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1 said, "Plan A is not working. We can't have these sweeping.

2 We've got to go to Plan B."

3 Q. And did she tell you what her idea was as to Plan B?

4 A. There were two parts. There were, there were loans  
5 advanced -- well, to describe it, let's see, the warehouse lines  
6 had aging provisions.

7 Q. What does that mean, "aging provisions"?

8 A. So if a loan was on the facility for 30 days, maybe it would  
9 advance at 97 percent.

10 Q. Let me ask you something else: What does that mean, the loan  
11 being on the facility for 30 days?

12 A. If the wire had gone out to the closing agent to fund the  
13 loan and the loan was unsold, was still there, then it would be  
14 advanced, say, at 97 percent, and if it went -- and I'm not, I  
15 don't remember the -- this is a long time ago, so I don't remember  
16 the terms, but in the next, the next period of time, whenever it  
17 was, say it was the next month, they would further haircut the  
18 loans.

19 Q. When you say "further haircut the loans," tell us what it  
20 means in that context, "haircut."

21 A. That means they would, they would take away from the, from  
22 the loan on that loan, say, another 2 percent or 3 percent,  
23 whatever it was. So if it was originally at 97, now it's at 94.  
24 So instead of Taylor Bean having \$3,000 in a \$100,000 loan, it now  
25 had \$6,000 in a \$100,000 loan.

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1 Q. And the aging process could go on for how long?

2 A. Not very long. And then they would, they would, then they  
3 would take it off. Then they would take the loan off, and it had  
4 zero value, and they would pay it down.

5 Q. But did it really have zero value?

6 A. No.

7 Q. Why not?

8 A. I mean, it still had that same value it had before. By  
9 definition, it just had been -- the advance had been lowered, and  
10 less money was borrowed against that loan. It's like, you know,  
11 amortizing down a loan on anything. If you had a car loan, every  
12 time you make a payment, some of it goes to principal, so you owe  
13 less, and I guess just like a car is worth less a month, maybe a  
14 loan is worth less a month. I'm not sure.

15 Q. So what was the effect of the aging process?

16 A. Well, it created -- it further created cash problems for  
17 Taylor Bean, because we didn't -- we were having issues funding  
18 the loan in the first place with the 3 percent equity, and now  
19 you're, now you're imposing 6 percent equity, so it's a further  
20 drain of cash on, on the business, and -- I guess that's it.  
21 That's what it did.

22 Q. And so what did Cathie suggest with regard to these aging  
23 loans?

24 A. She suggested that there were assets that we could re-advance  
25 that would, that would create cash and that would solve the, the

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1 cash problem up front.

2 Q. When you say "re-advance," what, what does that mean?

3 A. Well, you could advance it back up. In other words, if you'd  
4 taken -- say you'd marked it down 20 percent. You mark it back up  
5 20 percent.

6 Q. And how would you do that in terms of the other assets that  
7 she was referring to?

8 A. I'm not sure I understand that question.

9 Q. Well, I think you said that she said you could use other  
10 assets or advance other assets.

11 A. Right. Well, what she was saying was that she could, she  
12 could advance these loans back up because she had additional  
13 collateral under the line that made her feel comfortable doing  
14 that, and, of course, that collateral was the, the mortgage  
15 servicing assets, that she had a part of a first lien, part of a  
16 second lien, and at one time a third lien. She had three liens  
17 against it.

18 Q. Now, how did she obtain those liens? Was there documentation  
19 with regard to this? How did all this work?

20 A. Yeah, absolutely. The mortgage servicing rights were, were  
21 collateral under various complicated loan agreements, UCC filings,  
22 etc., to perfect Colonial's lien against those mortgage servicing  
23 assets and other assets.

24 Q. The what she called Plan B, do you recall when she put it  
25 into effect?

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1 A. You know, I don't. I'm not good with dates, and I don't  
2 remember when she, she told us to do it, but she told us to do it.  
3 She said, "We're going to do it. We're going to do it."

4 Q. And what did she tell you to do? When you say you, do you  
5 mean you personally, or do you mean Taylor, Bean & Whitaker?

6 A. She -- I'm not exactly sure what she told us exactly to do or  
7 if Teresa told us exactly what to do, but we were told exactly  
8 what to do, and we were, we were looking constantly to find  
9 assets, to find loans that Taylor Bean owned that were otherwise  
10 unencumbered that could go and be re-advanced on a COLB line.

11 Q. And where would you look to find these loans?

12 A. Well, you would -- it's funny, because people -- if you think  
13 of a loan as a big number, you know, a loan could be 100 or 200 or  
14 a million dollars or whatever, and you don't think of it like,  
15 like a small thing, but with us, with thousands and thousands of  
16 them being done every day, you had, you had databases full of  
17 loans, and they were in several different databases, the loans  
18 were, because one of the things that I did -- and right or wrong,  
19 this was my way of doing it -- was I kept a division between three  
20 different areas of the business and didn't let those three  
21 different areas of the business use the same data.

22 Q. What, what are the three different areas of the business  
23 you're referring to?

24 A. One would be Treasury, which dealt with the warehouse  
25 facilities; one would be the Accounting, which had their own

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1 inventory of loans; and the third would be the Secondary Marketing  
2 or the Capital -- which changed its name to the Capital Markets  
3 Group.

4 Q. What was the importance to you in your mind of doing that?

5 A. The reason I did that -- again, in retrospect, I'm not so  
6 sure it was so great -- but the reason I did it is I didn't  
7 want -- I wanted to make sure -- remember my questions. I wanted  
8 to make sure are we making money and do we have enough assets to  
9 cover the business.

10 So independently, I wanted Accounting to tell me we had  
11 enough assets without using the Treasury data, because the  
12 treasury data was moving around so quickly that no one could know  
13 where it was. And I, and I could talk about that, but let me not  
14 right now.

15 Then the Capital Markets Group, that was data that  
16 showed whether we were making money on selling the loans or not.

17 Q. The Capital -- what was the role of the Capital Markets  
18 Group?

19 A. They really had a couple of roles, but primarily when we  
20 acquired the loans, they were the ones who sold them. They were  
21 the ones who put them into trades and sold the loans. They also  
22 managed the risk on the pipeline, and they also managed the  
23 interest rate risk on the portfolio.

24 They actually had a trading floor. They actually had  
25 traders that traded Freddie and Ginnie bonds. We had about a

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1 \$10 billion forward position on average, and sometimes the  
2 portfolio people would try with the pipeline people, and, you  
3 know, they'd make their own in-house trades, and it was a very  
4 complicated thing that I'm not sure I completely understand or  
5 understood, but I know for sure that QRM, the system that we used,  
6 it's a very sophisticated, fancy, interest rate risk management  
7 system, would tell us at the end of every day whether our trading  
8 that day was profitable or not profitable.

9 Q. The Secondary Marketing Group, how many people were in the  
10 Secondary Marketing Group doing this trading?

11 A. At the end, at least 25.

12 Q. And they sat in the newer TBW, I mean, the ultimate TBW  
13 building that you had?

14 A. We had designed a special trading floor, a small trading  
15 floor for them to, to sit at, and it was down below the executive  
16 offices, and we had massive television screens and all kind of  
17 Bloomberg terminals and all kinds of information coming in from  
18 all over so they would have up-to-the-second information so they  
19 could, they could know how to trade their loans.

20 Q. Did they have their own databases that they used with regard  
21 to these loans?

22 A. They did.

23 Q. And how about Treasury? What kind of database did it use?

24 A. Treasury operated, as far as I know, off of the warehouse  
25 pipelines and had its own, you know, temporary databases.

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1 Q. And Accounting?

2 A. Accounting, that was the general ledger. That was the real  
3 system of record for the company. That's where the financials  
4 were prepared from, and that's where the inventory of loans that  
5 was on our balance sheet and the other assets, all the other  
6 assets was kept.

7 Q. By, by creating this walled-off system, what were you  
8 attempting to do?

9 A. Well, if, if there was erroneous data in one, I didn't want  
10 it to infect the others, and I wanted them to -- you know, it was  
11 like, like, they call, you know, there's a division in some  
12 companies where you don't want, you don't want everybody using the  
13 same data, at least I didn't.

14 I didn't want Accounting to lazily take the warehouse  
15 numbers. I wanted them to independently keep track of what assets  
16 Taylor Bean had, and I didn't want that to be affected by what  
17 warehouse line they were on, where they were moving to, and they  
18 were moving on and off balance sheet so fast that they couldn't  
19 keep track of it. So I wanted them to independently have their  
20 own inventory.

21 Q. When you say "so fast," what, what was the speed at which  
22 this operation was moving when you were processing hundreds of  
23 thousands of loans?

24 A. Well, here's the problem: The speed was, was too fast, and  
25 Colonial COLB line at the end was the only facility we had to fund

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1 loans with, so every time we sent a wire for a closing to acquire  
2 a loan, it had to be, it had to be wired out of COLB. COLB was  
3 about, I think, a billion and a half at the end.

4           You were doing \$200 million per day in volume, and so  
5 you had a seven-day warehouse of those. Well, it sometimes took  
6 ten days or more to get the notes back from the, from the table,  
7 from the closings. So we would, we would get the notes in at a  
8 building we had, we called CDF, and they would have this massive  
9 opening of thousands of UPS and FedEx packs every morning. They  
10 would pull all the notes out of the thing. They would do certain  
11 things, image them, do certain things to them, and we had a  
12 courier who ran down to Orlando twice a day, and he would take all  
13 the notes that we had to Colonial.

14           Colonial would be ready, and their custody staff would,  
15 would receive the notes, would log them into their system, and  
16 then would say, "Okay, we've got the notes," and at that point,  
17 when their Custody Group said they had the notes, they could  
18 certify that they had the note, then we could move it to an off  
19 balance sheet -- or to a different facility.

20           They could go off of COLB, allowing COLB to do a same  
21 day funding, okay, so we'd fund it in the morning off of that, and  
22 in the afternoon, they got paid back, and they would do a second  
23 funding late in the afternoon on COLB so we could get more loans  
24 closed that day.

25 Q.   And then this would repeat itself over and over?

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1 A. Every day, twice a day, he would run down with the notes, it  
2 was an 85-mile trip, and Colonial would be standing by and would  
3 hurry up and, and log those notes in, and they would, they would  
4 allow us -- Cathie allowed us to, to do a second funding.

5 Q. When you say, when you say logged those notes in, was this  
6 done by hand, scribes sitting there writing stuff out? How was it  
7 done?

8 A. You know, I never saw -- I don't know. I don't know how they  
9 did it.

10 Q. Did it result in a database of the loans that they had?

11 A. They did. I mean, they had their own database, but I believe  
12 that we had probably sent them a, pre-sent them a -- I'm sure we  
13 pre-sent them a spreadsheet of the loans that were on their way to  
14 help them in their work.

15 Q. Now, how quickly -- you'd get the UPS packages and FedEx  
16 packages in the morning?

17 A. Yes.

18 Q. And how many people were there opening up all of these  
19 envelopes?

20 A. Hundreds.

21 Q. And, and then who was in charge of logging it all in?

22 A. Well, the lady who ran that area, her name was Melissa Long.  
23 Her title was head of warehousing, and she was the one who, who  
24 took care of that.

25 Q. Now, we're back to -- let's go back to the Plan B idea that

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1 Cathie had, had talked to you about. So what did she tell you to  
2 do?

3 A. She wanted to advance-collateral everything we could on COLB  
4 to cover the overdraft and stop overdrafting the bank. That was  
5 Plan B.

6 Q. And did she tell you how to do that?

7 A. I mean, I don't know exactly -- they gave direct instructions  
8 on, on what to do and when to do it but not to me. I suppose  
9 they -- Teresa would relay what she wanted done to Desiree Brown.

10 Q. So Teresa is Teresa Kelly?

11 A. Yes.

12 Q. The woman who was working at Colonial?

13 A. Yes.

14 Q. Under Cathie?

15 A. Yes.

16 Q. And she would relay to Desiree --

17 A. Yes.

18 Q. -- what she wanted?

19 A. Exactly what they needed, right.

20 Q. And then what was Desiree's task?

21 A. I'm not sure what Desiree had to do to -- I'm not sure what  
22 Desiree had to do. I think Desiree had to send some kind of a  
23 file to her and data file to Colonial Bank, to the EFT site.

24 Q. Was that Desiree's only job?

25 A. No, Desiree's job was -- Desiree's job was not that.

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1 Desiree's job was to fund the loans. She had four or five people  
2 that worked for her that were called funders, and the way the  
3 company worked was we had 30 offices, and they all had loan  
4 closers in the offices, and the loan closers would prepare the  
5 documents for the closings on their system, and that would  
6 automatically create a wire request that would go to Desiree.

7           Desiree would manage the funding, if we had enough  
8 money, where we were going to fund it from, which bank, which  
9 warehouse, and how she was going to do it, and she was, she was  
10 very good at doing that every day. And that was -- that took up  
11 almost all of her time. I mean, it was, it was a very large job  
12 to, to fund the amount of business that we did with the amount of  
13 credit that we had.

14 Q. You said you had 30 offices, and tell me about those offices.  
15 Those were offices other than the TBW Ocala headquarters?

16 A. Well, we had two major buildings in Ocala. We had a  
17 75,000-square-foot building we called GHQ, which stood for global  
18 headquarters -- sort of funny being in Ocala, Florida -- and we  
19 had another building which was an old Winn Dixie store, and we  
20 called that CDF, and it was originally when I bought it, it was  
21 25,000 square feet. Then we doubled it to 50,000 square feet, and  
22 about a thousand people worked in that building. They were  
23 crammed in there.

24           And there was two -- two things went on there: loan  
25 servicing, loan administration and warehousing in the front of the

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1 building.

2 Q. When you say loan servicing, those are the people that  
3 received the envelopes with the payments that were coming in on  
4 the loans?

5 A. Well, most of the payments didn't come to us. Most of the  
6 payments went directly to Colonial Bank through a -- they had a  
7 lockbox arrangement with us, and so almost, I don't know what  
8 percentage, but most of the payments went through the lockbox.

9 Q. Now, you've talked about two offices, the two in Ocala, but  
10 you mentioned before that you had 30 offices altogether.

11 A. We did. We had a large office in, in Atlanta, Georgia, which  
12 was the head of our credit administration area underwriting and  
13 some closers and some salespeople. We had a very large office in  
14 Cincinnati, which was the second servicing center. Our servicing  
15 platform was rated by several rating agencies, I think two of the  
16 three, and they required multiple, they required multiple offices  
17 so if a bomb fell on Ocala or something, that they could still  
18 service loans in Cincinnati or whatever the reason was, and so we  
19 had a big group in Cincinnati.

20 Most of the other offices were sales offices with  
21 originators or salespeople, you know, account executives, some  
22 closers, and some underwriters. We had a large underwriting  
23 center in Tampa, we had one in Ponte Vedra and all over the  
24 country.

25 Q. Ponte Vedra was up in Jacksonville?

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1 A. In Florida, yes.

2 Q. Now, you said you had salespeople. What was the product that  
3 you were selling?

4 A. Well, again, we were a wholesale lender. We had three  
5 different divisions of salespeople. One was called Community  
6 Banks Online, and there was about 25 people that called on the  
7 nation's community banks along with the calling officers from the  
8 ICBA who would go with them, and they would --

9 Q. ICBA, tell us again what that was.

10 A. Oh, that's the Independent Community Bankers Association of  
11 America.

12 And we were the preferred and only mortgage lender that  
13 they recommended to their banks, and they would go out and call on  
14 the community banks and ask them to send their loans to us to be  
15 underwritten and funded.

16 Q. And so were these the salesmen?

17 A. They were salespeople.

18 Q. And you had account executives, also, I think you said.

19 A. Same thing really, same thing.

20 Q. Now, we were talking about, about Desiree and the scope of  
21 her job. With regard to the requests from Teresa Kelly  
22 specifically regarding Plan B, what, what did Desiree tell you  
23 about that?

24 A. I'm sorry, I don't know what you --

25 Q. Well, we've established that Cathie Kissick has suggested

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1 Plan B.

2 MR. STOKES: Objection, Your Honor. He's just  
3 summarizing the witness's testimony.

4 MR. ROGOW: I'm just trying to bring us in to where we  
5 are.

6 THE COURT: Just ask the question again.

7 MR. ROGOW: Okay. All right.

8 Q. So tell us what your understanding was of what Teresa Kelly  
9 would be asking Desiree Brown.

10 A. Well, there was two, there was two, there was two ways to  
11 accomplish this. There was something called COLB Plus, and then  
12 there was advancing loans, and that would be to advance loans at a  
13 higher percentage than they were already advanced at. They would  
14 re-advance them.

15 And then there was new COLB advances that could be loans  
16 that we found that had been previously not advanced or had been  
17 partially curtailed, which means they were partially paid down  
18 somewhere else, or anyway, there was a lot of, of loans around  
19 that might have not really been perfectly suited for the COLB  
20 line, maybe or maybe not, but that we were going to advance on  
21 COLB to, to come up with the amount of money that we needed.

22 Q. Now, you say not perfectly suited with the COLB line. Were  
23 there different kinds of suitability issues with regard to these  
24 loans?

25 A. Each facility had its own rules for what you could put in,

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1 and some had -- there were percentages, I think, of -- and I don't  
2 know, I can't remember exactly what COLB had, but I know it had an  
3 age requirement, and really it was for brand new loans and not for  
4 loans that you were going to re-advance. It really wasn't for  
5 that.

6 Q. And when the loans were sent over by Desiree Brown, would  
7 Teresa Kelly to the best of your knowledge check them out?

8 A. You know, generally, but when I got involved, the times that  
9 I got involved in what we were doing was to try to help find  
10 assets, and I was successful from time to time in finding nice  
11 pools of assets. I recall one day --

12 Q. Where would you, where would you find these pools?

13 A. I mean, just from -- I would have Mike Wawrzyniak run  
14 spreadsheets for me, and, I mean, one day I found \$29 million  
15 worth of loans that had fallen through the cracks, and we advanced  
16 them, and it was a great day. Everybody was happy.

17 Q. Now, how did \$29 million worth of loans fall through the  
18 cracks?

19 A. You know, I know it sounds incredulous, but the fact is that  
20 they were just -- each loan, no matter the amount of money, was a  
21 line on a spreadsheet, and we were moving them around, and I  
22 don't, I don't know. I don't know.

23 Q. Did you find those 29 million with your own hunting?

24 A. Well, my -- at my direction, they were found. No, I didn't  
25 know how to find them.

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1 Q. Now, you've heard the term "crap loans." Have you heard that  
2 term in this trial?

3 A. Yes, several times.

4 Q. Was that a term that you used with regard to loans?

5 A. Well, I never used that term. As a matter of fact, I never  
6 heard that term until, until this trial. Cathie used to call them  
7 dog loans, I remember, but those loans were -- I mean, there were  
8 always loans that had, for some reason or another had issues, and  
9 if you want to call them dogs, they could be called dogs.

10 Q. What kind of issues were these dog loans, or as you've heard  
11 in the trial them called crap loans, what kind of issues might  
12 they have?

13 A. Well, I mean, Cathie's valuation of a loan was only based on  
14 one criteria. That was how fast it could get off of her warehouse  
15 line. So if the loan could go off the warehouse line fast, it  
16 wasn't a dog or a crap, and if it couldn't go off the warehouse  
17 line fast, it was a dog or a crap.

18 Q. Did those loans still have value?

19 A. Absolutely.

20 Q. And why?

21 A. Well, I mean, they were loans. They represented people's  
22 homes. They represented families', you know, mortgages and all  
23 those things. Just because there were either documentation  
24 problems or because different lenders' appetites for different  
25 kinds of credit changed, I mean, that didn't mean that the loans,

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1 the loans were crap.

2 Q. The TBW -- the people that TBW dealt with originally were  
3 what government agencies?

4 A. Originally, before we bought the bank -- the thrift, I mean,  
5 the Department of HUD was our primary regulator.

6 Q. And who were -- where, where was Ginnie Mae, Freddie Mac, and  
7 Fannie Mae in terms of your business with regard to their  
8 interaction with you?

9 A. Well, certainly they had -- well, Ginnie Mae is part of HUD,  
10 I think, and Fannie Mae and Freddie Mac had their own separate  
11 oversight units. They would audit us and, you know, do all kind  
12 of different things, I think, but we had to answer to them, and we  
13 had to stay eligible to sell loans to them, but our primary  
14 regulator, I think, was HUD.

15 Q. Did there come a time when your relationship with Ginnie Mae  
16 ended?

17 A. Ginnie Mae had, yeah, well, August 4, I think, or whatever.

18 Q. When the takeover occurred?

19 A. Yeah.

20 Q. All right. And how about Fannie Mae? Did there come a time  
21 when the Fannie Mae relationship ended?

22 A. Yes. Fannie Mae terminated Taylor Bean as a seller servicer  
23 in April of 2002.

24 Q. And how -- why did they do that?

25 A. It, it came to their attention that there were eight loans in

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1 their pool that was first payment defaults that were loans from  
2 Lee Farkas.

3 Q. What is a first payment default?

4 A. No one ever made a payment.

5 Q. And what was the reason that those loans were sent to Fannie  
6 Mae?

7 A. Well, the reason, the short reason was it was an error, and  
8 the long, longer reason is in 2002, we were starting to expand our  
9 servicing portfolio, and Taylor Bean had its first batch of eight  
10 repurchases. Now, when, when you sell loans to somebody -- in  
11 this case, it was GMAC mortgage -- and they later determine that  
12 those loans did not meet their guidelines for some reason, because  
13 they default or some other reason, then in certain cases, they  
14 have the right to ask you to repurchase the loan. So it means  
15 just what it sounds like. They purchased it, and they want you to  
16 repurchase it.

17 So we had eight loans that needed to be repurchased from  
18 Fannie -- from GMAC Mortgage, okay, and they were FHA loans, and  
19 they were all in default, but they weren't ROE; they were in  
20 default. So what we did was I didn't know how to do it, we had no  
21 way to track it, it was just a -- it was a whole new day for us.  
22 We'd never had a repurchase request, didn't know what to do.

23 I decided that the best way to keep track of these was  
24 to set up eight individual loans, put them in my name. That way  
25 we could keep track of them on our system, and so that's what we

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1 did. So Taylor Bean, it had the funds to do the repurchases --

2 Q. Let me ask you, these were loans that were made to someone  
3 else? They were loans that you had to repurchase?

4 A. They were the Smith, Jones, Brown, and White loans, whoever.

5 Q. And they were --

6 A. Taylor Bean had made the loans originally and had sold the  
7 loans in a bulk servicing sale to, as I talked about before, to  
8 GMAC Mortgage, GMAC Mortgage, part of General Motors. They later  
9 determined that, that the loans did not meet their guidelines. We  
10 argued with them, but they wouldn't listen, and they said, "You're  
11 going to repurchase the loans."

12 So we said -- we had no choice but to repurchase the  
13 loans.

14 Q. Then tell us what you did with regard to creating these "Lee  
15 loans."

16 A. We created eight loans on those properties in my name, and we  
17 wired the money to GMAC so that they could repurchase the loans  
18 from the Ginnie Mae pools.

19 Q. And now these loans showed up on your books as your loans?

20 A. Now they're Lee Farkas loans. There's eight of them. And I  
21 had no intention of paying payments on those loans. It wasn't my  
22 obligation. It was simply a way to keep track of it, and it was,  
23 it was an idea I had that probably wasn't a great idea, but it was  
24 an idea that I had how to do it.

25 Q. And they found their way to Ginnie Mae?

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1 A. What happened was Donna Skuhrovec --

2 Q. To Fannie Mae? To Fannie May?

3 A. Well, unfortunately, Donna Skuhrovec, a lady who worked in  
4 Secondary Marketing at the time, was pooling loans, and what she  
5 would do was she would, she would copy and paste loans from  
6 spreadsheets to other spreadsheets and what have you, and she  
7 picked up the eight loans and put them on a sheet. They  
8 accidentally got put into a Fannie Mae pool.

9 Q. Did this cause distress, financial distress and other  
10 distress within TBW?

11 A. Well, initially it didn't cause anything until they became  
12 first payment defaults, and then Fannie Mae found the loans,  
13 thought there was fraud, massive fraud. They were all concerned.  
14 They came down to Ocala, they terminated Taylor Bean, and they  
15 seized our servicing portfolio.

16 Q. And how about the other government agencies that you were  
17 working with?

18 A. Ginnie Mae did not do anything, and Freddie Mac came down and  
19 sent the head of, head of the division that dealt with us and all  
20 these other people, and they decided that they would let us, let  
21 us live.

22 Q. Did it nevertheless cause you reputational harm?

23 A. Well, what happened -- yeah. Because of this and to protect  
24 Colonial Bank, really, I gotta tell you, Fannie Mae owed us a lot  
25 of money when they terminated us, because we had shipped them

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1 loans that they, that they needed to pay us for, and the money was  
2 really due to Colonial Bank, part of the money to Colonial Bank  
3 and part of the money to Taylor Bean.

4 So there was \$13 million worth of funding checks that we  
5 had written. In those days, we funded our loans with checks, not  
6 wires, and we had written all these checks to all these title  
7 companies and all these attorneys all over for all these loans for  
8 that day, and Fannie Mae agreed with us that they would wire  
9 \$19 million before 5:00.

10 So I told Cathie, I said, "Cathie, be careful. Don't  
11 send the wires out until -- don't pay those checks. They're  
12 waiting to be paid. You can return them. Don't pay those checks  
13 unless Fannie Mae wires the money, because I don't trust them."

14 She said, "Okay."

15 So 5:00, I asked them if they were going to wire the  
16 money. They said absolutely yes.

17 Q. This is you asked Fannie Mae.

18 A. I asked Fannie Mae. They were in my office. I said, "Have  
19 you sent the wire?"

20 "Yes, we've sent the wire."

21 I said, "Okay."

22 So I called Cathie. I said, "They've sent the wire."

23 She goes, "Well, it's so late now, I'm not going to send  
24 these checks out until I see the wire in our bank. I don't trust  
25 them."

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1 I said, "Okay."

