

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9453 / September 23, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15512

In the Matter of

TD BANK, N.A.,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
8A OF THE SECURITIES ACT OF 1933,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against TD Bank, N.A. (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. This matter involves TD Bank, N.A. (“TD Bank” or the “Bank”), a national banking institution, and the conduct of one of its former Regional Vice Presidents (the “RVP”) in connection with Scott Rothstein (“Rothstein”), a now disbarred attorney. From 2005 to October 2009, Rothstein utilized his law firm, Rothstein, Rosenfeldt and Adler, P.A. (“RRA”), to perpetrate a Ponzi scheme through the sale of purported discounted settlements to investors. Rothstein claimed to represent plaintiffs who had reached confidential settlements to be paid out over time by large corporate defendants. Rothstein told investors that the purported plaintiffs were willing to sell their periodic payments to investors at a discount in exchange for one lump sum payment. Rothstein further told investors that the defendants had deposited the entire amount of the settlements into his attorney trust accounts. Rothstein first opened accounts at a bank in South Florida, and subsequently opened accounts at Commerce Bank, a national banking institution that was later acquired by, and merged into, TD Bank. As Rothstein’s scheme began to unravel in late 2009, the RVP made material misstatements and omissions to investors and prepared false and misleading documents that he knew Rothstein would provide to investors. By the end of October 2009, Rothstein could no longer make payments to investors and the scheme collapsed.

2. The RVP falsely represented to several investors that TD Bank had restricted the movement of the settlement funds held in attorney trust accounts for the exclusive benefit of the investors. The RVP executed “lock letters” that stated that the particular trust accounts were irrevocably restricted such that TD Bank would distribute funds in those accounts only to the investor’s bank account designated in the lock letter. These representations were false, as the RVP did not apply any TD Bank procedures to block the accounts so as to enforce the lock letters or implement any TD Bank system that would have restricted Rothstein from moving the money out of the trust accounts. Additionally, the RVP also provided false assurances to two investors that certain RRA trust accounts at TD Bank in which the Rothstein settlement funds were purportedly held, did in fact maintain the account balances that Rothstein represented to investors.

3. In reality the settlements Rothstein sold to investors were fake and the purportedly “locked” accounts generally held no more than \$100. The Ponzi scheme collapsed in October 2009 when Rothstein was unable to continue making payments to investors. Rothstein surrendered to federal criminal authorities shortly thereafter and revealed that the plaintiffs and defendants never existed and the settlements were not real. He had forged the settlement documents, and the trust accounts did not contain hundreds of millions of dollars.

Respondent

4. TD Bank is one of the ten largest banks in the United States, with more than 7.8 million customers at more than 1,280 locations. TD Bank is a member of TD Bank Group and is a subsidiary of The Toronto-Dominion Bank of Toronto, Canada. The Toronto-Dominion Bank trades on the NYSE Euronext under the ticker symbol “TD.” TD Bank is a national banking association with its main offices in Wilmington, Delaware, and its principal place of business in

Cherry Hill, New Jersey. In March 2008, TD Bank acquired Commerce Bank and its legacy branches, systems, and customer accounts, including accounts opened by Rothstein. The Bank's integration of Commerce Bank was completed in September 2009.

Other Relevant Individual

5. The RVP was originally hired and employed by Commerce Bank from April 2006 until March 2008, when Commerce Bank was acquired and merged into TD Bank. He served as a Regional Vice President for TD Bank until the Bank terminated him in November 2009 shortly after learning of the Rothstein Ponzi scheme. The RVP was responsible for generating loans and deposit growth for TD Bank's branches within Broward County, Florida and Palm Beach County, Florida, as well as coordinating the efforts of TD Bank's lenders and branch managers within that region.

Background

A. Rothstein's Ponzi Scheme

6. Starting in or about 2005, Rothstein, a formerly licensed Florida attorney, began offering investors the opportunity to purchase purported legal settlements at a discount. Rothstein falsely claimed to represent plaintiffs who had threatened sexual harassment, whistleblower, and qui tam actions against large corporations. Rothstein explained to prospective purchasers that his clients reached confidential settlements with the corporations before the public filing of any lawsuits. Rothstein further explained that the confidentiality provisions prohibited him from identifying the parties and, because no actions had been filed, there were no court filings to verify the settlements.

7. Beginning in or about 2008, Rothstein told prospective investors that the defendants had deposited the full amount of the settlements in RRA trust accounts for the benefit of the plaintiffs, but to ensure compliance with the confidentiality terms of the settlements, the purported settlement funds had to remain in RRA's trust accounts and be paid out to investors according to the settlement schedule. Prospective purchasers did not have direct access to the RRA trust accounts or to any independent method to verify the amounts in those accounts. Rothstein claimed his clients were willing to assign their settlement payments from the RRA trust accounts in exchange for a discounted immediate cash payment. For example, Rothstein sold one individual the right to receive a \$450,000 settlement paid out in three monthly \$150,000 payments for an immediate payment of \$375,000.

