TD Bank's Historic $3.1B Money Laundering Settlement a Warning to All Financial Institutions

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On October 10, 2024, Attorney General Merrick Garland announced that TD Bank agreed to pay over $1.8 billion in penalties to resolve the U.S. Department of Justice's (DOJ) investigation into money laundering and Bank Secrecy Act (BSA) violations. When combined with agreements with the Federal Reserve, Office of the Comptroller of the Currency (OCC), and the Treasury Department's Financial Crimes Enforcement Network, the Toronto-based bank will pay approximately $3.09 billion in penalties. TD Bank also consented to a five-year probationary term and multi-year monitoring requirements. Significantly, the bank pleaded guilty to felony charges of conspiracy to commit money laundering – the first bank in history to do so.

The 116-page plea agreement details the bank's "pervasive and systemic failure to maintain an adequate" anti-money laundering (AML) compliance program. According to the agreement, TD Bank did not substantively update its transaction monitoring program between 2014 and 2022 and failed to monitor roughly $18.3 trillion in transactions processed through the bank between January 2018 and April 2024. These compliance deficiencies, among others, resulted in bank customers, sometimes aided by bank insiders, laundering approximately $671 million through TD Bank accounts, including on behalf of international drug traffickers. In reference to its slogan, "America's most convenient bank," Garland stated that "[b]y making its services convenient for criminals, TD Bank became one."

TD Bank's global resolution is noteworthy for several reasons beyond the eye-popping size of the monetary penalties.

First, the OCC has implemented a $434 billion asset cap until the bank remediates its AML compliance to the government's satisfaction. TD Bank has strategically invested in the U.S. market for decades, and the cap places a ceiling on the bank's growth. The asset limit could be lowered if further if the bank does not comply with the OCC's remediation requirements, and the agreement restricts the bank's business functions and total consolidated assets. The asset cap may ultimately have a more detrimental impact on TD Bank's stock price and value than the criminal and civil penalties.

Second, the DOJ was highly critical of TD Bank's lack of investment in compliance, specifically the bank's "implementation of a flat-cost year-over-year spending paradigm." The plea agreement frequently highlights the flat-cost paradigm in juxtaposition with the bank's failure to update and adapt its AML program in the face of TD Bank's growing risk profile and business expansion in the United States. U.S. regulators are scrutinizing compliance program budgets in relation to growth and demand continuing and dynamic re-evaluation of those programs. Financial institutions cannot have a "set it and forget it" approach to AML compliance.

Third, TD Bank did not receive credit for voluntary self-disclosure pursuant to the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy. Had TD Bank timely disclosed its conduct to the government, the bank would have received the full five points off its culpability score pursuant to the United States Sentencing Guidelines Section 8C2.5(g)(1) and likely could have secured a more favorable outcome. Financial institutions must quickly and thoroughly investigate potential AML/BSA deficiencies, so executives and the board can determine if self-disclosure is appropriate.

Finally, while the government did not criminally charge any TD Bank executives in connection with AML compliance deficiencies, the bank clawed back bonuses, including for its CEO, resulting in a dollar-for-dollar reduction of the bank's fine by approximately $2 million. The clawback fell within the purview of a recent DOJ pilot program, the goal of which is to shift the burden of corporate crime away from shareholders and onto those directly responsible. As the DOJ continues to focus on executives' roles in AML program deficiencies, financial institutions should proactively consider compensation systems that promote compliance. For instance, as part of the DOJ's December 2022 resolution with Danske Bank, the Danish lender instituted a reform in which bank executives and staff do not receive a bonus if they fail certain compliance-related evaluation criteria.

The TD Bank settlement is a reminder of the importance of maintaining risk-based, well-resourced compliance programs designed to evolve with the institution's growth and the ever-changing nature of the money laundering threat. Deputy Attorney General Lisa Monaco summed up the government's position succinctly: "Every bank official in America should be reviewing today's charges as a case study of what not to do. And every bank CEO and board member should be doing the same. Because if the business case for compliance wasn't clear before — it should be now."

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