2 Anyway, at 5 minutes 'til six, they walked in my office  
3 and said, "We're not going to send the wire."

4 And I said, "Well, why not?"

5 And they said, "Well, we just decided not to. We're not  
6 going to."

7 I said, "Okay."

8 I called Cathie right away and said, "Bounce all the  
9 checks."

10 So she said, "Don't worry, I already did."

11 So all these checks bounced. \$13 million worth of  
12 funding checks bounced all over the country. So that, that caused  
13 us years' worth of explanations and operational issues. We were  
14 on lists with every title, every major, every major title  
15 insurance provider in the country to not fund loans for Taylor,  
16 Bean & Whitaker. Don't fund loans for them.

17 Q. And economically, what was the effect upon you?

18 A. Well, I mean, it was -- I don't know. I mean, all in all, I  
19 really don't know how it hurt us. I know it hurt us. I can't  
20 really tell you how much it hurt us, because it's hard to  
21 quantify, you know, the loss of business and what have you.

22 One of the problems that we had was we were a 100  
23 percent user of Fannie Mae's underwriting automated system, and we  
24 had to switch to Freddie Mac, and it caused delays. So it caused  
25 a lot of delays for our customers, but believe it or not, the

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1 customers, most of them stayed loyal to us. They put up with us,  
2 and they went with us to Freddie Mac, you know, over to their  
3 underwriting system, and we rebuilt Community Banks Online, and it  
4 seemed like it was, you know, it was okay.

5 Q. And your relationship with Colonial continued.

6 A. Well, Colonial, Colonial had made the decision to save us by  
7 standing by us, and Freddie Mac had made the decision and Ginnie  
8 Mae had made the decision to save us by standing by us. I mean, I  
9 don't recall another instance where one GSE such as Fannie or  
10 Freddie cuts off a private lender and the other one doesn't do the  
11 exact same thing.

12 Q. What does "GSE" stand for?

13 A. It's a government-sponsored enterprise.

14 Q. The loans that you heard Desiree say were sent over to, to  
15 Colonial, did you have any belief that loans were being sent to  
16 Colonial that would not be able to be used for collateral?

17 A. Well, we did. We sent loans to Colonial, all of us, for  
18 Teresa to check to make sure collateral was there, and she would  
19 say yes, no, or whatever, and generally, you know, you'd send her  
20 a lot, and there would be a few that were, that were good. Most  
21 of them weren't.

22 Our data was not that good, and oftentimes we would  
23 think that we had collateral available that really wasn't  
24 available, and then we would think that collateral wasn't  
25 available and then it would be available, but generally, there

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1 were -- generally, there were more loans that we'd send her that  
2 weren't good than were good.

3 Q. Now, you saw e-mails back and forth where Plan B was  
4 mentioned, did you not, as they've been introduced in the trial?

5 A. I've seen many, yes.

6 Q. Was there anything nefarious in the use of the term "Plan B"?

7 A. Well, Plan B, the way I understood it from Cathie was again,  
8 Plan A wasn't working, which was the overdrafts. Let's go to Plan  
9 B. So we started sort of almost jokingly, you know, calling it  
10 Plan B, and then they shortened it to "B" at the end, I guess.

11 I mean, I didn't deal with it very often, but when I  
12 did, certainly you'll see e-mails that say Plan B.

13 Q. Was, was there any attempt to hide in your e-mails the fact  
14 that the heading or the subject matter was Plan B?

15 A. No. I mean -- no.

16 Q. Did there come a time when you used PINs to communicate with  
17 Desiree, with Cathie?

18 A. Yes. And it's -- I find it almost humorous that we've, that  
19 we've all been talking about these PINs.

20 Q. Was there anything nefarious in the use of PINs?

21 A. PINs in those days to me were the same as texting is today.  
22 There was no texting, so -- there were two things that were going  
23 on at the time. One of them at Taylor Bean was we had always had  
24 a shortage of space on our exchange server, so we were always told  
25 every week to clean out our in boxes, to get rid of the e-mails,

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1 and to try to eliminate e-mails; and secondly, sometimes, you  
2 know, you just want to send -- like, why do you send a text  
3 instead of an e-mail if it's an informal, short communication?  
4 Just send a PIN.

5           So the PINs were our own little texting system before  
6 there were texts.

7 Q. Did you, did you view this use of PINs as some attempt to  
8 hide what was going on between TBW and Colonial Bank with regard  
9 to trying to find collateral and making sure that everything was  
10 working?

11 A. I think we tried to hide some dirty jokes and what have you,  
12 and I think that -- I think that we, we would, you know, all of us  
13 were under a lot of stress and would say things maybe that we  
14 weren't too, too proud of, you know, but I don't think that the  
15 PINs were, the purpose of the PINs was to hide, you know, this,  
16 some talk about Plan B, because there was plenty of e-mails that  
17 said Plan B as well as, as well as the PINs.

18 Q. Now, did there come a time when the AOT participation  
19 agreement was formulated between TBW and Colonial?

20 A. Yes.

21 Q. And how, how did it move -- how did that occur?

22 A. Well, as -- Taylor Bean had AOT lines with various Wall  
23 Street firms, and the reason that the Wall Street firms provided  
24 that kind of credit to mortgage companies -- they weren't  
25 interested in being mortgage lenders. That wasn't their, their

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1 idea.

2           Their idea was that they would provide aggregation lines  
3 to, which means you could, you know, pile up a bunch of assets  
4 together, to mortgage originators so that they could do  
5 mortgage-backed securities, they could issue mortgage-backed  
6 securities, and over a number of years, Taylor Bean issued upwards  
7 of \$6.5 billion worth of private label mortgage securities which  
8 were underwritten by everyone on the street, many, many different  
9 dealers, from Lehman, BNP Paribas, Credit Suisse, I forgot who  
10 all, maybe Bank of America.

11           So all of those Wall Street firms made a lot of money, I  
12 guess, doing those bond deals, because they were big. You had to  
13 have 400 million, 500 million, maybe a billion was better, in  
14 loans to be able to have enough to make a, to make a security to  
15 issue the security.

16 Q. Now, the AOT facility, whose idea was that? How did that  
17 come into being?

18 A. Well, again, when the -- I mean, it was Cathie's idea,  
19 because when we were losing the Wall Street lines, she said,  
20 "Well, Colonial can do that."

21           I said, "Okay."

22           And we sent her documents from the Wall Street lines so  
23 that they could use them for a template to make their own  
24 guidelines.

25 Q. Now, would this be of utility and advantage to Colonial?

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1 A. I think Colonial was looking to have at that time as much in  
2 outstanding as they could, and it was a big, nice piece of  
3 business that they viewed.

4 Q. And how did the AOT program work?

5 A. Well, there were two AOTs. There was one AOT for agency  
6 pools; and there was one AOT for private label pools, whole loans  
7 and single loans.

8 Q. Now, tell us the difference between the two.

9 A. Well, an agency pool to Taylor Bean would be Freddie or  
10 Ginnie pool. A Freddie Mac pool would be one that was issued by  
11 Freddie Mac. A Ginnie Mae pool would be a pool that was issued by  
12 Taylor Bean and, and guaranteed by Ginnie Mae.

13 Q. And the other?

14 A. The other side would be similar to the Wall Street lines,  
15 which would be an aggregation line, so you could put whole loans  
16 in there until you had enough to find them a -- to put them into a  
17 security, or you could put loans that were in private securities.

18 Q. Now, were there limitations upon the, the government program  
19 loans?

20 A. Yes.

21 Q. I mean -- and what were those limitations in terms of the  
22 size of the loans?

23 A. Well, the loan couldn't go over the maximum conforming size,  
24 which I think right now is 419,000 or something in that range.

25 Q. And on the private side?

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1 A. No, you could have jumbo loans, or you could put anything you  
2 want.

3 Q. So the two facility were, were created -- or the two  
4 different ways of creating these pools were created, correct?

5 A. I think it was one facility with two sets of guidelines.  
6 That's the way I would describe it. There were two sets of  
7 operating documents that, that controlled it.

8 Q. And these were now pools, you said, and what constituted a  
9 pool of loans on these facilities?

10 A. Well, a pool is just a group of loans that you've isolated.

11 Q. How many could be in a pool?

12 A. One.

13 Q. Pardon me?

14 A. One.

15 Q. And how -- what's the maximum that could be in a pool?

16 A. I don't think there's a maximum.

17 Q. All right. So in terms of creating the AOT line, was there  
18 anything nefarious about creating the AOT program?

19 A. I don't believe so.

20 Q. When Cathie suggested that to you, how did you go about  
21 creating it? Did you have to hire lawyers and people to look at  
22 these programs?

23 A. No. Actually, I learned of it when they -- Milton Vescovacci  
24 and Cathie would call me quite often during that time and ask me  
25 questions about how Taylor Bean did its business and how these

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1 securities worked and what the -- how the security, you know, what  
2 the -- all about the securities, and so I think they were  
3 designing that -- the private label side of that for us.

4 Q. The -- did you have counsel in these, in these agreements?

5 A. Yes.

6 Q. And who was your counsel?

7 A. Other than our internal counsel --

8 Q. Who was your internal counsel?

9 A. Jeff Cavender would have looked over those agreements.

10 Generally -- we had an outside lawyer, too, but I can't remember  
11 who it was on those.

12 Q. Now, did there come a time, too, when you decided you needed  
13 another funding source and created Ocala Funding?

14 A. Well, Ocala Funding was, was fortunate; it sort of came to  
15 us. Lehman Brothers had come up with the idea that mortgage  
16 companies could, could create these single seller asset-backed  
17 conduits, and they did create them for several different mortgage  
18 companies, but all of them were a lot bigger than, than Taylor  
19 Bean. The smallest that preceded us, I think, was, like, five or  
20 ten times our size.

21 Q. And when, and when that approach was made to you, was Paul  
22 Allen working for you then?

23 A. You know, I think it was before Paul started, but he started  
24 right around the time we were working on it.

25 Q. Now, you heard Paul Allen's testimony with regard to being

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1 hired and having full operational control?

2 A. Yes, I did.

3 Q. And did he have full operational control?

4 A. No.

5 Q. Why didn't he have full operational control?

6 A. Because I didn't relinquish it to him.

7 Q. And why not?

8 A. Well, when he first came, I intended to, but two things. One  
9 is he, he wanted to continue to work from home, and he lives up  
10 here in Virginia, and the second thing was I, I didn't, I didn't  
11 like the way he handled our salespeople or our account executives.

12 Q. Didn't like it in what, what way?

13 A. Well, he was -- right away he was telling the salespeople  
14 that we didn't have any money to fund loans with and -- or we  
15 might not have money to fund loans with, and it wasn't -- that's  
16 not a good thing to do. I mean, salespeople, their job is to  
17 sell, and if they don't have anything to sell, they're not going  
18 to sell.

19 So I said, "Paul don't do that." I told him, "Don't do  
20 that."

21 But he wanted to do it in the spirit of keeping them  
22 informed, and he was deflating their, their enthusiasm to zero.  
23 So -- and then there were other things he did that I just, I had a  
24 hard time agreeing with, and so I really, I didn't relinquish  
25 operational --

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1 Q. And did you then find a spot for him at Ocala Funding?

2 A. Well, Paul is a very smart man, and he was a university  
3 professor. He had a distinguished career at Fannie. He had a  
4 distinguished career at Freddie. He, he was the CFO of North  
5 American Mortgage, which was a big, giant mortgage company early  
6 on, and he was like, he knew all about accounting, and he knew all  
7 about a lot of things, and he, he knew all about interest rate  
8 risk and, and all that stuff.

9 You know, Ocala Funding was so complicated that I  
10 couldn't, I couldn't understand it, and on top of that, Lehman  
11 didn't like me. They, they didn't like me. So -- I don't know  
12 why. I think I'm so likeable, but they didn't like me.

13 So they -- I said, you know, Paul sort of naturally fit  
14 into the Ocala Funding situation, and I thought it was a great  
15 project, really great project for Paul to tackle. It was  
16 incredibly complex. He had to sit around for hours with lawyers  
17 and, you know, sweat over details and understand all kind of  
18 complex notions about swaps and mirror swaps and counterparty  
19 swaps and interest rate risk and all that stuff that he  
20 understood, and so it was obvious that I never was going to get it  
21 done. It was just beyond me for one, and Lehman didn't like me  
22 for two, and Bowman and I discussed it, and we said, well, let's  
23 let Paul Allen do it.

24 Q. And so was Paul Allen the person who was in charge of running  
25 Ocala Funding?

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1 A. From then on, Paul Allen took care of Ocala Funding. You  
2 know, later on, I helped him bring Deutsche Bank in as an  
3 investor, because the, the guy at Deutsche Bank, whose name was  
4 Sumeet Wadhera, was a friend of Cathie's, good friend of Cathie  
5 and Rodney Lewis at Colonial's, and became a friend of mine, and  
6 over time, we talked, and so Deutsche wanted to help Colonial, and  
7 Deutsche wanted to help us.

8 Q. That was the restructuring, though, when Deutsche came in and  
9 BNP Paribas?

10 A. Right.

11 Q. But the original, the original Ocala Funding was, was where  
12 Paul on the papers, did he become the manager of it?

13 A. Well, he was the manager the whole time.

14 Q. And what role did you have on any kind of daily basis with  
15 regard to Ocala Funding?

16 A. None. I never talked to Sean Ragland, maybe twice in the  
17 whole time he worked there, other than to say hello to him, and  
18 Paul didn't talk to me about it. He just, he just didn't. He --  
19 although he thought he communicated well with me, we didn't  
20 communicate that well.

21 Q. So what were your general duties during this time? You've  
22 got TBW running. You have Ocala Funding that's out there that TBW  
23 obviously has an interest in. What were you doing on a day-to-day  
24 basis?

25 A. Well, which period of time are you talking about?

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1 Q. '06.

2 A. '06, '06. Okay. Things were good. I was expanding the  
3 business. I was busy going into new markets. I was doing what I  
4 liked to do. I was adding account executive salespeople. I was  
5 working a lot with the ICBA in new programs and products for  
6 bankers to offer their mortgage customers, and life was good.

7 Q. And --

8 THE COURT: I think at this point since it's 12:15 and I  
9 told the jury they'd get no morning break, rather, we'll do the  
10 lunch break, we'll take our lunch hour now and reconvene at 1:15,  
11 all right?

12 (Recess from 12:15 p.m., until 1:15 p.m.)

13

14 CERTIFICATE OF THE REPORTER

15 I certify that the foregoing is a correct transcript of the  
16 record of proceedings in the above-entitled matter.

17

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19

\_\_\_\_\_  
/s/  
Anneliese J. Thomson

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obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, to transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, § 1343; and,

c. securities fraud, that is, to knowingly and intentionally execute a scheme and artifice to defraud any person in connection with any security of an issuer with a class of securities registered under § 12 of the Securities Exchange Act of 1934 (Title 15, United States Code, § 781), in violation of Title 18, United States Code, § 1348.

2. Among the manner and means by which defendant KELLY and others would and did carry out the conspiracy included, but were not limited to, the following:

a. KELLY and co-conspirators caused the transfer of funds between Taylor, Bean & Whitaker Mortgage Corp. (TBW) bank accounts at Colonial Bank in an effort to hide TBW overdrafts.

b. KELLY and co-conspirators caused TBW to sell to Colonial Bank mortgage loan assets, via the COLB facility, that included loans that did not exist or that had been committed or sold to third parties.

c. KELLY and co-conspirators caused TBW to sell to Colonial Bank, via the AOT facility, fictitious Trades that had no mortgage loans collateralizing them and that had fabricated agreements reflecting commitments by investors to purchase them in the near future.

d. KELLY and co-conspirators caused TBW to sell to Colonial Bank, via the AOT facility, Trades backed by impaired-value loans and real estate owned that had

**fabricated agreements reflecting commitments by investors to purchase them in the near future.**

**e. KELLY and co-conspirators periodically “recycled” fraudulent loans, identified as “Plan B” loans, on the COLB facility and the fictitious and impaired Trades on the AOT facility to give the false appearance that old loans and Trades had been sold and replaced by new loans and Trades.**

**f. KELLY and co-conspirators covered up their misappropriations of funds from the COLB and AOT facilities by causing false documents and information to be provided to Colonial Bank.**

**g. KELLY and co-conspirators caused Colonial BancGroup to file with the Securities and Exchange Commission (SEC) materially false annual reports contained in Forms 10-K and quarterly reports contained in Forms 10-Q that misstated the value and nature of assets held by Colonial BancGroup.**

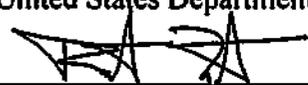
**3. In furtherance of the conspiracy and to effect the objects thereof, KELLY and other co-conspirators committed or caused others to commit the following overt acts, among others, in the Eastern District of Virginia and elsewhere:**

**a. On or about January 6, 2009, KELLY and other co-conspirators caused Colonial Bank to wire approximately \$66,400,000.00 to LaSalle Bank in connection with the purported purchase of three Trades from TBW, which were to be held on Colonial Bank’s books as securities purchased under agreements to resell.**

**(All in violation of Title 18, United States Code, § 371.)**

DENIS J. MCINERNEY  
Chief, Fraud Section  
Criminal Division  
United States Department of Justice

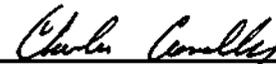
By:

 3/16/2011

Patrick F. Stokes  
Deputy Chief  
Robert A. Zink  
Trial Attorney

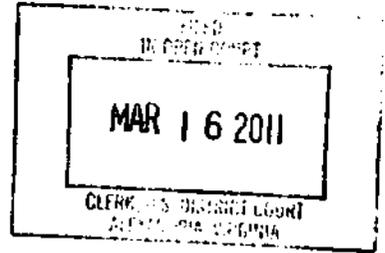
NEIL H. MACBRIDE  
United States Attorney

By:



Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA



Alexandria Division

UNITED STATES OF AMERICA

v.

TERESA KELLY,

Defendant.

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Case No. 1:11CR119

18 U.S.C. § 371 (Conspiracy)

CRIMINAL INFORMATION

THE UNITED STATES CHARGES THAT:

Count 1

(Conspiracy to Commit Bank Fraud, Wire Fraud, and Securities Fraud)

1. From in or about 2002 through in or about August 2009, in the Eastern District of Virginia and elsewhere, the defendant

TERESA KELLY

did knowingly and intentionally combine, conspire, confederate, and agree with others known and unknown to commit certain offenses against the United States, namely:

a. bank fraud, that is, to knowingly and intentionally execute a scheme and artifice to defraud a financial institution, and to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, a financial institution, by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, § 1344;

b. wire fraud, that is, having knowingly and intentionally devised and intending to devise a scheme and artifice to defraud a financial institution, and for

obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, to transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, § 1343; and,

c. securities fraud, that is, to knowingly and intentionally execute a scheme and artifice to defraud any person in connection with any security of an issuer with a class of securities registered under § 12 of the Securities Exchange Act of 1934 (Title 15, United States Code, § 781), in violation of Title 18, United States Code, § 1348.

2. Among the manner and means by which defendant KELLY and others would and did carry out the conspiracy included, but were not limited to, the following:

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**3. In furtherance of the conspiracy and to effect the objects thereof, KELLY and other co-conspirators committed or caused others to commit the following overt acts, among others, in the Eastern District of Virginia and elsewhere:**

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**(All in violation of Title 18, United States Code, § 371.)**

DENIS J. MCINERNEY  
Chief, Fraud Section  
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United States Department of Justice

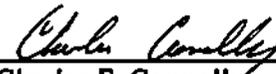
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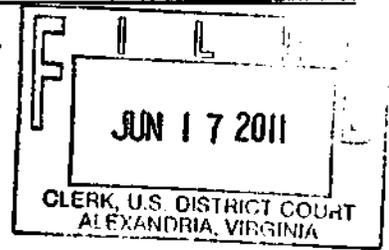
NEIL H. MACBRIDE  
United States Attorney

By:



Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys

UNITED STATES DISTRICT COURT  
Eastern District of Virginia  
Alexandria Division



UNITED STATES OF AMERICA

v.

Case Number 1:11CR00119-001

TERESA A. KELLY,

Defendant.

**JUDGMENT IN A CRIMINAL CASE**

The defendant, TERESA A. KELLY, was represented by Alan Yamamoto and Robert Leventhal, Esquires.

The defendant pleaded guilty to Count 1 of the Criminal Information. Accordingly, the defendant is adjudged guilty of the following count, involving the indicated offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18 U.S.C. § 371	Conspiracy to Commit Bank Fraud, Wire Fraud, and Securities Fraud (Felony)	08/2009	1

As pronounced on June 17, 2011, the defendant is sentenced as provided in pages 2 through 8\*\* of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Signed this 17th day of June, 2011.

*lsl*   
\_\_\_\_\_  
Leonie M. Brinkema  
United States District Judge

\*\* Page 8 of this document contains sealed information

Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **THREE (3) MONTHS**.

The Court makes the following recommendations to the Bureau of Prisons:

The defendant be designated to F.C.C. Coleman, Florida.

The defendant shall surrender for service of sentence any time after August 15, 2011 at the institution designated by the Bureau of Prisons as notified by the United States Marshal. Until she self surrenders, the defendant shall remain under the Order Setting Conditions of Release entered on March 16, 2011.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_, with a certified copy of this Judgment.

c: P.O. (2) (3)  
Mshl. (4) (2)  
U.S.Atty.  
U.S.Coll.  
Dft. Cnsl.  
PTS  
Financial  
Registrar  
ob

By \_\_\_\_\_  
United States Marshal  
\_\_\_\_\_  
Deputy Marshal

Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state, or local crime.

While on supervised release, the defendant shall not illegally possess a controlled substance.

While on supervised release, the defendant shall not possess a firearm or destructive device.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

### **STANDARD CONDITIONS OF SUPERVISED RELEASE**

The defendant shall comply with the standard conditions that have been adopted by this Court (set forth below):

- 1) The defendant shall not leave the judicial district without the permission of the Court or probation officer.
- 2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the Probation Officer within 72 hours, or earlier if so directed, of any change in residence.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

**SPECIAL CONDITIONS OF SUPERVISION**

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional conditions:

- 1) For the first NINE (9) MONTHS of supervision the defendant will be on home confinement with electronic monitoring. The defendant shall abide by all of the terms and conditions of the home confinement/electronic monitoring program including paying the costs of the electronic monitoring. Defendant may leave home only for educational programs; work related purposes; to attend meetings with attorneys, the probation officer and any counselors; for legitimate medical appointments; to attend bona fide religious services, and to attend court proceedings.
- 2) The defendant shall not open any new lines of credit or engage in any significant financial transactions without prior approval of the probation officer.
- 3) The defendant shall provide the probation officer access to any requested financial information, and waive all privacy rights.
- 4) The defendant shall advise any employers of the nature of her conviction and supervision.
- 5) Although mandatory drug testing is waived pursuant to 18 U.S.C. §3563(a)(4), defendant must remain drug free and her probation officer may require random drug testing at any time.
- 6) The defendant shall make a good faith effort to pay her full restitution obligation during supervised release, to begin 60 days after release from custody, until paid in full. The defendant shall pay restitution jointly and severally with her co-defendants.

Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total monetary penalties in accordance with the schedule of payments set out below.

<u>Count</u>	<u>Special Assessment</u>	<u>Fine</u>
1	\$100.00	
<u>Total</u>	<u>\$100.00</u>	<u>\$0.00</u>

**FINE**

No fines have been imposed in this case.

**SCHEDULE OF PAYMENTS**

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

The special assessment is due in full immediately. If not paid immediately, the Court authorizes the deduction of appropriate sums from the defendant's account while in confinement in accordance with the applicable rules and regulations of the Bureau of Prisons.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

If this judgment imposes a period of imprisonment, payment of Criminal Monetary penalties shall be due during the period of imprisonment.

All criminal monetary penalty payments are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

Restitution to be determined and reflected in a separate order to be issued in the future.

**Total**

Payments of restitution are to be made to Clerk, U. S. District Court, 401 Courthouse Square, Alexandria, VA 22314.

Restitution is due and payable immediately and shall be paid in equal monthly payments to be determined and to commence within 60 days of release, until paid in full.

Interest on Restitution has been waived.

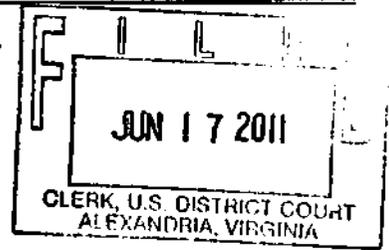
If there are multiple payees, any payment not made directly to a payee shall be divided proportionately among the payees named unless otherwise specified here:

Defendant is jointly and severally liable with co-defendants.

**FORFEITURE**

Forfeiture has not been ordered in this case.

UNITED STATES DISTRICT COURT  
Eastern District of Virginia  
Alexandria Division



UNITED STATES OF AMERICA

v.

Case Number 1:11CR00119-001

TERESA A. KELLY,

Defendant.

**JUDGMENT IN A CRIMINAL CASE**

The defendant, TERESA A. KELLY, was represented by Alan Yamamoto and Robert Leventhal, Esquires.

The defendant pleaded guilty to Count 1 of the Criminal Information. Accordingly, the defendant is adjudged guilty of the following count, involving the indicated offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18 U.S.C. § 371	Conspiracy to Commit Bank Fraud, Wire Fraud, and Securities Fraud (Felony)	08/2009	1

As pronounced on June 17, 2011, the defendant is sentenced as provided in pages 2 through 8\*\* of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Signed this 17th day of June, 2011.

*lsl*   
\_\_\_\_\_  
Leonie M. Brinkema  
United States District Judge

\*\* Page 8 of this document contains sealed information

Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

**IMPRISONMENT**

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The Court makes the following recommendations to the Bureau of Prisons:

The defendant be designated to F.C.C. Coleman, Florida.

The defendant shall surrender for service of sentence any time after August 15, 2011 at the institution designated by the Bureau of Prisons as notified by the United States Marshal. Until she self surrenders, the defendant shall remain under the Order Setting Conditions of Release entered on March 16, 2011.

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I have executed this Judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_, with a certified copy of this Judgment.

