



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter to the Department of Justice (Department), dated October 30, 2024, regarding the Department's criminal prosecution of TD Bank N.A. (TDBNA) and TD Bank U.S. Holding Company (TDBUSH) (collectively, "TD Bank" or the "Bank"), including the felony money laundering and Bank Secrecy Act (BSA) charges filed against TD Bank and the Bank's guilty plea.

The Department is committed to the vigorous enforcement of the law against corporations that engage in criminal misconduct, and the historic \$1.8 billion in criminal penalties and forfeiture against TD Bank reflect the seriousness of its crimes.¹ Never before has a bank of this size been criminally charged with—or pleaded guilty to—violating the BSA, and never before has any U.S.-chartered bank been criminally charged with—or pleaded guilty to—conspiracy to commit money laundering.² As a result of the Department's prosecution, TD Bank will be required to pay the largest-ever penalty imposed under the BSA and fundamentally restructure its corporate compliance program.³ The case also broke new ground by applying for the first time the BSA's "daily fine" penalty provision,⁴ with TD Bank required to pay the statutory maximum of \$500,000 for each of the 3,587 days between January 2014 and October 2023 that the Bank failed to maintain an anti-money laundering (AML) program that complied with the law. The entirety of this more than \$1.4 billion fine will be deposited into the Crime Victims Fund for distribution to federal, state, and tribal victim assistance programs across the country.⁵

The criminal case against TD Bank is the latest example of the Department's work to hold financial institutions accountable for misconduct. During this Administration, the Department has surged resources to the Bank Integrity Unit—housed within the Criminal

¹ The combination of these criminal penalties and forfeitures with regulatory penalties announced the same day results in TD Bank being required to pay approximately \$3.09 billion.

² Press Release, U.S. Dep't of Just., Off. of Pub. Affs., TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution (Oct. 10, 2024), <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.

³ *Id.*

⁴ 31 U.S.C. §§ 5322(b) and (c).

⁵ 34 U.S.C. § 20101.

Division's Money Laundering and Asset Recovery Section (MLARS)—to bring cases against entities and individuals that violate the BSA's criminal provisions and other related statutes. The TD Bank case comes less than a year after the Department's prosecution of Binance Holdings Limited and its former CEO—a case in which the Bank Integrity Unit played a leading role and established a new standard for AML compliance in the cryptocurrency industry.

These enforcement efforts are buttressed by new Department programs and policies designed to root out and ensure accountability for corporate misconduct. This includes the Corporate Whistleblower Awards Pilot Program, which is housed within MLARS and offers whistleblowers the potential for a monetary award if they provide Department investigators with original information about previously undetected corporate misconduct that leads to forfeiture, including certain crimes involving financial institutions.

As noted in your letter, the Department's resolution with TD Bank involved two entities: TDBNA, a federally chartered national bank, and TDBUSH, the chartered bank's immediate corporate parent. Both entities pleaded guilty to felonies. TDBNA pleaded guilty to one-count Information charging it with conspiring to: (1) fail to maintain an adequate AML program, (2) fail to file accurate Currency Transaction Reports, and (3) launder monetary instruments. TDBUSH pleaded guilty to two-count Information charging it with two substantive BSA violations: failure to maintain an adequate AML program and failure to file accurate Currency Transaction Reports.

When deciding whether to charge a corporation and what charges to bring, Department prosecutors are bound by a bedrock principle: they apply the law to the facts, in compliance with applicable Department policies. The Justice Manual identifies eleven factors that prosecutors must consider in reaching a decision as to the proper approach to prosecuting a corporate target:

- (1) the nature and seriousness of the offense;
- (2) the pervasiveness of wrongdoing within the corporation;
- (3) the corporation's history of misconduct;
- (4) the corporation's willingness to cooperate, including as to potential wrongdoing by its current and former employees;
- (5) the adequacy and effectiveness of the corporation's compliance program;
- (6) the corporation's timely and voluntary self-disclosure of wrongdoing;
- (7) the corporation's remedial actions;
- (8) collateral consequences, including whether there is disproportionate harm to shareholders, pension holders, employees, and others not proven personally culpable, as well as impact on the public arising from the prosecution;

