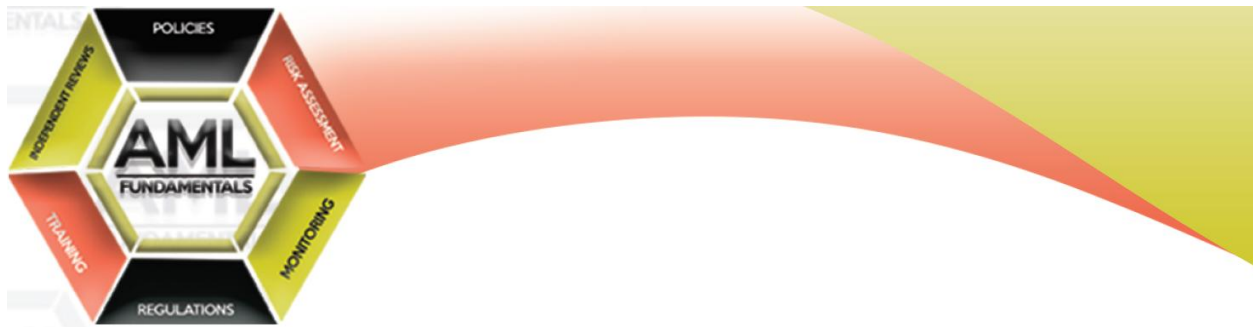




Board of Directors Oversight: Lessons from the TD Bank Case Study

Is Anti-Money Laundering Compliance (AML) at the forefront of board governance priorities?

Board Priorities 2025

Recently, while scrolling through my LinkedIn feed, I came across a publication which looked at the priorities of Boards for 2025, published by boardmember.com and entitled "What Directors Think 2025." The publication reported its findings having surveyed over two hundred directors of publicly traded companies in the United States of America in the fall of 2024. I found two data points instructive in the context of the TD Bank enforcement action of March 2024 by the Financial Crime Enforcement Network (FinCEN), particularly in considering the role of the board resulting in the anti-money laundering compliance failures and the resultant fines levied on the bank.

Corporate Board Member, in collaboration with Diligent Institute and FTI Consulting sought to measure Directors top priorities for 2025. The survey outcome reported that 76 percent of respondents indicated "pursuing growth" as their top priority. This was followed by "optimizing financials" at 50 percent. Improving regulatory compliance was ranked twelfth on the list of priority areas, with a mere 14 percent. Directors were also asked to indicate which pressing topic they would include on the next board agenda for discussion heading into 2025. At the top of the list was "growth strategies" with 78 percent, followed by "M&A transactions and opportunities" at 47 percent. Tied at 43 percent were "CEO/C-Suite succession and financial conditions and uncertainties". Matters of "regulatory compliance" was tenth among topics with 17 percent.

Board Responsibilities for AML Compliance

As referenced in the facts of the TD Bank case, TD Bank's US Holding was 'ultimately accountable for the bank's AML program and for monitoring its effectiveness regularly' as stated in its AML policy. But what are the responsibilities of the board in relation to the compliance program? These include:

- *Setting Risk Appetite and Governance Framework*

Boards define the institution's risk tolerance and approve its overall governance structure. They ensure that the AML compliance program aligns with the institution's strategic objectives and



regulatory obligations. This includes approving the relevant AML policies and procedures which govern the AML compliance program.

- *Allocate Resources and Expertise*

Boards must allocate sufficient budget, personnel, and technology to detect and prevent illicit activity. They appoint a qualified AML Compliance Officer (AMLCO) and ensure the compliance function has direct access to the board.

- *Monitor Program Effectiveness*

Boards receive and review regular reports on key performance indicators (KPIs), including suspicious activity reports filed, audit findings, and remediation status. They challenge assumptions and require evidence that controls operate as intended.

- *Establish Tone from the Top*

Boards set the ethical tone by demonstrating personal commitment to compliance. They must complete AML training, reinforce zero-tolerance policies, and hold senior management accountable for failures.

Failings of TD Bank's Board of Directors

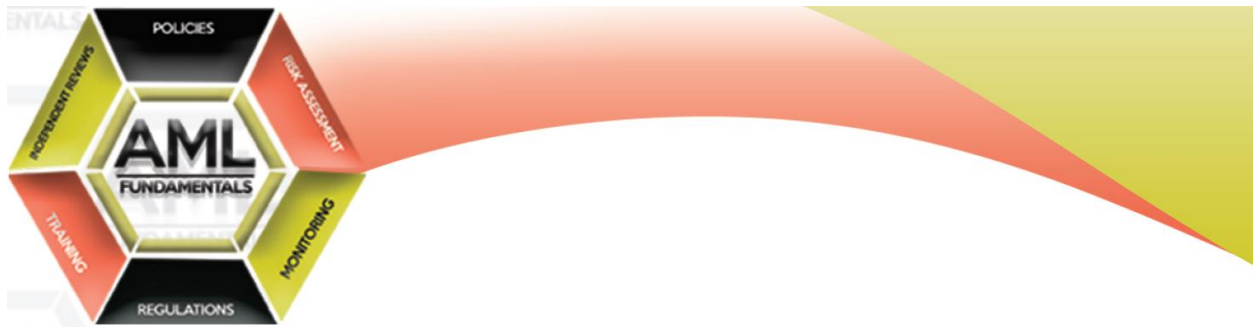
While the facts of the case as detailed in the FinCEN document did not explicitly name the board for culpability, it was made clear that the board was aware of the bank's failures by both regulators and auditors. Given the board's ultimate responsibility for the AML compliance program, they cannot escape culpability in the deficiencies which led to the bank being fined. In keeping with the facts as detailed in the case against the bank, the following constitute areas of failure, in keeping with the responsibilities of the board as previously outlined.

