

## Landmark Bank Secrecy Act Resolution Signals Increasing Focus on Banks' Anti-Money Laundering Compliance

### *Enforcement agencies urge investment in compliance programs.*

On October 10, 2024, the Department of Justice (DOJ) announced plea agreements with TD Bank N.A. (TDBNA) and its parent company, TD Bank US Holding Company (TDBUSH, and together with TDBNA, the Bank) in connection with anti-money laundering (AML) program failures. TDBNA pleaded to one count of conspiracy to (1) fail to maintain an adequate AML program; (2) fail to file accurate currency transaction reports; and (3) launder monetary instruments, in violation of 18 U.S.C. § 371. TDBUSH pleaded to two substantive offenses: (1) causing TDBNA to fail to maintain an adequate AML program; and (2) causing TDBNA to fail to file accurate currency transaction reports, in violation of 31 U.S.C. §§ 5322 and 5324. TD Bank became the largest bank in US history to plead to Bank Secrecy Act (BSA) program failures.

These pleas were part of a coordinated resolution with the Board of Governors of the Federal Reserve Board (FRB), the Treasury Department's Office of the Comptroller of the Currency (OCC), and the Financial Crimes Enforcement Network (FinCEN) — which each reached separate civil resolutions with the Bank. In total, this multi-agency resolution results in the Bank agreeing to pay approximately \$3 billion to the federal government, the largest penalty ever imposed under the BSA. In announcing this resolution, DOJ and other agencies signaled an ongoing and increasing focus on banks' BSA compliance.

This Client Alert summarizes the resolution and offers key takeaways for bank executives and compliance officers.

### Key Findings

According to the resolution documents, senior bank executives enforced a budget mandate, referred to internally as a "flat cost paradigm," that set expectations that all budgets — including the Bank's AML budget — would not increase year-over-year. As a result of these measures, the Bank acknowledged that, between 2014 and 2023, it had systemic deficiencies in its US AML policies, procedures, and controls and failed to take appropriate remedial action.<sup>1</sup>

In particular, DOJ and FinCEN highlighted multiple failures when discussing the resolutions:

1. The Bank intentionally did not automatically monitor all domestic automated clearinghouse (ACH) transactions, most check activity, and other transaction types. As a result, 92% of total transaction

volume went unmonitored from January 1, 2018, to April 12, 2024, (amounting to approximately \$18.3 trillion of transaction activity).<sup>2</sup>

2. The Bank also failed to meaningfully monitor transactions involving high-risk countries, instructed stores to stop filing internal unusual transaction reports on certain suspicious customers, and permitted more than \$5 billion in transactional activity to occur in accounts after the Bank decided to close them.<sup>3</sup>
3. The Bank insufficiently processed peer-to-peer transactions (e.g., Venmo and Zelle), including transactions indicative of human trafficking, and as a result, failed to identify and timely report these transactions to FinCEN.<sup>4</sup>
4. The Bank failed to timely detect suspicious activity involving its own employees. For example, in 2021, a Bank employee facilitated the laundering of narcotics proceeds in exchange for bribes. According to the resolution documents, this employee opened numerous accounts, including for shell companies, that then engaged in millions of dollars' worth of funnel account activity in a high-risk jurisdiction where the Bank maintained no operations.<sup>5</sup>

In announcing the settlements, Principal Deputy Assistant Attorney General Nicole Argentieri remarked that the Bank's AML employees joked that the deficient AML system made the Bank an "easy target" and a "convenient" bank for bad actors.<sup>6</sup> As a result, the Bank's AML failures enabled three money laundering networks to collectively transfer over \$670 million through TD Bank accounts between 2019 and 2023.<sup>7</sup> DOJ reports that it has charged more than two dozen individuals across the three schemes, including two Bank insiders.<sup>8</sup>

## Cooperation Considerations

In evaluating the Bank's cooperation in consideration of resolution, DOJ noted:

1. The Bank "did not voluntarily and timely disclose ... the conduct described in the Statement of Facts."<sup>9</sup>
2. The Bank received partial credit for its cooperation with DOJ's investigation by, among other things, reviewing hundreds of hours of Bank surveillance video and identifying portions of interest to DOJ, providing detailed analyses prepared by external consultants concerning money laundering through accounts at the Bank and involvement of employees in that conduct, and taking steps to "swiftly preserve and produce records and information related to employees involved in misconduct, including by securing their worksites to prevent the destruction of evidence."<sup>10</sup>
3. The Bank did not receive full credit for its cooperation because DOJ found its cooperation was "limited" in a number of respects, including (1) its failure to inform DOJ of "concerns expressed ... during the course of [the Bank's] internal investigation[] by a third-party financial services company concerning ... money laundering activity"; (2) its "fail[ure] to identify... a well-known and significant transaction monitoring gap that, since at least 2008, allowed the [Bank] to process trillions of dollars of [ACH] and other types of transactions per year without monitoring or reporting"; and (3) the Bank's rejection of the government's request that it voluntarily keep certain accounts open related to money laundering networks identified in the investigation.<sup>11</sup>