8. Contrary to Rothstein's representations, there were no legal settlements and the plaintiffs and defendants did not exist. In classic Ponzi fashion, Rothstein simply used the funds paid to purchase the supposed settlements to make the purported settlement payments that were due to other investors and to support his lavish lifestyle. At the end of October 2009, Rothstein's scheme collapsed, and shortly thereafter, he surrendered to federal authorities. He pled guilty to federal charges related to the operation of the Ponzi scheme and was sentenced to fifty years in federal custody.

B. RRA's Trust and Operating Accounts at Commerce Bank and TD Bank

9. Between November 2007 and mid-October 2009, Rothstein opened 22 attorney trust accounts and four law firm operating accounts at Commerce Bank and then TD Bank, after Commerce Bank was acquired and merged into TD Bank in March 2008. Rothstein used accounts at Commerce Bank, and subsequently TD Bank, to receive money from investors in his purported legal settlements, and to make Ponzi payments to these investors. Rothstein used RRA's main operating accounts to receive funds from investors in his purported legal settlements, and to operate his law firm. Rothstein used the attorney trust accounts to receive money from purported settling defendants and to make payments to settlement investors. Rothstein led settlement investors to believe that he set up a separate trust account for each investor and that the defendants fully funded these trust accounts with the settlement proceeds prior to the investor's purchase. In reality, these trust accounts typically held less than \$100. When payments were due to settlement investors, Rothstein transferred enough money from RRA's main operating account into the investor's trust account to make the scheduled payment. Between RRA's law firm operations and Rothstein's Ponzi scheme, approximately \$1.2 billion flowed through these accounts over the life of Rothstein's Ponzi scheme. TD Bank earned customary fees and revenue through its banking relationship with Rothstein and his firm.

10. Following its acquisition of Commerce Bank in March 2008, TD Bank inherited Rothstein's accounts. Rothstein's main point of contact was the RVP who had primary responsibility for the management of Rothstein's accounts.

11. Because RRA owned the trust accounts at TD Bank, Rothstein controlled all the information relating to these accounts and investors had no independent way to verify the account balances. Several investors therefore sought assurances that the trust accounts were fully funded as Rothstein claimed and that their funds were protected. The RVP, through Rothstein, provided these assurances to numerous investors. At Rothstein's request, the RVP provided Rothstein with "lock letters" to give to investors that purported to irrevocably restrict the movement of the investors' funds from the TD Bank account despite his failure to apply any Bank procedures that would have effectively enforced such restrictions. Moreover, the RVP orally verified the trust account balances shown to investors that were false.

C. The RVP's Misrepresentations and Omissions to Investors

i. The RVP Provided Unenforceable Irrevocable "Lock Letters" to Rothstein

12. A key premise of Rothstein's Ponzi scheme was that investors were purchasing legal settlements that the settling defendants had paid in full, and the settlement proceeds were on deposit in one of several of his attorney trust accounts at TD Bank. Rothstein promised to make distributions from these accounts to his investors in accordance with their structured settlement purchases. Rothstein's investors had no direct access to RRA's trust accounts to verify his claims.

13. At the peak of Rothstein's Ponzi scheme in August 2009, several of Rothstein's investors wanted confirmation that the settlement funds they purchased in the TD Bank accounts could be paid only to them. These investors were looking for additional comfort that their investments were safe.

14. Acquiescing to investors' demands, Rothstein prepared at least four letters to investors on RRA letterhead that purported to "irrevocably restrict" certain trust accounts designated for investors. Rothstein provided these letters to the RVP who co-signed them on behalf of TD Bank. These letters, which Rothstein referred to as "lock letters," stated, "all funds contained in the above account shall only be distributed upon [Rothstein's] instructions and shall only be distributed to [the investor]" at the investor's designated bank account. The letter further emphasized that "the letter is not meant to convey ownership of the account or access to the account to any other party, but rather is meant to irrevocably restrict conveyances" from the referenced RRA account to the investor's bank account specified in the letter.

15. Subsequently, at Rothstein's request, the RVP prepared and executed at least seven additional lock letters for Rothstein on TD Bank letterhead. Rothstein emailed the draft language for the RVP to incorporate into the letters. In many instances, the RVP forwarded the language for the lock letters from Rothstein to his assistant and she prepared the letters for the RVP's signature. The language of these lock letters was nearly identical to the initial four lock letters on RRA letterhead in all material respects. When the RVP instructed his assistant to prepare the letters on TD Bank letterhead, the assistant questioned whether it was permissible for her to do so since she had never seen such a letter before. The RVP confirmed that she should prepare the letter for his signature.

16. The RVP knew that Rothstein planned to provide the lock letters to investors. When the RVP signed the letters, he either knew or was reckless in not knowing that the particular trust accounts he was purportedly restricting typically contained at most \$100, and in all instances contained far less than the investors' purchased settlements.