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U.S.Atty.  
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Dft. Cnsl.  
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Registrar  
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By \_\_\_\_\_  
United States Marshal  
\_\_\_\_\_  
Deputy Marshal

Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

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Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

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While on supervised release, the defendant shall not illegally possess a controlled substance.

While on supervised release, the defendant shall not possess a firearm or destructive device.

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- 6) The defendant shall notify the Probation Officer within 72 hours, or earlier if so directed, of any change in residence.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
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Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

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- 6) The defendant shall make a good faith effort to pay her full restitution obligation during supervised release, to begin 60 days after release from custody, until paid in full. The defendant shall pay restitution jointly and severally with her co-defendants.

Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

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1	\$100.00	
<u>Total</u>	<u>\$100.00</u>	<u>\$0.00</u>

**FINE**

No fines have been imposed in this case.

**SCHEDULE OF PAYMENTS**

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

The special assessment is due in full immediately. If not paid immediately, the Court authorizes the deduction of appropriate sums from the defendant's account while in confinement in accordance with the applicable rules and regulations of the Bureau of Prisons.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

If this judgment imposes a period of imprisonment, payment of Criminal Monetary penalties shall be due during the period of imprisonment.

All criminal monetary penalty payments are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

Defendant: TERESA A. KELLY  
Case Number: 1:11CR00119-001

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

Restitution to be determined and reflected in a separate order to be issued in the future.

**Total**

Payments of restitution are to be made to Clerk, U. S. District Court, 401 Courthouse Square, Alexandria, VA 22314.

Restitution is due and payable immediately and shall be paid in equal monthly payments to be determined and to commence within 60 days of release, until paid in full.

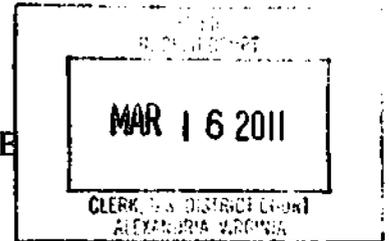
Interest on Restitution has been waived.

If there are multiple payees, any payment not made directly to a payee shall be divided proportionately among the payees named unless otherwise specified here:

Defendant is jointly and severally liable with co-defendants.

**FORFEITURE**

Forfeiture has not been ordered in this case.



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 1:11CR119
	)	
TERESA KELLY,	)	
	)	
Defendant.	)	

PLEA AGREEMENT

Denis J. McInerney, Chief, Fraud Section of the Criminal Division of the United States Department of Justice, Patrick F. Stokes, Deputy Chief, and Robert A. Zink, Trial Attorney, and Neil H. MacBride, United States Attorney for the Eastern District of Virginia, Charles F. Connolly and Paul J. Nathanson, Assistant United States Attorneys, and the defendant, TERESA KELLY, and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

**1. Offenses and Maximum Penalties**

The defendant agrees to waive indictment and plead guilty to a one-count criminal information charging the defendant with conspiracy (in violation of Title 18, United States Code, Section 371) to commit bank fraud (in violation of Title 18, United States Code, Section 1344), securities fraud (in violation of Title 18, United States Code, Section 1348), and wire fraud (in violation of Title 18, United States Code, Section 1343). The maximum penalties for conspiracy are a maximum term of five (5) years of imprisonment; a fine of \$250,000, or alternatively, a fine of not more than the greater of twice the gross gain or twice the gross loss; full restitution; a special

assessment; and three (3) years of supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

**2. Factual Basis for the Plea**

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offenses charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

**3. Assistance and Advice of Counsel**

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

**4. Role of the Court and the Probation Office**

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 , United States Code, Section 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005), the Court, after considering the factors set forth in Title 18, United States Code, Section 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

**5. Waiver of Appeal, FOIA and Privacy Act Rights**

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also

hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

**6. Recommended Sentencing Factors**

In accordance with Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States and the defendant will recommend to the Court that the following provisions of the Sentencing Guidelines apply:

- a. pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level for the conduct charged in Count One is 6;
- b. pursuant to U.S.S.G. § 2B1.1(b)(2)(c), the conduct charged in Count One involved 250 or more victims, and pursuant to U.S.S.G. § 2B1.1(b)(14)(B), the conduct charged in Count One substantially jeopardized the safety and soundness of a financial institution; accordingly, the defendant qualifies for an 8-level upward adjustment (see U.S.S.G. § 2B1.1(b)(14)(c));
- c. pursuant to U.S.S.G. Section 2B1.1(b)(9), the conduct charged in Count One involved sophisticated means and qualifies for a 2-level upward adjustment;
- d. pursuant to U.S.S.G. § 3B1.1(c), the defendant's role in the offense charged in Count One was one of a supervisor in a criminal activity and qualifies for a 2-level enhancement; and
- e. pursuant to U.S.S.G. § 3E1.1(b), the defendant has assisted the government

in the investigation and prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. If the defendant qualifies for a 2-level decrease in offense level pursuant to U.S.S.G. § 3E1.1(a) and the offense level prior to the operation of that section is a level 16 or greater, the government agrees to file, pursuant to U.S.S.G. § 3E1.1(b), a motion prior to, or at the time of, sentencing for an additional 1-level decrease in the defendant's offense level.

The United States and the defendant may argue at sentencing that additional provisions of the Sentencing Guidelines apply.

**7. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

**8. Payment of Monetary Penalties**

The defendant understands and agrees that whatever monetary penalties are imposed by the Court pursuant to Title 18, United States Code, Section 3613, will be due and payable immediately and subject to immediate enforcement by the United States. Furthermore, the defendant agrees to provide all of her financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States

to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

**9. Restitution for Offenses of Conviction**

The defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. At this time, the Government is aware that the following victims have suffered the following losses: To Be Determined

**10. Limited Immunity from Further Prosecution**

The United States will not further criminally prosecute the defendant for the specific conduct described in the information or statement of facts. The defendant understands that this agreement is binding only upon the Fraud Section of the Criminal Division of the United States Department of Justice and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia. This agreement does not bind the Civil Division of the United States Department of Justice or the United States Attorney's Office for the Eastern District of Virginia or any other United States Attorney's Office, nor does it bind any other Section of the Department of Justice, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that might be made against the defendant.

**11. Defendant's Cooperation**

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the United States. In that regard:

- a. The defendant agrees to testify truthfully and completely as a witness before any grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation by the United States or at the request of the United States.
- d. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- e. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- f. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

**12. Use of Information Provided by the Defendant Under This Agreement**

Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the

defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

**13. Prosecution in Other Jurisdictions**

The Fraud Section of the Criminal Division of the United States Department of Justice and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the Fraud Section of the Criminal Division of the United States Department of Justice and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia agree, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

**14. Defendant Must Provide Full, Complete and Truthful Cooperation**

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

**15. Motion for a Downward Departure**

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

**17. Order of Prohibition**

The defendant agrees that she will consent to an Order of Prohibition From Further Participation pursuant to Section 8(e) of the Federal Deposit Insurance Act, Title 12, United States Code, Section 1818(e), by entering into a Stipulation and Consent to the Issuance of an Order of Prohibition From Further Participation. The defendant also agrees that she will consent to an Order of Prohibition by entering into a Stipulation and Consent to the Issuance of an Order of Prohibition with the Office of Thrift Supervision.

**18. The Defendant's Obligations Regarding Assets Subject to Forfeiture**

The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past eight years, or in which the defendant has or had during that time any financial interest. The defendant agrees to take all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the United States may choose to administer concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous six years. Defendant agrees to forfeit to the United States all of the defendant's interests in any asset of a value of more than \$1000 that, within the last eight years, the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

**19. Forfeiture Agreement**

The defendant agrees to forfeit all interests in any asset that the defendant owns or over which the defendant exercises control, directly or indirectly, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of her offense. The defendant further agrees to waive all interest in the asset(s) in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of the sentence that may

be imposed in this case. The Fraud Section of the Criminal Division of the United States Department of Justice and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia agree to recommend to the Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section that any monies obtained from the defendant through forfeiture be transferred to the Clerk to distribute to the victims of the offense in accordance with any restitution order entered in this case.

**20. Waiver of Further Review of Forfeiture**

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also waives any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct, property facilitating illegal conduct, property involved in illegal conduct giving rise to forfeiture, and substitute assets for property otherwise subject to forfeiture.

**21. Breach of the Plea Agreement and Remedies**

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and

time scheduled with the Court by the United States (in consultation with the defendant's attorney).

If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or

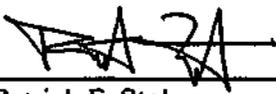
any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

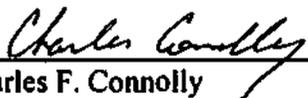
**22. Nature of the Agreement and Modifications**

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and her attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Denis J. McNerney  
Chief  
Criminal Division, Fraud Section  
United States Department of Justice

By:  3/16/2011  
Patrick F. Stokes  
Deputy Chief  
Robert A. Zink  
Trial Attorney

Neil H. MacBride  
United States Attorney

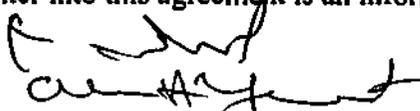
By:   
Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys

**Defendant's Signature:** I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to Title 18, United States Code, Section 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: 3-16-11   
Teresa Kelly  
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending information. Further, I have reviewed Title 18, United States Code, Section 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 3/16/11

  
\_\_\_\_\_  
Robert Leventhal, Esq.  
Alan Yamamoto, Esq.  
Counsel for the Defendant

Exclusion Summary

Exclusion Summary

There may be instances when an Individual or Firm has the same or similar name as your search criteria, but is actually a different party. Therefore, it is important that you verify a potential match with the excluding agency identified in the exclusion's details. To confirm or obtain additional information, contact the federal agency that took the action against the listed party. Agency points of contact, including name and telephone number, may be found by navigating to the Agency Exclusion POCs page within SAM Help.

View Exclusion History

Current Record

VIEW HISTORICAL RECORD

PRINT

[Expand All] | [Collapse All]

Current Record Details

Exclusion Details:

Exclusion Program: Reciprocal
Classification Type: Individual
Exclusion Type: Ineligible (Proceedings Completed)

Nature (Cause):

Determined ineligible upon completion of administrative proceedings establishing by preponderance of the evidence of a cause of a serious and compelling nature that it affects present responsibility; or determined ineligible based on other regulation, statute, executive order or other legal authority.

Effect:

Procurement:

Agencies shall not solicit offers from, award contracts to renew, place new orders with, or otherwise extend the duration of current contracts, or consent to subcontracts in excess of \$30,000 (other than commercially available off-the-shelf items (COTS)), with these contractors unless the agency head (or designee) determines in writing there is a compelling reason to do so.

Nonprocurement:

No agency in the Executive Branch shall enter into, renew, or extend primary or lower tier covered transactions to a participant or principal determined ineligible unless the head of the awarding agency grants a compelling reasons exception in writing. Additionally, agencies shall not make awards under certain discretionary Federal assistance, loans, benefits (or contracts there under); nor shall an ineligible person participate as a principal, including but not limited to, agent, consultant, or other person in a position to handle, influence or control Federal funds, or occupying a technical or professional position capable of substantially influencing the development or outcome of a funded activity; nor act as an agent or representative of other participants in Federal assistance, loans and benefits programs. Contact the award agency for questions regarding the extent of Nonprocurement transaction award ineligibility. The period of ineligibility is specified by the termination date.

CT Code:

R

Active Date:

05/06/2011

Termination Date:

05/05/2014

Excluding Agency :HOUSING AND URBAN DEVELOPMENT, UNITED STATES DEPT OF

Status :Active

Create Date :07/27/2012

Update Date :07/27/2012

Additional Comments:

Primary Address:

Verify Street Address

Street Address 1:

Street Address 2:

Verify

City:

Ocoee

State/Province:

FL

ZIP/Postal Code:

34761

Country:

UNITED STATES

Identification Information:

Prefix:

First Name:

Teresa

Middle Name:

Last Name:

Kelly

Suffix:

NPI:

Cross-References:

No Cross References

More Locations:

No Locations

Exclusion Summary

Exclusion Summary

There may be instances when an Individual or Firm has the same or similar name as your search criteria, but is actually a different party. Therefore, it is important that you verify a potential match with the excluding agency identified in the exclusion's details. To confirm or obtain additional information, contact the federal agency that took the action against the listed party. Agency points of contact, including name and telephone number, may be found by navigating to the Agency Exclusion POCs page within SAM Help.

View Exclusion History

Current Record

VIEW HISTORICAL RECORD

PRINT

[Expand All] | [Collapse All]

Current Record Details

Exclusion Details:

Exclusion Program: Reciprocal
Classification Type: Individual
Exclusion Type: Ineligible (Proceedings Pending)
Nature (Cause):

Preliminary ineligible based upon adequate evidence of conduct indicating a lack of business honesty or integrity, or a lack of business integrity, or regulation, statute, executive order or other legal authority, pending completion of an investigation and/or legal proceedings; or based upon initiation of proceedings to determine final ineligibility based upon regulation, statute, executive order or other legal authority or a lack of business integrity or a preponderance of the evidence of any other cause of a serious and compelling nature that it affects present responsibility.

Effect:

Procurement:

Agencies shall not solicit offers from, award contracts to renew, place new orders with, or otherwise extend the duration of current contracts, or consent to subcontracts in excess of \$30,000 (other than commercially available off-the-shelf items (COTS)), with these contractors unless the agency head (or designee) determines in writing there is a compelling reason to do so.

Nonprocurement:

No agency in the Executive Branch shall enter into, renew, or extend primary or lower tier covered transactions to a participant or principal determined preliminarily ineligible unless the head of the awarding agency grants a compelling reasons exception in writing. Additionally, agencies shall not make awards under certain discretionary Federal assistance, loans, benefits (or contracts there under); nor shall an ineligible person participate as a principal, including but not limited to, agent, consultant, or other person in a position to handle, influence or control Federal funds, or occupying a technical or professional position capable of substantially influencing the development or outcome of a funded activity; nor act as an agent or representative of other participants in Federal assistance, loans and benefits programs. Contact the award agency for questions regarding the extent of Nonprocurement transaction award ineligibility. The termination date will be listed as "Indefinite" (Indef.) unless otherwise specified.

CT Code: S
Active Date: 05/06/2011
Termination Date: Indefinite

Excluding Agency :HOUSING AND URBAN DEVELOPMENT, UNITED STATES DEPT OF
Status :Active
Create Date :07/27/2012
Update Date :07/27/2012

Additional Comments:

Primary Address:

Verify Street Address

Street Address 1:

Street Address 2:

Input fields for Street Address 1 and Street Address 2

Verify

City: Ocoee
State/Province: FL
ZIP/Postal Code: 34761
Country: UNITED STATES

Identification Information:

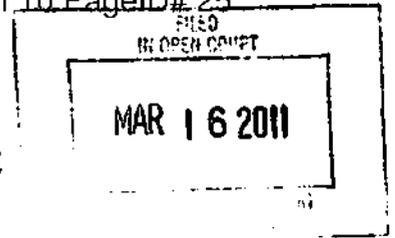
Prefix:
First Name: Teresa
Middle Name:
Last Name: Kelly
Suffix:
NPI:

Cross-References:

No Cross References

More Locations:

No Locations



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 1:11CR119
	)	
TERESA KELLY,	)	
	)	
Defendant.	)	

STATEMENT OF FACTS

The United States and the defendant, TERESA KELLY, agree that had this matter proceeded to trial the United States would have proven the facts set forth in this Statement of Facts beyond a reasonable doubt. Unless otherwise stated, the time periods for the facts set forth herein are at all times relevant to the charges in the Information.

I. Overview

1. The defendant was an operations supervisor in Colonial Bank’s Mortgage Warehouse Lending Division (MWLD). MWLD was located in Orlando, Florida.

2. From in or about 2002 through in or about August 2009, co-conspirators, including the defendant, engaged in a scheme to defraud various entities and individuals, including Colonial Bank, a federally insured bank; Colonial BancGroup, Inc.; shareholders of Colonial BancGroup; and the investing public. One of the goals of the scheme to defraud was to cause Colonial Bank to provide funding to Taylor, Bean & Whitaker (TBW) to assist TBW in covering expenses related to operations and servicing payments owed to third-party purchasers of loans and/or mortgage-backed securities. Although the defendant did not personally receive

funds paid out by Colonial Bank to TBW as a result of the scheme to defraud, she knowingly and intentionally placed Colonial Bank and Colonial BancGroup at significant risk of incurring losses as a result of the scheme and, in fact, caused Colonial Bank to purchase assets from TBW of substantially more than \$400 million that in fact had no value and were held on Colonial Bank's and Colonial BancGroup's books as if they had actual value.

## II. Colonial Bank's Purchase of Worthless Assets

3. In or about early 2002, TBW began running overdrafts in its master bank account at Colonial Bank due to TBW's inability to meet its operating expenses, such as mortgage loan servicing payments owed to investors in Freddie Mac and Ginnie Mae securities, payroll, and other obligations. The defendant and co-conspirators covered up the overdrafts by transferring, or "sweeping," overnight money from another TBW account with excess funds into the master account to avoid the master account falling into an overdrawn status. This sweeping of funds gave the false appearance to other Colonial Bank employees that TBW's master account was not overdrawn. The day after sweeping funds, the conspirators would cause the money to be returned to the other account, only to have to sweep funds back into the master account later that day to hide the deficit again. By in or about December 2003, the size of the deficit due to overdrafts had grown to tens of millions of dollars.

4. In or about December 2003, Lee Farkas, the chairman of TBW, and co-conspirators, including the defendant, caused the deficit in TBW's master account at Colonial Bank to be transferred to "COLB," a mortgage loan purchase facility at MWLD. Through the COLB facility, Colonial Bank purchased interests in individual residential mortgage loans from TBW pending resale of the loans to third-party investors. The purpose of the COLB facility was

to provide mortgage companies, like TBW, with liquidity to generate new mortgage loans pending the resale of the existing mortgage loans to investors. The COLB facility was designed such that Colonial Bank would recoup its outlay only after TBW resold a mortgage loan to a third-party investor, which generally was supposed to take place within 90 days after being placed on the COLB facility.

5. In this part of the scheme, which the conspirators called "Plan B," Farkas and other co-conspirators, including the defendant, sought to disguise the misappropriations of tens of millions of dollars of Colonial Bank funds to cover up TBW shortfalls or overdrafts of TBW's accounts at Colonial Bank as payments related to Colonial Bank's purchase through the COLB facility of legitimate TBW mortgage loans. Farkas and other co-conspirators, including the defendant, accomplished this by causing TBW to provide false mortgage loan data to Colonial Bank under the pretense that it was selling Colonial Bank interests in mortgage loans. As the defendant, Farkas, and other co-conspirators knew, however, the Plan B data included data for loans that did not exist or that TBW had already committed or sold to other third-party investors. As a result, these loans were not, in fact, available for sale to Colonial Bank. Whether a Plan B loan was fictitious or owned by a third party, the defendant knew and understood that she and her co-conspirators had caused Colonial Bank to pay TBW for an asset that was worthless to Colonial Bank.

6. Farkas and other co-conspirators at TBW caused the Plan B loan data to be delivered to the defendant and/or other co-conspirators at Colonial Bank. The defendant and other co-conspirators caused the Plan B loan data to be recorded in Colonial Bank's books and

records to give the false appearance that Colonial Bank had purchased legitimate interests in mortgage loans from TBW through COLB.

7. To avoid scrutiny from regulators, auditors, and Colonial Bank management of Plan B loans sold to Colonial Bank, Farkas and other co-conspirators devised and, with the defendant's assistance, implemented a plan that gave the appearance that TBW was periodically selling the Plan B loans off of the COLB facility. In fact, Plan B loans were unable to be sold off of the COLB facility, and the conspirators instead created a document trail that disguised the existence of the Plan B loans.

8. In or about mid-2005, conspirators caused the deficit created by Plan B to be moved from the COLB facility to MWLD's Assignment of Trade (AOT) facility. The AOT facility was designed for the purchase of interests in pools of loans, which were referred to as "Trades," that were in the process of being securitized and/or sold to third-party investors. The conspirators moved the deficit to the AOT facility in part because, unlike the COLB facility, Colonial Bank generally did not track in its accounting records loan-level data for the Trades held on the AOT facility, thus making detection of the scheme by regulators, auditors, Colonial Bank management, and others less likely.

9. In an effort to transfer the deficit caused by the Plan B loans on the COLB facility to the AOT facility, Farkas and other co-conspirators, including the defendant, caused TBW to engage in sales to Colonial Bank of fictitious Trades purportedly backed by pools of Plan B loans. In fact, the Trades had no collateral backing them. As the defendant and other co-conspirators knew, Colonial Bank held these fictitious Trades in its accounting records at the amount Colonial Bank paid for them.

10. After moving the Plan B deficit from the COLB facility to the AOT facility, TBW continued to experience significant operating losses. From in or about mid-2005 through in or about 2009, Farkas and other co-conspirators, including the defendant, continued to cause TBW to sell additional fictitious Trades to Colonial Bank through the AOT facility. These Trades had no pools of loans collateralizing them. Moreover, conspirators caused the creation of false documents to reflect agreements, as required under the AOT facility, for third-party investors to purchase the Trades within a short period of time. This fraudulent AOT funding was typically provided in an ad hoc fashion based on requests from Farkas or other co-conspirators at TBW for, among other reasons, servicing obligations, operational expenses, and covering overdrafts.

11. To obtain the fraudulent AOT funding, Farkas or other TBW co-conspirators would contact the defendant and/or another co-conspirator at Colonial Bank to request an advance from the AOT facility. Once an advance had been agreed to, TBW co-conspirators caused a wire request to be generated for the funds and provided the defendant and other Colonial Bank co-conspirators with false documentation purporting to represent the sale of pools to Colonial Bank to support the release of the funds. The defendant and her co-conspirators caused the false information to be entered on Colonial Bank's books and records, giving the appearance that Colonial Bank owned a 99% interest in legitimate securities on the AOT facility in exchange for the advances, when in fact those securities had no value and could not be sold.

12. In addition to causing Colonial Bank to hold in its accounting records fictitious AOT Trades with no collateral backing them, Farkas and other co-conspirators, including the defendant, caused Colonial Bank to hold in its accounting records AOT Trades backed by assets that TBW was unable to sell, including but not limited to impaired-value loans, charged-off

loans, previously sold loans, loans in foreclosure, and real-estate owned (REO) property.

Conspirators also caused the creation of false documents to reflect agreements, as required under the AOT facility, for third-party investors to purchase these impaired Trades within a short period of time.

13. As with the Plan B loans, the defendant, Farkas, and other co-conspirators took steps to cover up the fictitious and impaired Trades on AOT by giving the false appearance that, periodically, the fictitious and impaired Trades were sold to third parties. The conspirators did this by, among other things, engaging in sham sales to hide the fact that the vast majority of assets backing the AOT Trades could not be resold because the assets were either wholly fictitious or consisted of, among other things, impaired-value loans and REO and, in either case, had no corresponding, legitimate commitment to be purchased by third parties. Farkas and other co-conspirators, including the defendant, engaged in these sham sales to deceive others, including regulators, auditors, and certain Colonial Bank management.

14. The size of the deficit created by providing fraudulent advances to TBW through Plan B loans and the fictitious AOT Trades fluctuated during the conspiracy, and it reached into the hundreds of millions of dollars. During the course of the conspiracy, the defendant and other co-conspirators negotiated the transfer of funds to Colonial Bank from TBW bank accounts or lending facilities and obtained other collateral from TBW and Farkas in order to reduce the deficit caused by the Plan B loans and the fictitious AOT Trades. Despite these efforts, the government would prove at a trial that the deficit in AOT caused by the defendant's and her co-conspirators' scheme was significantly more than \$400 million on or about August 14, 2009, the day the Alabama State Banking Department seized Colonial Bank and appointed the Federal

Deposit Insurance Corporation (FDIC) as receiver. Moreover, the government would prove that some wire transfers of funds by Colonial Bank to TBW for fictitious Plan B loans and AOT securities involved transfers to LaSalle Bank, which had been purchased by Bank of America. Some of these wires were processed from Chicago, Illinois, through a Bank of America server located in Richmond, Virginia.

### III. False Financial Statements

15. During the conspiracy, the defendant was aware that the financial results of MWLD were incorporated into Colonial BancGroup's publicly filed financial statements, including annual reports on Form 10-K and quarterly reports on Form 10-Q filed with the United States Securities and Exchange Commission (SEC). As the government would prove, Colonial BancGroup's Forms 10-K and Forms 10-Q were filed electronically with the SEC's EDGAR Management Office of Information and Technology, in Alexandria, Virginia, during the period set forth in the Information. The defendant and her co-conspirators took steps to hide the fraud scheme described in this statement of facts from Colonial Bank's and Colonial BancGroup's senior management, auditors, and regulators, and Colonial BancGroup's shareholders, including by providing materially false information that significantly overstated assets held in the COLB and AOT facilities. The defendant knew that these actions caused materially false financial data to be reported to Colonial BancGroup and incorporated in its publicly filed statements.

16. For example, in its Form 10-K for the year ending December 31, 2008, which was filed on or about March 2, 2009, Colonial BancGroup reported that MWLD had total assets under management of approximately \$4.3 billion, of which approximately \$1.55 billion, or 36%, were held as AOT Trades reported as Securities Purchased under Agreements to Resell. In its

last Form 10-Q filed with the SEC, for the period ended March 31, 2009, which was filed on or about May 8, 2009, Colonial BancGroup reported that MWLD managed assets valued at approximately \$4.9 billion, with approximately \$1.6 billion, or approximately 33%, held as AOT Trades reported as Securities Purchased under Agreements to Resell. As the defendant knew, the vast majority of the securities held on AOT at that time were fictitious or impaired and were not under legitimate agreements to be resold to third-party investors.

IV. January 6, 2009, AOT Transaction

17. On or about January 6, 2009, the defendant received an email request from a co-conspirator at TBW requesting that Colonial Bank wire approximately \$66,400,000 to LaSalle Bank, on behalf of Ocala Funding, for the purported purchase of three Trades from TBW. The co-conspirator also sent the defendant three "trade assignment agreements" purporting to represent that TBW had arranged with a third-party to purchase the Trades in approximately one month. As the defendant knew, the transaction was part of an effort by the co-conspirators to periodically "recycle" the Trades held on the AOT facility by making it appear that Trades had been sold and replaced by newly purchased Trades. As the defendant knew, the three Trades "purchased" by Colonial Bank had no loans assigned to them, and thus no actual value, and the trade assignment agreements were false as there was no third-party purchaser for the Trades. As the defendant knew, the three new Trades were held in Colonial Bank's books as securities purchased under agreements to resell.

