

October 30, 2024

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Washington, DC 20530

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Dear Attorney General Garland and Deputy Attorney General Monaco:

Your recent settlement with TD Bank over money laundering and other charges failed to hold corporate executives accountable—and appears to be carefully crafted to allow the banking regulators to side-step the penalties that Congress intended to apply to money laundering crimes. I write to seek an explanation for these failures. Regulators have appropriately levied an asset cap on TD Bank,¹ and the Department of Justice (DOJ) settlement includes a historic \$3 billion fine.² However, DOJ did not charge any of the bank’s high-level executives, and it creatively structured the charges to shift legal liability from TD Bank to its holding company (TD BHC),³ allowing this lawbreaking bank and its reckless leadership to escape the full scope of penalties that Congress determined is necessary to effectively deter future criminal acts.

TD Bank’s Crimes are Egregious

TD Bank’s executives allowed TD Bank to act as a criminal slush fund and hurt hundreds of thousands of people. The details of this crime are egregious. TD Bank was laundering money for fentanyl and human trafficking rings.⁴ Between January 2014 and October 2023, TD Bank leadership knowingly presided over a criminally deficient anti-money laundering program while growing the bank such that its “risk profile increas[ed] significantly.”⁵ According to DOJ:

¹ Office of the Comptroller of the Currency, “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,” press release, October 10, 2024, <https://www.occ.treas.gov/news-issuances/news-releases/2024/nr-occ-2024-116.html>.

² Fortune, “TD Bank execs presided over rampant money laundering, but no one is going to jail—for now,” Leo Schwartz, October 16, 2024, <https://fortune.com/2024/10/16/td-bank-execs-presided-over-rampant-money-laundering-but-no-one-is-going-to-jail-for-now/>.

³ A bank holding company is a corporation that owns or controls one or more banks but does not itself engage in banking activities. Government Accountability Office, “Bank Holding Company Act: Characteristics and Regulation of Exempt Institutions and the Implications of Removing the Exemptions,” January 19, 2012, <https://www.gao.gov/products/gao-12-160>.

⁴ Department of the Treasury, “FinCEN Assesses Record \$1.3 Billion Penalty against TD Bank,” press release, October 10, 2024, <https://www.fincen.gov/news/news-releases/fincen-assesses-record-13-billion-penalty-against-td-bank>.

⁵ Department of Justice, “TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution,” press release, October 10, 2024, <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.

Throughout this time, TD Bank intentionally did not automatically monitor all domestic automated clearinghouse (ACH) transactions, most check activity, and numerous other transaction types, resulting in 92% of total transaction volume going unmonitored from Jan. 1, 2018, to April 12, 2024. This amounted to approximately \$18.3 trillion of [unmonitored] transaction activity. TD Bank also added no new transaction monitoring scenarios and made no material changes to existing transaction monitoring scenarios from at least 2014 through late 2022; implemented new products and services, like Zelle, without ensuring appropriate transaction monitoring coverage; 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 even after the bank decided to close them. TD Bank’s AML [anti-money laundering] failures made it “convenient” for criminals, in the words of its employees.⁶

These shocking failures enabled three separate money laundering syndicates to launder more than \$670 million through the bank between 2019 and 2023.⁷ The magnitude of the dollar value of these illicit transactions is dwarfed only by the obviousness of the criminal activity. According to Attorney General Garland, one drug dealer “on more than one occasion” “deposited more than \$1 million in cash in a single day. He then immediately moved the funds out of the bank using official bank checks and wire transfers.”⁸ In 2021, a TD Bank employee commented on that same drug dealer’s purchase of \$1 million in official bank checks with cash, asking: “How is that not money laundering,” to which another employee replied: “Oh, it 100% is.”⁹ Also according to Attorney General Garland, TD Bank employees openly laughed at the bank’s slogan: “America’s Most Convenient Bank”—joking that TD Bank made it most convenient for criminals.¹⁰