## Key Terms of Resolution

The monetary penalties imposed by each agency are set forth below:

<b>DOJ</b>	\$1.89B <sup>12</sup>
<b>FinCEN</b>	\$1.3B <sup>13</sup>
<b>OCC</b>	\$450M
<b>FRB</b>	\$123.5M

The DOJ penalty was based on a rarely used penalty provision in the BSA: the ability to fine a financial institution up to \$500,000 for each day it lacks a functional AML program. Here, DOJ (for the first time) sought to impose this maximum daily penalty, calculating a fine based on \$500,000 per day from January 2014 to October 2023. The resulting amount is nearly three times the top end of the sentencing guideline range, likely reflecting a number of aggravating factors, including that (1) the BSA failures resulted in actual laundering of proceeds of drug trafficking and other unlawful activity; (2) some Bank employees were aware of and intentionally facilitated the substantive money laundering; (3) a large volume of the transaction went unmonitored; and (4) the Bank failed to timely disclose certain misconduct even after it began cooperating with the government's investigation.

Additional noteworthy terms of the resolutions include the following:

1. **Independent monitorships.** Both DOJ (three-year term) and FinCEN (four-year term, including oversight of a SAR lookback consultant already engaged by the Bank<sup>14</sup>) each imposed monitorships.
2. **Onshoring compliance operations.** FRB imposed a requirement for the Bank to relocate parts of its global AML compliance program responsible for establishing and maintaining compliance with US BSA/AML requirements to the US. FRB also required the Bank to “establish a Remediation Office in the United States that will operate under the oversight of the [Bank's] boards of directors,” responsible for assessing, identifying, assisting, and tracking “all remediation-related actions, including those in this [FRB] Order.”<sup>15</sup>
3. **Compliance committee.** OCC imposed a requirement that the Board appoint a compliance committee a majority of whose members “are not employees or officers of the Bank or any of its subsidiaries or affiliates.”<sup>16</sup>
4. **Asset cap and additional business restrictions imposed.** OCC imposed an asset cap for the duration of the order, limiting the Bank's total consolidated assets to those reported as of September 30, 2024. The Bank may further be required to reduce its total consolidated assets by up to 7% if it does not comply with the order by the timeline approved by OCC (and for each successive year of noncompliance). The Bank also may not open a new branch, or expand to a new market, without approval from OCC; moreover, it may not add new products or services without approval from OCC until it has improved its policies and procedures. Even after that time, the Bank must receive OCC approval before adding new products or services with medium or high BSA/AML risk.<sup>17</sup>

## Takeaways

In announcing the resolutions, Deputy Attorney General Lisa Monaco cautioned that “[e]very bank compliance official in America should be reviewing [the] 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.”<sup>18</sup> The resolutions highlight several key takeaways for executives and compliance officers.

1. **Investment in compliance resourcing.** In announcing the Bank’s pleas, Attorney General Garland stated that the Bank “chose profits over compliance” with the law.<sup>19</sup> Deputy Attorney General Monaco similarly noted that it “starved its compliance program of the resources it needed to obey the law,”<sup>20</sup> while the US Attorney for the District of New Jersey stated that the Bank “prioritized growth and convenience over following its legal obligations.”<sup>21</sup>
2. **Effective staffing, supervision, and training.** DOJ highlighted employee involvement in money laundering schemes, including employees who received gift cards as bribes from an individual who moved more than \$470 million in illicit funds through the Bank’s branches. DOJ characterized the individual’s conduct as “obvious.” In a separate scheme, five Bank insiders opened accounts and provided dozens of ATM cards to money laundering networks, which the networks used to launder funds from the US to Colombia through high-volume ATM withdrawals. Despite significant internal red flags, the Bank did not identify the role the insiders played in the money laundering activity until law enforcement arrested one of them in October 2023.
3. **Implementing transaction monitoring technology and compliance infrastructure.** According to the resolutions, the Bank monitored only approximately 8% of transactions because it omitted all domestic ACH transactions, most check activity, and numerous other transaction types from its automated transaction monitoring system.
4. **Adapting and updating transaction monitoring technology.** According to the resolutions, the Bank failed to substantively update its transaction monitoring system despite rapid growth in the volume and risks of the Bank’s business and repeated warnings about gaps and vulnerabilities in the outdated system, even after OCC and FinCEN enforcement actions in 2013. Those actions stemmed from a Ponzi scheme orchestrated by a Florida attorney in which OCC determined that the Bank needed to develop transaction monitoring policies and procedures for new scenarios to appropriately mitigate emerging risks.
5. **Approach to high-risk jurisdictions.** While the Bank maintained and regularly updated a list of “high-risk countries,” its US AML group only effectively monitored transactions involving what it dubbed “high high risk countries,” which were a subset of the high-risk country list and which were not updated after 2013, regardless of changes to the Bank’s high-risk country list, updates to the Financial Action Task Force’s “grey list,” or other geopolitical events.