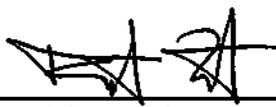
V. Conclusion

18. The defendant admits that this statement of facts does not represent and is not intended to represent an exhaustive factual recitation of all the facts about which she has knowledge relating to the scheme to defraud as described herein.

19. The defendant admits that her actions, as recounted herein, were in all respects intentional and deliberate, reflecting an intention to do something the law forbids, and were not in any way the product of any accident or mistake of law or fact.

Respectfully submitted,

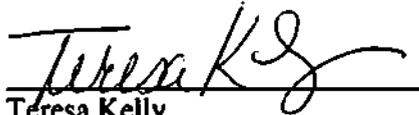
Denis J. McInerney  
United States Department of Justice  
Chief  
Criminal Division, Fraud Section

By:  3/16/2011  
Patrick F. Stokes  
Deputy Chief  
Robert A. Zink  
Trial Attorney

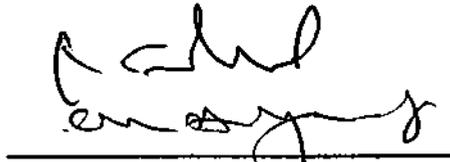
Neil H. MacBride  
United States Attorney

By:   
Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, TERESA KELLY, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate to the best of my knowledge, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

  
\_\_\_\_\_  
Teresa Kelly  
Defendant

I am TERESA KELLY's attorney. I have carefully reviewed the above Statement of Facts with her. To my knowledge, her decision to stipulate to these facts is an informed and voluntary one.

  
\_\_\_\_\_  
Robert Alan Leventhal, Esq.  
Alan Yamamoto, Esq.  
Attorneys for Defendant



JUL 08 2011

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY INVESTMENT CENTER

**VIA UNITED PARCEL SERVICE**

Ms. Teresa Kelly  
a.k.a Teresa A. Kelly

(b)(7)(C)

Ocoee, FL 34761

Re: Notice of Proposed Debarment and Continuation of Existing Suspension

Dear Ms. Kelly:

You are hereby notified that the Department of Housing and Urban Development (HUD) is proposing your debarment from future participation in procurement and nonprocurement transactions as a participant or principal, with HUD and throughout the Executive Branch of the Federal Government, for a three-year period from May 6, 2011, the date of your suspension. This action is in accordance with the procedures set forth at Title 2, Code of Federal Regulations (C.F.R.), Parts 180 and 2424. Copies of those regulations accompany this Notice. Your proposed debarment is based upon your guilty plea and conviction in the United States District Court for the Eastern District of Virginia, Alexandria Division, for violation of 18 U.S.C. § 371 (Conspiracy to Commit Bank Fraud, Wire Fraud, and Securities Fraud). You pled guilty and were convicted of selling and transferring nonexistent or previously sold collateralized loans, covering up misappropriations of funds, and filing false annual reports with the Securities and Exchange Commission. Your actions are evidence of serious irresponsibility and are cause for debarment under the provisions of 2 C.F.R. § 180.800(a)(1), (3) and (4).

In addition, you continue to be suspended from participation in procurement and nonprocurement transactions as a participant or principal, with HUD and throughout the Executive Branch of the Federal Government. This action is also in accordance with the procedures set forth at 2 C.F.R., Parts 180 and 2424. Your conviction constitutes independent adequate evidence on which to base your suspension under the provisions of 2 C.F.R. §§ 180.700 and 180.705. The violation in the conviction specifies that you conspired to defraud the United States, which is contrary to the public's interest. Given the seriousness of the violation, I have determined that continuing your suspension is necessary to protect the public interest. Your suspension is for a temporary period pending the completion of the debarment proceedings.

Since you were an operations supervisor of a mortgage lending division, handling FHA-insured loans, you have been or may reasonably be expected to be involved in covered transactions.

If you decide to contest this proposed debarment and continuing suspension, you may submit a written argument and request an informal hearing, which you may attend in person or by telephone or through a representative. Pursuant to 2 C.F.R. §§ 180.730 and 180.825, your written submission must identify: 1) specific facts that contradict the statements contained in this Notice of Proposed Debarment and Continuation of Existing Suspension (a general denial is insufficient to raise a genuine dispute over facts material to the debarment); 2) all existing, proposed, or prior exclusions against you under regulations implementing Executive Order 12549, and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies; 3) all criminal and civil proceedings against you not included in this Notice of Proposed Debarment and Continuation of Existing Suspension that grew out of the facts relevant to the cause(s) stated in this Notice; and 4) all of your affiliates as defined in the enclosed regulations at 2 C.F.R. § 180.905. If you provide false information, the Department may seek further criminal, civil or administrative action against you as appropriate.

Please be advised that contesting a suspension does not stay the suspension. While contesting the suspension, you are prohibited from participating in any nonprocurement or procurement transaction with the Federal Government as identified above. Your written opposition and hearing request must be submitted within 30 days of your receipt of this Notice of Proposed Debarment and Continuation of Existing Suspension. The response may be mailed to the Debarment Docket Clerk, U.S. Department of Housing and Urban Development, Departmental Enforcement Center, 451 7th Street, S.W., B-133 - Portals 200, Washington, DC 20410. If you wish to use a courier or overnight mail, send your response to the Docket Clerk, Departmental Enforcement Center, 1250 Maryland Avenue, S.W., Suite 200, Washington, DC 20024.

(b)(7)(C) is my designee in this matter. If you request a hearing, Mr. (b)(7)(C) will set a briefing and hearing schedule as necessary. He has the authority to review any written submissions, conduct an informal hearing, make a recommendation as to whether there is a genuine dispute over material facts, and propose a recommended decision. If I determine that a genuine dispute over material facts exists, I will refer this matter to a Hearing Officer, who is an administrative judge, for a formal hearing to make findings of fact pursuant to 2 C.F.R. § 180.845. After receiving those findings of fact, and any related submissions from the parties, I will make a final decision. If you have any questions, please call Stanley E. Field, Director, Compliance Division. (b)(7)(C) may be reached at (b)(7)(C)

The final decision regarding your proposed debarment will be based upon evidence and information, including any written information and argument, that both you and the Government may submit in this matter. If you fail to respond to this Notice within the 30-day period, this proposed debarment will be affirmed.

If this matter is referred to a Hearing Officer for a formal hearing, this Notice of administrative action shall also serve as a Complaint, in compliance with 24 C.F.R. § 26.13(a), (b) and (c).

Sincerely,

(b)(7)(C)

Craig T. Clemmensen  
Director  
Departmental Enforcement Center

Enclosures

cc:

CACB Director, DEC (Clemmensen, Craig T.) Port#200

CACC Associate General Counsel for Program Enforcement  
(Narode, Dane M.) Port#200

4OGI Special Agent in Charge, Tampa, OIG  
(Mowery, Timothy) [OIG File No. 2010 FC 002468 I]

4OGI Assistant Special Agent in Charge, Tampa, OIG (b)(7)(C)

4DGI Assistant Special Agent in Charge, Miami, OIG (b)(7)(C)

4OGI Special Agent, Tampa, OIG (b)(7)(C)

Sharpley, Christopher R. Deputy Inspector General for Investigations.  
FHFA-OIG ([Christopher.Sharpley@fhfa.gov](mailto:Christopher.Sharpley@fhfa.gov))

Emerzian, Peter. Special Agent in Charge, Washington DC. FHFA-OIG  
([Peter.Emerzian@fhfa.gov](mailto:Peter.Emerzian@fhfa.gov))

Baker, Brian W., Deputy Chief Counsel, Washington DC. FHFA-OIG  
([Brian.Baker@fhfa.gov](mailto:Brian.Baker@fhfa.gov))

Saddler, Bryan. Chief Counsel, Washington, DC. FHFA-OIG  
([Bryan.Saddler@fhfa.gov](mailto:Bryan.Saddler@fhfa.gov))

4AMA Regional Administrator, Atlanta (Jennings, Ed)

4OMA Field Office Director, Tampa (Gadsden, Rosemary)

4AC Regional Counsel, Atlanta (Murray, Donnie)

4DC Chief Counsel, Miami (Swain, Sharon)

4AHHQ3 Branch Chief, QAD, Atlanta SF HOC (Kittrell, Nora G.)

CACBB File Port#200

CACBB Burks Port#200

CACBB Field Port#200

Sharepoint: Burks\Kelly Teresa\Proposed Debarment Continue Existing Suspension



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0800

SEP 12 2011

Office of General Counsel  
Departmental Enforcement Center

**VIA UNITED PARCEL SERVICE**

Ms. Teresa Kelly  
a.k.a. Teresa A. Kelly

(b)(7)(C)

Ocoee, FL 34761

Re: Notice of Final Determination

Dear Ms. Kelly:

By notice dated July 8, 2011 (Notice), you were told of the proposed debarment action against you by the Department of Housing and Urban Development (HUD) for a three year period from May 6, 2011, the date of your suspension. You were informed of your right to submit, within 30 days of your receipt of the Notice, a written argument and a request for a hearing in opposition to the proposed debarment action. The Notice also advised you that if you did not respond within 30 days, a final determination would be issued.

You did not respond to the Notice within the required 30 days and your debarment has become final. During your period of debarment, you are excluded from procurement and nonprocurement transactions, as either a principal or participant, with HUD and throughout the Executive Branch of the Federal Government. Your debarment is effective through May 5, 2014. Your suspension is hereby superseded by this debarment.

Sincerely,

(b)(7)(C)

Craig T. Clemmensen  
Director  
Departmental Enforcement Center

cc:

CACB Director, DEC (Clemmensen, Craig T.) Port#200

CACC Associate General Counsel for Program Enforcement  
(Narode, Dane M.) Port#200

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(Mowery, Timothy) [OIG File No. 2010 FC 002468 I]

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4DGI Assistant Special Agent in Charge, Miami, OIG

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([Peter.Emerzian@fhfa.gov](mailto:Peter.Emerzian@fhfa.gov))

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([Brian.Baker@fhfa.gov](mailto:Brian.Baker@fhfa.gov))

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([Bryan.Saddler@fhfa.gov](mailto:Bryan.Saddler@fhfa.gov))

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4AC Regional Counsel, Atlanta (Murray, Donnie)

4DC Chief Counsel, Miami (Swain, Sharon)

4AIIIHQ3 Branch Chief, QAD, Atlanta SF HOC (Kittrell, Nora G.)

CACBB File Port#200

CACBB Burks Port#200

CACBB Field Port#200

CID [cid\\_dec@hudoig.gov](mailto:cid_dec@hudoig.gov)

Sharepoint: Burks\Kelly Teresa\Final Debarment with Suspension



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-0500

Office of General Counsel  
Departmental Enforcement Center

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Ms. Catherine Kissick  
Register Number: 77945-083  
FCI Coleman Medium  
Federal Correctional Institution  
P.O. Box 1032  
Coleman, FL 33521

Re: Notice of Final Determination

Dear Ms. Kissick:

By notice dated December 8, 2011 (Notice), you were told that the Department of Housing and Urban Development (HUD) proposed your debarment for an indefinite period. You were informed of your right to submit, within 30 days of your receipt of the Notice, a written argument and a request for a hearing in opposition to the proposed debarment action. You also were advised that if you did not respond to the Notice within 30 days, a final determination would be issued.

You did not respond to the Notice within the required 30 days and your debarment has become final. During your debarment, you are excluded from procurement and nonprocurement transactions, as either a principal or participant, with HUD and throughout the Executive Branch of the Federal Government. Your debarment is effective for an indefinite period from the date of this notice.

Sincerely,

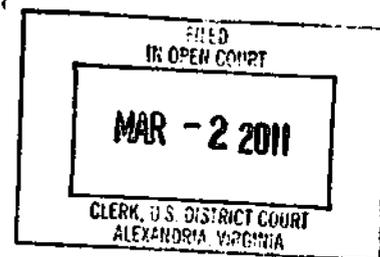
(b)(7)(C)

Craig T. Clemmensen  
Director  
Departmental Enforcement Center

cc:

CACB	Director, DEC (Clemmensen, Craig T.)	Port#200
CACC	Associate General Counsel for Program Enforcement (Narode, Dane M.)	Port#200
4OGI	Special Agent in Charge, Tampa, OIG (Mowery, Timothy)	
4OGI	Assistant Special Agent in Charge, Tampa, OIG	(b)(7)(C)
4DGI	Assistant Special Agent in Charge, Miami, OIG	(b)(7)(C)
4OGI	Special Agent, Tampa, OIG	(b)(7)(C)
	Sharpley, Christopher R, Deputy Inspector General for Investigations, FHFA-OIG ( <a href="mailto:Christopher.Sharpley@fhfa.gov">Christopher.Sharpley@fhfa.gov</a> )	
	Emerzian, Peter, Special Agent in Charge, Washington DC, FHFA-OIG ( <a href="mailto:Peter.Emerzian@fhfa.gov">Peter.Emerzian@fhfa.gov</a> )	
	Baker, Brian W., Deputy Chief Counsel, Washington DC, FHFA-OIG ( <a href="mailto:Brian.Baker@fhfa.gov">Brian.Baker@fhfa.gov</a> )	
	Saddler, Bryan, Chief Counsel, Washington, DC, FHFA-OIG ( <a href="mailto:Bryan.Saddler@fhfa.gov">Bryan.Saddler@fhfa.gov</a> )	
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4OMA	Field Office Director, Tampa (Gadsden, Rosemary)	
4AC	Regional Counsel, Atlanta (Murray, Donnie)	
4DC	Chief Counsel, Miami (Swain, Sharon)	
4AHHQ3	Branch Chief, QAD, Atlanta SF HOC (Kittrell, Nora G.)	
CACBB	File	Port#200
CACBB	Aker	Port#200
CACBB	Field	Port#200
CID	<a href="mailto:cid_dec@hudoig.gov">cid_dec@hudoig.gov</a>	

Sharepoint: Aker: Kissick, Catherine.Final Debarment



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 1:11CR88
	)	
CATHERINE KISSICK,	)	
	)	
Defendant.	)	

PLEA AGREEMENT

Denis J. McNerney, Chief, Fraud Section of the Criminal Division of the United States Department of Justice, Patrick F. Stokes, Deputy Chief, and Robert A. Zink, Trial Attorney, and Neil H. MacBride, United States Attorney for the Eastern District of Virginia, Charles F. Connolly and Paul J. Nathanson, Assistant United States Attorneys, and the defendant, CATHERINE KISSICK, and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

**1. Offenses and Maximum Penalties**

The defendant agrees to waive indictment and plead guilty to a one-count criminal information charging the defendant with conspiracy (in violation of Title 18, United States Code, Section 1349) to commit bank fraud (in violation of Title 18, United States Code, Section 1344), securities fraud (in violation of Title 18, United States Code, Section 1348), and wire fraud (in violation of Title 18, United States Code, Section 1343). The maximum penalties for conspiracy are a maximum term of thirty (30) years of imprisonment; a fine of \$250,000, or alternatively, a fine of not more than the greater of twice the gross gain or twice the gross loss; full restitution; a special

assessment; and five (5) years of supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

**2. Factual Basis for the Plea**

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offenses charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

**3. Assistance and Advice of Counsel**

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

**4. Role of the Court and the Probation Office**

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

**5. Waiver of Appeal, FOIA and Privacy Act Rights**

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also

hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

**6. Recommended Sentencing Factors**

In accordance with Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States and the defendant will recommend to the Court that the following provisions of the Sentencing Guidelines apply:

- a. pursuant to USSG § 2B1.1(a)(1), the base offense level for the conduct charged in Count One is 7;
- b. pursuant to USSG § 2B1.1(b)(2)(C), the conduct charged in Count One involved 250 or more victims, and pursuant to USSG § 2B1.1(b)(14)(B), the conduct charged in Count One substantially jeopardized the safety and soundness of a financial institution; accordingly, the defendant qualifies for an 8-level upward adjustment pursuant to USSG § 2B1.1(b)(14)(C);
- c. pursuant to USSG § 2B1.1(b)(9), the conduct charged in Count One involved sophisticated means and qualifies for a 2-level upward adjustment;
- d. pursuant to USSG § 3B1.1(a), the defendant's role in the offense charged in Count One was one of an organizer or leader in a criminal activity that involved five or more participants and was otherwise extensive and qualifies for a 4-level enhancement;

- e. pursuant to U.S.S.G. § 3C1.1, the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation of the instant offense of conviction and qualifies for a 2-level enhancement; and
- f. pursuant to U.S.S.G. § 3E1.1(b), the defendant has assisted the government in the investigation and prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. If the defendant qualifies for a 2-level decrease in offense level pursuant to U.S.S.G. § 3E1.1(a) and the offense level prior to the operation of that section is a level 16 or greater, the government agrees to file, pursuant to U.S.S.G. § 3E1.1(b), a motion prior to, or at the time of, sentencing for an additional 1-level decrease in the defendant's offense level.

The United States and the defendant may argue at sentencing that additional provisions of the Sentencing Guidelines apply.

**7. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

**8. Payment of Monetary Penalties**

The defendant understands and agrees that whatever monetary penalties are imposed by the Court pursuant to Title 18, United States Code, Section 3613, will be due and payable immediately

and subject to immediate enforcement by the United States. Furthermore, the defendant agrees to provide all of her financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

**9. Restitution for Offenses of Conviction**

The defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. At this time, the Government is aware that the following victims have suffered the following losses: To Be Determined

**10. Limited Immunity from Further Prosecution**

The United States will not further criminally prosecute the defendant for the specific conduct described in the information or statement of facts. The defendant understands that this agreement is binding only upon the Fraud Section of the Criminal Division of the United States Department of Justice and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia. This agreement does not bind the Civil Division of the United States Department of Justice or the United States Attorney's Office for the Eastern District of Virginia or any other United States Attorney's Office, nor does it bind any other Section of the Department of Justice, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that might be made against the defendant.

**11. Defendant's Cooperation**

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the United States. In that regard:

- a. The defendant agrees to testify truthfully and completely as a witness before any grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation by the United States or at the request of the United States.
- d. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- e. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.

- f. **Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.**

**12. Use of Information Provided by the Defendant Under This Agreement**

Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

**13. Prosecution in Other Jurisdictions**

The Fraud Section of the Criminal Division of the United States Department of Justice and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the Fraud Section of the Criminal Division of the United States Department of Justice and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia agree, upon request, to contact

that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

**14. Defendant Must Provide Full, Complete and Truthful Cooperation**

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

**15. Motion for a Downward Departure**

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

**16. Order of Prohibition**

The defendant agrees that she will consent to an Order of Prohibition From Further Participation pursuant to section 8(e) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(e), by entering into a Stipulation and Consent to the Issuance of an Order of Prohibition From Further Participation. The defendant also agrees that she will consent to an Order of Prohibition by entering

into a Stipulation and Consent to the Issuance of an Order of Prohibition with the Office of Thrift Supervision.

**17. The Defendant's Obligations Regarding Assets Subject to Forfeiture**

The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past eight years, or in which the defendant has or had during that time any financial interest. The defendant agrees to take all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the United States may choose to administer concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous six years. Defendant agrees to forfeit to the United States all of the defendant's interests in any asset of a value of more than \$1000 that, within the last eight years, the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

**18. Forfeiture Agreement**

The defendant agrees to forfeit all interests in any asset that the defendant owns or over which the defendant exercises control, directly or indirectly, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of her offense. The defendant further agrees to waive all interest in the asset(s) in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging

instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case. The Fraud Section of the Criminal Division of the United States Department of Justice and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia agree to recommend to the Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section that any monies obtained from the defendant through forfeiture be transferred to the Clerk to distribute to the victims of the offense in accordance with any restitution order entered in this case.

**19. Waiver of Further Review of Forfeiture**

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also waives any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct, property facilitating illegal conduct, property involved in illegal conduct giving rise to forfeiture, and substitute assets for property otherwise subject to forfeiture.

**20. Breach of the Plea Agreement and Remedies**

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives

any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

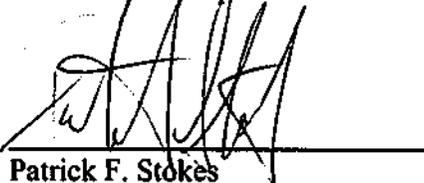
Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

#### **21. Nature of the Agreement and Modifications**

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and her attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Denis J. McNerney  
Chief  
Criminal Division, Fraud Section  
United States Department of Justice

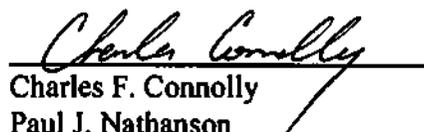
By:



Patrick F. Stokes  
Deputy Chief  
Robert A. Zink  
Trial Attorney

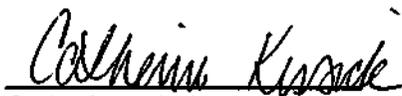
Neil H. MacBride  
United States Attorney

By:



Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

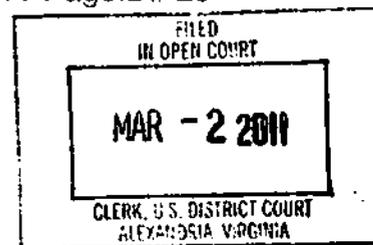
Date: 3/2/2011   
Catherine Kissick  
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending information. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 3-2-11



Kent Sands, Esq.  
Douglas Steinberg, Esq.  
Counsel for the Defendant



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 1:11cr88
	)	
CATHERINE KISSICK,	)	
	)	
Defendant.	)	

STATEMENT OF FACTS

The United States and the defendant, CATHERINE KISSICK, agree that had this matter proceeded to trial the United States would have proven the facts set forth in this Statement of Facts beyond a reasonable doubt. Unless otherwise stated, the time periods for the facts set forth herein are at all times relevant to the charges in the Information.

I. Overview

1. The defendant was a senior vice president of Colonial Bank and the head of Colonial Bank’s Mortgage Warehouse Lending Division (MWLD). MWLD was located in Orlando, Florida.

2. From in or about 2002 through in or about August 2009, co-conspirators, including the defendant, engaged in a scheme to defraud various entities and individuals, including Colonial Bank, a federally insured bank; Colonial BancGroup, Inc.; shareholders of Colonial BancGroup; the Troubled Asset Relief Program (TARP); and the investing public. One of the goals of the scheme to defraud was to obtain funding for Taylor, Bean & Whitaker (TBW) to assist it in covering expenses related to operations and servicing payments owed to third-party purchasers of loans and/or mortgage-backed

securities. Although the defendant did not personally receive funds paid out by Colonial Bank to TBW as a result of the scheme to defraud, she knowingly and intentionally placed Colonial Bank and Colonial BancGroup at significant risk of incurring losses as a result of the scheme and, in fact, caused Colonial Bank to purchase assets from TBW of substantially more than \$400 million that in fact had no value and were held on Colonial Bank's and Colonial BancGroup's books as if they had actual value.

II. Colonial Bank's Purchase of Worthless Assets

3. In or about early 2002, TBW began running overdrafts in its master bank account at Colonial Bank due to TBW's inability to meet its operating expenses, such as mortgage loan servicing payments owed to investors in Freddie Mac and Ginnie Mac securities, payroll, and other obligations. The defendant and co-conspirators covered up the overdrafts by transferring, or "sweeping," overnight money from another TBW account with excess funds into the master account to avoid the master account falling into an overdrawn status. This sweeping of funds gave the false appearance to other Colonial Bank employees that TBW's master account was not overdrawn. The day after sweeping funds, the conspirators would cause the money to be returned to the other account, only to have to sweep funds back into the master account later that day to hide the deficit again. By in or about December 2003, the size of the deficit due to overdrafts had grown to tens of millions of dollars.

4. In or about November 2003, the defendant and co-conspirators, including Lee Farkas, the chairman of TBW, caused the deficit in TBW's master account at Colonial Bank to be transferred to "COLB," a mortgage loan purchase facility at MWLD. Through the COLB facility, Colonial Bank purchased interests in individual residential

mortgage loans from TBW pending resale of the loans to third-party investors. The purpose of the COLB facility was to provide mortgage companies, like TBW, with liquidity to generate new mortgage loans pending the resale of the existing mortgage loans to investors. The COLB facility was designed such that Colonial Bank would recoup its outlay only after TBW resold a mortgage loan to a third-party investor, which generally was supposed to take place within 90 days after being placed on the COLB facility.

5. In this part of the scheme, which the conspirators called "Plan B," the defendant, Farkas, and other co-conspirators sought to disguise the misappropriations of tens of millions of dollars of Colonial Bank funds to cover up TBW shortfalls or overdrafts of TBW's accounts at Colonial Bank as payments related to Colonial Bank's purchase through the COLB facility of legitimate TBW mortgage loans. The defendant, Farkas, and other co-conspirators accomplished this by causing TBW to provide false mortgage loan data to Colonial Bank under the pretense that it was selling the bank interests in mortgage loans. As the defendant, Farkas, and other co-conspirators knew, however, the Plan B data included data for loans that TBW had already committed or sold to other third-party investors or that did not exist. As a result, these loans were not, in fact, available for sale to Colonial Bank. Whether a Plan B loan was fictitious or owned by a third party, the defendant knew and understood that she and her co-conspirators had caused Colonial Bank to pay TBW for an asset that was worthless to Colonial Bank.

6. Farkas and other co-conspirators at TBW, including the treasurer at TBW, caused the Plan B loan data to be delivered to the defendant and/or other co-conspirators

at Colonial Bank, including an operations supervisor who worked for the defendant and, among other things, kept track of the Plan B loans. The defendant and others caused the Plan B loan data to be recorded in Colonial Bank's books and records to give the false appearance that Colonial Bank had purchased legitimate interests in mortgage loans from TBW through COLB.

7. To avoid scrutiny from regulators, auditors, and Colonial Bank management of Plan B loans sold to Colonial Bank, the defendant, Farkas, and other co-conspirators devised and implemented a plan that gave the appearance that TBW was periodically selling the Plan B loans off of the COLB facility. In fact, Plan B loans were unable to be sold off of the COLB facility, and the conspirators instead created a document trail that disguised the existence of the Plan B loans.

8. In or about mid-2005, conspirators caused the deficit created by Plan B to be moved from the COLB facility to MWLD's Assignment of Trade (AOT) facility. The AOT facility was designed for the purchase of interests in pools of loans, which were referred to as "Trades," that were in the process of being securitized and/or sold to third-party investors. The conspirators moved the deficit to the AOT facility in part because, unlike the COLB facility, Colonial Bank generally did not track in its accounting records loan-level data for the Trades held on the AOT facility, thus making detection of the scheme by regulators, auditors, Colonial Bank management, and others less likely.

9. In an effort to transfer the deficit caused by the Plan B loans on the COLB facility to the AOT facility, the defendant, Farkas, and other co-conspirators caused TBW to engage in sales to Colonial Bank of fictitious Trades purportedly backed by pools of Plan B loans. In fact, the Trades had no collateral backing them. As the defendant and

other co-conspirators knew, Colonial Bank held these fictitious Trades in its accounting records at the amount Colonial Bank paid for them.

10. After moving the Plan B deficit from the COLB facility to the AOT facility, TBW continued to experience significant operating losses. From in or about mid-2005 through in or about 2009, the defendant, Farkas, and other co-conspirators continued to cause TBW to sell additional fictitious Trades to Colonial Bank through the AOT facility. These Trades had no pools of loans collateralizing them. Moreover, the defendant and other co-conspirators caused the creation of false documents to reflect agreements, as required under the AOT facility, for third-party investors to purchase the Trades within a short period of time. This fraudulent AOT funding was typically provided in an ad hoc fashion based on requests from Farkas or other co-conspirators at TBW for, among other reasons, servicing obligations, operational expenses, and covering overdrafts.

11. To obtain the fraudulent AOT funding, Farkas or other TBW co-conspirators would contact the defendant and/or another co-conspirator at Colonial Bank to request an advance from the AOT facility. Generally, the defendant discussed new advances with Farkas before the defendant would release the funds to TBW. Once an advance had been agreed to, TBW co-conspirators caused a wire request to be generated for the funds and provided the defendant and other Colonial Bank co-conspirators with false documentation purporting to represent the sale of pools to Colonial Bank to support the release of the funds. The defendant and her co-conspirators caused the false information to be entered on Colonial Bank's books and records, giving the appearance that Colonial Bank owned a 99% interest in legitimate securities on the

AOT facility in exchange for the advances, when in fact those securities had no value and could not be sold.

12. In addition to causing Colonial Bank to hold in its accounting records fictitious AOT Trades with no collateral backing them, the defendant, Farkas, and other co-conspirators caused Colonial Bank to hold in its accounting records AOT Trades backed by assets that TBW was unable to sell, including but not limited to impaired-value loans, charged-off loans, previously sold loans, loans in foreclosure, and real-estate owned (REO) property. The defendant, Farkas, and other co-conspirators also caused the creation of false documents to reflect agreements, as required under the AOT facility, for third-party investors to purchase these impaired Trades within a short period of time.

13. As with the Plan B loans, the defendant, Farkas, and other co-conspirators took steps to cover up the fictitious and impaired Trades on AOT by giving the false appearance that, periodically, the fictitious and impaired Trades were sold to third parties. The conspirators did this by, among other things, engaging in sham sales to hide the fact that the vast majority of assets backing the AOT Trades could not be resold because the assets were either wholly fictitious or consisted of, among other things, impaired-value loans and REO and, in either case, had no corresponding, legitimate commitment to be purchased by third parties. The defendant, Farkas, and other co-conspirators engaged in these sham sales to deceive others, including regulators, auditors, and certain Colonial Bank management.

14. The size of the deficit created by providing fraudulent advances to TBW through Plan B loans and the fictitious AOT Trades fluctuated during the conspiracy, and it reached into the hundreds of millions of dollars. During the course of the conspiracy,

the defendant and other co-conspirators negotiated the transfer of funds to Colonial Bank from TBW bank accounts or lending facilities and obtained other collateral from TBW and Farkas in order to reduce the deficit caused by the Plan B loans and the fictitious AOT Trades. Despite these efforts, the government would prove at a trial that during the course of the conspiracy charged in count one of the Information the defendant and co-conspirators caused Colonial Bank to pay TBW more than \$400 million for Plan B loans and fictitious AOT Trades, i.e., loans and Trades that had no value to Colonial Bank. Moreover, the government would prove that some wire transfers of funds by Colonial Bank to TBW for fictitious Plan B loans and AOT securities involved transfers to LaSalle Bank, which had been purchased by Bank of America. Some of these wires were processed from Chicago, Illinois, through a Bank of America server located in Richmond, Virginia.

III. Efforts to Hide Fraudulent Scheme

15. At all times relevant to the Information, the defendant knew that her actions were wrong and not permitted by law. The defendant and her co-conspirators took steps to hide their scheme from regulators, auditors and certain senior Colonial Bank management. Among other things, in May 2009, the defendant deleted electronic communications on her personal Blackberry PDA, and instructed members of her staff to delete communications on their Blackberry PDAs, to evade subpoenas for documents from the Special Inspector General for the Troubled Asset Relief Program that had been served on Colonial Bank and TBW.

IV. False Financial Statements

16. As part of her duties during the relevant period, the defendant was responsible for certifying the financial results of MWLD to Colonial BancGroup for purposes of incorporating those results into Colonial BancGroup's publicly filed financial statements, including annual reports on Form 10-K and quarterly reports on Form 10-Q filed with the United States Securities and Exchange Commission (SEC). As the government would prove, Colonial BancGroup's Forms 10-K and Forms 10-Q were filed electronically with the SEC's EDGAR Management Office of Information and Technology, in Alexandria, Virginia, during the period set forth in the Information. The defendant and her co-conspirators took steps to hide the fraud scheme described in this statement of facts from Colonial Bank's and Colonial BancGroup's senior management, auditors, and regulators, and Colonial BancGroup's shareholders, including by providing materially false information that significantly overstated assets held in the COLB and AOT facilities. The defendant knew that these actions caused materially false financial data to be reported to Colonial BancGroup and incorporated in its publicly filed statements.

17. For example, in its Form 10-K for the year ending December 31, 2008, which was filed on or about March 2, 2009, Colonial BancGroup reported that MWLD had total assets under management of approximately \$4.3 billion, of which approximately \$1.55 billion, or 36%, were held as AOT Trades reported as Securities Purchased under Agreements to Resell. In its last Form 10-Q filed with the SEC, for the period ended March 31, 2009, which was filed on or about May 8, 2009, Colonial BancGroup reported that MWLD managed assets valued at approximately \$4.9 billion,

with approximately \$1.6 billion, or approximately 33%, held as AOT Trades reported as Securities Purchased under Agreements to Resell. As the defendant knew, the vast majority of the securities held on AOT at that time were fictitious or impaired and were not under legitimate agreements to be resold to third-party investors.

V. TARP Funding

18. In or about October 2008, Colonial BancGroup submitted an application to the FDIC seeking approximately \$570 million in TARP funding under the Capital Purchase Program. In connection with the application, regulators and the United States Treasury Department (Treasury) reviewed Colonial BancGroup's financial data and filings, including the materially false information related to mortgage loan and securities assets held by Colonial Bank's MWLD resulting from the fraudulent conduct of the defendant and co-conspirators. In or about December 2008, Treasury conditionally approved \$553 million of TARP funding to Colonial BancGroup if, among other things, Colonial BancGroup could first raise \$300 million in private capital.

19. The TARP application submitted by Colonial BancGroup relied on financial statements that included the false financial information described above that was a direct result of the fraud scheme perpetrated by the defendant and co-conspirators. The defendant learned that Colonial BancGroup had submitted a TARP application and understood that the application contained financial information based, in part, on the materially false information described above. The defendant also understood that the United States government considered the financial statements of Colonial BancGroup in determining whether to approve TARP funding. The defendant and co-conspirators assisted Colonial BancGroup in a capital raise to meet TARP's outside funding condition

in order to obtain a significant cash infusion into Colonial BancGroup from the United States government, despite knowing that the Colonial BancGroup's application was based on materially false information. Colonial Bank never received TARP funding.

VI. Conclusion

20. The defendant admits that this statement of facts does not represent and is not intended to represent an exhaustive factual recitation of all the facts about which she has knowledge relating to the scheme to defraud as described herein.

21. The defendant admits that her actions, as recounted herein, were in all respects intentional and deliberate, reflecting an intention to do something the law forbids, and were not in any way the product of any accident or mistake of law or fact.

Respectfully submitted,

Denis J. McNerney  
United States Department of Justice  
Chief  
Criminal Division, Fraud Section

By:



Patrick F. Stokes  
Deputy Chief  
Robert A. Zink  
Trial Attorney

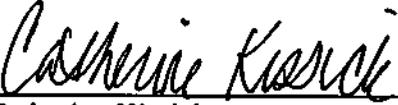
Neil H. MacBride  
United States Attorney

By:



Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys

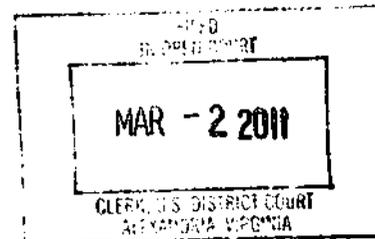
After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, CATHERINE KISSICK, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate to the best of my knowledge, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

  
Catherine Kissick  
Defendant

I am CATHERINE KISSICK's attorney. I have carefully reviewed the above Statement of Facts with her. To my knowledge, her decision to stipulate to these facts is an informed and voluntary one.

  
Kent Sands, Esq.  
Attorney for Defendant

  
Douglas Steinberg, Esq.  
Attorney for Defendant



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:11cr88
	)	
CATHERINE KISSICK,	)	18 U.S.C. § 1349 (Conspiracy)
	)	
Defendant.	)	

CRIMINAL INFORMATION

THE UNITED STATES CHARGES THAT:

Count 1

(Conspiracy to Commit Bank Fraud, Wire Fraud, and Securities Fraud)

1. From in or about 2002 through in or about August 2009, in the Eastern District of Virginia and elsewhere, the defendant

CATHERINE KISSICK

did knowingly and intentionally combine, conspire, confederate, and agree with others known and unknown to commit certain offenses against the United States, namely:

- a. bank fraud, that is, to knowingly and intentionally execute a scheme and artifice to defraud a financial institution, and to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, a financial institution, by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, § 1344;
- b. wire fraud, that is, having intentionally devised and intending to devise a scheme and artifice to defraud a financial institution, and for obtaining money and

property by means of materially false and fraudulent pretenses, representations, and promises, to knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, § 1343; and,

c. securities fraud, that is, to knowingly and intentionally execute a scheme and artifice to defraud any person in connection with any security of an issuer with a class of securities registered under § 12 of the Securities Exchange Act of 1934 (Title 15, United States Code, § 78l), in violation of Title 18, United States Code, § 1348.

2. Among the manner and means by which defendant KISSICK and others would and did carry out the conspiracy included, but were not limited to, the following:

a. KISSICK and co-conspirators caused the transfer of funds between Taylor, Bean & Whitaker Mortgage Corp. (TBW) bank accounts at Colonial Bank in an effort to hide TBW overdrafts.

b. KISSICK and co-conspirators caused TBW to sell to Colonial Bank mortgage loan assets, via the COLB facility, that included loans that did not exist or that had been committed or sold to third parties.

c. KISSICK and co-conspirators caused TBW to sell to Colonial Bank, via the AOT facility, fictitious Trades that had no mortgage loans collateralizing them and that had fabricated agreements reflecting commitments by investors to purchase them in the near future.

d. KISSICK and co-conspirators caused TBW to sell to Colonial Bank, via the AOT facility, Trades backed by impaired-value loans and real estate owned that had

**fabricated agreements reflecting commitments by investors to purchase them in the near future.**

**e. KISSICK and co-conspirators periodically “recycled” fraudulent loans, identified as Plan B loans, on the COLB facility and the fictitious and impaired Trades on the AOT facility to give the false appearance that old loans and Trades had been sold and replaced by new loans and Trades.**

**f. KISSICK and co-conspirators covered up their misappropriations of funds from the COLB and AOT facilities by causing false documents and information to be provided to Colonial Bank.**

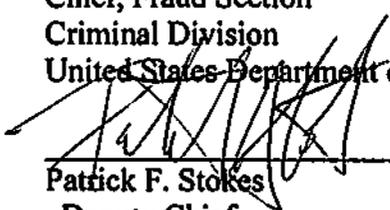
**g. KISSICK and co-conspirators caused Colonial BancGroup to file with the Securities and Exchange Commission (SEC) materially false annual reports contained in Forms 10-K and quarterly reports contained in Forms 10-Q that misstated the value and nature of assets held by Colonial BancGroup.**

**h. KISSICK and co-conspirators caused Colonial BancGroup to submit materially false information to the FDIC and to the SEC in furtherance of its application for Troubled Asset Relief Program funds.**

**(All in violation of Title 18, United States Code, § 1349.)**

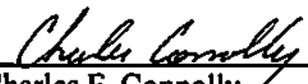
DENIS J. MCINERNEY  
Chief, Fraud Section  
Criminal Division  
United States Department of Justice

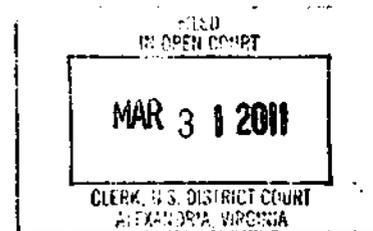
By:

  
\_\_\_\_\_  
Patrick F. Stokes  
Deputy Chief  
Robert A. Zink  
Trial Attorney

NEIL H. MACBRIDE  
United States Attorney

By:

  
\_\_\_\_\_  
Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 SEAN W. RAGLAND )  
 )  
 Defendant. )

CRIMINAL NO. 1:11cr162

CRIMINAL INFORMATION

THE UNITED STATES CHARGES THAT:

Count 1  
(Conspiracy to Commit Bank Fraud and Wire Fraud)

1. From in or about 2006 through in or about August 2009, in the Eastern District of Virginia and elsewhere, the defendant

SEAN RAGLAND

did knowingly and intentionally combine, conspire, confederate, and agree with others known and unknown to commit certain offenses against the United States, namely:

a. bank fraud, that is, to knowingly and intentionally execute a scheme and artifice to defraud a financial institution, and to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, a financial institution, by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, § 1344; and

b. wire fraud, that is, having intentionally devised and intending to devise a scheme and artifice to defraud a financial institution, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, to knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, § 1343.

2. Among the manner and means by which defendant RAGLAND and others would and did carry out the conspiracy included, but were not limited to, the following:

a. RAGLAND tracked and would report to co-conspirators the size of the collateral deficit in Ocala Funding.

b. RAGLAND and TBW co-conspirators would cover up the shortfalls in collateral held by Ocala Funding to back commercial paper by sending investors and other third parties documents containing material misrepresentations.

c. RAGLAND and TBW co-conspirators would cause TBW to temporarily transfer collateral into Ocala Funding so that it could meet certain collateral tests.

d. Co-conspirators at TBW misappropriated funds from Ocala Funding bank accounts.

e. TBW co-conspirators caused mortgage loans held by Ocala Funding to be sold to both Colonial Bank and Freddie Mac.

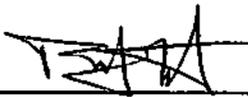
3. In furtherance of the conspiracy and to effect the objects thereof, RAGLAND and other co-conspirators committed or caused others to commit the following overt act, among others, in the Eastern District of Virginia and elsewhere:

a. On or about May 15, 2008, RAGLAND sent by email from TBW in Ocala Florida, to a co-conspirator in the Eastern District of Virginia, and to investors and other third parties, an Ocala Funding Facility report that inflated the assets reportedly held in Ocala Funding by approximately \$680 million.

(All in violation of Title 18, United States Code, § 371.)

DENIS J. MCINERNEY  
Chief, Fraud Section  
Criminal Division  
United States Department of Justice

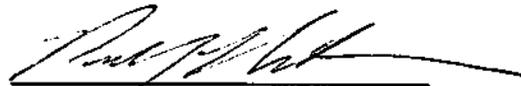
By:



Patrick F. Stokes  
Deputy Chief  
Robert A. Zink  
Trial Attorney

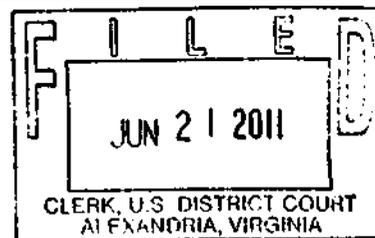
NEIL H. MACBRIDE  
United States Attorney

By:



Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys

**UNITED STATES DISTRICT COURT  
Eastern District of Virginia  
Alexandria Division**



**UNITED STATES OF AMERICA**

v.

Case Number 1:11CR00162-001

**SEAN WILLIAM RAGLAND,**

Defendant.

**JUDGMENT IN A CRIMINAL CASE**

The defendant, SEAN WILLIAM RAGLAND, was represented by J. Frederick Sinclair and Fritz Scheller, Esquires.

The defendant pleaded guilty to Count 1 of the Criminal Information. Accordingly, the defendant is adjudged guilty of the following count, involving the indicated offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18 U.S.C. § 371	Conspiracy to Commit Bank Fraud and Wire Fraud (Felony)	08/2009	1

As pronounced on June 21, 2011, the defendant is sentenced as provided in pages 2 through 8\*\* of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Signed this 21st day of June, 2011.

  
 \_\_\_\_\_  
**Leonie M. Brinkema**  
 United States District Judge

\*\* Page 8 of this document contains sealed information

Defendant: SEAN WILLIAM RAGLAND  
Case Number: 1:11CR00162-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of THREE (3) MONTHS .

The Court makes the following recommendations to the Bureau of Prisons:

The defendant be designated to F.P.C. Montgomery, Alabama.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the United States Marshal. Until he self surrenders, the defendant shall remain under the Order Setting Conditions of Release entered on March 31, 2011.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_  
\_\_\_\_\_, with a certified copy of this Judgment.

c: P.O. (2) (3)  
Mshl. (4) (2)  
U.S.Atty.  
U.S.Coll.  
Dft. Cnst.  
PTS  
Financial  
Registrar  
ob

By

\_\_\_\_\_  
United States Marshal  
\_\_\_\_\_  
Deputy Marshal

Defendant: SEAN WILLIAM RAGLAND  
Case Number: 1:11CR00162-001

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state, or local crime.

While on supervised release, the defendant shall not illegally possess a controlled substance.

While on supervised release, the defendant shall not possess a firearm or destructive device.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

**STANDARD CONDITIONS OF SUPERVISED RELEASE**

The defendant shall comply with the standard conditions that have been adopted by this Court (set forth below):

- 1) The defendant shall not leave the judicial district without the permission of the Court or probation officer.
- 2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the Probation Officer within 72 hours, or earlier if so directed, of any change in residence.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: SEAN WILLIAM RAGLAND  
Case Number: 1:11CR00162-001

### **SPECIAL CONDITIONS OF SUPERVISION**

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional conditions:

- 1) For the first NINE (9) MONTHS of supervision the defendant will be on home confinement with electronic monitoring. The defendant shall abide by all of the terms and conditions of the home confinement/electronic monitoring program including paying the costs of the electronic monitoring. Defendant may leave home only for work related purposes; to attend meetings with attorneys, the probation officer and any counselors; for legitimate medical appointments for himself or his child; to attend bona fide religious services, and to attend court proceedings.
- 2) The defendant shall make a good faith effort to pay his full restitution obligation during supervised release, to begin 60 days after release from custody, until paid in full. The defendant shall pay restitution jointly and severally with his co-defendants.
- 3) The defendant shall provide the probation officer access to any requested financial information, and waive all privacy rights.
- 4) The defendant shall not open any new lines of credit or engage in any significant financial transactions without prior approval of the probation officer.
- 5) As directed by the probation officer, the defendant shall apply monies received from income tax refunds, lottery winnings, inheritances, judgments, and any unanticipated or unexpected financial gain to the outstanding court ordered financial obligation.
- 6) The defendant shall advise any employers of the nature of his conviction and supervision.
- 7) Although mandatory drug testing is waived pursuant to 18 U.S.C. §3563(a)(4), defendant must remain drug free and his probation officer may require random drug testing at any time.

Defendant: SEAN WILLIAM RAGLAND  
Case Number: 1:11CR00162-001

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total monetary penalties in accordance with the schedule of payments set out below.

<u>Count</u>	<u>Special Assessment</u>	<u>Fine</u>
1	\$100.00	
<b>Total</b>	<b>\$100.00</b>	<b>\$0.00</b>

**FINE**

No fines have been imposed in this case.

**SCHEDULE OF PAYMENTS**

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

The special assessment is due in full immediately. If not paid immediately, the Court authorizes the deduction of appropriate sums from the defendant's account while in confinement in accordance with the applicable rules and regulations of the Bureau of Prisons.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

If this judgment imposes a period of imprisonment, payment of Criminal Monetary penalties shall be due during the period of imprisonment.

All criminal monetary penalty payments are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

Defendant: SEAN WILLIAM RAGLAND  
Case Number: 1:11CR00162-001

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

Restitution to be determined and reflected in a separate order to be issued in the future.

**Total**

Payments of restitution are to be made to Clerk, U. S. District Court, 401 Courthouse Square, Alexandria, VA 22314.

Restitution is due and payable immediately and shall be paid in equal monthly payments to be determined and to commence within 60 days of release, until paid in full.

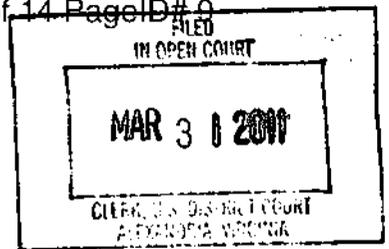
Interest on Restitution has been waived.

If there are multiple payees, any payment not made directly to a payee shall be divided proportionately among the payees named unless otherwise specified here:

Defendant is jointly and severally liable with co-defendants.

**FORFEITURE**

Forfeiture has not been ordered in this case.



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 SEAN W. RAGLAND )  
 )  
 Defendant. )

CRIMINAL NO. 1:11cr 162

**PLEA AGREEMENT**

Denis J. McInerney, Chief, Fraud Section of the Criminal Division of the United States Department of Justice ("Fraud Section"), Patrick F. Stokes, Deputy Chief, Robert Zink, Trial Attorney, and Neil H. MacBride, United States Attorney for the Eastern District of Virginia, Charles F. Connolly and Paul J. Nathanson, Assistant United States Attorneys, and the defendant, SEAN RAGLAND, and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

**1. Offense and Maximum Penalties**

The defendant agrees to waive indictment and plead guilty to a one-count criminal information charging the defendant with one count of conspiracy (in violation of Title 18, United States Code, Section 371) to commit bank fraud (in violation of 18 U.S.C. § 1344) and wire fraud (in violation of 18 U.S.C. § 1343). The maximum penalties for conspiracy are a maximum term of five years of imprisonment, a fine of \$250,000, or alternatively, a fine of not more than the greater of twice the gross loss or gross gain, full restitution, a special assessment, and three years of supervised release. The defendant understands that this supervised release term is in

addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

**2. Factual Basis for the Plea**

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B 1.2(a) of the Sentencing Guidelines.

**3. Assistance and Advice of Counsel**

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel - and if necessary have the court appoint counsel - at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

**4. Role of the Court and the Probation Office**

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with Title 18, United States Code, Section 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220, 261 (2005), the Court, after considering the factors set forth in Title 18, United States Code, Section 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

**5. Waiver of Appeal, FOIA and Privacy Act Rights**

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section

3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

**6. Recommended Sentencing Factors**

Based upon the information now available to the United States (including representations by the defense), the defendant's Criminal History Category is one. In accordance with Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States and the defendant will recommend to the Court that the following provisions of the Sentencing Guidelines apply:

- a. pursuant to USSG § 2B1.1(a)(2), the base offense level for the conduct charged in Count One is 6;
- b. pursuant to USSG § 2B1.1(b)(1)(P), the conduct charged in Count One resulted in a loss of more than \$400,000,000.00 and qualifies for a 30-level upward adjustment;
- c. pursuant to USSG § 2B1.1(b)(9), the conduct charged in Count One involved sophisticated means and qualifies for a 2-level upward adjustment;
- d. pursuant to USSG § 3E1.1(b), the defendant has assisted the government in the investigation and prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. If the defendant qualifies for a two-level decrease in offense level pursuant to U.S.S.G. § 3E1.1(a) and the offense level prior to the operation of that section is a level 16 or

greater, the government agrees to file, pursuant to U.S.S.G. § 3E1.1(b), a motion prior to, or at the time of, sentencing for an additional one-level decrease in the defendant's offense level.

e. pursuant to USSG § 5G1.1, if the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily maximum sentence shall be the guideline sentence.

f. No agreements regarding the applicability of any other Sentencing Guidelines provision have been reached, and the parties reserve the right to argue for or against the applicability of any other Guidelines provision at sentencing.

**7. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

**8. Payment of Monetary Penalties**

The defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

**9. Restitution for Offense of Conviction**

The defendant agrees to the entry of a Restitution Order for such amount as may be determined by the Court. At this time, the defendant understands that the Government believes the following victims have suffered the following losses: [To be determined]

**10. Limited Immunity from Further Prosecution**

The Fraud Section and the Criminal Divisions of the United States Attorneys' Offices for the Eastern District of Virginia and the Middle District of Florida, will not further criminally prosecute the defendant for the specific conduct described in the information or statement of facts or related conduct. The defendant understands that this agreement is binding only upon the Fraud Section and the Criminal Divisions of the United States Attorneys' Offices for the Eastern District of Virginia and Middle District of Florida. This agreement does not bind the civil divisions of the United States Department of Justice, the United States Attorneys' Offices for the Eastern District of Virginia or Middle District of Florida, or any other United States Attorney's Office. Nor does it bind any other Section of the Department of Justice, nor does it bind any other state, or local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that might be made against the defendant.

**11. Defendant's Cooperation**

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

- a. The defendant agrees to testify truthfully and completely as a witness before any grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States.

- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation by the United States or at the request of the United States.
- d. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- e. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- f. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

**12. Use of Information Provided by the Defendant Under This Agreement**

The United States will not use any truthful information provided pursuant to this agreement in any criminal prosecution against the defendant in the Eastern District of Virginia, Middle District of Florida or by the Fraud Section, except in any prosecution for a crime of violence or conspiracy to commit, or aiding and abetting, a crime of violence (as defined in Title 18 United States Code, Section 16). Pursuant to U.S.S.G. § 1B1.8, no truthful information that the defendant provides under this agreement will be used in determining the applicable guideline range, except as provided in section 1B1.8(b). Nothing in this plea agreement, however, restricts

the Court's or Probation Officer's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant knowingly provide false, untruthful, or perjurious information or testimony, or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

**13. Prosecution in Other Jurisdictions**

The Fraud Section and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the Fraud Section and the Criminal Division of the United States Attorney's Office for Eastern District of Virginia agree, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. Prior to turning over any information, the Fraud Section or United States Attorney's Office for the Eastern District of Virginia will contact undersigned counsel for the defendant in order to permit the defendant the opportunity to contact the requesting jurisdiction and speak with that jurisdiction about its request. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

**14. Defendant Must Provide Full, Complete and Truthful Cooperation**

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

**15. Motion for a Downward Departure**

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

**16. The Defendant's Obligations Regarding Assets Subject to Forfeiture**

The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past eight years, or in which the defendant has or had during that time any financial interest. The defendant agrees to take all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the United States may choose to administer concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous six years. Defendant agrees to forfeit to the United States all of the defendant's interests in any asset of a value of

more than \$1,000 that, within the last eight years, the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

**17. Forfeiture Agreement**

The defendant agrees to forfeit all interests in any bank fraud asset that the defendant owns or over which the defendant exercises control, directly or indirectly, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of his offense if in fact, and to the extent, that the defendant received bank fraud assets as part of the commission of the offense. The defendant further agrees to waive all interest in the asset(s) in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. If the Court deems forfeiture to be appropriate, the defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case. The Fraud Section and the Criminal Division of the United States Attorney's Office for the Eastern District of Virginia agree to recommend to the Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section that any monies obtained from the defendant through forfeiture be transferred to the Clerk to distribute to the victims of the offense in accordance with any restitution order entered in this case

**18. Waiver of Further Review of Forfeiture**

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also waives any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct, property facilitating illegal conduct, property involved in illegal conduct giving rise to forfeiture, and substitute assets for property otherwise subject to forfeiture if in fact, and to the extent, that the defendant received bank fraud assets as part of the commission of the offense.

**19. Breach of the Plea Agreement and Remedies**

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;

b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and

c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

**20. Nature of the Agreement and Modifications**

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Denis J. McNerney  
Chief, Criminal Division, Fraud Section  
United States Department of Justice

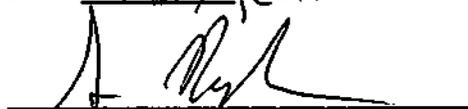
By:   
Patrick F. Stokes, Deputy Chief  
Robert Zink, Trial Attorney

Neil H. MacBride  
United States Attorney

By:   
Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys

**Defendant's Signature:** I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to Title 18, United States Code, Section 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

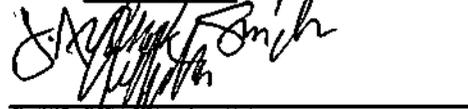
Date: March 31, 2011



Sean Ragland  
Defendant

**Defense Counsel Signature:** I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending information. Further, I have reviewed Title 18, United States Code, Section 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: March 31, 2011



Fred Sinclair, Esq.  
Fritz Scheller, Esq.  
Counsel for the Defendant



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-0500

NOV 11 2011

Office of General Counsel  
Departmental Enforcement Center

**VIA UNITED PARCEL SERVICE**

Mr. Sean Ragland  
a/k/a Sean William Ragland

(b)(7)(C)  
San Antonio, TX 78255

Re: Notice of Final Determination

Dear Mr. Ragland:

By notice dated September 27, 2011 (Notice), you were told of the proposed debarment action against you by the Department of Housing and Urban Development for a three year period from May 6, 2011, the date of your suspension. You were informed of your right to submit, within 30 days of your receipt of the Notice, a written argument and a request for a hearing in opposition to the proposed debarment action. The Notice also advised you that if you did not respond within 30 days, a final determination would be issued.

You did not respond to the Notice within the required 30 days and your debarment has become final. During your period of debarment, you are excluded from procurement and nonprocurement transactions, as either a principal or participant, with HUD and throughout the Executive Branch of the Federal Government. Your debarment is effective through May 5, 2014. Your suspension is hereby superseded by this debarment.

Sincerely,

(b)(7)(C)

Craig T. Clemmensen  
Director  
Departmental Enforcement Center

cc:

CACB	Director, DEC (Clemmensen, Craig T.)	Port#200
CACC	Associate General Counsel for Program Enforcement (Narode, Dane M.)	Port#200
4OGI	Special Agent in Charge, Tampa, OIG (Mowery, Timothy)	
4OGI	Assistant Special Agent in Charge, Tampa, OIG	
4DGI	Assistant Special Agent in Charge, Miami, OIG	(b)(7)(C)
4OGI	Special Agent, Tampa, OIG	(b)(7)(C)
	Sharpley, Christopher R, Deputy Inspector General for Investigations, FHFA-OIG ( <a href="mailto:Christopher.Sharpley@fhfa.gov">Christopher.Sharpley@fhfa.gov</a> )	
	Emerzian, Peter, Special Agent in Charge, Washington DC, FHFA-OIG ( <a href="mailto:Peter.Emerzian@fhfa.gov">Peter.Emerzian@fhfa.gov</a> )	
	Baker, Brian W., Deputy Chief Counsel, Washington DC, FHFA-OIG ( <a href="mailto:Brian.Baker@fhfa.gov">Brian.Baker@fhfa.gov</a> )	
	Saddler, Bryan, Chief Counsel, Washington, DC, FHFA-OIG ( <a href="mailto:Bryan.Saddler@fhfa.gov">Bryan.Saddler@fhfa.gov</a> )	
4AMA	Regional Administrator, Atlanta (Jennings, Ed)	
4OMA	Field Office Director, Tampa (Gadsden, Rosemary)	
4AC	Regional Counsel, Atlanta (Murray, Donnie)	
4DC	Chief Counsel, Miami (Swain, Sharon)	
4AHHQ3	Branch Chief, QAD, Atlanta SF HOC (Kittrell, Nora G.)	
CACBB	File	Port#200
CACBB	Burks	Port#200
CACBB	Field	Port#200
CID	<a href="mailto:cid_dec@hudoig.gov">cid_dec@hudoig.gov</a>	

Sharepoint: Burks\Ragland Sean\Final Debarment with Suspension Subject



MAY 16 2011

Office of General Counsel  
Departmental Enforcement Center

**VIA UNITED PARCEL SERVICE**

Mr. Sean Ragland

(b)(7)(C)

San Antonio, TX 78255

Re: Notice of Suspension

Dear Mr. Ragland:

The Department of Housing and Urban Development (HUD) hereby notifies you of your immediate suspension from participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government. This action is in accordance with the procedures set forth at Title 2, Code of Federal Regulations (C.F.R.), Parts 180 and 2424. Copies of those regulations accompany this Notice.

Your suspension is based upon an Information filed in the United States District Court for the Eastern District of Virginia, Alexandria Division, charging you with violating 18 U.S.C. § 371 (Conspiracy to Commit Bank Fraud and Wire Fraud). Specifically, you are accused of conspiring to commit bank fraud, wire fraud, and securities fraud through the sale and transfer of nonexistent or previously sold or collateralized loans. The Information constitutes adequate evidence on which to base your suspension under 2 C.F.R. §§ 180.700 and 180.705.

I have determined that immediate action is necessary to protect the public. This Information contains allegations that demonstrate that the Government faces a serious and immediate risk of harm if you are permitted to continue doing business with the Government.

Your suspension is for a temporary period pending the outcome of the criminal proceedings or any related debarment action. The Department will notify you when your suspension is terminated.

In light of your past or present position as a senior financial analyst of an FHA-approved lender, you have been or may reasonably be expected to be involved in covered transactions, and are thereby subject to these regulations.

If you decide to contest this suspension, you may submit a written argument and request an informal hearing, which you may attend in person, by telephone or through a representative. Pursuant to 2 C.F.R. § 180.730, your written submission must identify: 1) specific facts that contradict the statements contained in this Notice of Suspension (a general denial is insufficient to raise a genuine dispute over facts material to the

suspension); 2) all existing, proposed, or prior exclusions against you under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies; 3) all criminal and civil proceedings against you not included in this Notice that grew out of the facts relevant to the cause(s) stated in this Notice; and 4) all of your affiliates as defined in the enclosed regulations at 2 C.F.R. § 180.905. If you provide false information, the Department may seek further criminal, civil or administrative action against you as appropriate.

Please be advised that contesting a suspension does not stay the suspension. While contesting the suspension, you are prohibited from participating in any nonprocurement or procurement transactions with the Federal Government. Your written opposition and hearing request must be submitted within 30 days of your receipt of this Notice. The response may be mailed to the Debarment Docket Clerk, U.S. Department of Housing and Urban Development, Departmental Enforcement Center, 451 7th Street, S.W., B-133 - Portals 200, Washington, DC 20410. If you wish to use a courier or overnight mail, send your response to the Docket Clerk, Departmental Enforcement Center, 1250 Maryland Avenue, S.W., Suite 200, Washington, DC 20024.

(b)(7)(C) is my designee in this matter. If you request a hearing, Mr. (b)(7)(C) will set a briefing and hearing schedule as necessary. He has the authority to review any written submissions, conduct an informal hearing, make a recommendation as to whether there is a genuine dispute over material facts and propose a recommended decision. If I determine that a genuine dispute over material facts exists, I will refer this matter to a Hearing Officer, who is an administrative judge, for a formal hearing to make findings of fact pursuant to 2 C.F.R. § 180.745. After receiving those findings of fact, and any related submissions from the parties, I will make a final decision. If you have any questions, please call Stanley E. Field, Director, Compliance Division. Mr. Field may be reached at (b)(7)(C)

The final decision regarding your suspension will be based upon evidence and information, including any written information and argument, that both you and the Government may submit in this matter. If you fail to respond to this Notice within the 30-day period, then your suspension will become final.

If this matter is referred to a Hearing Officer for a formal hearing, this Notice of administrative action shall also serve as a Complaint, in compliance with 24 C.F.R. § 26.13(a), (b) and (c).

Sincerely,

(b)(7)(C)

Craig T. Clemmensen  
Director  
Departmental Enforcement Center

Enclosures

cc:

CACB Director, DEC (Clemmensen, Craig F.) Port#200

CACC Associate General Counsel for Program Enforcement  
(Narode, Dane M.) Port#200

4OGI Special Agent in Charge, Tampa, OIG (Mowery, Timothy)

4OGI Assistant Special Agent in Charge, Tampa, OIG (b)(7)(C)

4DGI Assistant Special Agent in Charge, Miami, OIG (b)(7)(C)

4OGI Special Agent, Tampa, OIG (b)(7)(C)

Sharpley, Christopher R, Deputy Inspector General for Investigations,  
FHFA-OIG ([Christopher.Sharpley@fhfa.gov](mailto:Christopher.Sharpley@fhfa.gov))

Emerzian, Peter, Special Agent in Charge, Washington DC, FHFA-OIG  
([Peter.Emerzian@fhfa.gov](mailto:Peter.Emerzian@fhfa.gov))

Baker, Brian W., Deputy Chief Counsel, Washington DC, FHFA-OIG  
([Brian.Baker@fhfa.gov](mailto:Brian.Baker@fhfa.gov))

Saddler, Bryan, Chief Counsel, Washington, DC, FHFA-OIG  
([Bryan.Saddler@fhfa.gov](mailto:Bryan.Saddler@fhfa.gov))

4AMA Regional Administrator, Atlanta (Jennings, Ed)

4OMA Field Office Director, Tampa (Gadsden, Rosemary)

4AC Regional Counsel, Atlanta (Murray, Donnie)

4DC Chief Counsel, Miami (Swain, Sharon)

4AHHQ3 Branch Chief, QAD, Atlanta SF HOC (Kittrell, Nora G.)

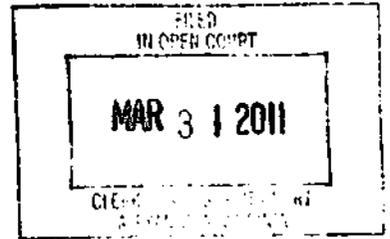
CACBB File Port#200

CACBB Burks Port#200

CACBB Field Port#200

CID [cid\\_dec@hudoig.gov](mailto:cid_dec@hudoig.gov)

Sharepoint: Burks\Ragland Sean\Suspension Information for Person



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	CRIMINAL NO. 1:11cr162
SEAN W. RAGLAND	)	
	)	
Defendant.	)	

**STATEMENT OF FACTS**

The United States and the defendant, SEAN RAGLAND, agree that had this matter proceeded to trial the United States would have proven the facts set forth in this Statement of Facts beyond a reasonable doubt. Unless otherwise stated, the time periods for the facts set forth herein are at all times relevant to the charges in the Information.

**I. Overview**

1. Defendant began working at Taylor, Bean & Whitaker Mortgage Corp. (TBW) in Ocala, Florida in 2002. In 2004, defendant joined the Accounting Department, and shortly thereafter was promoted to Senior Financial Analyst and reported to the Chief Financial Officer. In or about 2005, the defendant was assigned responsibilities for reporting and tracking issues related to the Ocala Funding, LLC facility (Ocala Funding).

2. From in or about 2006 through in or about August 2009, co-conspirators, including the defendant, engaged in a scheme to defraud financial institutions that had invested in Ocala Funding. One of the goals of the scheme to defraud was to mislead investors and auditors as to the financial health of Ocala Funding. This aspect of the fraud scheme allowed TBW to misappropriate over \$1 billion in collateral from Ocala Funding. By participating in the

fraud scheme described below, the defendant knowingly and intentionally placed financial institution investors in Ocala Funding at significant risk of incurring losses as a result of the scheme.

## II. Ocala Funding

3. In or about January 2005, TBW established a wholly-owned special purpose entity called Ocala Funding. Ocala Funding was a bankruptcy remote facility designed to provide TBW additional funding for mortgage loans. The facility obtained funds for mortgage lending from the sale of asset-backed commercial paper to financial institutions, including Deutsche Bank and BNP Paribas.

4. Ocala Funding was managed by TBW and had no employees of its own. The defendant was one of the TBW employees responsible for preparing monthly reports relating to the assets and outstanding liabilities in Ocala Funding in connection with the issuance and rolling of commercial paper and for coordinating wire transfers related to Ocala Funding. When preparing the reports, the defendant knew and understood that Ocala Funding's assets, including mortgage loans and cash, had to be greater than or equal to its liabilities, including outstanding commercial paper held by the financial institutions and a relatively small amount of subordinated debt.

5. Shortly after Ocala Funding was established, the defendant learned that there was a shortage of assets in Ocala Funding and the defendant began tracking this "hole" on his own initiative. The hole grew significantly over time and by June 2008, the hole had grown to over \$700 million. The defendant kept the CEO and CFO informed as to the size of the hole.

6. To cover up the hole at the direction of other co-conspirators, the defendant prepared documents that inaccurately and intentionally inflated figures representing the

aggregate value of the loans held in the Ocala Funding facility or under-reported the amount of outstanding commercial paper. The defendant sent this false information to the financial institution investors, including Deutsche Bank and BNP Paribas, and to other third parties. By doing so, the defendant and co-conspirators misled investors into believing that there was sufficient cash and mortgage loan collateral to back the outstanding commercial paper owned by the investors.

7. At the direction of a co-conspirator, the defendant also sent the false reports to an outside audit firm that reviewed financial reports related to the Ocala Funding facility.

8. The defendant also learned that co-conspirators were transferring hundreds of millions of dollars from Ocala Funding bank accounts, located at LaSalle Bank, to TBW accounts, including the TBW operating account. These transfers contributed to the hole in Ocala Funding.

9. As the government would prove at a trial, at the time that Ocala Funding ceased operations, there was a hole of approximately \$1.5 billion.

10. The defendant did not personally receive any funds TBW misappropriated from Ocala Funding.

### III. Conclusion

11. The defendant admits that this statement of facts does not represent and is not intended to represent an exhaustive factual recitation of all the facts about which he has knowledge relating to the scheme to defraud as described herein.

12. The defendant admits that his actions, as recounted herein, were in all respects intentional and deliberate, reflecting an intention to do something the law forbids, and were not in any way the product of any accident or mistake of law or fact.

Denis J. McInerney  
Chief, Criminal Division, Fraud Section  
United States Department of Justice

By:



Patrick F. Stokes, Deputy Chief  
Robert Zink, Trial Attorney

Neil H. MacBride  
United States Attorney

By:



Charles F. Connolly  
Paul J. Nathanson  
Assistant United States Attorneys

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, SEAN RAGLAND, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate to the best of my knowledge, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

Date: March 4, 2011



Sean Ragland  
Defendant

I am SEAN RAGLAND's attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Date: March 31, 2011



Fred Sinclair, Esq.  
Fritz Scheller, Esq.  
Counsel for the Defendant



FEDERAL HOUSING FINANCE AGENCY  
OFFICE OF INSPECTOR GENERAL



**Report of Investigation (ROI)**

Title: LEE FARKAS; TBW; COLONIAL BANK  
 Type of Investigation: CRIMINAL  
 Type of Report: FINAL  
 Period of Investigation: September 10, 2011 through November 13, 2013

**Basis for Investigation**

This investigation was opened on January 10, 2011, by the Federal Housing Finance Agency, Office of Inspector General. Beginning in early 2002, Taylor, Bean, and Whitaker (TBW), a wholesale mortgage lender, began to experience significant cash flow problems. It was alleged that in an effort to cover these shortfalls, a group of co-conspirators devised various schemes that involved Colonial Bank and Ocala Funding LLC (Ocala Funding), the latter of which was a special purpose entity designed for TBW to purchase home mortgages. By the middle of 2009, the co-conspirators misappropriated approximately \$3 billion from Colonial Bank and Ocala Funding, and attempted to secure \$570 million from the Troubled Asset Relief Program (TARP).

**Details of Investigation**

This investigation involved the following individuals:

1. Lee Farkas, President, TBW
2. Paul Allen, Chief Executive Officer, TBW
3. Raymond Bowman, Vice President/Director of Secondary Marketing, TBW
4. Delton De Armas, Chief Financial Officer, TBW
5. Teresa Kelley, Operations Supervisor, Colonial Bank
6. Catherine Kissick, Vice President, Colonial Bank
7. Sean Ragland, Senior Financial Analyst, TBW
8. Desiree Brown, Vice President, TBW

<i>Distribution:</i>	<i>No.</i>	Case No. I-11-0010
Inspector General		Signature of Person Making Report _____
Ass't U.S. Attorney		Signature of Person Examining Report <span style="border: 1px solid black; padding: 2px;">(b)(7)(C)</span>
Other ( <i>specify below</i> )		Title Acting SAC Office Washington DC
		Div. Office Investigations Date of Report 11/13/2013

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**Report of Investigation** *continued*

Case Title: LEE FARKAS;TBW; COLONIAL BANK

Case Reference No.: I-11-0010

These individuals were charged in a criminal scheme to misappropriate more than \$400 million from Colonial Bank's Mortgage Warehouse Lending Division in Orlando, Florida, and approximately \$1.5 billion from Ocala Funding to cover TBW's operating losses. The fraud scheme contributed to the operational failure of both Colonial Bank and TBW. The defendants also committed wire and securities fraud in connection with their attempt to convince the government officials to provide Colonial Bank with approximately \$570 million in TARP funds.

The scheme began in 2002, when the co-conspirators ran overdrafts in TBW bank accounts at Colonial Bank in order to cover TBW's cash shortfalls. Farkas and his co-conspirators at TBW and Colonial Bank transferred money between accounts at Colonial Bank to hide the overdrafts. When the overdrafts grew to more than \$100 million, Farkas and his co-conspirators covered up the overdrafts and operating losses by causing Colonial Bank to purchase from TBW more than \$400 million in what amounted to worthless mortgage loan assets, including loans that TBW had already sold to other investors, as well as fictitious pools of loans supposedly being formed into securities. The co-conspirators caused Colonial Bank to report these purported assets on its books at their face value, when in fact the mortgage loan assets were worthless.

The co-conspirators at TBW also misappropriated hundreds of millions of dollars from Ocala Funding. Ocala Funding sold asset-backed commercial paper to financial institution investors, including Deutsche Bank and BNP Paribas Bank. Ocala Funding, in turn, was required to maintain collateral in the form of cash and/or mortgage loans at least equal to the value of outstanding commercial paper. The defendants working at TBW diverted cash from Ocala Funding to TBW to cover its operating losses and, as a result, created significant deficits in the amount of collateral Ocala Funding possessed to back the outstanding commercial paper. To cover up the diversions, the co-conspirators allegedly sent false information to Deutsche Bank, BNP Paribas Bank and other financial institution investors to lead them to falsely believe that they had sufficient collateral backing the commercial paper they had purchased.

On or about August 2009, Deutsche Bank and BNP Paribas Bank held approximately \$1.68 billion in Ocala Funding commercial paper that was only collateralized with approximately \$150 million in cash and mortgage loans. When TBW failed in August 2009, the total collateral deficit in Ocala Funding was approximately \$1.5 billion. The defendants also caused Colonial Bank and the Federal Home Loan Mortgage Corporation (Freddie Mac) to falsely believe that they each had an undivided ownership interest in thousands of the same loans worth hundreds of millions of dollars.

Case Title: LEE FARKAS;TBW; COLONIAL BANK

Case Reference No.: I-11-0010

In the fall of 2008, Colonial Bank's holding company, Colonial BancGroup Inc., applied for \$570 million in taxpayer funding through the Capital Purchase Program, a sub-program of the TARP. In connection with the application, Colonial BancGroup submitted financial data and filings that included materially false information related to mortgage loan and securities assets held by Colonial Bank as a result of the fraudulent scheme described above. The approval of Colonial BancGroup's TARP application was contingent on the bank raising \$300 million in private capital. Some of the co-conspirators then allegedly led an effort to raise the \$300 million.

On or about March 31, 2009, the co-conspirators falsely informed Colonial BancGroup that they had identified sufficient investors to satisfy the TARP contingency. They caused \$30 million to be placed in escrow, falsely claiming it represented payments by investors, when in fact the co-conspirators had diverted \$25 million of the escrow amount from Ocala Funding. Ultimately, Colonial BancGroup did not receive any TARP funds.

The co-conspirators also caused Colonial BancGroup to file materially false financial data with the Securities and Exchange Commission (SEC) regarding -assets listed in public filings. Colonial BancGroup's materially false financial data allegedly included overstated assets for mortgage loans that had little to no value that Farkas and his co-conspirators caused Colonial Bank to purchase.

### **Prosecutive Disposition**

This case was prosecuted by the Department of Justice in the Eastern District of Virginia. The following defendants were charged and sentenced in connection with this investigation. See Attachment A for the specific amounts of restitution ordered.

Lee Farkas, President, TBW, was convicted by trial of conspiracy to commit bank fraud, wire fraud, and securities fraud, six counts of bank fraud, four counts of wire fraud, and three counts of securities fraud. On June 30, 2011, Farkas was sentenced to 360 months of imprisonment, 39 years of supervised release, and a \$1,400 special assessment fee. See Attachment A for the amount of ordered restitution.

Paul Allen, CEO, TBW, plead guilty to conspiracy to commit bank fraud and wire fraud, and one count of false statements. On June 21, 2011, Allen was sentenced to 40 months of imprisonment, 4 years of supervised release, and a \$200 special assessment fee.

**Report of Investigation** *continued*

Case Title: LEE FARKAS;TBW; COLONIAL BANK

Case Reference No.: I-11-0010

Raymond Bowman, Vice President and Director of Secondary Marketing, TBW, plead guilty to conspiracy to commit bank fraud, wire fraud, and securities fraud, and one count of false statements. On June 10, 2011, Bowman was sentenced to 30 months of imprisonment, 4 years of supervised release, and a \$200 special assessment fee.

Delton De Armas, Chief Financial Officer, TBW, plead guilty to conspiracy to commit bank and wire fraud, and one count of false statements. On June 15, 2012, De Armas was sentenced to 120 months of imprisonment, 6 years of supervised release, and a \$200 special assessment fee. De Armas was ordered to pay restitution to the following entities: \$1,201,785,000 to Deutsche Bank, \$898,873,958 to FDIC, and \$500,000 to BNP Paribas.

Teresa Kelley, Operations Supervisor, Colonial Bank, plead guilty to conspiracy to commit bank fraud, wire fraud, and securities fraud. On June 11, 2011, Kelley was sentenced to 3 months of imprisonment, 3 years of supervised release (9 months of home confinement), and a \$100 special assessment fee.

Catherine Kissick, Vice President, Colonial Bank, plead guilty to conspiracy to commit bank fraud, wire fraud, and securities fraud. On June 17, 2011, Kissick was sentenced to 96 months of imprisonment, 3 years of supervised release, and a \$100 special assessment fee.

Sean Ragland, Senior Financial Analyst, TBW, plead guilty to conspiracy to commit bank fraud and wire fraud. On June 21, 2011, Ragland was sentenced to 3 months of imprisonment, 2 years of supervised release, 9 months of home confinement, and a \$100 special assessment fee.

Desiree Brown, Vice President, TBW, plead guilty to conspiracy to commit bank fraud, wire fraud, and securities fraud. On June 10, 2011, Brown was sentenced to 72 months of imprisonment, 3 years of supervised release, and a \$100 special assessment fee.

**Systemic Implications**

(b)(5);(b)(7)(E)

**Report of Investigation** *continued*

Case Title: LEE FARKAS;TBW; COLONIAL BANK

Case Reference No.: I-11-0010

(b)(5);(b)(7)(E)

The Audit Section for FHFA-OIG issued a report stating that contingency planning may have reduced Freddie Mac's losses. For example, Freddie Mac could have implemented a contingency plan that outlined procedures to monitor and curtail TBW's existing or new activities when it learned that TBW's financial condition was deteriorating. FHFA recognizes that contingency planning can reduce the Enterprises' counterparty risk exposure, but FHFA has not published written policy guidance for the Enterprises requiring such contingency plans or describing what should be included in them.



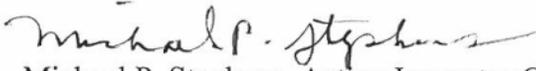
## OFFICE OF INSPECTOR GENERAL

Federal Housing Finance Agency

400 7th Street, S.W., Washington DC 20024

August 21, 2014

For: Melvin L. Watt, Director

From:   
Michael P. Stephens, Acting Inspector General

Subject: Systemic Implication Report: TBW-Colonial Investigation Lessons Learned  
SIR No.: SIR-2014-0013  
OIG Case No.: I-11-0010

Attached is a paper that is intended to extract lessons learned from a multifaceted and multiyear fraud scheme perpetrated by officers and employees of Taylor, Bean & Whitaker Mortgage Corporation (TBW) and Colonial Bank (Colonial), which — in its June 2011 SEC Form 8K — Freddie Mac stated caused it to file a \$1.78 billion proof of claim in TBW's bankruptcy, as a result of pending and projected repurchase obligations, funds deposited with Colonial related to Freddie Mac-owned or –guaranteed loans, and miscellaneous expenses. These lessons learned derive from evidence compiled during the investigation of TBW's and Colonial's fraud scheme.

The paper reports that various red flags should have alerted counterparties, investors, and regulators to the fraud scheme, but they were not adequately addressed. The failure to adequately address the red flags cost various parties losses of billions of dollars. To avoid a recurrence of such losses, the Enterprises need to improve counterparty monitoring, contract enforcement, and communication. Accordingly, OIG recommends that FHFA should consider:

1. coordinating with Government National Mortgage Association (Ginnie Mae) on best practices related to the how long an independent public accountant (IPA) may audit a counterparty before it must be replaced;
2. issuing guidance limiting the number of years that an IPA can audit a counterparty's annual financial statement before it must be replaced;
3. ordering the Enterprises to require IPAs to perform supplemental compliance tests;
4. ordering the Enterprises to increase their monitoring of counterparties that exhibit abnormal or unusual characteristics;

5. implementing guidance to the Enterprises that will govern their discretion to waive contractual obligations of counterparties. Such guidance should include requirements for: detailed written analysis of justifications for waivers; written descriptions of required corrective action plans — with dates by which compliance will be achieved — to avoid the need for future waivers; short timeframes for all waivers; and monitoring steps to assure that corrective action plans have been satisfied;
6. requiring the Enterprises to share — between themselves and with FHFA, Ginnie Mae, and other interested entities — negative performance and compliance data, and evidence of illegal activities of counterparties. Additionally, in furtherance of this recommendation, FHFA needs to monitor the Enterprises' sharing and prohibit the formation of nondisclosure agreements with terminated or suspended counterparties; and
7. ordering the Enterprises to require — by means of their seller/servicer agreements — counterparties to implement corporate governance procedures that direct chief risk officers (and internal auditors) to report illegal activities, compliance violations, and unresolved suspicions of the same to both the chief financial officer and the board of directors.

I would appreciate receiving FHFA's response to OIG's recommendations by October 31, 2014.

Peter Emerzian, Senior Policy Advisor, Michael Najjum, Senior Policy Advisor, and Bryan Saddler, Chief Counsel, prepared the attached paper. You and your staff may contact them with any questions or requests for additional assistance.

Cc: Eric Stein, Chief of Staff  
John Major, Manager of Internal Controls and Audit Follow-up

## **TBW-COLONIAL INVESTIGATION LESSONS LEARNED**

### **Introduction**

This paper is intended to extract lessons learned from a multifaceted fraud scheme perpetrated by officers and employees of Taylor, Bean & Whitaker Mortgage Corporation (TBW) and Colonial Bank (Colonial). The fraud caused billions of dollars in losses to victims, including the Federal Home Loan Mortgage Corporation (Freddie Mac), and resulted in substantial criminal penalties for conspirators.

As an agency that participated in the investigation of the fraud scheme and as the oversight organization of the regulator/conservator of one of the key victims of the conspirators, OIG determined that — to prevent a recurrence of the events of 2003 through 2009 — it is important to: (1) discuss the fraud scheme, its ramifications, and indicators that could have mitigated it if they had been heeded; and (2) synthesize lessons learned from the experience. Accordingly, this paper begins with a short description of TBW and Colonial. Next, it discusses how the conspirators' multifaceted fraud scheme evolved. Then, it explains how the fraud scheme was discovered and stopped. Finally, it describes indicators that — had they been appropriately analyzed and acted on — could have mitigated the extent and impact of the fraud scheme, and lessons that can be learned from the failure to heed earlier warnings.

### **Background**

On July 27, 2011, Lee Bentley Farkas, former Chairman of TBW, was sentenced to 30 years in prison, concluding one of the most significant fraud investigations resulting from the 2007-2008 housing finance crisis. Farkas and his co-conspirators at TBW and Colonial defrauded multiple financial institutions, causing billions of dollars of losses throughout the course of seven years.

TBW began business in 1982 and was purchased by Farkas in 1990. At one time, TBW was the largest privately held mortgage company in the United States, employing over 2,000 people in multiple states. TBW originated loans for homebuyers or purchased them from smaller mortgage companies, and then sold the loans to investors, such as Freddie Mac.<sup>1</sup> Alternatively,

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<sup>1</sup> On April 1, 2002, the Federal National Mortgage Association (Fannie Mae) terminated TBW's status as an approved seller/servicer, and on April 4, 2002, Fannie Mae and TBW signed a non-disclosure agreement. At the time, loans sold to Fannie Mae represented 85% of TBW's business. Fannie Mae cancelled TBW's approval, after learning that Farkas personally had taken out eight loans — amounting to \$2 million — to finance the repurchase of non-compliant loans that TBW had sold to Fannie Mae. The eight purported mortgage loans were not backed by homes or other eligible collateral. In other words, Fannie Mae caught Farkas selling to the Enterprise eight loans whose proceeds were to be used to finance TBW's obligation to buy back from Fannie Mae other defective loans that it had previously sold. The bogus loans came to Fannie Mae's attention when Farkas failed to make payments on them.

Fannie Mae did not formally advise Freddie Mac, its regulator, or other interested entities about TBW's termination, and following its termination TBW dramatically increased the volume of its business with Freddie Mac.

TBW consolidated its loans into pools, securitized the pools as mortgage backed securities (MBS) guaranteed by the Government National Mortgage Association (Ginnie Mae),<sup>2</sup> and marketed the guaranteed MBS to investors.

Colonial served as TBW's warehouse lender, funding TBW's loan originations and purchases. Specifically, TBW borrowed interim operating funds from Colonial's Mortgage Warehouse Lending Division (MWLD) in Orlando, Florida. After TBW's loans were sold to investors, it would pay back Colonial.

As of August 3, 2009, TBW serviced a mortgage portfolio of approximately 512,000 loans with an aggregated remaining principal balance (RPB) exceeding \$80 billion.<sup>3</sup> Freddie Mac had purchased from TBW and owned many of these loans, and many additional TBW loans were included in Ginnie Mae-guaranteed MBS pools. Pursuant to its sales agreements, TBW committed to stand behind the quality of all of the loans. Freddie Mac requires sellers to represent and warrant that the loans they sell to it comply with its underwriting and other eligibility requirements. If Freddie Mac later determines that a seller deviated from such representations and warranties, then it has the contractual right to require the seller to repurchase or buy back the defective loan(s). Similarly, Ginnie Mae's guarantee agreements with issuers of MBS empower it to require them to purchase defective loans out of Ginnie Mae-guaranteed MBS pools.

Of course, these repurchase remedies are ineffective if a seller proves to be inadequately capitalized or — worse — defunct. Accordingly, Freddie Mac lost over a billion dollars on defective loans that TBW sold it, after TBW's below-described frauds were uncovered and the firm ceased operations. Likewise, the Federal Housing Administration and Ginnie Mae lost millions on defective loans placed in MBS pools that were guaranteed by Ginnie Mae.

### **The Fraud Schemes**

TBW's fraudulent activities started small but quickly grew in size and sophistication. A multi-agency investigation determined the fraud evolved through five distinct phases. The **first phase**, which is commonly referred to as the "sweeping" phase, began in early 2003 and involved covering up overdrafts in TBW's master

An **overdraft** is an extension of credit from a financial institution that occurs when the available balance of an account reaches zero. An overdraft allows the account holder to continue withdrawing money even though the account has no funds in it.

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<sup>2</sup> Ginnie Mae guarantees only MBS backed by federally insured or guaranteed loans (*i.e.*, loans insured or guaranteed by the Federal Housing Administration, the Department of Veterans Affairs, the Department of Agriculture's Rural Development, or the Department of Housing and Urban Development's Office of Public and Indian Housing).

<sup>3</sup> See Freddie Mac Proof of Claim in TBW's bankruptcy, Case No. 3:09-bk-07047-JAF, dated June 14, 2011.

operating account, which was maintained by Colonial. At the end of each day, Colonial co-conspirators would determine the amount of TBW's ongoing overdraft and transfer funds from other TBW accounts to its master operating account to cover the overdraft. The following morning, the Colonial co-conspirators would transfer the same amount of funds back to the accounts from which they had been diverted.<sup>4</sup>

The sweeping fraud was not detected by Colonial management because Colonial MWLD Director Catherine Kissick and Operations Supervisor Teresa Kelly performed the daily sweeps. TBW was the MWLD's largest customer and Kissick, as the Director, did not want to lose it as a customer. Both Kissick and Kelly initially believed the overdrafts were temporary and TBW would start managing their money better and the overdrafts would stop. There were numerous emails from Kissick and Kelly pleading with Farkas to stop the overdrafts, but they continued because Farkas had placed Kissick and Kelly in an unenviable position where they could not refuse to continue the daily account sweeps for fear of being exposed to Colonial management and law enforcement.<sup>5</sup>

In December 2003, TBW's rolling overdraft had grown to over \$120 million and the sweeping scheme had become increasingly unmanageable, and thus the **second phase** of the fraud — or Plan B — was initiated. Plan B moved the overdraft fraud from TBW's accounts maintained by Colonial to Colonial's "COLB" account, which was used to buy individual loans from TBW, pending their subsequent resale to investors. By moving the \$120 million overdraft to COLB, Farkas, Kissick, and Kelly were able to obscure the \$120 million overdraft with fake loans or loans that had already been sold to someone else. In other words, the co-conspirators paid off the overdraft in TBW's master operating account by having TBW sell an equal value of phony loans to Colonial's COLB account.<sup>6</sup>

Plan B did not resolve TBW's practice of spending more than it earned, however, and its rolling overdraft continued to expand. By 2005, the amount of the fraud had more than doubled to \$250 million; accordingly, Colonial held over \$250 million worth of fake or previously disposed loans on their books. Moreover, loans held on the COLB account had to be sold within 90 days. This meant that the problematic loans had to be continually replaced/recycled, which again became unmanageable and led to the third phase of the fraud.

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<sup>4</sup> Farkas trial, Case No. 1:10-cr-00200-LBM, Transcripts of Teresa Kelly, Catherine Kissick, and Raymond Bowman.

<sup>5</sup> Farkas — paraphrasing an old banking proverb — once joked, "If I owe someone a dollar I have the problem, but if I owe someone \$1 million they have the problem." *See* Farkas trial, Case No. 1:10-cr-00200-LBM, Transcript of Bowman.

<sup>6</sup> Farkas trial, Case No. 1:10-cr-00200-LBM, Transcripts of Kelly and Kissick.

The **third phase** of the fraud involved the Colonial Assignment of Trade (AOT) account. Like the COLB account, the AOT account warehoused TBW loans pending resale to investors. The key difference between the COLB and AOT accounts, however, was volume. Under the COLB account Colonial purchased individual loans from TBW; conversely, under the AOT account Colonial purchased pools of loans.<sup>7</sup> With this volume from bulk sales, Farkas, Kissick, and Kelly moved the \$250 million overdraft from the COLB account to the AOT account, and simultaneously attempted to decrease the level of fictitious data that backstopped the phony and previously sold loans.<sup>8</sup>

The AOT account loan pools were supposed to be presold to investors and had to be off of Colonial's books within 30 days; thus, they did not receive the same level of scrutiny from Colonial's regulators and auditors as did loans in the COLB account. Further, only a limited amount of Colonial employees had access to the loan-level detail for collateral in the AOT account. As a consequence, the overdrafts continued to grow, and by 2009 there were over \$500 million worth of problematic loan pools on Colonial's books.

After effectively stealing hundreds of millions of dollars from Colonial, Farkas expanded his illicit efforts to other victims in the **fourth phase**. Farkas created Ocala Funding (OF), which was owned and operated by TBW; OF had no employees of its own. Ostensibly, OF was created as a supplemental warehouse line of credit and sold commercial paper to investor banks. The proceeds of the commercial paper were supposed to be used to fund the origination or purchase of loans that would be subsequently sold to investors, in order to repay the commercial paper debt. In 2009, BNP Paribas (BNP) and Deutsche Bank (Deutsche) purchased \$1.7 billion in commercial paper from OF. The commercial paper was purportedly backed by mortgages originated or purchased by TBW and cash with a combined value of at least \$1.7 billion. But, the commercial paper was not backed by appropriate collateral, and Farkas and his co-conspirators diverted almost all of the

**Commercial paper** refers to an unsecured, short-term debt instrument typically issued by a corporation to finance accounts receivable or inventories, or to meet short-term liabilities.

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<sup>7</sup> The conspirators' position was that the loan-level data needed to support loan pools should be less detailed than that needed to support individual loans. In other words, when more Colonial money is at risk, Colonial should require less documentation. As shown in *Observations and Red Flags*, below, Colonial's Risk Control Division unsuccessfully challenged the conspirators' position on the level of support that should be obtained for loans on the AOT account.

<sup>8</sup> Farkas trial, Case No. 1:10-cr-00200-LBM, Transcripts of Kelly and Kissick.

\$1.7 billion in proceeds, significantly impacting the value and liquidity of BNP's and Deutsche's investments.<sup>9</sup>

The **fifth phase** of the fraud involved TBW's efforts to save Colonial from insolvency, through the use of the Troubled Asset Relief Program (TARP). By the end of 2008, Colonial was in desperate financial shape, and it applied to the U.S. Treasury for \$553 million in TARP funding. Its application was tentatively approved with the condition that it raise \$300 million from outside investors. Farkas recognized that if Colonial failed to raise the investment capital, TBW's frauds would be uncovered. Accordingly, Farkas agreed to put up \$150 million and help raise another \$150 million. He did this through "Project Squirrel," which diverted funds from OF.<sup>10</sup>

### **The Investigation and Prosecution**

An investigation was initiated when Colonial issued a SEC Form 8K that indicated that TBW planned to raise \$300 million to enable Colonial to receive the \$550 million in TARP funds. On the basis of a hunch, investigators sought to test whether the \$300 million was a "round trip transaction" — and potentially accounting fraud — whereby Colonial would loan TBW \$300 million and TBW would return the funds to Colonial to meet the \$300 million investment condition associated with its application for \$550 million in TARP funds. In other words, investigators tested whether the \$300 million "investment" was a sham that did not increase Colonial's capital. Evidence of a round trip transaction was not adduced, but the investigation caused various co-conspirators to come forward and reveal details of the above-described multi-phase fraud.<sup>11</sup>

One year after the investigation was initiated, Farkas was indicted and arrested on 14 counts of conspiracy, wire fraud, bank fraud, and securities fraud.

### **Harm Caused by of the Fraud**

TBW's fraud caused tremendous harm to a variety of persons and businesses:

- Deutsche Bank and BNP Paribas together lost over \$1.5 billion, due to the fraud related to OF commercial paper.<sup>12</sup>
- In its June 2011 SEC Form 8K, Freddie Mac stated that it had filed a \$1.78 billion proof of claim in TBW's bankruptcy as a result of pending and projected repurchase

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<sup>9</sup> Farkas trial, Case No. 1:10-cr-00200-LBM, Transcripts of Desiree Brown, Paul Allen, and Sean Ragland.

<sup>10</sup> Farkas trial, Case No. 1:10-cr-00200-LBM, Transcripts of Brown and Allen.

<sup>11</sup> Farkas trial, Case No. 1:10-cr-00200-LBM, Transcript of Brown.

<sup>12</sup> See Farkas Restitution Order in Case No. 1:10-cr-00200-LBM.

obligations, funds deposited with Colonial related to Freddie Mac-owned or -guaranteed loans, and miscellaneous expenses.

- In 2010, Ginnie Mae bought over \$4 billion of non-performing TBW loans out of its guaranteed MBS pools and increased its applicable reserve for losses by \$720 million to prepare for anticipated losses.<sup>13</sup>
- Colonial, once the 26<sup>th</sup> largest bank in the United States, was rendered insolvent. Colonial's insolvency caused a \$3.8 billion loss to the FDIC's Deposit Insurance Fund. Further, as Colonial closed 346 offices across five states, its employees lost their jobs. Additionally, Colonial's investors and employees lost the value of their investments in Colonial as its stock value plummeted.<sup>14</sup>
- TBW was one of the largest employers in Ocala, Florida. When it closed, it had over 2,000 employees. They lost their jobs and Ocala's economy was severely impacted.

### **Observations and Red Flags**

Although TBW's fraud was discovered based upon an unsubstantiated hunch about a round trip transaction, there were several unheeded red flags that should have alerted investors and regulators to actual problems. Such red flags included the following items.

**Changing Charters and Regulators.** Colonial changed charters and therefore changed regulators three times over the course of a decade. The identity of a bank's regulator is largely dependent upon its charter, *i.e.*, national banks, federal savings associations, and U.S.-located branches of foreign banks are regulated by the Comptroller of the Currency (OCC);<sup>15</sup> the Federal Reserve regulates state-chartered banks that are members of the Federal Reserve Bank System, bank holding companies, and foreign branches of member banks;<sup>16</sup> and state-chartered banks and thrifts that are not members of a Federal Reserve System are regulated by a state regulator and the FDIC.<sup>17</sup> In 1997, Colonial's regulator was FDIC and it changed its charter by becoming a member of the Federal Reserve System in order to change its regulator to the Federal Reserve Bank of Atlanta (FRB-Atlanta). In 2003, Colonial again changed its charter. This time it changed from a state-chartered bank to a national bank in order to change its regulator from FRB-Atlanta to the OCC. Then, in June of 2008, Colonial again changed its charter, reverting to a state-chartered bank in order to change its regulator back to FDIC from the OCC.

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<sup>13</sup> Ginnie Mae FY 2010 Financial Statements, footnotes C and H.

<sup>14</sup> FDIC-OIG Colonial Bank Material Loss Review No. MLR-10-031, dated April 2010.

<sup>15</sup> See <http://www.occ.gov/about/what-we-do/mission/index-about.html>.

<sup>16</sup> See [http://www.federalreserve.gov/pf/pdf/pf\\_5.pdf](http://www.federalreserve.gov/pf/pdf/pf_5.pdf).

<sup>17</sup> See <http://www.fdic.gov/about/learn/symbol/>.

The 2008 charter change occurred during the pendency of an OCC management review. As part of this management review, OCC proposed a Cease and Desist Order that addressed various deficiencies or problems with Colonial's accounting, policies, procedures, reporting and management information systems, Allowance for Loan and Lease Losses, and credit risk management of the MWLD operation.

OCC apprised FDIC of its tentative findings and that it was in the process of issuing a Cease and Desist Order. Although FDIC began to follow up on this information, it did not take enforcement action or otherwise restrict Colonial's activities.

**Counterparty Monitoring.** It is essential to monitor continuously the performance of counterparties and evaluate the risks associated with continuing business relations with them. In TBW's case, Fannie Mae, Freddie Mac, and Ginnie Mae each performed some level of oversight monitoring, and each encountered or should have encountered issues of concern. Their responses, however, differed widely.

Fannie Mae Termination. In January 2000, a Fannie Mae executive discovered that TBW, from which Fannie Mae had been purchasing loans, had pledged to a third party the same loans that had purportedly been sold to Fannie Mae. After studying the issue for nearly two years — including discovering that Farkas personally had taken out \$2 million worth of mortgage loans that were not backed by homes or other eligible collateral to finance the repurchase of non-compliant loans that TBW had sold to Fannie Mae — Fannie Mae terminated TBW's right to sell loans to the Enterprise, but it did not formally advise Freddie Mac or its regulator about TBW's termination.<sup>18</sup>

Fannie Mae's competitor, Freddie Mac, noted the cessation of TBW's business relationship with Fannie Mae, and — with very little in the way of due diligence — viewed it as a business opportunity. Its due diligence essentially consisted of discussions between a Freddie Mac employee, Farkas, and representatives from Colonial.

Freddie Mac commenced a self-described "special relationship" with TBW in May 2002. In that regard, Freddie Mac entered into a seller/servicer agreement with TBW — specifically, Freddie Mac agreed to purchase mortgages from TBW and then hire TBW to service some or all of those mortgages. Further, during the initial 90 days of this relationship, TBW's sales volumes doubled: its servicing portfolio RPB increased from approximately \$650 million to \$1.3 billion. Over the course of the next six years, or until 2008, Freddie Mac permitted TBW's volume limit to increase to \$34.5 billion. Nonetheless, throughout its "special relationship" with TBW, Freddie Mac was aware of weaknesses in TBW's operations. As early as August 2002, Freddie Mac personnel

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<sup>18</sup> OIG Audit Report No. AUD-2012-007 (September 18, 2012), footnote 10.

identified deteriorations in TBW's financial condition, discrepancies in its financial statements (*e.g.*, the failure to report warrants that, if exercised, would have severely depleted its reported equity), the loss of a major source of earnings, and a negative cash flow position. Yet, Freddie Mac did not adequately increase its monitoring of TBW or place restrictions on its operations.

Freddie Mac Contract Enforcement. As a condition of selling loans to Freddie Mac, lenders represent and warrant that their loans comply with the Enterprise's underwriting requirements. If Freddie Mac later determines that the lender did not comply with such requirements, then Freddie Mac has the right to demand that the lender repurchase the loan(s) at par value. Failure to repurchase can lead to termination of a lender's right to sell loans to Freddie Mac or lesser sanctions such as collateral demands.

During the first half of 2009, Freddie Mac had substantial outstanding repurchase demands pending with TBW. Because many of these demands had been pending for a substantial period of time, Freddie Mac also demanded that TBW post collateral. TBW did not comply with these demands, and the business side of Freddie Mac opposed punishing TBW's contumacy.

Meanwhile, Freddie Mac's former Chief Risk Officer had identified several "red flags" indicating potential counterparty risk issues, including:

- TBW was very thinly capitalized; and
- TBW did not have the capability to ensure that Freddie Mac's loan eligibility standards were met.

Further, the former Chief Risk Officer advised that he was shocked when he learned that — in spite of its refusal to satisfy its repurchase responsibilities and comply with Freddie Mac's collateral demand — TBW had announced that it was going to raise \$300 million in capital for Colonial.<sup>19</sup>

Nonetheless, Freddie Mac's board of directors did not receive detailed reports about TBW's lagging performance and refusal to remedy defective loans that it had sold, the business side's and Chief Risk Officer's differing perceptions of TBW, or TBW's announced investment in Colonial. Hence, the board of directors was unable to ensure that Freddie Mac enforced its sales agreements with TBW, and the Enterprise suffered significant losses when TBW failed and no longer had the capacity to fulfill its repurchase obligations.

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<sup>19</sup> OIG interview of Raymond Romano, dated March 3, 2011.

Ginnie Mae Net-funding. Ordinarily, when a loan is refinanced, the borrower's old loan is paid in full at the closing of the new loan. The proceeds of the new loan are the source of the old loan's pay off. In contrast, TBW often "net-funded" old and new loans when it was the lender and/or servicer of both. In TBW's alternative practice, it would pay off the old loan when the new loan was sold. This alternative practice resulted in: (1) the need for no or very little additional funding to finance the closings of new loans; and (2) borrowers unknowingly remaining responsible for both their old and new loans, pending the subsequent sales of their new loans and pay-offs of their old loans.

When TBW's business collapsed in August 2009, there were at least 788 of these net-funded loans that had been closed. For each of these loans, TBW serviced the borrowers' old loans, which were owned by investors in Ginnie Mae-guaranteed MBS pools. Of the borrower's new loans, 751 had not been sold to an investor when TBW became defunct. TBW serviced 746 of them, and RoundPoint serviced the remaining 5. Other servicers serviced the additional 37 new loans that had been sold to investors. When TBW shut down, its loan servicing responsibilities were shifted to other servicers and the net-funding practice was discovered.<sup>20</sup>

Naturally, the borrowers — who were not fully apprised of the ramifications of TBW's net-funding practice — failed to make payments on their old loans as they commenced making payments on their new loans following their closings. This circumstance went undetected as long as TBW serviced the majority of the old loans. However, when TBW ceased operations, and Ginnie Mae took over the MBS pools that it guaranteed, Ginnie Mae discovered the delinquent net-funded loans.

Although TBW's net-funding practice violates sections 5.02 and 6.04 of Ginnie Mae's Handbook 5500.3 Rev-1, and involves the financial management of Ginnie Mae's guaranteed MBS pools, Ginnie Mae and its monitoring contractor failed to discover the practice prior to TBW's demise. Robust monitoring of the MBS pools' Principal and Interest accounts could have detected the payment discrepancies among the old loans, pending their subsequent payoff.

