super-majority shareholder approval of certain business combinations with significant shareholders unless certain price and procedural requirements are met or the Banknorth board approves the transaction in the manner provided in the articles of incorporation. The stockholders agreement sets forth specific limits on the number of additional shares of Banknorth Delaware that TD may acquire and specific procedures to be followed if TD wishes to obtain permission from Banknorth Delaware or its shareholders to exceed these limits. These provisions are described under the subsections of [The Stockholders Agreement](#), which begins on page 101, captioned [Share Ownership](#) and [Going-Private Transactions](#). Accordingly, Banknorth and TD agreed that the fair price provision in Banknorth's articles of incorporation was neither necessary for Banknorth Delaware nor consistent with the stockholders agreement.

The elimination of the provisions of Banknorth's articles of incorporation requiring super-majority approval for certain amendments to the articles of incorporation. In a widely-held public corporation like Banknorth, these provisions provide protection for minority shareholders against modification of certain provisions of the articles of incorporation, particularly those that provide anti-takeover protections intended to protect minority shareholders, without the approval of a super-majority of the shareholders or of the board of directors. Because TD will hold a majority of the voting securities of Banknorth Delaware and have the right to appoint a majority of the board of directors, and since the stockholders agreement contains protective provisions for minority stockholders that may not be amended without the approval of the designated independent directors, Banknorth and TD agreed to eliminate these provisions. For a comparison of the rights of shareholders regarding the amendment of governing documents, see [Comparison of Shareholder Rights - Amendments of Governing Instruments](#) beginning on page 150.

The inclusion of a provision limiting Banknorth Delaware's ability to adopt defensive measures, including a shareholders rights plan, that are not consistent with the terms of the stockholders

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agreement. For a description of this provision, see [Comparison of Shareholder Rights](#) [Shareholder Rights Plans](#) [Banknorth Delaware](#) beginning on page 161.

***Proposal No. 2C: Approval of Certain Other Modifications to the Rights of Banknorth Shareholders***

The terms of the post-transaction certificate of incorporation will result in the following modifications to the rights of Banknorth shareholders that reflect the structure of the transaction and the terms of the stockholders agreement:

The elimination of the provision in Banknorth's articles of incorporation requiring directors of Banknorth, in discharging their duties, to consider the best interests of both shareholders and constituencies other than shareholders, including employees, depositors and borrowers of any banking subsidiary and communities in which Banknorth operates. This provision is based on a similar provision in the Maine Business Corporation Act, which permits directors to consider the effects of any action on other constituencies. The Delaware General Corporation Law does not contain a provision similar to that contained in the Maine Business Corporation Act, and Banknorth and TD agreed not to include a provision similar to that included in Banknorth's articles of incorporation in the post-transaction certificate of incorporation.

In recognition of the fact that Banknorth Delaware and TD and their respective subsidiaries engage in and in the future may 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 post-transaction certificate of incorporation includes provisions relating to the allocation of corporate opportunities between Banknorth Delaware and TD. For a description of these provisions, see [The Stockholders Agreement](#) [Corporate Opportunities](#) beginning on page 107.

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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:

in connection with a going-private transaction completed in accordance with the terms of the stockholders agreement, as described below 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 as 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 below under Banknorth Delaware's Obligation to Repurchase Stock, the issuance by Banknorth Delaware of some types of non-voting preferred stock or of trust preferred

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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 in connection with the exercise of employee stock options, stock appreciation rights or similar instruments covered by the repurchase obligation of Banknorth Delaware described below under *Banknorth Delaware's Obligation to Repurchase Stock*, TD will have the option, to the extent it did not previously exercise its rights described above 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 below 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 of the options or warrants. 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 under 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;

in compliance with 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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in connection with 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 August 25, 2004. 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 under 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 under 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 regarding its intention to transfer securities in a manner subject to Banknorth'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 on other terms not

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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 below under Suspension, Termination of Certain Provisions.

TD has agreed not to take any action to remove any person serving as a director of Banknorth immediately prior to the completion of the mergers and who becomes a Class A director immediately following the completion of the mergers, prior to the date when that director would have been required to stand for re-election as a director of Banknorth, measured as of August 25, 2004.

*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, including rights with respect to the approval of (1) an increase in TD's ownership limitation, as described above under Share Ownership, (2) going-private transactions, as described above under Going-Private Transactions, (3) certain transfers by TD, including as described above under Transfer Restrictions, (4) delisting of the Banknorth Delaware common stock from the NYSE, as described below under NYSE Listing, (5) the terms of any contribution by TD to Banknorth Delaware of a retail bank acquired by TD, as described below under Acquisition of Competing Entities, and (6) amendments of, or waivers of Banknorth Delaware's rights under, the stockholders agreement. 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 completion of the mergers, 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

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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 under 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

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 below under Suspension, Termination of Certain Provisions.

## **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.



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### **Corporate Opportunities**

In recognition of the fact 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

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

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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

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 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.

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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.

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**

Under 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 in connection with 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.

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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 affiliate commences the process to dispose of the acquired retail bank due to the failure to consummate a contribution or going-private transaction within 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 a bank that is insured by the Federal Deposit Insurance Corporation and 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 enhancements 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 164. 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**  
(C\$ in millions, except where noted)

	<b>BANKNORTH</b>					<b>Reference</b>	<b>Pro Forma Consolidated</b>
	<b>TD</b>	<b>In millions of U.S.\$</b>	<b>C\$</b>	<b>Pro Forma Adjustments</b>	<b>As at July 31, 2004</b>		
	<b>As at July 31, 2004</b>	<b>As at September 30, 2004</b>	<b>As at September 30, 2004</b>	<b>As at July 31, 2004</b>	<b>As at July 31, 2004</b>		
<b>ASSETS</b>							
Cash resources	C\$ 10,236	U.S.\$ 580	C\$ 734	C\$			C\$ 10,970
Securities purchased under resale agreements	25,401						25,401
Securities							
Investment	33,653	7,511	9,500	10	3(a)&(j)		43,163
Trading	67,702						67,702
	<u>101,355</u>	<u>7,511</u>	<u>9,500</u>	<u>10</u>			<u>110,865</u>
Loans							
Residential mortgages	51,528	3,097	3,917	(38)	3(a)		55,407
Consumer, installment and other personal	49,812	5,275	6,672	38	3(a)		56,522
Business and government	23,251	10,039	12,697	(15)	3(a)		35,933
	<u>124,591</u>	<u>18,411</u>	<u>23,286</u>	<u>(15)</u>			<u>147,862</u>
Allowance for credit losses	(1,369)	(243)	(307)				(1,676)
Loans (net of allowance for credit losses)	<u>123,222</u>	<u>18,168</u>	<u>22,979</u>	<u>(15)</u>			<u>146,186</u>
Customer liabilities under acceptances	5,701	4	5				5,706
Trading derivatives – market revaluation	26,163						26,163
Intangible assets	2,286	53	67	613	3(a)		2,966
Goodwill	2,308	1,369	1,732	2,711	3(a)		6,751
Land, buildings and equipment	1,221	286	362				1,583
Other assets	11,300	1,015	1,283				12,583
	<u>C\$ 309,193</u>	<u>U.S.\$ 28,986</u>	<u>C\$ 36,662</u>	<u>C\$ 3,319</u>			<u>C\$ 349,174</u>
<b>LIABILITIES AND SHAREHOLDERS EQUITY</b>							
Deposits							
Personal	C\$ 111,564	U.S.\$ 13,335	C\$ 16,866	8	3(a)		C\$ 128,438
Banks	16,501	2	3				16,504
Business and government	83,439	6,033	7,630	2,960	3(a)		94,029
	<u>211,504</u>	<u>19,370</u>	<u>24,499</u>	<u>2,968</u>			<u>238,971</u>
Acceptances	5,701	4	5				5,706
Obligations related to securities sold short	19,413						19,413
Obligations related to securities sold under repurchase agreements	10,934	3,286	4,156				15,090
Trading derivatives – market revaluation	26,556						26,556

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Other liabilities and other borrowings	14,490	2,619	3,313	255	3(a),(i)&(j)	18,058
Subordinated notes and debentures	5,671	661	836	104	3(a)	6,611
Non-controlling interest in subsidiaries	1,250			1,895	3(h)&(j)	3,145
<b>Shareholders' equity</b>						
Preferred shares	1,309					1,309
Common shares	3,245	2	3	1,947	3(a)&(b)	5,195
Contributed surplus	17	1,352	1,710	(1,710)	3(a)	17
Foreign currency translation adjustments	(73)					(73)
Retained earnings	9,176	1,692	2,140	(2,140)	3(a)	9,176
	<u>13,674</u>	<u>3,046</u>	<u>3,853</u>	<u>(1,903)</u>		<u>15,624</u>
<b>Total liabilities and shareholders equity</b>	<u>C\$ 309,193</u>	<u>U.S.\$ 28,986</u>	<u>C\$ 36,662</u>	<u>C\$ 3,319</u>		<u>C\$ 349,174</u>

**Table of Contents****UNAUDITED PRO FORMA CONSOLIDATED STATEMENT OF INCOME**

**For the Nine Months Ended July 31, 2004**  
(C\$ in millions, except share data)

	BANKNORTH				Reference	Pro Forma Consolidated
	TD	In millions of U.S.\$	C\$	Pro Forma Adjustments		
	Nine Months Ended July 31, 2004	Nine Months Ended September 30, 2004	Nine Months Ended September 30, 2004			
Interest income						
Loans	C\$ 5,191	U.S.\$ 682	C\$ 907	C\$		C\$ 6,098
Securities	2,778	245	326			3,104
Deposits with banks	343					343
	<u>8,312</u>	<u>927</u>	<u>1,233</u>			<u>9,545</u>
Interest expense						
Deposits	2,844	118	157	78	3(e)	3,079
Subordinated notes and debentures	234	10	13			247
Other obligations	784	111	148			932
	<u>3,862</u>	<u>239</u>	<u>318</u>	<u>78</u>		<u>4,258</u>
Net interest income	4,450	688	915	(78)		5,287
Provision for credit losses	(313)	30	40			(273)
Net interest income after credit loss provision	<u>4,763</u>	<u>658</u>	<u>875</u>	<u>(78)</u>		<u>5,560</u>
Other income						
Investment and securities services	1,785	15	20			1,805
Credit fees	263					263
Net investment securities gains	148	10	13			161
Trading income	(78)					(78)
Service charges	503	81	108			611
Loan securitizations	308					308
Card services	152	37	49			201
Insurance, net of claims	418	38	51			469
Trust fees	60	29	39			99
Other	224	59	78			302
	<u>3,783</u>	<u>269</u>	<u>358</u>			<u>4,141</u>
Net interest and other income	8,546	927	1,233	(78)		9,701
Non-interest expenses						
Salaries and employee benefits	2,871	267	355	38	3(j)&(m)	3,264
Occupancy, including depreciation	455	47	62			517
Equipment, including depreciation	401	36	48			449
Amortization of intangible assets	484	6	8	87	3(d)	579
Goodwill impairment and restructuring costs	(7)	11	15			8
Other	1,899	131	174	15	3(f)	2,088
	<u>6,103</u>	<u>498</u>	<u>662</u>	<u>140</u>		<u>6,905</u>



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Income before provision for income taxes	2,443	429	571	(218)		2,796
Provision for income taxes	676	145	193	(79)	3(g)&(l)	790
	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>		<u>        </u>
Income before non-controlling interest in subsidiaries	1,767	284	378	(139)		2,006
Non-controlling interest in net income of subsidiaries	69			173	3(h)	242
	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>		<u>        </u>
Net income	1,698	284	378	(312)		1,764
Preferred dividends	61					61
	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>		<u>        </u>
Net income applicable to common shares	C\$ 1,637	U.S.\$ 284	C\$ 378	C\$ (312)		C\$ 1,703
	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>		<u>        </u>
Average number of common shares outstanding (millions)						
Basic	654.9					698.3
Diluted	659.7					703.1
Earnings per common share						
Basic	C\$ 2.50				4	C\$ 2.44
	<u>        </u>					<u>        </u>
Diluted	C\$ 2.48				4	C\$ 2.42
	<u>        </u>					<u>        </u>

**Table of Contents****UNAUDITED PRO FORMA CONSOLIDATED STATEMENT OF INCOME**

**For the Year Ended October 31, 2003**  
(C\$ in millions, except share data)

	BANKNORTH					
	TD	In millions of U.S.\$	C\$	Pro Forma Adjustments	Reference	Pro Forma Consolidated
	Year Ended Oct. 31, 2003	Year Ended Dec. 31, 2003	Year Ended Dec. 31, 2003			Year Ended Oct. 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	104	3(e)	4,569
Subordinated notes and debentures	259	13	18			277
Other obligations	1,125	150	209			1,334
	<u>5,586</u>	<u>352</u>	<u>490</u>	<u>104</u>		<u>6,180</u>
Net interest income	5,616	841	1,171	(104)		6,683
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>(104)</u>		<u>6,439</u>
Other income						
Investment and securities services	2,132	16	22			2,154
Credit fees	415					