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## UNITED STATES V. DANSKE BANK: NEW THEORY OF LIABILITY FOR VIOLATION OF U.S. AML STANDARDS

*This Article discusses the recent plea agreement between the United States and Danske Bank. It argues that the Department of Justice has advanced a new and evolving theory of liability for foreign banks that access the U.S. financial system through correspondent banking relationships. This theory of liability has expansive extraterritorial reach because such foreign banks provide extensive representations about their anti-money laundering and sanctions compliance programs at account opening and on an ongoing basis. If those representations are deemed false, they could be the basis of criminal liability if supported by other elements of bank fraud — even if the foreign bank has no subsidiary, branch, or other presence in the United States.*

By Michael Dawson and Michael Leotta \*

Late last year, Danske Bank A/S pleaded guilty to one count of conspiracy to commit bank fraud in violation of 18 U.S.C. Section 1349 and agreed to a money judgment of \$2,059,979,050.<sup>1</sup> The plea agreement is notable not only because it is the largest financial penalty imposed in a matter whose root lies in violation of anti-money laundering (“AML”) standards, but also because it entails a new theory of liability with broad implications for the extra-territorial application of U.S. AML standards. The matter also reflects the evolving enforcement policy of the Department of Justice in corporate criminal matters, particularly a policy preference for guilty pleas over deferred prosecution agreements; expectations for securing credit for cooperation; and requirements for compliance

commitments, including evaluating the compliance performance of executives and rendering executives with a “failing score” ineligible for bonuses.

### THE FACTS

Danske Bank is headquartered in Copenhagen and is the largest bank in Denmark. It has had both a retail and a commercial business. As of 2022, it had approximately \$600 billion in assets.<sup>2</sup> Its activities have been concentrated in the Nordics, with some efforts to expand into additional markets, including the United Kingdom, Ireland, and, as we shall see, the Baltics. Notably, and unlike many other foreign banking organizations of similar size and prominence, Danske

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<sup>1</sup> Consent Preliminary Order of Forfeiture / Money Judgment, *United States v. Danske Bank A/S*, 22 Cr. 679 (NRB) (S.D.N.Y. Dec. 12, 2022) (The plea agreement was signed on December 12 and filed on December 13).

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<sup>2</sup> “Danske Bank,” Forbes (profile accessed Jan. 30, 2023) available at: <https://www.forbes.com/companies/danske-bank/?sh=3d1de42b4242>.

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