Waiving Contract Compliance. In August 2008, TBW reported to Ginnie Mae delinquency rates for loans that it originated/sold/serviced that exceeded quality ceilings established by Ginnie Mae.<sup>21</sup> Nonetheless, until TBW's collapse one year later, Ginnie Mae routinely waived applicable guidelines and granted additional commitment authority, which allowed TBW to increase rapidly its business volume. Similarly,

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<sup>20</sup> TBW bankruptcy Order, Case No. 3:09-bk-07047, dated February 24, 2010.

<sup>21</sup> Ginnie Mae Issuer Review Board- Program Office Commitment Authority Request Memorandum-Justification No. J, dated September 19, 2008, and October 17, 2008.

although — as described above — Freddie Mac was aware of circumstances that raised serious questions about TBW’s capitalization, capacity, and compliance with repurchase obligations, it effectively waived its applicable guidance and allowed TBW to expand its business volume.

**Abnormal Growth Rates.** Although Fannie Mae represented TBW’s biggest counterparty, comprising 85% of its secondary market sales at the time Fannie Mae terminated its sales authority, and although secondary market sales were a crucial factor in TBW’s business model (*i.e.*, if loans were not sold off of TBW’s and Colonial’s books and into the secondary market, then liquidity would dry up and in turn TBW’s new originations would grind to a halt), TBW’s business volume expanded at an unprecedented rate following Fannie Mae’s revocation of its authority to sell loans to Fannie Mae.

MBS pools are not static. Once originated, they gradually decrease in size as the debt outstanding on the loans that comprise the pools is paid off — either periodically according to the amortization schedule or in full because of a sale or other reason. This diminution of the underlying debt is a useful measure of a loan seller/servicer’s overall volume of business and is often referred to as the remaining principal balance or RPB. From December 2003 to June 2008, the RPB of loans originated/sold/serviced<sup>22</sup> by TBW increased by \$60 billion. From December 2003 to December 2005, TBW’s RPB grew from \$6.2 billion to \$21.6 billion, which essentially represents a doubling of its business volume on an annual basis. Then in 2007, TBW’s business volume more than doubled as its servicing portfolio RPB increased by appropriately \$25 billion. This 2007 surge is all the more astounding when one considers it in the context of the time: in 2007, as the housing finance crisis was intensifying, business volumes for other lenders of TBW’s size were retreating.<sup>23</sup>

Prudent organizations persistently analyze counterparty risk. In light of the extraordinary growth of TBW’s business volume, it would have been reasonable for its counterparties to thoroughly evaluate the risk that TBW had the resources (*i.e.*, interim funding pipeline) and capacity (*i.e.*, staff and systems) to handle the deluge it was confronting. In hindsight, TBW did not have the resources and capacity and its counterparties suffered losses as a result of their failure to timely detect these facts.

**Counterparty risk** is the risk that a party to an agreement or contract will not fulfill the party’s obligations. Credit risk is a type of counterparty risk associated with financial obligations.

<sup>22</sup> TBW retained the servicing rights on a large proportion of the loans it originated/sold.

<sup>23</sup> Standards & Poor’s Servicer Evaluation: Taylor, Bean & Whitaker Mortgage Corporation, dated October 27, 2008.

**Internal Controls.** Typically financial institutions’ internal controls will reveal fraud by customers or employees, but such controls may not be as effective when there is collusion between customers and employees. As Colonial’s CFO testified, “[i]f a bank employee and a bank customer are working together, it’s very difficult to find errors or omissions or things going on because it’s a vertically integrated effort. So, the customer is typically a check on the bank employee and the bank employee is a check on the customer. But if those two are working together, it makes it very difficult to find any issues.” Because Kissick, Kelly, Farkas, and others conspired to commit various frauds, they were able to overcome Colonial’s basic internal controls.<sup>24</sup>

**Internal controls** relate to an organization’s plans, methods, and procedures used to meet its mission, goals, and objectives and include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

However, as a counter-measure to such customer-employee collusion, organizations often deploy internal auditing or review programs. Colonial created the Risk Control Division (RCD), which raised concerns about TBW’s master operating account maintained by Colonial and the AOT account. In the latter regard, the RCD attempted to obtain loan-level detail of loans on the AOT account and was rebuffed by Kissick. This caused greater suspicion on the part of the RCD, but it had no way to resolve its suspicion because Colonial’s reporting structure required it to report its findings to Kissick’s supervisor as opposed to the CFO or another chief executive (outside of the business line) and to the board of directors.

**Lessons Learned**

Three evident areas for improvement that the TBW-Colonial fraud exemplifies are: counterparty monitoring, contract enforcement, and communication.

**1. Improved Monitoring.**

The Enterprises can improve their monitoring of counterparties, particularly non-regulated counterparties.<sup>25</sup> Such monitoring can be improved, among other means, by rotating independent public accountants (IPAs), instructing IPAs to test compliance with the Enterprises’

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<sup>24</sup> Farkas trial, Case No. 1:10-cr-00200-LBM, Transcript of Sarah Moore.

<sup>25</sup> The majority of the Enterprises’ mortgage lender counterparties are depository institutions, their subsidiaries, and nonbank mortgage companies. Depository institutions are regulated by the FDIC, the OCC, or the National Credit Union Administration. Nonbank mortgage companies specialize in the origination, sale, and/or servicing of real-estate mortgage loans, and they are not regulated by aforementioned financial regulators.

seller/servicer guides,<sup>26</sup> and focusing/increasing monitoring activities related to counterparties that reflect abnormal or unusual characteristics (*e.g.*, frequent charter changes or extraordinary growth).

Rotating IPAs. Enterprise and Ginnie Mae guidelines require seller/servicer/issuer counterparties to hire IPAs to audit their annual financial statements and submit the audit reports to the Enterprises and Ginnie Mae for consideration. However, these audits are only as good as they are independent, and to ensure independence FHFA should consider coordinating with Ginnie Mae on best practices related to how long an IPA may audit a counterparty before it must be replaced.

The length of time an IPA audits a counterparty can be indicative of a problem. If a counterparty changes IPAs routinely, then it could be trying to prevent IPAs from becoming too familiar with its operations. Alternatively, if a counterparty uses the same IPA year-after-year, then questions of collusion or competence may arise.<sup>27</sup> The intended recipients of an IPA's audits should consider the amount of audits that the IPA has performed for a given counterparty, and FHFA should consider issuing guidance limiting the number of years that an IPA can audit a counterparty's annual financial statement before it must be replaced.

Supplemental Compliance Tests. The Enterprises can improve the value of IPAs' audits — and in turn the quality of their monitoring — by requiring supplemental compliance testing. These supplemental tests could be implemented one of two ways: (1) ordinary testing of a management certification of compliance, or (2) agreed-upon procedures.<sup>28</sup> Under the first alternative, as part of the process of auditing its annual financial statement, counterparty management would certify that the counterparty complied with the Enterprises' guidelines over the course of the audit period, and the IPA would then be obligated to test the accuracy of the counterparty's certification. IPAs would exercise professional

Pursuant to an **agreed-upon procedures** audit engagement, the audit client engages an IPA to assist a third party to resolve information needs of the third party. Because the third party requires that the information be independently derived/verified, the services of an IPA are obtained to perform the procedures specified by the third party.

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<sup>26</sup> Supplemental compliance testing should be conducted and reported in accordance with Generally Accepted Auditing Standards.

<sup>27</sup> TBW used the same IPA from 2003 through 2009.

<sup>28</sup> OIG will soon complete an audit, and issue a report, concerning FHFA's oversight of the Enterprises' information used to oversee compliance with origination and servicing standards, which will further elaborate on this sort of supplemental testing.

discretion when selecting items to test and planning test steps.

Under the second alternative, the Enterprises would devise and publish “agreed-upon procedures” for IPAs to implement as part of their annual financial statement audit process. The agreed-upon procedures would focus on seller/servicer requirements that the Enterprises deem to present a material risk of loss. Freddie Mac required counterparties to engage IPAs for similar agreed-upon procedure tests until October 1995.

FHFA should consider ordering the Enterprises to require IPAs to perform supplemental compliance tests.

Abnormal Characteristics. The Enterprises can improve the quality of their counterparty monitoring by elevating their oversight of counterparties that exhibit abnormal or unusual characteristics, such as frequent charter/regulator changes or sudden extraordinary growth in business volume. The potential that such abnormal characteristics may be associated with funding, capacity, or other typical counterparty risks that could frustrate counterparties’ fulfillment of their contractual obligations weighs heavily in favor of increased supervision.

FHFA should consider ordering the Enterprises to increase their monitoring of counterparties that exhibit abnormal or unusual characteristics.

## **2. Contract Enforcement.**

In contrast to Fannie Mae, which terminated TBW’s authority to sell its loans when it determined that TBW had audaciously attempted to remedy its sale of defective loans to Fannie Mae by selling it more defective loans, Freddie Mac and Ginnie Mae continued to waive guidelines and grant additional commitment authority for TBW in spite of information indicating that TBW represented a heightened risk. Indeed, in Freddie Mac’s case, it continued to purchase loans from TBW and allowed it to expand its business volume notwithstanding TBW’s failure to satisfy substantial outstanding repurchase demands and to post collateral.

In view of Freddie Mac’s experience, FHFA should consider implementing guidance to the Enterprises that will govern their discretion to waive contractual obligations of counterparties. Such guidance should include requirements for: detailed written analysis of justifications for waivers; written descriptions of required corrective action plans — with dates by which compliance will be achieved — to avoid the need for future waivers; short timeframes for all waivers; and monitoring steps to assure that corrective action plans have been satisfied.

### 3. Increased Communication.

Although rigorous counterparty monitoring and contract enforcement are indispensable, the TBW-Colonial fraud also reveals that various actors were victimized because they didn't learn of or from the experiences of others. In retrospect it appears obvious that Fannie Mae, Freddie Mac, Ginnie Mae, and FDIC should have shared their experiences with counterparties among themselves and they should have learned from each others' experiences. However, these obvious points were not implemented in the TBW-Colonial scenario. Additionally, Freddie Mac and Colonial demonstrated that problems need to be conveyed adequately to the highest levels of executive management within counterparties. Given that Fannie Mae and Freddie Mac did not self-initiate one or more of these straightforward internal controls, FHFA should consider imposing them.

Sharing Information Externally. As discussed above, Fannie Mae did not formally apprise Freddie Mac, its regulator, or Ginnie Mae of its termination of TBW, and Freddie Mac did not adequately delve into the reasons for TBW's cessation of its business relationship with Fannie Mae. Had it done so, it would have learned that TBW had twice been caught selling defective loans to Fannie Mae. Knowing these facts, it would have been an extraordinary exhibition of hubris or naivety for Freddie Mac not to take special precautions against TBW selling it defective loans.

Similarly, FDIC did not take adequate precautions to protect itself from the tentative findings of OCC's 2008 management review. Hence, significant concerns regarding Colonial's accounting, policies, procedures, reporting and management information systems, and credit risk management were not resolved, and the TBW-Colonial fraud continued for another year.

FHFA should consider requiring the Enterprises to share — between themselves and with FHFA, Ginnie Mae, and other interested entities — negative performance and compliance data, and evidence of illegal activities of counterparties. Additionally, in furtherance of this recommendation, FHFA needs to monitor the Enterprises' sharing and prohibit the formation of nondisclosure agreements with terminated or suspended counterparties.

Disseminating Information Internally. Risk officers within Freddie Mac and Colonial were confronted with red flags related to TBW's and Colonial's problematic activities. Yet, they failed to elevate this information to the highest levels. Within Freddie Mac, the Credit Risk Officer wrangled with the business side about how to resolve pending demands for TBW to repurchase defective loans and post collateral. Their differing view points were not brought to the attention of the board of directors, however, and a standoff between the offices persisted until the time of TBW's failure.

With respect to Colonial, the risk officer had questioned the loan-level detail of loans on the AOT, where the conspirators had parked over \$500 million worth of phony loans. However, he was prevented from resolving his questions because Colonial's reporting structure required him to report his findings to the supervisor of one of the conspirators as opposed to a disinterested chief executive and/or the board of directors.

FHFA should consider ordering the Enterprises to require — by means of their seller/servicer agreements — counterparties to implement corporate governance procedures that direct chief risk officers (and internal auditors) to report illegal activities, compliance violations, and unresolved suspicions of the same to both the chief financial officer and the board of directors.

## Conlon, Paul

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**From:** Emerzian, Peter  
**Sent:** Tuesday, August 27, 2013 8:06 AM  
**To:** Meyer, Kari; Conlon, Paul; patrick.stokes (patrick.stokes2@usdoj.gov); Scott.Rebein@treasury.gov; Febles, Rene  
**Subject:** TBW

# U.S. judge tosses BofA suit vs FDIC over \$1.7 bln investor losses

## RELATED

### \* Judge says lacked jurisdiction to hear claims

\* Case arose from \$2.9 billion Taylor Bean mortgage fraud

By Jonathan Stempel

Aug 26 (Reuters) - A federal judge on Monday threw out Bank of America Corp's lawsuit against the Federal Deposit Insurance Corp over \$1.7 billion of investor losses stemming from the collapses in 2009 of a large regional bank and a large mortgage lender.

The lawsuit concerned the FDIC's role as receiver for an banking unit of Alabama's Colonial BancGroup Inc and the implosion of Taylor, Bean & Whitaker Mortgage Corp, home to what federal prosecutors called a \$2.9 billion mortgage fraud.

Bank of America, as trustee for notes issued by Taylor Bean's Ocala Funding LLC unit, had contended that the FDIC wrongly denied claims by Ocala noteholders to recover from Colonial Bank. Among the buyers of Ocala's notes were Deutsche Bank AG and France's BNP Paribas SA.

Last December, U.S. District Judge Barbara Rothstein in Washington, D.C. dismissed some of Bank of America's claims but let the Charlotte, North Carolina-based lender pursue claims on behalf of itself, Deutsche Bank and BNP Paribas.

But on Monday, she dismissed those claims as well, saying the FDIC determination that there were not enough assets in Colonial's estate to pay general unsecured creditors deprived her of jurisdiction.

"The No-Value Determination is a final agency action that is binding on this court and is preclusive as to whether there are now or ever will be assets sufficient to satisfy general unsecured claims against the Colonial receivership," she wrote.

Rothstein said the only way for Bank of America to challenge this determination is under the Administrative Procedures Act, not through individual lawsuits against the FDIC. She dismissed the lawsuit with prejudice, meaning it cannot be brought again.

Bank of America spokesman Bill Halldin declined immediate comment.

The case arose from a scheme in which Taylor Bean sold fake loans to Colonial Bank and diverted money from Ocala, and gave Bank of America false collateral lists that misrepresented the status of loans in which Ocala supposedly had an interest.

Former Taylor Bean Chairman Lee Farkas is serving a 30-year prison term following his April 2011 conviction on 14 counts of bank fraud, securities fraud, wire fraud and conspiracy.

Prosecutors accused him of masterminding the \$2.9 billion fraud, which they said occurred from 2002 to 2009.

Taylor Bean was based in Ocala, Florida, and Colonial in Montgomery, Alabama. Colonial had \$25 billion of assets when it collapsed in August 2009 and was the largest U.S. lender to fail that year.

The case is Bank of America NA v. FDIC, U.S. District Court, District of Columbia, No. 10-01681.



**Peter C. Emerzian**

Deputy Inspector General for Investigations  
Office of Inspector General  
Federal Housing Finance Agency  
400 7th Street, SW  
Washington, DC 20024  
Office: 202-730-4751  
Mobile: 202-604-0882



## OFFICE OF INSPECTOR GENERAL

Federal Housing Finance Agency

400 7th Street, S.W., Washington DC 20024

January 29, 2014

### MEMORANDUM

TO: Alfred M. Pollard, FHFA General Counsel  
(b)(7)(C)

FROM: Peter Emerzian, FHFA-OIG Deputy Inspector General for Investigations

SUBJECT: Suspended Counterparty Program Referral for Teresa A. Kelly

The Federal Housing Finance Agency's (FHFA) Office of Inspector General (OIG) is referring Ms. Teresa A. Kelly to be considered for designation as a suspended counterparty under the FHFA's Suspended Counterparty Program (SCP).<sup>1</sup> The SCP's purpose is to mitigate the risk to the regulated entities presented by individuals and entities with a history of fraud or other financial misconduct. This referral is made as a result of Ms. Kelly's recent guilty plea in the United States District Court for the Eastern District of Virginia (Alexandria Division) to a felony charge of conspiracy to commit bank fraud, securities fraud, and wire fraud. She has also been debarred by the U.S. Department of Housing and Urban Development (HUD).

For these reasons, the OIG believes that she poses an excessive risk to the safety and soundness of the regulated entities. The OIG therefore requests that FHFA designate Ms. Kelly a suspended counterparty, thereby permanently suspending her and any affiliated entities from entering into future contractual relationships with the regulated entities with regard to mortgages, securities or other lending products.

#### I. Subject Information

Name: Ms. Teresa A. Kelly  
DOB: January 24, 1976  
SS#: (b)(7)(C)  
Address: (b)(7)(C)  
Ocoee, Florida 34761

<sup>1</sup> June 15, 2012 Alfred Pollard Memorandum to Regulated Entities' General Counsels (hereinafter "Policy," attached hereto). Note: in October of 2013 FHFA issued an interim final rule covering these matters titled, Suspended Counterparty Program, 78 Fed. Reg. 63007-15 (Oct. 23, 2013) (12 C.F.R. Part 1227).

## II. Suspended Counterparty Program

FHFA established the SCP “to help address the risk to the regulated entities presented by individuals and entities with a history of fraud or other financial misconduct.”<sup>2</sup> The SCP requires that FHFA be notified if “an individual or entity with which [a regulated entity] has a contractual relationship in the mortgage, securities or other lending product business:

1. Has, within the past three (3) years, been criminally convicted of:
  - a. fraud or similar offense in connection with a mortgage, mortgage business, securities or other lending product; or
  - b. embezzlement, theft, conversion, forgery, bribery, making false statements or claims, tax evasion, obstruction of justice, or any other similar offense; or
2. Was, within the past three (3) years, suspended or debarred by any Federal agency for conduct that would constitute an offense described in paragraph 1 above.”<sup>3</sup>

FHFA will engage in an independent review of each report and, if appropriate, issue a Suspended Counterparty Designation (SCD) for the referred individual or entity.<sup>4</sup> A SCD protects the regulated entities from doing business with any party that FHFA’s SCP analysis has determined would present an excessive risk to regulated entities’ safety and soundness. As appropriate, FHFA will work with the OIG on any issues related to the SCP.<sup>5</sup>

FHFA’s authority to issue such an order designating an entity or person a suspended counterparty comes from section 1313B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which authorized FHFA to establish standards for the regulated entities regarding prudential management of risks, including counterparty risk. *See* 12 U.S.C. § 4513b(a)(9). Additionally, section 1313G of the Act authorizes FHFA to issue any orders necessary to ensure that the Act’s purposes are accomplished. *Id.* § 4526(a). Finally, section 1313 of the Act authorizes FHFA to exercise such incidental powers as may be necessary in the supervision and regulation of each regulated entity. *Id.* § 4513(a)(2).

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<sup>2</sup> Policy at 1.

<sup>3</sup> *Id.* § A.

<sup>4</sup> *Id.* § B.

<sup>5</sup> *Id.*

### **III. Relevant Factual Background**

The following basic summary sets forth facts which the OIG believes supports the designation of Ms. Kelly as a suspended counterparty.<sup>6</sup>

#### **A. Referral: Ms. Kelly**

At all times relevant to this referral, Ms. Kelly was an operations supervisor in Colonial Bank's Mortgage Warehouse Lending Division (MWLD). The MWLD was located in Orlando, Florida. Colonial Bank was an Alabama-based, state-chartered bank which provided short-term, secured funding to mortgage lending companies.

#### **B. The Conspiracy**

Taylor, Bean, & Whitaker Mortgage Corporation (TBW) was one of the largest privately held mortgage lending companies in the United States.<sup>7</sup> In early 2002 TBW began running overdrafts in its master bank account at Colonial Bank due to TBW's inability to meet its operating expenses, such as mortgage loan servicing payments owed to investors in Freddie Mac securities. Ms. Kelly and her co-conspirators covered up the overdrafts by transferring or "sweeping" overnight money from another TBW account at Colonial Bank with excess funds, into the master account to avoid the master account falling into an overdrawn status. The sweeping of funds gave the false appearance that TBW's master account was not overdrawn. The day after sweeping funds Ms. Kelly and her co-conspirators would cause the money to be returned to the other account, only to have to sweep funds back into the master account at the close of business that day to hide the deficit again.

By December of 2003, the size of the deficit due to the overdrafts had grown into the tens of millions of dollars. At that time Ms. Kelly and her co-conspirators caused the deficit in TBW's master account at Colonial Bank to be transferred to "COLB," a mortgage loan purchase facility at MWLD. By this process they sought to disguise the misappropriation of tens of millions of dollars of Colonial Bank funds to disguise TBW shortfalls or overdrafts, as payments related to Colonial Bank's purchase, through the COLB facility, of legitimate TBW mortgage loans. In fact, the mortgage loans either did not exist, or TBW had already committed to, or had already sold them to other third-party investors. As a result, these loans were not available for purchase by Colonial Bank. Ms. Kelly knew that she had played a role in causing Colonial Bank to pay TBW for assets that were worthless to Colonial.

In mid-2005 Ms. Kelly and her co-conspirators caused the deficit to be moved from the COLB facility to MWLD's "Assignment of Trade" (AOT) facility. The AOT facility was designed for the purchase of interests in pools of loans, which were referred to as "Trades," that

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<sup>6</sup> For additional relevant information please see the following attached documents: (1) the Criminal Information dated March 16, 2011 charging Ms. Kelly with felony conspiracy in violation of 18 U.S.C. § 371; (2) Ms. Kelly's Plea Agreement dated March 16, 2011; and (3) the accompanying Statement of Facts also dated March 16, 2011.

<sup>7</sup> TBW ceased most operations during August of 2009. On August 10, 2011, TBW went out of business per its Chapter 11 liquidation filing under bankruptcy.

were in the process of being securitized and/or sold to third-party investors. Ms. Kelly and her co-conspirators caused TBW to engage in sales to Colonial Bank of fictitious Trades purportedly backed by pools of loans. In fact, they had no collateral backing them. Additionally, the conspirators caused Colonial Bank to hold in its accounting records AOT Trades backed by assets that TBW was unable to sell (such as impaired-value loans, charged-off loans, previously sold loans, loans in foreclosure, and real-estate owned property). Ms. Kelly and her co-conspirators took steps to cover up the fictitious and impaired Trades on AOT by giving the false appearance that periodically the Trades were sold to third parties. She and others engaged in this sham to deceive others, including regulators and auditors.

The size of the deficit created by the false purchases through the COLB facility and the fictitious AOT Trades fluctuated during the conspiracy, at times it reached into the hundreds of millions of dollars. On August 14, 2009, the day the Alabama State Banking Department seized Colonial Bank the deficit in AOT was significantly more than \$400 million.

### **C. Conviction and Sentence**

On March 16, 2011 Ms. Kelly pled guilty and was convicted of one felony count of conspiracy in violation of 18 U.S.C. § 371. Her plea acknowledged that she conspired to commit bank fraud in violation of 18 U.S.C. § 1344, securities fraud in violation of section 1348, and wire fraud in violation of section 1343.<sup>8</sup> On June 17, 2011 Ms. Kelly was sentenced to three (3) months of imprisonment. Additionally, Ms. Kelly was sentenced to a term of three (3) years of supervised release following her imprisonment, which included nine (9) months of home confinement with electronic monitoring.<sup>9</sup>

### **D. Debarment**

HUD debarred Ms. Kelly for a three year period from May 6, 2011 at FHFA-OIG's request, due to her conduct discussed herein.<sup>10</sup>

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<sup>8</sup> See Plea Agreement, ¶ 1.

<sup>9</sup> Judgment in a Criminal Case, dated June 17, 2011.

<sup>10</sup> In researching the GSA's System for Awards Management website ([www.sam.gov](http://www.sam.gov)) two records related to Ms. Kelly's debarment were located. The active date for both is May 6, 2011, however there is a discrepancy as to the termination date. One agrees with the information provided by HUD in its Notice of Final Determination on debarment, which was sent to Ms. Kelly on September 12, 2011, and states that her debarment would run for a three-year period beginning on May 6, 2011 and ending on May 5, 2014. The other states that the debarment is indefinite. It is possible that the second SAM entry is an error of some sort as no other information has been located to support the conclusion that she has been debarred by HUD for an indefinite period. Both records have been provided as attachments.

#### **IV. Argument for Suspended Counterparty Designation**

The OIG believes that sufficient grounds exist for FHFA to issue a SCD and thereby designate Ms. Kelly a suspended counterparty for misconduct. Specifically:

- Within the past three (3) years, Ms. Kelly pled guilty and was convicted of a federal felony (conspiracy to commit bank fraud, securities fraud, and wire fraud) directly related not only to a mortgage business (TBW/ Ocala), but also to a regulated entity (Freddie Mac).
- Also, within the past three (3) years, HUD debarred Ms. Kelly for the very conduct for which she pled guilty.

For the foregoing reasons, the OIG believes that any future business relationship between Ms. Kelly and any of the regulated entities would present excessive risk to their safety and soundness. The OIG therefore requests that FHFA designate Ms. Kelly as a suspended counterparty, thereby permanently suspending her and any affiliated entities from entering into future contractual relationships with the regulated entities with regard to mortgages, securities or other lending products.

#### **V. Contact Information**

For questions concerning the underlying facts supporting this request, or if you require additional information, please contact me at (202) 730-4751.

For questions of a legal nature, please contact FHFA-OIG Assistant Chief Counsel Mark D. Baker at (202) 730-4041.

#### **Exhibits:**

- SCP Policy
- Ms. Kelly's Criminal Information
- Ms. Kelly's Plea Agreement & Related Statement of Facts
- Judgment in a Criminal Case
- Notice of Proposed Debarment from HUD
- Notice of Final Determination of Debarment from HUD
- Two (2) SAM Records of Debarment

#### **CC:**

Bryan Saddler, FHFA-OIG Chief Counsel

Non Responsive

Non Responsive



Non Responsive