

## Anti-Money Laundering

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### **TD Bank to Pay Historic \$3 Billion Over AML Compliance Violations**

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On October 10, 2024, multiple U.S. federal and state agencies cumulatively fined a number of US based Toronto Dominion Bank subsidiaries (collectively, TD Bank or the Bank) more than \$3 billion after finding that TD Bank engaged in systemic, willful anti-money laundering (AML) failures in contravention of its regulatory obligations under the Bank Secrecy Act (BSA). The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), the U.S. Federal Reserve Bureau (FRB), the U. S. Department of Justice (DOJ), the U.S. Attorney's Office for the District of New Jersey, and the Office of the Comptroller of the Currency (OCC) each assessed a separate fine.<sup>1</sup> In the DOJ criminal matter, TD Bank pled guilty to one count of conspiracy for failure to maintain an adequate AML program under the BSA and one count of failure to file accurate currency transaction reports, resulting in the Bank facilitating money laundering.<sup>2</sup> The penalty is the largest ever assessed under the BSA.

In addition to financial and criminal penalties, FinCEN will require TD Bank to engage an independent monitor for a four year term at TD Bank's expense. The independent monitor will oversee a full suspicious activity reporting (SAR) program and AML program lookback review and may recommend further disciplinary action against the current TD Bank employees who were involved in the misconduct. To date, five Bank employees have been implicated and two Bank employees have been arrested due to investigations by the DOJ into TD Bank's clients.<sup>3</sup>

In addition, pursuant to its resolution with the OCC, TD Bank's U.S. retail banking subsidiary, TD Bank NA, will not be allowed to open new branches or grow its assets in the U.S. without permission from the OCC.<sup>4</sup> If the OCC is unsatisfied with the result of the aforementioned measures, it reserves the right to require TD Bank to reduce its assets in the U.S. by 7 percent per year. The OCC's examiner-in-charge will be the liaison with the OCC and will ensure TD Bank's ongoing compliance with the consent order in a similar manner to the FinCEN monitor. The FRB cease and desist order contains similar requirements for FRB oversight as TD Bank tries to remedy its AML failures.<sup>5</sup>

Prior to the current investigations, TD Bank had been under a separate consent order with FinCEN, which it entered into in September 2013<sup>6</sup> and was thus on notice of its AML obligations under the BSA. Despite its knowledge of the penalties for failing to maintain an adequate AML program, among other things, TD Bank continued from 2013 until 2024 to (1) understaff its AML function, (2) allow thousands of suspicious activities to go unresolved and unreported for years, (3) hamstringing the authority of its BSA Officer, (4) hire employees who had no AML background and fail to train its AML staff, and (5) purposely not monitor transactions of certain high risk clients. These failures resulted in 80 percent of its transactions, or trillions of dollars, not being screened for potential suspicious activity, BSA violations, and other violations of law. In addition, more than 5 million customer accounts were never assessed for compliance risk or assigned a risk rating in contravention of TD Bank's legal requirement to maintain a reasonably designed, risk-based customer identification program.<sup>7</sup>

As an example of what the government views to be egregious AML program failures, TD Bank did not monitor or investigate for potential suspicious activity the account of Dang Ying Sze, an individual who eventually pled guilty with the DOJ for operating an unlicensed money service business and bribing bank employees. Approximately 4000 of Mr. Sze's transactions were processed through TD Bank aggregating to \$200 million of illicit proceeds while TD Bank filed only a small number of incomplete SARs. TD Bank employees also knowingly misled law enforcement on behalf of

Mr. Sze by filing currency transaction reports in names other than Mr. Sze's despite recognizing that Mr. Sze was using false identities.<sup>8</sup>

Even after law enforcement advised TD Bank of Mr. Sze's activities, the bank failed to close Mr. Sze's accounts for several years. As a result, TD Bank's AML failures allowed three known money laundering networks to operate through its branches, totaling in \$670 million in illicit funds passing through the bank undetected and unreported to law enforcement, in contravention of the bank's affirmative obligations under the BSA.

TD Bank's historic penalty and the continued compliance obligations should serve as a warning to other financial institutions subject to the BSA. Federal regulators are investigating and will continue to prosecute facilitators of money laundering. Indeed, as the DOJ assistant attorney general advises, "U.S. financial institutions are the first line of defense against money laundering and illicit finance. When they participate in crime rather than prevent it, [the DOJ] will not hesitate to hold them accountable to the fullest extent of the law."<sup>9</sup>

All institutions subject to the BSA or who will become subject to the BSA, such as Securities and Exchange Commission registered investment advisers, should undertake their AML compliance programs to ensure that the types of systemic failures that occurred at TD Bank could not occur within their own institution.

Lowenstein Sandler continues to monitor AML violations of the BSA to keep our clients informed. For any questions on best practices to comply with the BSA or about this Client Alert, please contact the authors at [LSAMLETeam@lowenstein.com](mailto:LSAMLETeam@lowenstein.com).

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<sup>1</sup> See "TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution," U.S. Department of Justice Office of Public Affairs, [available here](#); "FinCEN Assesses Record \$1.3 Billion Penalty against TD Bank," Financial Crimes Enforcement Network, [available here](#); "Federal Reserve Board fines Toronto-Dominion Bank \$123.5 million for violations related to anti-money laundering laws," Federal Reserve Bureau, [available here](#); and "OCC Issues Cease and Desist Order, Assesses \$450 Million Civil Money Penalty, and Imposes Growth Restriction Upon TD Bank, N.A. for BSA/AML Deficiencies," Office of the Comptroller of the Currency News Release 2024-116; [available here](#).

<sup>2</sup> "TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution," U.S. Department of Justice Office of Public Affairs, [available here](#).

<sup>3</sup> See "In the Matter of TD Bank, N.A. and TD Bank USA, N.A.," No. 2024-02, FinCEN, [available here](#).

<sup>4</sup> See "In the Matter of TD Bank N.A. and TD Bank USA, N.A.," No. AA-ENF-2024-77, OCC, [available here](#).

<sup>5</sup> See "In the Matter of Toronto-Dominion Bank, TD Group U.S. Holdings, LLC, and TD Bank U.S. Holding Company," Nos. 24-027-B-FB, 24-027-CMP-FB, 24-027-B-HC, and 24-027-CMP-HC, FRB, [available here](#).

<sup>6</sup> See "In the Matter of TD Bank, N.A.," Number 2013-1, FinCEN, [available here](#).

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2.

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