DOJ and other enforcement agencies expect banks to focus on and invest in such measures to ensure that they have appropriately designed and implemented AML compliance programs.

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If you have questions about this Client Alert, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

**Benjamin A. Naftalis**

benjamin.naftalis@lw.com  
+1.212.906.1713  
New York

**Eric S. Volkman**

eric.volkman@lw.com  
+1.202.637.2237  
Washington, D.C.

**Douglas K. Yatter**

douglas.yatter@lw.com  
+1.212.906.1211  
New York

**Kathryn A. Worthington**

kathryn.worthington@lw.com  
+1.202.637.2226  
Washington, D.C.

**Kelly McBride**

kelly.mcbride@lw.com  
+1.212.906.4614  
New York

**Catherine J. Yao**

catherine.yao@lw.com  
+1.202.637.2262  
Washington, D.C.

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**Endnotes**

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<sup>1</sup> Department of Justice, Plea Agreement (Oct. 10, 2024), available at <https://www.justice.gov/opa/media/1373146/dl>.

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

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

<sup>4</sup> Financial Crimes Enforcement Network, Consent Order (Oct. 10, 2024), available at [https://www.fincen.gov/sites/default/files/enforcement\\_action/2024-10-10/FinCEN-TD-Bank-Consent-Order-508FINAL.pdf](https://www.fincen.gov/sites/default/files/enforcement_action/2024-10-10/FinCEN-TD-Bank-Consent-Order-508FINAL.pdf).

<sup>5</sup> *Id.*

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- <sup>6</sup> Nicole M. Argentieri, Principal Deputy Assistant Attorney, Principal Deputy Assistant Attorney General Nicole M. Argentieri Delivers Remarks Announcing TD Bank's Guilty Plea for Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution (Oct. 10, 2024), available at <https://www.justice.gov/opa/speech/principal-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-announcing-td>.
- <sup>7</sup> Department of Justice, Press Release, TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution (Oct. 10, 2024), available at <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.
- <sup>8</sup> *Id.*
- <sup>9</sup> Department of Justice, Plea Agreement (Oct. 10, 2024), available at <https://www.justice.gov/opa/media/1373146/dl>.
- <sup>10</sup> *Id.*
- <sup>11</sup> *Id.*
- <sup>12</sup> DOJ reduced the Bank's fine by approximately \$2 million under the Criminal Division's Pilot Program on Compensation Incentives and Clawbacks, in recognition that the Bank had clawed back bonuses of its CEO and other executives. Nicole M. Argentieri, Principal Deputy Assistant Attorney, Principal Deputy Assistant Attorney General Nicole M. Argentieri Delivers Remarks Announcing TD Bank's Guilty Plea for Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution (Oct. 10, 2024), available at <https://www.justice.gov/opa/speech/principal-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-announcing-td>.
- <sup>13</sup> FinCEN agreed to credit payments of \$543M to DOJ and OCC, leaving TD Bank to pay \$757M to FinCEN. Financial Crimes Enforcement Network, Consent Order (Oct. 10, 2024), available at [https://www.fincen.gov/sites/default/files/enforcement\\_action/2024-10-10/FinCEN-TD-Bank-Consent-Order-508FINAL.pdf](https://www.fincen.gov/sites/default/files/enforcement_action/2024-10-10/FinCEN-TD-Bank-Consent-Order-508FINAL.pdf).
- <sup>14</sup> We note that OCC also required that TD Bank engage an independent third party to conduct a transaction lookback and report any previously unreported suspicious activity. Office of the Comptroller of the Currency, Consent Order (Oct. 8, 2024), available at <https://www.occ.gov/static/enforcement-actions/eaAA-ENF-2024-77.pdf>.
- <sup>15</sup> Federal Reserve Board, Order (Oct. 10, 2024), available at <https://www.federalreserve.gov/newsevents/pressreleases/files/enf20241010a1.pdf>.
- <sup>16</sup> Office of the Comptroller of the Currency, Consent Order (Oct. 8, 2024), available at <https://www.occ.gov/static/enforcement-actions/eaAA-ENF-2024-77.pdf>.
- <sup>17</sup> *Id.*
- <sup>18</sup> Department of Justice, Press Release, TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution (Oct. 10, 2024), available at <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.
- <sup>19</sup> Merrick B. Garland, Attorney General, Attorney General Merrick B. Garland Delivers Remarks Announcing TD Bank's Guilty Plea for Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution (Oct. 10, 2024), available at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-announcing-td-banks-guilty-plea-bank>.
- <sup>20</sup> Lisa Monaco, Deputy Attorney General, Deputy Attorney General Lisa Monaco Delivers Remarks Announcing TD Bank's Guilty Plea for Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution (Oct. 10, 2024), available at <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-announcing-td-banks-guilty-plea>.
- <sup>21</sup> Department of Justice, Press Release, TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution (Oct. 10, 2024), available at <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.