# Now questions loom from NZ regulators

**Smart ATMs**

**Patrick Durkin**

The Commonwealth Bank faces questions from anti-money laundering regulators in New Zealand, after revelations that CBA's New Zealand subsidiary ASB Bank is under scrutiny over the use of its smart ATM machines similar to those exploited by criminals in Australia.

The CBA-owned ASB Bank rolled out a network of smart ATMs in December 2013 which allow its customers to deposit under $10,000 without any identification. The ATMs operate 24/7 and allow customers to deposit cash instantly into their bank accounts, including on weekends and public holidays. The customers can then transfer funds into other accounts and move them to other financial institutions or remit the funds overseas.

While other banks have used similar ATM technology, money laundering experts said other banks had hard limits and oversights, such as ANZ which had a cap of 50 notes and transaction monitoring systems to prevent repeat transactions. The CBA ATMs had a limit of 200 notes or $20,000 and no daily transaction limit which was exploited by the criminals, AUSTRAC claims in court documents.

CBA CEO Ian Narev has admitted the bank "made mistakes" by failing to report the money laundering. In Australia, $8.9 billion in cash moved through CBA's smart ATMs before a compulsory risk assessment was undertaken with AUSTRAC alleging 53,700 contraventions of the act.

A spokesman for the Reserve Bank of New Zealand, which supervises banks for money laundering, said "smart ATMs will be on the agenda for regular anti-money laundering discussions we have with our supervised institutions".

Organised crime syndicates, particularly from Malaysia, have exploited the so-called smart ATMs because they allow vast sums of money to be deposited without any face-to-face interaction with bank staff, a risk assessment from the RBNZ warned in April.

"The ease of use and anonymity afforded by these services ... present a high level of ... risk. While RBNZ recognises that this service provides greater customer convenience and quicker deposit of funds the deposit of cash by unidentified persons remains a key vulnerability," the RBNZ update warned.

Leading Australian and New Zealand barrister in financial crime and regulatory cases Gary Hughes said New Zealand's laws carry a similarly explicit legal requirement to assess the risk of the smart ATMs for money laundering before they are rolled out.

"There is a requirement to give direct consideration to any new or developing technologies or products, especially where they might favour anonymity," Mr Hughes said. "In New Zealand, this is explicit in our legislation, obliging regulated entities to assess the risk of any such technologies before they introduce them, and to put in place any additional measures if needed to mitigate and manage the risk that the anonymous machine element can be exploited."

A spokesperson for ASB bank said its smart ATMs were a different model and used a different operating system to the CBA's.

"ASB has processes and tools in place to ensure compliance to New Zealand's AML regime, including the reporting of suspicious transactions to the New Zealand Police Financial Intelligence Unit," an ASB bank spokesperson said.

Money laundering expert Ronald Pol said it was unsurprising the Australian Federal Police had identified professional laundering syndicates from Malaysia exploiting weaknesses in CBA's controls. "Criminal enterprises are adept at manipulating gaps in the anti-money laundering regime. When they identify a loophole, they quickly adjust their operations to exploit it," Mr Pol said.

Nathan Lynch, Thomson Reuters' head of financial crime intelligence for Asia-Pacific, said regulators in New Zealand were scrutinising the bank's anti-money laundering controls as it emerged that ASB Bank's smart ATMs had similar vulnerabilities.

He claimed New Zealand regulators would now place pressure on CBA to do an internal review on the controls of its smart teller network.

Catherine Livingstone was summoned by the Treasurer. PHOTO: BROOK MITCHELL

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## Morrison warns all options are open

pay substantially docked was National Australia Bank's Cameron Clyne, whose statutory pay was cut by $1 million after NAB fell short of key targets in 2012 and narrowly avoided a first strike at its AGM.

Governance advisers and shareholders said the action was a positive first step for CBA as it tries to avoid a second strike at its annual general meeting in November, after the shock first strike last year.

But they say further action might include determining whether senior executives who have recently left the bank should have bonuses clawed back and whether any executives should lose their jobs.

Daniel Smith, general manager of proxy advisers CGI Glass Lewis, which advises 1200 institutional investors around the world on governance issues, said that while the decision was admirable the bank had much more to do with observers awaiting decisions on deferred cash bonuses and long-term incentives.

"Cutting the bonuses is the easiest thing to do, the hard yards is in determining who if anyone gets sacked and whether any previous bonuses can or should be clawed back," Mr Smith said.

Australian Council of Superannuation Investors chief executive Louise Davidson, who advises 37 institutional investors with $1.6 trillion of funds under management, said the decision to scrap bonuses for executives and reduce director fees was appropriate but she wanted to see more detail.

"We strongly support that there be accountability for what's occurred and we are happy to see the board on the front foot. Whether it goes far enough is the question," Ms Davidson said. "We think that the entire REM structure would need to be considered."

One large institutional shareholder of CBA said after the pay cuts were announced that they might not go far enough. He said heads needed to roll, describing the move to cut bonuses as "obviously not sufficient".

> **Cutting the bonuses is [easy], the hard yards is determining who gets sacked.**
> Daniel Smith, CGI Glass Lewis

"What do you need to do to get sacked at CBA? If not this, then what? What is a sackable offence at CBA? That is the question for Livingstone," the shareholder said, adding that the decision by the board to cut bonuses legitimised the argument that bonuses should only be a reward for exceptional performance.

UniSuper's chief investment officer John Pearce said: "Obviously everyone wants to see accountability and the board has already made a statement that no group executive will receive a bonus – and I doubt that will be the end of it."

He said Mr Narev was best placed to lead the bank through determination of the case.

"The chair and the CEO would be weighing up a lot of factors at the moment and we have full confidence in both of them to make the right decisions. The last thing they need is less-informed fund managers providing gratuitous advice."

While Ms Livingstone's statement on Tuesday suggested the bonus cuts applied only to current group executives, it also raised questions about whether financial penalties will be worn by former executives such as former group chief risk officer Alden Toevs, who left the bank on July 30 last year.

The annual report shows that a cash bonus of $752,091 was deferred "at risk" to July 1, 2017. Mr Toevs also has rights to 140,755 Commonwealth Bank shares that will vest over the next few years worth $11.3 million at current prices.

Former CBA chairman David Turner left Ms Livingstone with a lot of work to do to patch up relationships with institutional investors, following the first strike at the bank's AGM last November. It is understood Ms Livingstone has conducted several meetings with big institutional investors over recent months.

Institutional investors have for many years argued that variable remuneration in the banking sector is not variable enough; most senior executives are paid out 100 per cent of their entitlements to a short-term bonus, effectively baking it in to their annual pay.

"This is the first step towards demonstrating accountability," said Martin Lawrence, a governance analyst at Ownership Matters, of Ms Livingstone's move.

According to data from Ownership Matters, of the 82 disclosed bonus payments to CBA executives between the 2010 and 2016 financial years, only seven executives received a bonus below their target (which is 100 per cent of fixed pay), and the lowest one of these received 85 per cent of the target.

Over the past four years, only one senior CBA executive has been paid below their target, according to Ownership Matters data. This was the head of wealth, Annabel Spring, who received 95 per cent of her target payment in 2016 after the damaging Commonwealth Financial Planning scandal.

Tuesday's action to cut the short-term bonuses to zero reflects that "the board has made a big statement that annual bonuses are at risk", said one industry observer.

But the move may not be enough to appease the retail shareholder base. The Australian Shareholders Association welcomed the decision to axe short-term bonuses but said that reducing pay was only one way in which managers should be held accountable.

The ASA also suggested heads needed to roll, adding the government needed to put a royal commission into the banking sector "back on the agenda".