

TD Bank Learns the Hard Way: Anti-Money Laundering Law Is About More Than Terrorists

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In agreeing to pay a \$37.5 million civil money penalty to the Financial Crimes Enforcement Network (FinCEN) and an additional \$15 million penalty to the SEC this past September, TD Bank N.A. unwittingly provided an expensive lesson to the financial services industry: the Bank Secrecy Act, often called the "anti-money laundering (AML) law," is not just about stopping terrorism. According to statements by the SEC, FinCEN's newly-created Enforcement Division, and the Office of Comptroller of the Currency (which partnered with FinCEN on the \$37.5 million penalty), Scott Rothstein, chairman of the Fort Lauderdale, Florida-based law firm, Rothstein Rosenfeldt Adler, operated a Ponzi scheme worth nearly \$1 billion from April, 2008 through September, 2009 while banking with TD Bank. The scheme involved convincing individuals to invest in purported confidential structured settlements that were available for purchase; upon doing so Rothstein would forge judges' signatures on fake settlements. Under the Bank Secrecy Act, banks are obligated to report transactions that involve or aggregate to at least \$5,000, are conducted by, at, or through the bank, and that the bank "knows, suspects, or has reason to suspect" are suspicious. According to FinCEN, the bank "failed to properly identify, monitor, and report suspicious activity" in Rothstein's Interest on Trust Accounts (IOTAs) at the bank; many transactions therein were part of Rothstein's Ponzi scheme. Rothstein used these TD Bank IOTAs to project safety and legitimacy to potential investor victims. Although the bank's AML surveillance software allegedly issued alerts at that time concerning activity in Rothstein's accounts, the bank did not file any Suspicious Activity Reports (SARs) until 2011, after an internal review uncovered approximately \$900 million in aggregate suspicious activity in Rothstein's accounts – and after Rothstein had plead guilty to RICO charges in June, 2010. While the SEC separately alleged fraudulent facilitating activity by the bank's regional vice president, *FinCEN, in its Assessment, focused squarely on the bank's delay in filing SARs, blaming it largely on "[a] lack of adequate training for both the business and Bank Secrecy Act/Anti-Money Laundering staff."*

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