TD Bank’s criminally deficient AML practices are the latest target in a string of investigations into TD Bank. In 2017, the Office of the Comptroller of the Currency (OCC) under the Trump Administration “private[ly] reprimand[ed]” TD Bank rather than assessing fines or even publicly disclosing the misconduct, after finding that TD Bank employees created new accounts and enrolled customers in services without their permission.¹¹ In 2020, after TD Bank illegally charged 1.5 million Americans overdraft fees on ATM and debit card transactions without their consent, the Consumer Financial Protection Bureau (CFPB) ordered TD Bank to pay \$122 million in fines

⁶ *Id.*

⁷ *Id.*

⁸ Department of Justice, “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,” October 10, 2024, <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-announcing-td-banks-guilty-plea-bank>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Capitol Forum, “TD Bank/First Horizon: Faulty Accounts Didn’t Draw Fines From Trump Officials; Workers Say Suspect Practices Persist As Deal Approvals Sought,” May 4, 2022, <https://thecapitolforum.com/td-bank-first-horizon-faulty-accounts-didnt-draw-fines-from-trump-officials-workers-say-suspect-practices-persist-as-deal-approvals-sought/>.

and restitution.¹² In 2021, TD Bank settled two lawsuits: one alleging it knowingly charged multiple insufficient funds fees on the same transaction and another alleging it overcharged ATM fees.¹³ In February 2023, TD Bank paid a \$1.2 billion settlement related to its involvement in R. Allen Stanford's 20-year-long Ponzi scheme.¹⁴ The \$7 billion fraud was one of the largest in U.S. history.¹⁵

DOJ Failed to Hold Top Bank Executives Accountable

DOJ has long failed to hold corporate executives accountable for crimes that occur on their watch, but you have vowed to change that approach. In October 2023, I wrote to Deputy Attorney General Monaco urging DOJ to quickly reverse a new “safe harbor” policy, which would have provided a get-out-of-jail-free card for mergers involving corporate white-collar criminals.¹⁶ As a justification for the safe harbor, Deputy Attorney General Monaco explained that: “by giving a path to resolution and declination to companies trying to do the right thing, we are able to identify and prosecute the individuals who are not.”¹⁷ In a speech earlier this year, Deputy Attorney General Monaco said DOJ’s “first priority has been — and will continue to be — individual accountability. Companies can only act through individuals.”¹⁸ As Deputy Attorney General Monaco noted: “[t]he rule of law demands that those most culpable for a company’s misconduct are the ones being charged, prosecuted, and convicted.”¹⁹ In August 2024, Deputy Attorney General Monaco said that the purpose of DOJ is to “identify the most serious wrongdoers, whether individuals or companies, and ... focus our full energy on holding them accountable.”²⁰

¹² American Economic Liberties Project, “American Banker: Regulators were right not to greenlight the TD-First Horizon merger,” Shahid Naeem, June 9, 2023, <https://www.economicliberties.us/media/regulators-were-right-not-to-greenlight-the-td-first-horizon-merger/>.

¹³ *Id.*

¹⁴ Wall Street Journal, “Concern Over TD Anti-Money-Laundering Practices Helped Scuttle First Horizon Deal,” Justin Baer and Vipal Monga, May 8, 2023, <https://www.wsj.com/articles/concern-over-td-anti-money-laundering-practices-helped-scuttle-first-horizon-deal-fc73b831>.

¹⁵ Wall Street Journal, “Toronto-Dominion to Pay \$1.2 Billion to Settle R. Allen Stanford Ponzi Litigation,” Alexander Gladstone and Adriano Marchese, February 27, 2023, https://www.wsj.com/articles/toronto-dominion-to-pay-1-21-billion-to-settle-stanford-financial-litigation-f029ef13?mod=article_inline.

¹⁶ Letter from Senator Elizabeth Warren to Attorney General Merrick Garland and Deputy Attorney General Lisa Monaco, October 5, 2023, https://www.warren.senate.gov/imo/media/doc/Letter%20to%20DOJ%20re%20Safe%20Harbor_Final%20105023.pdf.