- (9) the adequacy of civil or regulatory remedies;
- (10) the adequacy of prosecutions of culpable individuals; and
- (11) the interests of any victims.⁶

Given these many considerations, the Department's prosecutorial approach to any particular corporate target is intensely fact-bound, and the Department carefully considers information from a variety of sources before arriving at its final charging decisions. When a target corporation operates in a highly regulated industry—including banking and other financial services—the Department consults with relevant regulators. Such consultation enables the Department to better understand the regulatory context for the conduct, the corporation's position in the overall market and its compliance posture compared to peer institutions, the potential collateral consequences arising from a Department action, and what, if any, additional authorities or remedies may be available to hold entities or individuals accountable for their misconduct. These consultations are especially important when the target entity is a global systemically important bank and the prudential regulators possess expertise about financial risks and collateral consequences.

Your letter noted that certain criminal charges involving financial institutions require the Office of the Comptroller of the Currency (OCC) to provide a notice of intent to terminate the institution's charter, pursuant to Title 12, United States Code, Section 93(d), and asked whether the Department consulted with the OCC or other banking regulators in the process of negotiating the resolution with TD Bank. The Department did consult the regulatory agencies with jurisdiction and expertise on the TD Bank resolution, including the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, as well as Canada's Office of the Superintendent of Financial Institutions. The Department carefully took these consultations into account when it applied the factors mandated by the Justice Manual, along with other considerations regarding the evidence and the law, in arriving at its charging decision and resolution. The resulting criminal resolution imposes both the statutory maximum financial penalty and an independent monitor tasked with ensuring the implementation of significant compliance reforms at TD Bank. The resolution also requires TD Bank's global parent—Toronto-Dominion Bank—to take legal responsibility for ensuring compliance with the terms of the plea agreement, rendering it subject to prosecution in the event of any violations of the agreement.

The plea agreement with TD Bank did not release any individuals, including current or former executives, from criminal or civil liability arising from their misconduct. This is consistent with Department practice and our commitment to ensuring individual accountability. Indeed, the agreement mandates that TD Bank cooperate with the Department—as well as any other domestic or foreign law enforcement or regulatory authorities, at the Department's direction—regarding individual investigations and prosecutions. Of course, the Department's decisions on whether to prosecute individuals are—and must always be—based on the facts and the law. To date, the Department has prosecuted more than two dozen individuals, including two TD Bank employees, in connection with the schemes charged in this case. And as Attorney

⁶ U.S. Dep't of Just., Just. Manual § 9-28.300(A) (list formatting adjusted).

General Garland said in October 2024 when announcing the corporate criminal charges and guilty plea, “our criminal investigations into individual employees at every level of TD Bank are active and ongoing.”

Your letter also asked about compensation clawbacks. As set forth in TD Bank’s criminal plea agreement, the corporation has withheld \$2,065,000 in compensation from its employees and anticipates withholding up to \$5.5 million more in compensation at the end of this calendar year—the largest withholding of compensation in a corporate criminal resolution since the Criminal Division launched a three-year pilot program in April 2023 that requires companies entering into criminal resolutions to incorporate compliance-related criteria in their compensation and bonus system.⁷ Consistent with that program, the plea agreement also requires TD Bank to implement changes to its compensation system to reward compliance-promoting behavior. Those changes will prohibit bonuses for employees who do not satisfy compliance performance requirements and require TD Bank to recoup compensation from personnel who engaged in wrongdoing or who had supervisory authority over the personnel or business area engaged in the misconduct and knew of or were willfully blind to the misconduct. In addition, they will establish compensation and bonus incentives for employees who demonstrate full commitment to compliance processes and disincentives for employees who do not.

During the TD Bank investigation, the Department identified several ways that statutory authorities could be enhanced to promote successful criminal prosecutions of culpable corporate executives. The Department would welcome the opportunity to provide your office with technical assistance on potential solutions.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

CARLOS
URIARTE

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CARLOS URIARTE
Date: 2024.12.12
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Carlos Felipe Uriarte
Assistant Attorney General

⁷ The Criminal Division’s Pilot Program Regarding Compensation Incentives and Clawbacks (March 3, 2023), available at <https://www.justice.gov/criminal/criminal-fraud/file/1571941/dl>.