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CFTC Orders TD Bank to Pay $4 Million for Supervision Failures Impacting its Electronic Communications Surveillance System

August 14, 2024

Washington, D.C. — The Commodity Futures Trading Commission today issued an order simultaneously filing and settling charges against **The Toronto Dominion Bank** (TD Bank), a registered swap dealer, for failing to diligently supervise activities related to its business as a CFTC registrant, specifically, its electronic communications surveillance system. This resulted in TD Bank failing to surveil certain communications for hundreds of its swap dealer personnel over a five-year period.

The order requires TD Bank to pay a $4 million civil monetary penalty, cease and desist from further violations of the CFTC's supervision requirements, and comply with conditions and undertakings specified in the order. TD Bank admits the facts in the order and acknowledges its conduct violated the Commodity Exchange Act and CFTC regulations.

"Communications surveillance is a critical component of an effective system of supervision," said Director of Enforcement Ian McGinley. "This order and the significant monetary penalty reflect that swap dealers must not only have robust systems to detect and prevent market abuse and other misconduct, they must also vigilantly oversee and monitor those systems to ensure they are working. The CFTC will take appropriate action where a registrant's surveillance systems lack effective oversight and monitoring resulting in supervisory failures."

Case Background

The order finds TD Bank lacked effective oversight and internal monitoring over its electronic communications surveillance system, resulting in TD Bank's failure to surveil certain communications for hundreds of its swap dealer personnel over a five-year period.

According to the order, TD Bank allowed its personnel to use an electronic messaging platform and used an automated surveillance tool to surveil communications made over the messaging platform. In 2016, TD Bank had an automated process to ingest messaging platform communications into its surveillance tool, which involved, among other things, updating TD Bank's internal record of messaging platform accounts to include accounts that had been recently created. In July 2016, TD Bank's vendor made a change impacting that automated process, and subsequently, as a temporary measure, TD Bank began updating its internal record of messaging platform accounts on a manual basis. However, in January 2018, TD Bank stopped updating its internal record of accounts manually. As a result, messages from messaging platform accounts for TD Bank personnel created after January 2018 were generally not ingested into TD Bank's surveillance tool and were not surveilled. The order also finds that after switching to the manual process, TD Bank did not put in place any supervision or internal monitoring to ensure the manual process was conducted or detect if it was not.

The order further finds in October 2019, when TD Bank finally updated its automated process to address the July 2016 change by its vendor, TD Bank did not test all of its process for ingesting messages for new accounts into its surveillance tool to ensure it was functioning again as expected. Therefore, TD Bank did not detect there had been another technical change by its vendor that prevented TD Bank's automated process from functioning properly. Instead, TD Bank continued, until March 2023, to fail to surveil messages for all new messaging platform accounts created after January 2018. The order finds TD Bank lacked effective oversight over its electronic communications surveillance system, including that its monitoring to identify gaps in its surveillance was insufficient to alert it to its surveillance gap and that it did not escalate any of its surveillance technology issues to a more senior oversight body until after it discovered its years-long failure in June 2023.

In accepting TD Bank's offer, the CFTC recognized the cooperation of TD Bank with the Division of Enforcement's investigation. The CFTC also acknowledges TD Bank's representations concerning its remediation in connection with this matter.

The CFTC acknowledges the assistance of the Ontario Securities Commission.

The Division of Enforcement staff responsible for this matter are Penina Moisa, Andrew Rodgers, Alejandra de Urioste, Lenel Hickson, Jr., and Manal M. Sultan. Devin Cain and R. Stephen Painter, Jr. also assisted with this matter.

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