¹⁷ Department of Justice, “Policy Designed to Encourage Disclosure of Misconduct and Hold Individual Wrongdoers Accountable,” October 4, 2023, <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>.

¹⁸ Department of Justice, “Deputy Attorney General Lisa Monaco Delivers Keynote Remarks at the American Bar Association’s 39th National Institute on White Collar Crime,” March 7, 2024, <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

¹⁹ *Id.*

²⁰ Department of Justice, “Deputy Attorney General Lisa Monaco Delivers Remarks on the Justice Department’s Lawsuit Against RealPage for Algorithmic Pricing Scheme that Harms Millions of Americans,” August 23, 2024, <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-justice-departments-lawsuit-against>.

But the TD Bank settlement fails to meet this standard. TD Bank’s executives allowed TD Bank to act as a criminal slush fund and launder money for fentanyl and human trafficking rings.²¹ For a decade, TD Bank leadership knowingly presided over a criminally deficient anti-money laundering program,²² and according to Attorney General Garland: “at various times high-level executives, including the person who became the bank’s chief anti-money laundering officer, knew there were serious problems with the bank’s anti-money laundering program. But the bank failed to correct them.”²³

Yet, DOJ is only choosing to prosecute two relatively low-level TD Bank employees while alluding to the possibility of future prosecutions.²⁴ Until and unless those executives who presided over TD Bank’s institutionalized money laundering are held accountable, banks will continue to factor enforcement fines into the cost of doing business, rather than approaching compliance with our money laundering laws with the seriousness it requires.

TD Bank’s Settlement Appears to be Carefully Crafted to Avoid Penalties from Bank Regulators

The settlement also allows TD Bank to evade the full scope of penalties that Congress intended for bank regulators to employ in response to criminal money laundering. Specifically, the charges settled against TD Bank and TD BHC shift responsibility for the hundreds of millions of dollars in money laundering from the bank to the bank’s holding company, which precludes the OCC from invoking the bank “death penalty” provision.

First, DOJ avoided the most obvious charge against the bank: money laundering. Instead, TD Bank pleaded guilty to “conspiracy” to launder money.²⁵ This is not an academic distinction. A guilty plea to money laundering charges would have triggered the bank “death penalty” provision administered by the OCC. Specifically, as provided under 12 U.S.C. 93(d): “if a national bank has been convicted of any criminal offense under Section 1956 or 1957 of title 18 [“laundering of

²¹ Department of Justice, “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,” October 10, 2024, <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-announcing-td-banks-guilty-plea-bank>;

Department of the Treasury, “FinCEN Assesses Record \$1.3 Billion Penalty against TD Bank,” press release, October 10, 2024, <https://www.fincen.gov/news/news-releases/fincen-assesses-record-13-billion-penalty-against-td-bank>.

²² Department of Justice, “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,” October 10, 2024, <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-announcing-td-banks-guilty-plea-bank>; Department of Justice, “TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution,” press release, October 10, 2024, <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.

²³ Department of Justice, “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,” October 10, 2024, <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-announcing-td-banks-guilty-plea-bank>.

²⁴ Department of Justice, “TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution,” press release, October 10, 2024, <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.

²⁵ *Id.*

monetary instruments” and “engaging in monetary transactions in property derived from specified unlawful activity,” respectively], the Comptroller “shall issue to the national bank a notice of the Comptroller’s intention to terminate all rights, privileges, and franchises of the bank . . . and schedule a pre-termination hearing.”²⁶

In plain terms, if DOJ had charged TD Bank with the crime it committed—money laundering—the OCC would have been legally required to serve TD Bank with a notice of intent to terminate the bank’s charter and to hold a hearing to publicly discuss the merits of a charter revocation.

But despite the obvious evidence of money laundering, DOJ agreed to a settlement in which TD Bank pleaded guilty to “conspiring to:” . . . “(3) launder monetary instruments, contrary to Title 18, United States Code.”²⁷ By charging TD Bank with conspiracy to launder money, rather than money laundering itself,²⁸ DOJ neatly side-stepped the bank death penalty provision.

Similarly, if a bank is convicted of failing to maintain an adequate AML program or failing to file accurate Currency Transparency Reports (CTRs),²⁹ the OCC may issue a notice of intent to terminate the bank’s charter and schedule a pretermination hearing.³⁰ DOJ did identify these crimes in the settlement but allowed TD Bank’s holding company—not TD Bank itself—to plead guilty to “causing” TD Bank to “fail to maintain an AML program that complies with the Bank Secrecy Act” and “causing” TD Bank to “fail to file accurate CTRs,” among other charges.³¹ However, bank holding companies are not subject to the bank death penalty provision, which means DOJ’s decision to charge TD Bank with conspiracy and TD BHC with the substantive money laundering crimes allowed the bank to avoid a public hearing on the potential revocation of its charter. This is in spite of the fact that the violations of U.S. AML laws all occurred within the national bank. TD Bank also pleaded guilty to conspiracy to fail to maintain an adequate AML program and conspiracy to fail to file CTRs,³² which is frankly ridiculous. TD Bank is the actor here, and TD Bank failed to perform adequate AML.

²⁶ 12 U.S.C. 93(d); 18 U.S.C. 1956; 18 U.S.C. 1957.

²⁷ Department of Justice, “TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution,” October 10, 2024, <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>; Department of Justice, “United States v. TD Bank US Holding Company Please Agreement,” October 10, 2024, p. 3, <https://business.cch.com/BFLD/TD-Bank-US-Holding-Company-DOJ-Plea-Agreement-10102024.pdf>.

²⁸ 18 U.S.C. 371.

²⁹ Department of Justice, “TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution,” press release, October 10, 2024, <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.

³⁰ 12 U.S.C. 93(d).

³¹ Department of Justice, “TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution,” press release, October 10, 2024, <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.

³² Department of Justice, “TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution,” [TD Bank N.A. Plea Agreement and Attachments](https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b), October 10, 2024, <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.

These charging decisions represent absurd legal gymnastics by DOJ that ultimately have allowed the bank and its top executives to avoid full responsibility for their actions. This is not an acceptable outcome.


Conclusion and Questions

Despite Deputy Attorney General Monaco’s statement that the TD Bank plea “should serve as a warning and a reminder that we will hold corporate wrongdoers accountable, no matter their size or stature,”³³ the way that DOJ structured the plea agreement ensures that TD Bank will not face the full range of penalties that Congress has enacted for banks that engage in criminal money laundering.

To better understand DOJ’s approach to negotiating the TD Bank and TD BHC plea agreements, I request answers to the following questions no later than November 15th:

1. If money laundering did occur, what is the evidence that TD Bank was not the entity laundering money?
2. Did DOJ consult with the OCC or other banking regulators in the process of negotiating its agreement with TD Bank? If so, what advice and input did those regulators provide?
3. Is TD Bank responsible for implementing an effective AML program and for filing accurate CTRs?
 - a. If so, why did DOJ charge TD Bank with “conspiracy” to fail to implement an effective AML program and “conspiracy”³⁴ to fail to file CTRs rather than charging the bank with failing to do so?
4. Why did DOJ fail to charge any of TD Bank’s or TD BHC’s executives?
5. Does the settlement preclude any such charges?
6. Please describe the compensation clawbacks that regulators will require as part of the agreement.

Sincerely,


Elizabeth Warren
United States Senator

³³ Department of Justice, “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,” October 10, 2024, <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-announcing-td-banks-guilty-plea>.

³⁴ Department of Justice, “TD Bank Pleads Guilty to Bank Secrecy Act and Money Laundering Conspiracy Violations in \$1.8B Resolution,” press release, October 10, 2024, <https://www.justice.gov/opa/pr/td-bank-pleads-guilty-bank-secrecy-act-and-money-laundering-conspiracy-violations-18b>.