- a) *Under-resourced Compliance Function*

TD Bank "starved its compliance program of the resources needed to obey the law," senior DOJ officials noted. This underinvestment left controls outdated and ineffective.

- b) *Failure to Monitor High-Risk Transactions*

Regulators found that TD Bank failed to monitor 92 percent of its transaction volume over six years. This lapse allowed criminal networks to move at least \$670 million in illicit funds.



c) *Lack of Probing Oversight*

Internal communications showed employees knew the bank was an “easy target” for criminals. Yet the board relied on cursory reports and accepted management assurances without demanding deeper analysis or independent validation.

d) *Inadequate Follow-through on Audit Findings*

The board did not ensure open items from internal or external reviews were fully resolved.

Strategies to Strengthen Board Oversight

In view of the failure of the board of TD Bank in its fiduciary duty to effectively carryout its responsibilities with regard to the AML compliance program of the bank, the following are advanced as possible strategies for boards of financial institutions as points of action to improve their own oversight of the compliance function.

1. *Cultivate Curiosity and Probing Inquiry*

- Require that the compliance manager/money laundering reporting officer present not only topline metrics but also root-cause analyses of compliance failures.
- Encourage directors to ask, “What evidence supports these conclusions?” and request data drill-downs on high-risk areas.

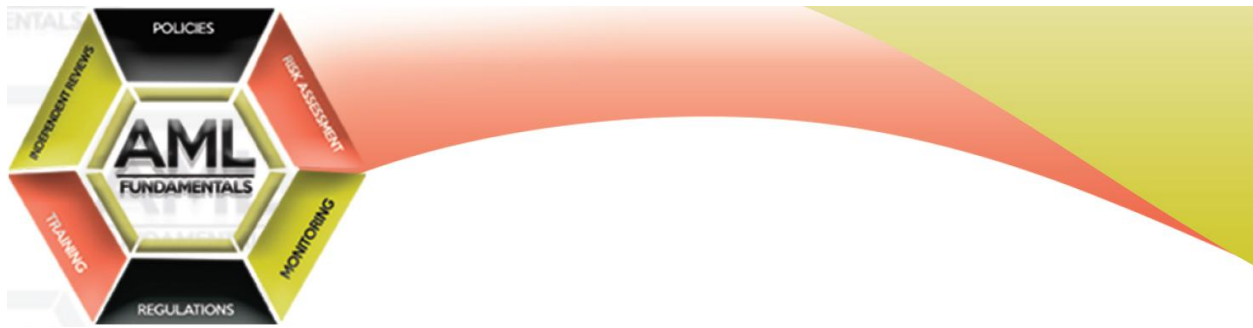
2. *Include AML Expertise on the Board*

- Appoint at least one director with direct AML experience in financial institution regulations.
- Leverage external advisors or committee members with specialized knowledge of evolving AML typologies.

3. *Demonstrate Tone from the Top*

- Mandate that all directors complete AML training and verify training completion annually.
- Publicly reinforce compliance priorities in board meetings and shareholder communications.

4. *Hold Management Accountable*



- Set clear remediation deadlines for audit findings and track progress monthly.
- Require the compliance function to certify the closure of open issues and present independent validation of effectiveness.

5. *Verify Commitments and Close the Loop*

- Employ “spot checks” or third-party reviews to confirm that management’s pledges (e.g., system upgrades, policy updates) are implemented.
- Require follow-up reports on all high-priority action items until full closure.

6. *Prioritize AML as a Strategic Enabler*

- Treat regulatory compliance failures as material risks comparable to credit or market risk.
- Integrate AML metrics into executive scorecards and link performance incentives to compliance outcomes.

Key Takeaways

- **Active Oversight Reduces Risk.** Boards that engage deeply with AML data uncover gaps before they become crises.
- **Expertise Drives Effectiveness.** Directors with AML compliance backgrounds help translate complex regulation into actionable board agendas.
- **Accountability Ensures Delivery.** Regular tracking and independent verification build confidence that controls work.
- **A Culture of Compliance Protects Value.** Boards that visibly prioritize AML compliance safeguard the institution’s reputation and financial health.

By embedding curiosity, expertise, and accountability into their governance practices, boards can transform their AML programs from check-the-box exercises into robust defenses against regulatory action and reputational damage, thus supporting long-term success.

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