17. The RVP's representations in the lock letters were false, as he had not applied any TD Bank procedures to block the accounts so as to enforce the lock letters or implement any TD Bank system that would have restricted Rothstein from moving the money out of the trust accounts. The RVP also did not make use of any Bank system to restrict Rothstein from making transfers out of the trust accounts to anyone from anywhere as Rothstein had online computer access via TD Bank's internet customer banking systems. A TD Bank Assistant Vice President and Branch Manager (the "AVP") who worked at TD Bank's Weston, Florida branch and reported to the RVP, told the RVP shortly after the first lock letter dated August 17, 2009 that the "lock" instructions put onto an account would have no practical effect because Rothstein could still transfer the money without bank officials being alerted. The RVP dismissed the AVP's concerns.

18. On August 17, 2009, the same day the first lock letter was written and co-signed by the RVP, Rothstein and the RVP had a conference call with representatives of one investment partnership that had purchased purported settlements from Rothstein. The RVP and Rothstein prepared for the call by email. Specifically, Rothstein emailed the RVP a list of questions he would ask him during the call about the effectiveness of the lock letters and instructed the RVP to “just answer yes to all the questions and we are done.” The RVP replied “no problem.”

19. During this call, the RVP confirmed that he co-signed the lock letter and that the investment proceeds were in a restricted, segregated account that could only be disbursed directly to that investment partnership. The RVP knew or was severely reckless in not knowing these representations were false.

20. The RVP also misrepresented to Rothstein’s investors that the lock letters were commonplace at TD Bank. Although the lock letters concept and its wording had never previously been utilized by the Bank, the RVP explained to a couple of Rothstein investors during in-person meetings and telephone conferences the mechanics of the lock letter and stated that the letter was not unusual at TD Bank and that many accounts at the Bank had similar restrictions in place. The RVP further stated to Rothstein’s investors that TD Bank had systems in place to ensure compliance with the lock letters. The RVP knew or was severely reckless in not knowing that all of these representations were false.

21. On September 10, 2009, the RVP spoke with another investor and confirmed that he signed a lock letter, that such letters were routine and common at the Bank, and that the Bank was obligated to adhere to the restrictions in the letter, including the transfer restrictions. This information was false.

ii. The RVP Verified Phony Account Balances to Investors

22. The RVP also provided false assurances to at least two investor groups regarding the balances in the RRA trust accounts. First, on August 17, 2009, the RVP participated in a conference call with Rothstein and representatives of an investor group. When the investor group’s representatives asked how much money was in a particular RRA trust account, the RVP told them that the account held \$22 million, which corresponded to the amount the investor was expecting. In fact, the account held no more than \$100 at the time. At all relevant times, the RVP had full access to the account information and knew or was severely reckless in not knowing the actual account balances.

23. Further, on September 25, 2009, the RVP met in person with representatives of the same investor group after it had made additional investments with Rothstein. The RVP represented that he was familiar with the transactions in their account, that the money in their account was safe, and that they had nothing to worry about since the provisions of the lock letter were in place restricting the movement of their money. The RVP’s representations were again false. The RRA trust account that Rothstein had set up for this investor at TD Bank held only \$100 at the time.

24. Second, a different investor group purchased a purported \$20 million settlement from Rothstein in early September 2009. On September 10, 2009, one of the investor group's representatives obtained a TD Bank deposit slip dated for the particular RRA trust account that supposedly held the settlement funds for the investor to purchase. The investor group's representative observed that the account appeared to have a \$0 balance as of that morning, whereas Rothstein had claimed to the investor that this account held the investor's \$20 million settlement. Also on September 10, 2009, another representative of the same investor group asked Rothstein whether the \$20 million settlement payment from the purported defendant had been deposited into the account. Rothstein falsely stated that the funds were indeed in the account, but the funds would not appear as "available" on the deposit slip because they were in TD Bank's "Federal wire queue."

25. On Monday, September 14, 2009, Rothstein and representatives from the same investor group met with the RVP. The RVP falsely represented that the \$20 million did not appear as available funds because TD Bank was holding the funds in a Treasury Direct Wire queue for this account. The RVP also falsely represented that the lock letter issued for this account on Bank letterhead irrevocably restricted the movement of the money in the trust account to its bank account designated in the lock letter. In reality, TD Bank was not holding any amounts in a Treasury Direct Wire queue for this account and the account did not contain the investor's settlement funds.

Violations

26. Section 17(a)(2) of the Securities Act prohibits any person, in the offer or sale of any security, from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Section 17(a)(3) of the Securities Act prohibits any person, in the offer and sale of any security, from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Sections 17(a)(2) and 17(a)(3) of the Securities Act do not require a showing of scienter. Aaron v. SEC, 466 U.S. 680 (1980). A showing of negligence is sufficient to establish violations of these provisions. Id. at 701-702.

27. As a result of the RVP's conduct described above, Respondent TD Bank violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

TD Bank's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent TD Bank cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$15,000,000. This sum shall be paid to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Respondent's name as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

C. The civil money penalty payment shall be held at the SEC for possible distribution until the Commission enters an order as to its disbursement. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by

the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary