Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

We had a $3.5 billion fraud investigation that had all three of these schemes:

From 2002 to 2009, former Taylor, Bean & Whitaker (TBW) Chairman Lee Farkas directed the sale of more than $1.5 billion in fake mortgage assets to Colonial Bank and misappropriated more than $1.5 billion from Ocala Funding LLC, a financing vehicle used and controlled by TBW.

Farkas, 58, oversaw the "triple-selling" of $900 million worth of mortgage loans to Colonial, Ocala Funding & Freddie Mac, and led an effort to obtain $553 million from the Troubled Asset Relief Program.

On June 30th, 2011, Farkas was sentenced to 30 years in prison. Seven other convictions so far. The CFO for TBW will be sentenced tomorrow

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

(b)(5)

On June 15, 2012, Delton DeArmas, the former chief financial officer of Taylor, Bean & Whitaker Mortgage Corporation (TBW), was sentenced to 60 months in prison for his role in a more than $2.9 billion fraud scheme that contributed to the failures of TBW and Colonial Bank. DeArmas had previously pleaded guilty to criminal information charging him with one count of conspiracy to commit bank and wire fraud and one count of making false statements. From 2005 through August 2009, he and other co-conspirators engaged in a scheme to defraud financial institutions that had invested in a TBW-owned lending facility called Ocala Funding LLC (Ocala). (b)(5

(b)(5)

(b)(5)

DeArmas admitted he was aware that, in an effort to cover up the hole and mislead investors, a subordinate who reported to him had falsified Ocala collateral reports and periodically sent the falsified reports to Ocala's investors and to other third parties.

(b)(5)

(b)(5)

(b)(5)

Six other individuals have also been convicted and sentenced for their roles in the TBW fraud scheme, including: Paul Allen, former CEO of TBW, who was sentenced to 40 months in prison;

Raymond Bowman, former president of TBW, who was sentenced to 30 months in prison; Desiree Brown, former treasurer of TBW, who was sentenced to 72 months in prison; Catherine Kissick, former senior vice president of Colonial Bank and head of its Mortgage Warehouse Lending Division (MWLD), who was sentenced to 96 months in prison; Teresa Kelly, former operations supervisor for Colonial Bank's MWLD, who was sentenced to 3 months in prison; and Sean Ragland, a former senior financial analyst at TBW, who was sentenced to 3 months in prison.

In addition, all of the TBW conspirators [redacted] (b)(5) have been suspended and debarred from doing business with the federal government or have debarment proceedings pending against them.

The case was prosecuted by the DOJ Criminal Division's Fraud Section and the U.S. Attorney's Office for the Eastern District of Virginia. The investigation was conducted jointly with SIGTARP, the FBI, HUD-OIG, and FDIC-OIG. [redacted] (b)(5)

[redacted] Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

(b)(5)

On June 15, 2012, Delton DeArmas, the former chief financial officer of Taylor, Bean & Whitaker Mortgage Corporation (TBW), was sentenced to 60 months in prison for his role in a more than $2.9 billion fraud scheme that contributed to the failures of TBW and Colonial Bank. DeArmas had previously pleaded guilty to criminal information charging him with one count of conspiracy to commit bank and wire fraud and one count of making false statements. From 2005 through August 2009, he and other co-conspirators engaged in a scheme to defraud financial institutions that had invested in a TBW-owned lending facility called Ocala Funding LLC (Ocala). (b)(5)

(b)(5) DeArmas admitted he was aware that, in an effort to cover up the hole and mislead investors, a subordinate who reported to him had falsified Ocala collateral reports and periodically sent the falsified reports to Ocala's investors and to other third parties. (b)(5) Six other individuals have also been convicted and sentenced for their roles in the TBW fraud scheme, including: Paul Allen, former CEO of TBW, who was sentenced to 40 months in prison; Raymond Bowman, former president of TBW, who was sentenced to 30 months in prison; Desiree Brown, former treasurer of TBW, who was sentenced to 72 months in prison; Catherine Kissick, former senior vice president of Colonial Bank and head of its Mortgage Warehouse Lending Division (MWLD), who was sentenced to 96 months in prison; Teresa Kelly, former operations supervisor for Colonial Bank's MWLD, who was sentenced to 3 months in prison; and Sean Ragland, a former senior financial analyst at TBW, who was sentenced to 3 months in prison.

In addition, all of the TBW conspirators, (b)(5) have been suspended and debarred from doing business with the federal government or have debarment proceedings pending against them.

The case was prosecuted by the DOJ Criminal Division's Fraud Section and the U.S. Attorney's Office for the Eastern District of Virginia. The investigation was conducted jointly with SIGTARP, the FBI, HUD-OIG, and FDIC-OIG. (b)(5)

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Non Responsive

Office of Inspector General

Office of Material Loss Reviews
Report No. MLR-10-031

Material Loss Review of Colonial Bank, Montgomery, Alabama

Exhibit B

April 2010

In its comments, the ASBD discussed its perspective on bank management based on the department's long, regulatory involvement with Colonial. In brief, the ASBD stated that attempts by regulators over the years to discourage or limit Colonial's CRE and ADC exposures were viewed as attempts to micromanage the bank and change its basic business model. Management's philosophy also called for aggressive growth into Florida and other high-growth real estate markets while operating the bank with significant leverage. Consequently, the bank generally operated with lower capital ratios than other banks regulated by the ASBD.

With regard to the specific cause of Colonial's failure, the ASBD indicated that the report accurately stated the ASBD's reasons for closing the bank on August 14, 2009. The ASBD pointed out that although the MWL operations caused significant losses, the CRE and ADC exposures would have brought down the bank by themselves.

With respect to supervision, the ASBD stated that when Colonial pursued charter changes in 2003 and 2008, the Boards of Directors and management were not receptive to the findings and recommendations conveyed to them by examiners prior to the respective conversions. Additionally, the relationship between examiners and senior management had become increasingly strained and communication had deteriorated. The ASBD noted that banks should not be allowed to ignore examiner concerns and recommendations no matter how determined bank management is to do so. In that regard, the ASBD strongly agreed with most of the improvements in the policy statement on regulatory conversions discussed in the body of our report. The ASBD also indicated that it would not do another conversion without a full-scope examination and that it is very important, in its view, that the existing regulator be allowed to follow up on any outstanding issues post-conversion.

The ASBD stated that, in the case of Colonial, the transition meeting with the FDIC and the OCC after the conversion was effected was a very positive step. In its view, prompt and appropriate regulatory actions were taken by the FDIC during the period of its supervision. Further, the ASBD believes that there were no significant delays in downgrading CAMELS ratings and putting enforcement actions in place to address the bank's problems.

Finally, the ASBD provided its views on PCA and the FDIC's backup authority, noting that:

- The PCA capital guidelines do not properly account for current experience in this banking crisis, the guidelines should be increased, and the term "well capitalized" should be eliminated; and

- The FDIC should be able to exercise backup authority any time it sees excessive risks at insured institutions.

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	Case No. 1:10CR200
v.	)	
	)	Honorable Leonie M. Brinkema
LEE BENTLEY FARKAS,	)	
	)	Sentencing Date: June 30, 2011
Defendant.	)	

POSITION OF THE UNITED STATES
WITH RESPECT TO SENTENCING

The United States of America, through its attorneys, 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, in accord with 18 U.S.C. § 3553(a) and the United States Sentencing Commission, Guidelines Manual ("Guidelines" or "U.S.S.G.") § 6A1.2 (Nov. 2010), files this Position of the United States With Respect to Sentencing of the defendant, Lee Bentley Farkas.

Introduction

From 2002 to August 2009 Farkas orchestrated a fraud of staggering proportions – one of the largest bank fraud schemes in this country's history – through his company, Taylor, Bean & Whitaker Mortgage Corp. ("TBW"). Farkas spearheaded the sale of more than $1.5 billion in fake mortgage assets to Colonial Bank, ultimately leaving a deficit of more than $500 million in its Assignment of Trade ("AOT") financing facility. He directed the misappropriation of more than $1.5 billion from Ocala Funding, a commercial-paper vehicle set up by TBW to finance mortgage purchases and funded by Deutsche Bank ("DB") and BNP Paribas ("BNP"). He oversaw the triple-selling of mortgage loans, worth approximately $900 million, to Colonial Bank, Ocala Funding, and Freddie Mac. He led an effort to fraudulently obtain another $553 million from the government's Troubled Asset Relief Program ("TARP"). His scheme contributed significantly to the failure of Colonial Bank, wiping out shareholder value in its public parent company, Colonial BancGroup. And, throughout, Farkas profited handsomely. As the principal owner of TBW, which would have collapsed in 2002 but for the fraud scheme, Farkas took home millions in salary. He personally stole more than $40 million from TBW and Colonial Bank. He acquired a jet, in part, through the sale of fake mortgages. He diverted TBW money to assemble a large personal collection of expensive antique and collector cars. He amassed a substantial portfolio of vacation homes, rental properties, restaurants, and small businesses, all financed by TBW. And he drew attention to himself through charitable giving made possible only because of his fraud.

Farkas fueled his lifestyle of ostentatious wealth by ripping off banks and attempting to steal from the government, all with little to no regard for the consequences to TBW's or Colonial Bank's employees, thousands of whom lost their jobs when TBW and Colonial Bank closed, or to the shareholders of Colonial BancGroup. Between 2007 and August 2009, as the country faced one of the worst financial crises in recent history largely sparked by suspect mortgage-related transactions, Farkas ramped up his scheme to rip off banks through sales of fake mortgage assets and by double-and triple-selling mortgage loans. And to this day, as evidenced by his deceitful testimony on the stand and his written submission to the probation officer, Farkas continues to deny any responsibility for the devastation brought on by the staggering fraud scheme that he initiated and led.

The nature, duration, and scope of Farkas's criminal acts warrant maximum punishment for maximum deterrence. The Guidelines in this case advise a sentencing range of life, bound by the statutory maximum of 385 years. In light of Farkas's stunning criminal scheme, giving full force to the advisory Guidelines range here would be fair and just. Accordingly, the government respectfully submits that an appropriate sentence in this case would be a Guidelines sentence capped at the statutory maximum of 385 years. Alternatively, the government respectfully recommends a period of years that would ensure that Farkas will remain in prison for life and forcefully promote general deterrence.

Background[1]

Lee Farkas was the chairman and principal owner of TBW, a mortgage company based in Ocala, Florida. Colonial Bank was one of the 25 largest depository banks in the country and was based in Montgomery, Alabama. Colonial's Mortgage Warehouse Lending Division ("MWLD") provided financing to mortgage origination companies, including TBW. From approximately 2002 through August 2009, Farkas and numerous co-conspirators defrauded three banks of more than $2.9 billion, misled shareholders of Colonial BancGroup, and attempted to fraudulently obtain approximately $553 million from the government's TARP program.

I. THE FIVE PHASES OF THE FRAUD SCHEME

At trial, the government proved Farkas led a five-part fraud scheme:

A. *Overdraft / sweeping scheme*

Beginning in 2002, Farkas and other co-conspirators engaged in a "sweeping" scheme to hide overdrafts in TBW bank accounts held at Colonial Bank. TBW ran large overdrafts

[1] In light of this Court's familiarity with the facts of this case, the Government includes only a brief overview and recitation of the key facts.

in its Master Account to cover its operating expenses. To cover up the overdrafts, conspirators "swept" funds on a daily basis into this account from the Investor Funding Account, a Colonial Bank-controlled account.[2] The sweeping scheme, which grew to approximately $140 million, continued until approximately December 2003. In addition to Farkas, other co-conspirators participating in the sweeping scheme included Ray Bowman, the president of TBW, Cathie Kissick, head of the MWLD at Colonial Bank, and Teresa Kelly, an MWLD operations supervisor.

B. ***Plan B on COLB***

In December 2003, Farkas and Kissick implemented "Plan B," a new phase of the scheme in which they caused the deficit covered up by the sweeping scheme to be moved to the COLB facility. While Plan B was initially supposed to be a one-time event, the conspirators continued to engage in Plan B transactions for years. Under Plan B, conspirators caused TBW to engage in fake sales of mortgage assets to Colonial Bank. TBW pretended to sell mortgage loans to Colonial Bank, and the bank advanced TBW money for the loans. In fact, the mortgage loans either did not exist or had already been sold to other banks or investors. By mid-2005, Colonial Bank held approximately $250 million in Plan B loans on its books. In addition to Farkas and Kissick, Bowman and Kelly also participated in Plan B.

C. ***Plan B on AOT***

Plan B on COLB grew to approximately $250 million and, because of the number of loans involved, became difficult for the conspirators to administer. In 2005, the conspirators

[2] At trial, Farkas argued that the sweeping scheme was not fraudulent because it involved the movement of TBW funds from the Investor Funding Account to the Master Account. Farkas's claim is misleading. The Investor Funding Account held deposits from investors that had purchased loans held on a Colonial Bank facility such as COLB. Typically, Colonial Bank owned 99% of these COLB loans and TBW owned 1%. Thus, the bulk of the money in the Investor Funding Account was owed to Colonial Bank.

moved Plan B from COLB to Colonial's AOT facility. The AOT facility was intended for the purchase of pools of loans that TBW was in the process of selling or securitizing. Under this new version of Plan B, the conspirators engaged in fake sales of pools of loans to Colonial Bank, and in return TBW received over $1.3 billion from Colonial Bank from mid-2005 through mid-2008. The Plan B pools of loans that TBW sold Colonial Bank consisted of nothing more than data for pools of loans that TBW had already sold to other investors. As such, the Plan B data was worthless to Colonial Bank. TBW paid down some of the Plan B balance on AOT over time and, by August 2009, Colonial Bank held approximately $500 million worth of worthless Plan B pools on the AOT facility. Other co-conspirators involved with Plan B on AOT included Brown, Kissick, and Kelly. Farkas and Brown also failed to disclose to Kissick and Kelly that approximately $700 million worth of loans they had sold to AOT were in fact double sold, paid in full, or charged off. As a result of Plan B and the sale of worthless loans to Colonial Bank, Colonial BancGroup, the public holding company for the bank, significantly overstated the mortgage assets held by the MWLD in BancGroup's public financial filings, including its annual reports (Forms 10-K) and quarterly reports (Forms 10-Q).

D. ***Ocala Funding ("OF")***

OF was a standalone subsidiary of TBW. It was designed to provide low-cost funding to TBW for additional mortgage loan originations. It was also set up to be bankruptcy remote. OF issued commercial paper (corporate IOUs) to investors in return for cash. OF would then use the cash to fund mortgage loans at TBW. OF was required to have at all times more assets (cash + loans) than liabilities (the commercial paper + subordinated debt). And, OF cash could only be used for OF purposes. When TBW ceased operations in August 2009, there were two investors in OF: DB and BNP, who owned a combined $1.75 billion in commercial paper. Farkas and co-

conspirators caused nearly all of the assets in OF to be stripped out and used to pay other TBW expenses, including mandatory servicing advances to investors in mortgage-backed securities TBW had sold. To cover up the missing assets, Farkas and other co-conspirators caused OF loans already sold to Freddie Mac to continue to appear as collateral at Colonial Bank and OF. As a result, Colonial Bank believed it owned $900 million in loans that had already been sold to Freddie Mac, and DB and BNP, as the investors in OF, believed they had approximately $1.67 billion in loan collateral backing their supposedly asset-backed commercial paper when in fact there was only collateral of roughly $160 million. Paul Allen, TBW's CEO, and Sean Ragland, a TBW financial analyst, facilitated the conspiracy by causing false collateral reports to be sent to DB and BNP as well as the custodian for OF, LaSalle Bank (purchased by Bank of America in 2007), that inflated by hundreds of millions of dollars the actual value of the collateral backing the commercial paper. Kissick and Kelly were not involved in the OF phase of the fraud scheme, and Colonial Bank was a victim of this fraud.

E. ***Capital Raise***

In the fall of 2008, Colonial BancGroup, Colonial Bank's holding company, applied for more than $550 million of TARP funds. Colonial BancGroup was approved for $553 million contingent upon its raising an additional $300 million in private capital. In early 2009, TBW undertook to lead the capital raise. TBW said it would invest $150 million itself and would find two private equity investors to invest $50 million each. Colonial BancGroup undertook to raise the remaining $50 million from other companies with which it did business. Ultimately, Colonial BancGroup announced on March 31, 2009, that it had met its contingency. That was false; TBW had falsely represented the participation of the two $50 million private equity investors and misrepresented the source of TBW's 10% deposit. Moreover, Colonial

BancGroup's TARP application, which incorporated the bank's financial statements, was materially false in that the fraud scheme caused the bank to significantly overstate the value of mortgage assets on its books. Farkas and Allen were involved in falsely representing the participation of the two $50 million private equity investors. And Farkas directed Brown in obtaining a $25 million deposit on behalf of TBW and the two equity investors by taking the money from OF. While Kissick was not aware of Farkas's misrepresentations regarding the equity investors, she knew that Colonial BancGroup's TARP application relied upon false bank financial data.

II. FARKAS'S PERSONAL GAIN FROM THE SCHEME

Farkas pulled tens of millions of dollars out of TBW—in excess of his millions of dollars in salary and bonuses—in order to support his lifestyle. He caused TBW to originate at least 24 fraudulent loans, totaling at least $7.3 million, which he used to fund the purchase of real estate for himself and others, to fund bars he operated in Ft. Lauderdale and Atlanta, and to pay, in part, for the purchase of a $28 million private jet. Farkas took out these loans, identified at trial as "Lee loans," on properties he did not own or that did not exist and in the names of others—real people whose identity the defendant used as the borrowers on many of these loans, without their knowledge. Farkas never made payments on these loans, never executed or recorded mortgages to accompany the loan promissory notes, and the loans were sold to Colonial Bank as part of mortgage pools in fraudulent Plan B transactions or otherwise funded by Colonial Bank.

Tens of millions of additional dollars Farkas pulled out of TBW for his personal use are reflected on TBW's general ledger in receivable accounts—Farkas's personal "due from shareholder" account and "due from" accounts associated with his personal entities, like 3201 Partnership and the businesses that owned his bars, restaurants, and health clubs. When TBW accountants could tell Farkas was moving money out the door for non-TBW purposes, they dutifully recorded the amounts in "due from" accounts. When TBW collapsed, Farkas's due from shareholder account and the due from 3201 Partnership accounts had a total balance of nearly $20 million. And as was proven at trial, this balance is understated by $15 million. The only time Farkas ever meaningfully paid down his "due from" accounts was with a fraudulent $15 million Plan B advance in connection with the sale of a fake pool of mortgage loans to Colonial Bank, so he could pay down his due from shareholder account and bring an end to the attention it was receiving from TBW's other lenders. As these numbers make clear, Farkas's extravagant lifestyle required enormous amounts of money, and his massive fraud kept TBW in business and able to meet the demands his lifestyle placed on it.

Argument

As this Court is aware, following the Supreme Court's decision in *United States v. Booker*, the Guidelines are now advisory. *United States v. Booker*, 543 U.S. 220, 261 (2005). As such, "[i]n the wake of *Booker* . . . the discretion of the sentencing court is no longer bound by the range prescribed by the guidelines." *United States v. Hughes*, 401 F.3d 540, 546 (4th Cir. 2005). The Supreme Court subsequently clarified that this means that the sentencing court "may not presume that the Guidelines range is reasonable." *Gall v. United States*, 552 U.S. 38, 50 (2007), *quoted in Nelson v. United States*, 129 S. Ct. 890, 892 (2009). Nevertheless, "sentencing courts are not left with unguided and unbounded sentencing discretion." *United States v. Green*, 436 F.3d 449, 455 (4th Cir. 2006). Instead, at sentencing a court "must first calculate the Guidelines range." *Nelson,* 129 S. Ct. at 891; *see also Hughes*, 401 F.3d at 546 (holding that a sentencing court is still required to 'consult [the] Guidelines and take them into account when sentencing.'") (*quoting Booker*, 542 U.S. at 264). After appropriately calculating the Guidelines, a sentencing court must then consider the Guidelines range, as well as the sentencing factors set forth in 18 U.S.C. § 3553(a), and determine a sentence that is appropriate for the individual defendant. *Nelson,* 129 S. Ct. at 891-92; *see also Hughes,* 401 F.3d at 546.

I. THE APPROPRIATE GUIDELINES RANGE

The Pre-Sentence Report ("PSR") calculates the defendant's adjusted offense level as 55, which is an astounding 12 levels higher than the highest offense level set forth in the Guidelines. The PSR calculation includes the following enhancements:

- Base offense level of 7;
- 30-level enhancement for loss of more than $400,000,000;
- 6-level enhancement for more than 250 victims;
- 4-level enhancement for substantially jeopardizing the safety and soundness of a financial institution;
- 2-level reduction because the combined enhancement for number of victims and safety and soundness of a financial institution is capped at 8;
- 2-level enhancement for use of sophisticated means;
- 4-level enhancement for role as an organizer and leader of a criminal activity that involved 5 or more participants;
- 2-level enhancement for abuse of trust; and
- 2-level enhancement for obstruction of justice.

The United States has no objections to the PSR and believes that the Probation Officer correctly calculated the defendant's offense level as a 55. Pursuant to U.S.S.G. Chapter 5, however, the PSR limits Farkas's offense level to a 43, with a recommended Guideline sentence of life imprisonment. U.S.S.G. Chapter 5, Part A, Comment. n. 2.

None of the 14 counts on which the defendant was convicted has a statutory maximum of life imprisonment. Section 5G1.2(d) of the Guidelines states that in such a situation "if the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, the sentence imposed on one or more of the other counts, shall run consecutively, but only to the extent necessary to produce a combined sentence equal to the total punishment." U.S.S.G. § 5G1.2(d). Consequently, the Guidelines sentence for the defendant is calculated by running each of the 14 statutory maximum sentences of conviction consecutively, to the extent necessary to ensure Farkas spends the rest of his life in prison Counts one through seven have 30-year statutory maximums, counts eight and nine have 20-year statutory maximums, counts 10 and 11 have 30-year statutory maximums, and counts 14 through 16 have 25-year statutory maximums. Thus, the defendant faces a total statutory maximum sentence of 385 years. The defendant appears to contest only the enhancements for number of victims, leadership role, abuse of trust, and obstruction of justice. *See* Defendant's Objections to PSR. Nevertheless, the United States sets forth the evidentiary support for each enhancement below.

A. *The PSR Correctly Applies a 30-Level Enhancement for Loss Greater than $400,000,000*

The PSR correctly applies a 30-level enhancement pursuant to § 2B1.1(b)(1)(P) because the loss in this case far exceeds $400 million, which is the highest level established by the Guidelines. At trial, the government proved that Farkas's scheme caused actual losses exceeding $2.9 billion. In addition, Farkas sought to steal another $553 million from the government's TARP program. The government's calculation consisted of the following:

1. <u>Plan B Losses of More Than $500 Million</u>

The government established the losses associated with Plan B on AOT in several ways. One, Teresa Kelly testified that she knew AOT had a $500 million "hole" as of August 2009. Trial Tr. vol. 3 (a.m.), 479:16-25, Apr. 6, 2011. Two, the government's summary witness, Ray Peroutka, identified the historical hole in AOT from approximately January 2008 through August 2009 by comparing Colonial Bank records of the book value of collateral as recorded in the bank's general ledger and in contemporaneous collateral reports generated by Teresa Kelly. As these reports showed, the deficit in collateral between what Colonial Bank paid TBW and what Colonial Bank actually held in collateral was approximately $500 million as of August 2009. Trial Tr. vol. 8 (a.m.), 2006-07, Apr. 14, 2011 ("Peroutka Tr."); Govt. Exh. 1-700. And, three, Peroutka testified about his review of collateral found at Colonial Bank that was either assigned to AOT or not assigned to any financing facility. By analyzing transaction histories for these loans in TBW's servicing database, FICS, Peroutka identified hundreds of millions of dollars worth of ineligible loans on AOT, including loans that had been double-sold, charged off, or paid in full. From this, Peroutka calculated the deficit in collateral on AOT, giving Farkas credit for thousands of loans not actually assigned to AOT, at approximately $550 million. Peroutka Tr.1999-2006; Govt. Exh. 1-700.

Farkas argued at trial and in a submission to the Probation Officer that excess collateral pledged to other facilities, such as the working capital line of credit and the Overline facility, more than made up for any collateral shortfall on AOT. This argument is not supported by the facts adduced at trial. For example, government witness Neil Luria testified that there was no available collateral to cover the hole at Colonial Bank. Moreover, the defendant's argument ignores the fact that any legitimately pledged collateral could not somehow erase the actual losses caused by his fraudulent transactions. Farkas's argument is akin to a bank robber claiming no harm from his bank heist because he maintained an account at the bank.

2. Ocala Funding Fraud of Approximately $2.4 Billion

Putting aside defendant's arguments about collateral related to Plan B, the losses from the Ocala Funding part of the scheme, which are unrelated to the Plan B losses, are enormous. The government proved that Farkas and his co-conspirators misappropriated approximately $2.4

billion through the Ocala Funding phase of the fraud scheme. As Peroutka testified, he identified in Colonial Bank and TBW records a collateral shortfall in the Ocala Funding facility of approximately $1.5 billion. Peroutka Tr. 2016-19; Govt. Exh. 1-700. This collateral shortfall was confirmed by the testimony of Avi Pemper, Brendon Girardi and Paul Allen that after TBW ceased operations there was little to no collateral backing the $1.7 billion of outstanding commercial paper. Trial Tr. vol. 6 (a.m.), 1453:5-13 (Apr. 12, 2011) (Allen testifying that in August 2009, the shortage in Ocala Funding was approximately $1.5 billion); Trial Tr. vol. 7 (a.m.), 1804:14-19 (Apr. 12, 2011) (Pemper testifying that in August 2009 the value of the collateral backing BNP's commercial paper was almost nothing.)

Peroutka also identified loans that were pledged to both Colonial Bank and Ocala Funding at the same time they had been sold to Freddie Mac. Through this double- and triple-pledging scheme, Farkas and his co-conspirators defrauded Colonial Bank of another $900 million. Peroutka Tr. 2017-18; Govt. Exh. 1-700.

3. <u>Intended Loss from $553 Million TARP Approval</u>

The government also proved that Farkas fraudulently attempted to obtain $553 million in TARP funds by causing Colonial BancGroup to submit an application based, in part, on the bank's inflated assets in the MWLD. Farkas also led a group of investors seeking to raise $300 million for Colonial BancGroup to meet a contingency before the government would approve the bank's TARP application. Unable to identify sufficient interest in the deal, Farkas falsely identified two private equity investors for $50 million each in a definitive agreement signed by him on behalf of other investors, and led an effort to use stolen funds from Ocala Funding to represent escrow deposits by these ostensible investors. In fact, neither investor had agreed to participate in the capital raise.

B. *The PSR Correctly Applies a Six-Level Enhancement for More than 250 Victims*

The PSR correctly applies a six-level enhancement pursuant to § 2B1.1(b)(2)(C) because the offense involved more than 250 victims. The Guidelines define a "victim" as "any person who sustained any part of the actual loss" and includes within that definition "individuals, corporations, companies and associations." U.S.S.G. § 2B1.1, Comment. n. 1. The conspiracy directly caused losses to three major financial institutions. Deutsche Bank and BNP lost a combined $1.7 billion as a direct result of the Ocala Funding portion of the fraud scheme. *See,* P.S.R., p. 38. Colonial Bank itself was also a victim. Evidence at trial established that Colonial Bank lost approximately $1.4 billion through the AOT fraud and the double and triple pledging that resulted from the Ocala Funding fraud. The FDIC, which is acting as the receiver for Colonial Bank, sets the loss at approximately $2.4 billion. *See also* PSR ¶ 56 (FDIC identifying actual loss of approximately $1.8 billion).

Beyond the major financial institutions that have been victimized, there are thousands of individuals who are also victims. At the very least, the 9,291 holders of Colonial BancGroup common stock who owned stock on August 3, 2009 – the day federal agents executed search warrants on Colonial Bank and TBW, and the day the fraud investigation became public – are victims.[3] By August 4, 2009, the day after the fraud investigation became public, the price of Colonial BancGroup's common stock fell precipitously to $0.49. By December 17, 2010, Colonial BancGroup's common stock closed at $.007 and thereafter could no longer be publicly traded. Critically, at no time from August 3, 2009 to December 2010 did Colonial BancGroup's common stock recover to its pre-August 3, 2009 trading price. Therefore, all individuals who

---

3 The shareholder notice administrator retained by the Department of Justice to distribute victim notifications provided the government with the number of Colonial BancGroup common stock holders as of August 3, 2009.

held Colonial BancGroup common stock as of August 3, 2009 are victims because, once the fraud was disclosed, the stockholders were unable to sell their stock for a price higher or equal to the price at which they purchased the stock.

C. *The PSR Correctly Applies a Two-Level Enhancement for Substantially Jeopardizing the Safety and Soundness of a Financial Institution*[4]

The PSR correctly applies a two-level enhancement pursuant to § 2B1.1(b)(14)(B)(i) because the fraud contributed to the failure of Colonial Bank, a financial institution under the Guidelines and federal law. The evidence presented at trial showed that as of August 2009, Colonial Bank's AOT facility was under-collateralized by over $500 million. But this approximately $500 million hole does not even account for the approximately $900 million of double—and triple—pledged loans that Colonial Bank believed it owned on the COLB facility. Given these staggering numbers, it is not surprising that Colonial Bank went into receivership less than two-weeks after TBW ceased operations. In fact, the defendant himself predicted this, repeatedly telling his co-conspirators that if TBW failed, Colonial would soon follow. *See e.g.* Trial Tr. vol. 2 (p.m.), 381:7-8, Apr. 5, 2011 (Farkas telling Kelly, if the overdraft is not covered, "it will be catastrophic to TBW and subsequently to Colonial Bank"); Trial Tr. vol. 2 (a.m.), 233:13-14, Apr. 5, 2011 (Farkas telling Bowman if they did not do Plan B it would "basically shut our company down and Colonial . . ."); Trial Tr. vol. 4 (a.m.), 781:18-20, Apr. 7, 2011 (Farkas emailing Kissick,"If you make good on your threats, the meltdown will surely be unpleasant."); Trial Tr. 4 (a.m.), 781:20, Apr. 7, 2011 (Farkas telling Kissick, if Colonial Bank cut off funding, it "would be unpleasant for [TBW] and unpleasant for [Colonial]"); Trial Tr. 4

---

[4] Although this enhancement normally calls for a four-level increase, only two levels are added because of a reduction for overlapping enhancements pursuant to U.S.S.G. § 2B1.1(b)(14)(C).

(a.m.), 832:3, Apr. 7, 2011 (Farkas telling Kissick that if TBW shut down, "Colonial Bank would be the one that would be hurt, because if he blew up, we would blow up").

Nevertheless, the defendant asserts in his objections to the PSR that "there is no evidence that he was the cause of the Colonial Bank failure." Rather than rely on the evidence at trial, the defendant cites to the FDIC Inspector General Report, issued in April 2010. That report makes clear that, although the fraud was not the sole cause of Colonial Bank's failure, it was one of the three key factors contributing to the bank's demise. *See* FDIC, Report of the Inspector General "Material Loss Review of Colonial Bank," at 3. This is sufficient to trigger the enhancement. *See United States v. Young*, 413 F.3d 727, 732-33 (8th Cir. 2005) (denying a defendant's challenged to a four-level enhancement for substantially jeopardizing the safety and soundness of a financial institution and finding that "nothing in the language requires the offense be the sole cause of jeopardy to the bank's safety and soundness"); *see also United States v. Zech*, 553 F.3d 663, 666 (8th Cir. 2009) (finding that the financial institution's avoidance of insolvency did not preclude application of the enhancement).

Even if this Court were to find that the conspiracy's causal relationship to the failure of Colonial Bank was insufficient to trigger an enhancement under § 2B1.1(b)(14)(B)(i), the enhancement would properly apply under § 2B1.1(b)(14)(B)(ii)(II), which applies if "the offense substantially endangered the solvency or financial security of an organization that . . . had 1,000 or more employees." There is no dispute that the fraud scheme resulted in the failure of TBW in August 2009 or that TBW had well over 2,000 employees shortly before it ceased operations. There is also no question that TBW is an "organization" under the Guidelines. *See* U.S.S.G. § 8A1.1. This fact alone is enough to trigger the four point enhancement under § 2B1.1(b)(14)(B)(ii)(II).

The defendant's conduct is also enough to trigger a two-level enhancement under § 2B1.1(b)(14)(A) because the defendant derived more than $1 million from Colonial Bank. As discussed above, TBW received over a billion dollars from Colonial Bank as a result of the sale of worthless assets. In addition, the defendant himself derived more than $1 million from Colonial Bank through the placement of the fraudulent "Lee loans" on the Colonial Bank facilities. Both of these are sufficient to trigger a two-point enhancement under § 2B1.1(b)(14)(A).[5]

D. *The PSR Correctly Applies a Two-Level Enhancement for Sophisticated Means*

The PSR correctly applies a two-level enhancement pursuant to § 2B1.1(b)(9)(C) because the fraud scheme involved sophisticated means. The defendant does not appear to object to this enhancement, but, even if he did, the enhancement is well-founded. The defendant led an incredibly complex, eight-year conspiracy that defrauded sophisticated financial institutions and numerous regulators. The conspiracy involved repeated transfers of tens of millions of dollars to hide a growing overdraft. It involved Plan B, in which the conspirators, at the defendant's direction, created fictitious spreadsheets that listed the alleged assets backing hundreds of millions of dollars in advances. In order to ensure that internal bank auditors, regulators, and external auditors did not discover the ongoing fraud, the conspirators would recycle or refresh their fictitious collateral every few months. They also engaged in complicated round trip transactions to hide the fact that the collateral on the AOT facility did not exist. In fact, the extent of the defendant's sophisticated means of covering up the scheme is evidenced by the defendant's persistent, yet erroneous, argument that the specific transactions charged in the indictment—and found to be proven beyond a reasonable doubt by the jury—actually resulted in

[5] This would not result in any change to the offense level because the 2 point reduction under § 2B1.1(b)(14)(C) would not apply.

a net benefit to Colonial Bank. Any of these facts alone would be enough to justify the sophisticated means enhancement. *See* U.S.S.G. § 2B1.1, cmt. n. 8(B) ("'Sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense."); *United States v. Milner*, 2008 WL 199703, *6 (E.D.N.C. 2008) (setting forth cases in which sophisticated means enhancement applies because the conduct at issue is more complex than the average case).

E. *The PSR Correctly Applies a Four-Level Enhancement for Leader or Organizer*

The PSR correctly applies a four-level enhancement pursuant to § 3B1.1(a) because the defendant was the "organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." *See* PSR, ¶ 60. Defendant challenges this enhancement claiming that "it has not been proven that Farkas . . . was the organizer and leader" of the conspiracy. *See* Defendant's Objections to PSR, ¶ 60. Defendant's objection ignores the overwhelming evidence presented at trial that establishes well beyond a preponderance that the defendant was in fact the leader of this extensive conspiracy.

There is no dispute that the conspiracy was extensive and that it involved more than five participants. In addition to the defendant, six conspirators pleaded guilty and cooperated with the government. All six of the cooperating co-conspirators testified that the defendant was the person from whom they took direction, or learned of the fraud scheme. *See e.g.* Trial Tr. vol. 2 (a.m.), 232:11-12, Apr. 5, 2011 (Bowman learning of Plan B from Farkas); Trial Tr. vol. 6 (p.m.), 1578:19-10, Apr. 12, 2011 (Brown testifying that Farkas is the decision maker on Plan B); Trial Tr. vol. 3 (a.m.), 459:4-15, Apr. 6, 2011 (Kelly testifying that, with respect to "recycling," Farkas would get involved "if the system needed to change"); Trial Tr. vol. 3 (a.m.), 471:15-19, Apr. 6, 2011 (Kelly testifying that when she spoke or emailed with Farkas, it was with respect to Plan B transactions); Trial Tr. vol. 4 (a.m.), 813:1-10, Apr. 7, 2011 (Kissick testifying that Farkas was her point of contact at TBW for Plan B, while Desiree Brown was the TBW employee handling Plan B's day-to-day administration); Trial Tr. vol. 6 (a.m.), 1441:25, Apr. 12, 2011 (Allen testifying that he learned from Farkas that Farkas had "moved" the Ocala Funding hole to Colonial Bank). In short, he was the clear leader of the conspiracy.

The only issue, therefore, is whether the defendant was the leader/organizer (thus subject to a four-level increase) or a manger/supervisor (thus subject to a three-level increase). The Guidelines list seven non-exclusive factors that a court may consider to determine the defendant's role: (1) exercise of decision making authority; (2) the nature of the defendant's participation; (3) whether the defendant recruited accomplices; (4) whether the defendant claimed a larger share of the proceeds; (5) the defendant's degree in planning or organizing the offense; (6) the nature and scope of the crime; and (7) the defendant's degree of control over others. U.S.S.G. § 3B1.1, Comment. n. 4. Each one of these factors supports the finding that the defendant was the leader/organizer of the conspiracy.

As mentioned above, all the co-conspirators described Farkas as the leader. As the chairman and owner of TBW, Farkas was the most senior executive involved in the fraud and he clearly was the decision maker. His participation was extensive; in fact he was involved in many decisions related to the details of the fraud, such as what data to send to Colonial and which private equity firms to claim were investors in the capital raise. He recruited a number of accomplices into the scheme, including Bowman, Brown, Allen, and Michael Wawryzniak, a lower level IT employee at TBW. As discussed throughout, the defendant was by far the biggest beneficiary of the fraud. And, the defendant was actively involved in all five aspects of the conspiracy and exerted more control over the other co-conspirators than did any other member.

He purposefully excluded certain people from various aspects of the fraud, directed others only to report directly to him, and had direct conversations with a number of lower level employees in an effort to further the fraud scheme. *See, e.g.,* Trial Tr. vol. 3 (p.m.) 670:17-23, Apr. 6, 2011 (Farkas telling Wawrzyniak what data to pull for Plan B); Trial Tr. vol. 6 (a.m.) 1362:8-12, Apr. 12, 2011 (Farkas precluding Allen from getting information from TBW's treasury department). The overwhelming evidence is that the defendant was the leader and organizer of this massive fraud scheme and a four-level increase is appropriate.

F. *The PSR Correctly Applies a Two-Level Enhancement for Abuse of Trust*

The PSR correctly applies a two-level enhancement pursuant to § 3B1.3 for abuse of a position of trust. *See* PSR, ¶ 66. The defendant does not appear to object to this enhancement, but does object to the inclusion of one fact supporting the enhancement. Regardless of the nature of the defendant's objection, the evidence clearly supports the application of the enhancement. *See United States v. Dahlstrom*, 180 F.3d 677, 685 (5th Cir. 1999) (affirming an abuse of trust enhancement for the defendant who was the CEO and president of a private company and noting that "an abuse of position of trust is imposed if a defendant's job places the defendant in a superior position to commit a crime and the defendant takes advantage of that superior position to facilitate the crime."); *United States v. Ragland*, 72 F.3d 500, 503 (6th Cir. 1996) (defining position of trust as one "characterized by substantial discretionary judgment that is ordinarily given considerable deference."); *United States v. Morris*, 18 F.3d 562, 568 (8th Cir. 1994) (affirming district court's application of abuse of trust enhancement for an officer and director of a bank who used her position to commit the offense and to conceal her criminal conduct).

First, there is no dispute that as owner and chairman of TBW, the defendant occupied a position of private trust. *See* U.S.S.G. § 3B1.3, Comment. n. 1 (defining a position of private trust as "characterized by professional or managerial discretion" and noting that "persons holding such positions ordinarily are subject to significantly less supervision than employees whose responsibilities are non-discretionary in nature"). There is likewise no real dispute that the defendant used his position as owner and chairman of TBW to "facilitate the commission [and] concealment of the offense." The defendant used his position as owner of TBW to pressure Cathie Kissick to continue with the fraud scheme, even when she expressed frustration and resignation. The testimony at trial established that whenever Kissick pushed back on engaging in additional fraudulent transactions, the defendant threatened to shut down TBW, which would have exposed the fraud and likely caused Colonial Bank—and Kissick—significant harm. The defendant also used his position as owner and chairman to control the flow of information, which made detection of the fraud significantly more difficult. For example, the defendant precluded Paul Allen, the TBW CEO, from talking with Colonial Bank directly. *See* Trial Tr. vol. 6 (a.m.) 1369:7-9, Apr. 12, 2011 (Farkas telling Allen not to have conversations with Colonial Bank without Farkas's approval). He also directed Wawryzniak not to discuss the Plan B project that the defendant assigned to him directly.

G. *The PSR Correctly Applies a Two-Level Enhancement for Obstruction of Justice*

The PSR correctly applies a two-level enhancement pursuant to § 3C1.1 for obstruction of justice based on the defendant's pejurious trial testimony. *See* PSR, ¶¶ 66-67. The defendant objects to this enhancement on the grounds that "perjury was not alleged, nor proven at trial, and conviction of a crime for which defendant maintains his innocence is not evidence of perjury." *See* Defendant's Objections to PSR. Defendant's objections are without merit. The government need not charge perjury in order for the enhancement to apply. Rather, the district court must find by a preponderance of the evidence that the defendant perjured himself by giving false testimony concerning a material matter with the willful intent to provide false testimony. *United States v. Dunnigan*, 507 U.S. 87, 94 (1993).

The Court has already determined that the defendant gave false testimony. In considering the government's request to have the defendant remanded post-verdict, the Court noted that it "agree[d] with what must have been part of the jury's finding that Mr. Farkas . . . was not honest when he testified from the stand." Trial Tr. vol. 11, 22:14-19, Apr. 19, 2011. In particular, the Court observed that Farkas's "testimony on the Plan B . . . was vivid, and it was very clear to the Court and, obviously, to the jury that that was not truthful." Trial Tr. vol. 11, 22:20-22, Apr. 19, 2011. Indeed, Plan B was a principal component of Farkas's fraud scheme and a central issue at trial. Farkas took the stand and repeatedly testified that he did not remember what Plan B was, or attempted to explain it away in innocent terms. *See* Trial Tr. vol. 9 (a.m.), 2292:3-5, Apr. 15, 2011; Trial Tr. vol. 9 (p.m.), 2306:7-12 & 2385:9-14, Apr. 15, 2011. As the Court recognized, this testimony was patently false and flatly contradicted by the mountain of evidence adduced at trial.

II. THE 18 U.S.C. § 3553(A) FACTORS

After calculating the appropriate Guidelines range, "the court must 'determine whether a sentence within that range . . . serves the factors set forth in § 3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors.'" *United States v. Moreland*, 437 F.3d 424, 432 (4th Cir. 2006) (quoting *Green*, 436 F.3d at 455). Section 3553(a) directs the sentencing court to consider various factors, including the nature and circumstances of the offense and characteristics of the defendant. In addition, § 3553(a) states that the court must consider other factors, including the need for the sentence "to reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense; [and] to afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(A) & (B).

A. *Nature and Circumstances of the Offense, Seriousness of the Offense, Respect for the Law, and Just Punishment for the Offense.*

As set forth above, and as made clear at trial, Farkas orchestrated an eight-year fraud of staggering proportions. His fraud caused billions of dollars of losses to financial institutions, significantly led to the failures of TBW and Colonial Bank, caused thousands of employees to lose their jobs, and wiped out the investments of thousands of Colonial BancGroup shareholders.

As the Court has noted at each of the sentencings in this case thus far, Farkas's co-conspirators are generally decent people who made terrible decisions and failed to extricate themselves from a fraud scheme spiraling out of control. Farkas can hardly be included in this category. For years, he manipulated his co-conspirators and others to his personal advantage. He celebrated having coerced Cathie Kissick to accede to his demands. *See, e.g.*, Trial Tr. vol. 6 (p.m.), 1574:6-12, Apr. 12, 2011 (testimony of Desiree Brown). At TBW, Farkas promoted to key positions individuals who were unqualified and whom he could control and then used them in furtherance of his fraud scheme. Farkas purposefully limited the information flowing to certain co-conspirators and controlled their communications and interactions with others for his own benefit.

As Brown and Bowman testified, Farkas exploited Kissick's and Kelly's vulnerable positions to steal even more money from Colonial Bank. At the same time that he used Kissick and Kelly to steal money through Plan B, he deceived them by parking nearly $700 million in worthless loans on AOT (including double-sold, paid-in-full, charged-off, and Lee loans) and double- and triple-pledging nearly $900 million worth of loans to the COLB facility, loans that were already pledged to Ocala Funding and/or sold to Freddie Mac. Farkas exemplifies the adage that there is "no honor among thieves."

While Farkas's co-conspirators are by no means victims of his crimes, it has become clear from their testimony at trial and their allocutions at sentencing that Farkas has ruined their lives. Most have been sentenced to significant periods of incarceration; all will live with the heavy burden of felony convictions and the collateral consequences. And, critically, no conspirator except Farkas personally profited from the fraud scheme. While Farkas was pulling tens of millions of dollars out of TBW to support his ostentatious lifestyle, driving exotic cars, and flying in his private jet to vacation homes in Maine and Key West, his co-conspirators were living in fear.

Not only did Farkas mastermind this gargantuan fraud scheme and destroy many lives in the process, but he also continues to show an absolute lack of respect for the law. In his statement submitted to the Probation Officer, Farkas does more than deny his crime; he suggests he was merely being "Pollyannaish" and "foolishly optimistic." *See* PSR, ¶69. He continues to deflect attention away from his sale of hundreds of millions of dollars of fake Plan B assets to Colonial Bank by suggesting he had sufficient collateral pledged to other facilities. *See* id. This collateral argument ignores, of course, the nearly $2.4 billion double- and triple-pledging scam he operated on Ocala Funding and Colonial Bank for the simple reason that, as defense arguments make clear, the maximum value of Farkas's supposed collateral was well under $1 billion.

In sentencing Farkas's co-conspirators, the Court took into account as mitigating factors their roles in the fraud scheme as compared to that of Farkas. The government respectfully requests that in order to satisfy the just punishment requirement of 18 U.S.C. § 3553(a)(2)(A), a substantial sentence of imprisonment for Farkas must reflect, in part, the unique situation he was in to recruit, control, exploit, and reward—or fail to reward—the co-conspirators in his fraud scheme. A sentence at the statutory maximum would do just that.

B. *The Need to Afford Adequate Deterrence*

The Court must also consider the need for the sentence imposed to afford adequate deterrence. 18 U.S.C. § 3553(a)(2). In this respect, the government respectfully submits that the statutory maximum sentence of 385 years is also justified. The government concedes that a statutory maximum sentence is unnecessary for purposes of specific deterrence given that any substantial sentence of incarceration is likely to result in the defendant being imprisoned for life. But, such a lengthy sentence is appropriate to establish the goal of general deterrence. And general deterrence is perhaps even more important in complex, corporate fraud cases such as this one, which are often difficult to detect, investigate, and prosecute. *See, e.g. United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) ("Because economic and fraud-based crime are 'more rational, cool, and calculated than sudden crimes of passion or opportunity' these crimes are 'prime candidates for general deterrence.'").

1. Specific Deterrence

Unlike the other six defendants in this case, the sentence imposed on this defendant must serve specific deterrence. The defendant has yet to acknowledge his illegal conduct. He has yet to accept responsibility and there is nothing in the record to suggest that, if given the opportunity, this defendant would not once again engage in illegal conduct. Indeed, even after federal agents raided TBW in August 2009, even after TBW had to shut down and thousands of employees lost their jobs, and even after the defendant knew that there was a federal criminal investigation, the defendant invested millions of dollars in other mortgage companies in an effort to get back into the game. *See* PSR, ¶ 92. Therefore, a substantial sentence is needed for specific deterrence alone.

2. General Deterrence

Although the difference between a sentence at the statutory maximum and a term of years ensuring he spend his life in prison may be immaterial to Farkas, sentencing him to the maximum penalty allowed by law will send the most forceful and unequivocal message to senior corporate executives that engaging in fraud and deceit in order to pump up your company or line your own pockets is unacceptable and will have severe consequences. Only a strong message of deterrence will provide the appropriate disincentives to the very people best-equipped with the means and ability to commit fraud. That is why courts have recognized that deterrence alone can justify a lengthy sentence. *See, e.g.*, *U.S. v. Phinazee*, 515 F.3d 511, 515-16 (6th Cir. 2008); *United States v. Sagendorf*, 445 F.3d 515, 518 (1st Cir. 2006).

In this case, the defendant was the owner and chairman of a large private company that employed thousands of people. He personally led an eight year long, multi-billion dollar fraud scheme. And he personally took over $40 million from his company and from Colonial Bank to finance his extravagant lifestyle. A very lengthy sentence, particularly one at the statutory maximum sentence of 385 years, will certainly draw the attention of corporate executives and will provide necessary and substantial general deterrence.

C. The Need to Avoid Unwarranted Sentencing Disparities

Imposition of the statutory maximum sentence for Farkas would not create an unwarranted sentencing disparity with sentences already imposed in this case or with respect to sentences imposed in other similar cases across the county.

With regard to the sentences of his co-conspirators, Farkas is simply not similarly situated to any of them. Each of the cooperating co-defendants pleaded guilty, accepted responsibility for his or her criminal conduct, cooperated with the government, and testified truthfully at trial, in stark contrast to Farkas. While each of the cooperating co-defendants was involved in discrete parts of the fraud scheme, only Farkas was involved in, and had knowledge of, all aspects of the fraud. As several witnesses testified, Farkas also limited co-conspirators' access to information, so he could best exploit them. Further, the evidence at trial established that Farkas was the undisputed leader of the fraud scheme. He was the overwhelming beneficiary of the scheme, as evidenced by his opulent lifestyle, and he designed the scheme, in large measure, to enrich himself and his company. Perhaps most significantly, Farkas lied at trial and, with his submission to the Probation Officer, continues to mislead the Court as to his role in the fraud. A substantial disparity in sentences between Farkas and his co-conspirators is, in light of these circumstances, both entirely warranted and necessary.

The government's sentencing recommendation for Farkas is also fully consistent with sentences imposed by courts across the country on similarly situated white collar defendants. The gravamen of Farkas's crimes is theft by fraud: he lied to banks, he sold them fake assets, and he sent them bogus collateral records, all designed to help him steal money directly from them. But he did not just harm financial institutions. His actions also contributed to Colonial BancGroup shareholders being wiped out, and he attempted to swindle another $553 million from TARP. These actions warrant comparison to a number of defendants, four of whom are listed below. These defendants were convicted after trial for committing significant investment frauds and were sentenced to substantial periods of incarceration based on actual, out-of-pocket loss:

1. *Norman Schmidt*, No. 04-CR-103 (D. Colo. 2010) (Defendant convicted at trial for $43 million Ponzi scheme; sentenced to 310 years' imprisonment);

2. *Edward Okun*, No. 08-CR-132 (E.D. Va. 2009) (Defendant convicted at trial for $126 million investment scheme; sentenced to 100 years' imprisonment)[6];

3. *Richard Harkless*, No. 07-CR-18 (C.D. Cal. 2009) (Defendant convicted at trial for $39 million Ponzi scheme; sentenced to 100 years' imprisonment);

4. *Thomas Petters*, No. 08-CR-364 (D. Minn. 2010) (Defendant convicted at trial of $1.8 billion Ponzi scheme; sentenced to 50 years' imprisonment);

Even sentences for white collar defendants who accepted responsibility and pleaded guilty have been significant in cases where the defendant caused significant out-of-pocket loss – losses like those caused by Farkas in this case:

1. *Bernard Madoff*, No. 09-CR-213 (S.D.N.Y 2009) (Defendant pleaded guilty in $13 billion Ponzi scheme; sentenced to 150 years' imprisonment);

2. *Scott Rothstein*, No. 09-CR-60331 (S.D. Fla. 2010) (Defendant pleaded guilty to $430 million Ponzi scheme; sentenced to 50 years' imprisonment);

3. *Louis Pearlman*, No. 07-CR-97 (M.D. Fla. 2008) (Defendant pleaded guilty to $300 million Ponzi scheme; sentenced to 25 years' imprisonment);

4. *Marc Dreier*, No. 09-CR-85 (S.D.N.Y. 2009) (Defendant pleaded guilty to $400 million investment fraud scheme; sentenced to 20 years' imprisonment);

5. *Samuel Israel*, No. 05-CR-1039 (S.D.N.Y. 2005) (Defendant pleaded guilty to $400 million Ponzi scheme; sentenced to 20 years' imprisonment)

White collar cases involving accounting fraud have also yielded substantial sentences. *See, e.g., United States v. Ebbers*, 02-CR-1144 (S.D.N.Y. 2005) (Defendant convicted at trial for $11 billion accounting fraud; sentenced to 25 years' imprisonment). Here, Farkas deserves punishment for the accounting aspect of his crime—the losses suffered by Colonial BancGroup's

---

[6] The 100 year sentence imposed on Edward Okun is the most substantial sentence imposed on a white collar defendant, in this district, in recent history. Okun's sentenced was based, at least in part, on the $126 million in actual, out-of-pocket loss he caused. Here, the actual loss caused by Farkas is nearly $3 billion. This fact alone justifies a more significant period of imprisonment for Farkas.

shareholders. But, unlike Ebbers, Farkas's crimes did not stop at cooking the books. He spearheaded a scheme that directly stole billions from financial institutions by selling fake assets, diverting money from bank accounts, and covering up the fraudulent transactions with false documents. He manufactured fake loans to line his own pockets, and he sold those to Colonial Bank. And, of course, he attempted to steal another half billion dollars from the government through his TARP scheme.

In light of the nature of Farkas's crimes, his deception on the stand, and his continued lies about his role in the scheme, a sentence at the statutory maximum, or alternatively, one that ensures he spend the rest of his life in prison, when compared with similar sentences identified above, is warranted.

III. Sentencing Recommendation

As set out above, the government respectfully requests that the Court impose a sentence that gives full force to the Guidelines. Alternatively, the government respectfully requests that the Court impose a term of years that will ensure Farkas spend the remainder of his life in prison. If the Court chooses to impose a term of years less than 385 years, the government respectfully submits that, in light of the egregious nature of Farkas's crimes and the sentences identified above, a sentence of at least 50 years is appropriate.

Forfeiture

The United States has filed motions seeking the defendant's forfeiture to the United States of all property constituting, or derived from, proceeds he obtained directly or indirectly as the result of his fraud scheme. In particular, the government has requested a money judgment in the amount of $42,199,597.47, representing $7,330,500 in proceeds Farkas obtained through the issuance of fraudulent mortgage loans, $15 million Farkas obtained from a fraudulent Plan B transaction and used to pay down his due from shareholder account, and $19,869,097.47 in proceeds Farkas pulled out of TBW and that was recorded in his due from shareholder account and in the receivable accounts associated with his general partnership, 3201 Partnership. In its motions, the government has also identified real properties, automobiles, and other assets owned in whole or in part by the defendant. The government respectfully requests entry of the $42.2 million forfeiture money judgment and forfeiture of the identified properties as substitute assets.[7]

Restitution

The government is still in the process of identifying victims and their loss amounts. The amount of potential restitution in this case is enormous, with the defendant potentially facing a restitution order of more than $2.9 billion. While it is unlikely that the victims will recover the full amount from the defendant or his co-conspirators, the government needs additional time to identify victims and the amounts they are owed to ensure they are able to recover ratably from any restitution payments made by Farkas (or the other defendants). Therefore, after consultation with defense counsel and pursuant to 18 U.S.C. § 3664(d)(5), the government respectfully moves the Court to defer the entry of a restitution order until after Farkas is sentenced and after a hearing is held on the issue sometime in July or August. This will ensure that late-identified victims and changes to loss figures based on additional review are consistently reflected in each restitution order.

Conclusion

In accordance with the foregoing and for the reasons stated herein, the United States respectfully requests that the Court impose a sentence at the statutory maximum of 385 years or,

[7] The government has continued to uncover assets owned in whole or in part by the defendant and anticipates moving for the forfeiture of additional substitute assets in the near future.

alternatively, a substantial term of years to ensure that Farkas remain in prison for the rest of his life.

Respectfully submitted,

Neil H. MacBride
United States Attorney

By: /s/
Charles F. Connolly
Paul J. Nathanson
Assistant United States Attorneys
Eastern District of Virginia
U.S. Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
Ph: 703.299.3700
Fax: 703.299.3981
Charles.Connolly@usdoj.gov

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

By: /s/
Patrick F. Stokes
Deputy Chief
Robert A. Zink
Trial Attorney
U.S. Department of Justice
1400 New York Avenue, NW
Washington, DC 20005
Ph: 202.305.4232
Fax: 202.514.7021
Patrick.stokes2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2011, I filed electronically the foregoing Position of the United States with Respect to Sentencing using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

William Bruce Cummings
William B. Cummings P.C.
P.O. Box 1177
Alexandria, Virginia 22313
Ph: 703-836-7997
wbcpclaw@aol.com

I have also sent a copy of the filing to the following:

Karen Moran
Senior U.S. Probation Officer
Karen_Moran@vaep.uscourts.gov

/s/

Charles F. Connolly
Assistant United States Attorney
U.S. Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
Phone: (703) 299-3700
Fax: (703) 299-3981
Email: Charles.Connolly@usdoj.gov

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:10-CR-200
	)	
v.	)	Count 1: Conspiracy
	)	(18 U.S.C. § 1349)
LEE BENTLEY FARKAS,	)	
	)	Counts 2-7: Bank Fraud
Defendant.	)	(18 U.S.C. §§ 1344 and 2)
	)	
	)	Counts 8-13: Wire Fraud
	)	(18 U.S.C. §§ 1343 and 2)
	)	
	)	Counts 14-16: Securities Fraud
	)	(18 U.S.C. §§ 1348 and 2)
	)	
	)	Forfeiture Notice
	)	(18 U.S.C. §§ 981, 982)
	)	
	)	**Under Seal Pursuant to**
	)	**Fed. R. Crim. P. 6(e)(4)**

JUNE 2010 TERM - AT ALEXANDRIA, VIRGINIA

INDICTMENT

THE GRAND JURY CHARGES THAT:

At all times relevant to this Indictment, unless otherwise stated:

INTRODUCTION

I. Relevant Entities

A. Taylor, Bean & Whitaker Mortgage Corp.

1. Taylor, Bean & Whitaker Mortgage Corp. (TBW), based in Ocala, Florida, was founded in 1982 and was one of the largest privately held mortgage lending companies in the United States. TBW was principally involved in the origination, purchase, sale, and servicing of residential mortgage loans. TBW generally sold these loans in the secondary mortgage market to third-party investors, including the Federal Home Loan Mortgage Corporation (Freddie Mac) and commercial financial institutions, either individually, pooled, or as part of mortgage-backed securities that received guarantees by Freddie Mac or the Government National Mortgage Association (Ginnie Mae). TBW originated and purchased billions of dollars in new residential loans on an annual basis. To fund its mortgage loan originations and acquisitions, TBW relied on various purchase facilities, credit lines, and financing vehicles, primarily with Colonial Bank and, starting in or about January 2005, Ocala Funding, LLC. On or about August 24, 2009, TBW filed for bankruptcy in the United States Bankruptcy Court for the Middle District of Florida in Jacksonville.

2. TBW's principal source of income came from servicing mortgage loans it sold to Freddie Mac and it sold as part of securities guaranteed by Ginnie Mae. TBW's loan servicing responsibilities required it to, among other things, collect principal and interest payments on mortgage loans from borrowers and disburse those "pass-through" payments to the third-party

investors in the loans. TBW earned a servicing fee, which amounted to a small portion of a borrower's payment. As a loan servicer for Freddie Mac and Ginnie Mae, TBW was generally obligated to advance the pass-through payments to investors in the mortgage loans even where borrowers failed to make principal and interest payments in a timely manner. If TBW failed to advance the required pass-through payments, it risked losing its right to act as a loan servicer, and thus the associated fees, on behalf of Freddie Mac and Ginnie Mae.

B. Ocala Funding

3. Ocala Funding, LLC, was a TBW wholly owned entity formed on or about January 14, 2005. TBW formed Ocala Funding as a financing vehicle to provide it additional funding for mortgage loans. Ocala Funding was managed by TBW and had no employees of its own. Ocala Funding sold commercial paper to financial institution investors and used the funds raised to acquire mortgage loans originated or purchased by TBW. Generally, Ocala Funding then sold the loans to Freddie Mac. As of on or about June 30, 2008, Ocala Funding had two dedicated financial institution investors: Deutsche Bank, which agreed to purchase up to $1.25 billion of commercial paper, and BNP Paribas Bank, which agreed to purchase up to $500 million of the commercial paper. 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.

4. LaSalle Bank, N.A., was headquartered in Illinois and was retained by Ocala Funding to, among other things, maintain custody of mortgage loan files for mortgage loans purchased by Ocala Funding, and to operate bank accounts for Ocala Funding. LaSalle Bank was purchased in or about October 2007 by Bank of America, N.A.

C. Colonial BancGroup and Colonial Bank

5. Colonial BancGroup, Inc., was a Delaware corporation organized in 1974 as a bank holding company that managed Colonial Bank and other, smaller subsidiaries. Colonial BancGroup, headquartered in Montgomery, Alabama, derived most of its income from Colonial Bank. Colonial BancGroup's securities were registered pursuant to § 12(b) of the Securities and Exchange Act of 1934 and traded on the New York Stock Exchange under trading symbol "CNB." On or about August 25, 2009, Colonial BancGroup filed for bankruptcy in the United States Bankruptcy Court for the Middle District of Alabama in Montgomery.

6. Colonial Bank was headquartered in Montgomery, Alabama, and since in or about June 2008 was an Alabama state-chartered bank with the Federal Deposit Insurance Corporation (FDIC) as its primary federal regulator. Colonial Bank was primarily involved in retail and commercial banking. As of December 31, 2008, Colonial Bank held approximately $26 billion in assets, which accounted for nearly all of Colonial BancGroup's consolidated assets. As of on or about December 31, 2008, Colonial Bank had approximately 350 branches in Florida, Alabama, Georgia, Nevada, and Texas, with deposits of approximately $19 billion. On or about August 14, 2009, the Alabama State Banking Department, the state regulator for Colonial Bank, seized Colonial Bank and appointed the FDIC as receiver.

7. Colonial Bank's Mortgage Warehouse Lending Division (MWLD) was based in Orlando, Florida, and provided short-term, secured funding to mortgage lending companies. MWLD's largest customer was TBW. During 2008, MWLD provided approximately $70 billion in interim funding to mortgage companies to fund approximately 400,000 residential mortgages.

MWLD accounted for at least 20% of Colonial Bank's pre-tax income from 2005 through 2009, and in 2008 and 2009 was one of Colonial Bank's few banking segments that reported a profit.

D. Freddie Mac and Ginnie Mae

8. Freddie Mac was a government-sponsored enterprise established by Congress to provide liquidity and stability to the housing market in the United States. Freddie Mac purchased residential mortgages in the secondary mortgage market, securitized those mortgages, and then sold them to investors as mortgage-backed securities. Freddie Mac also purchased mortgages and mortgage-backed securities for its own mortgage-related investment portfolios. Freddie Mac guaranteed the timely payment of principal and interest for its mortgage-backed securities. Freddie Mac was headquartered in McLean, Virginia.

9. Ginnie Mae was a government-owned corporation within the United States Department of Housing and Urban Development. Ginnie Mae did not buy or sell loans or issue mortgage-backed securities. Rather, Ginnie Mae guaranteed mortgage-backed securities issued by companies such as TBW that were backed by federally insured or guaranteed loans. Ginnie Mae was headquartered in Washington D.C.

E. TARP

10. The Troubled Asset Relief Program (TARP) was created by the Emergency Economic Stabilization Act of 2008 and was designed, among other things, to restore liquidity and stability to the financial system in the wake of the financial crisis. One of the sub-programs created under TARP was the Capital Purchase Program (CPP), in which government funds would be invested in financial institutions in exchange for preferred shares in those institutions. Financial institutions seeking TARP funds under CPP would apply through their primary federal

bank regulator, and both an institution's eligibility and the amount of the CPP investment would depend, in part, upon information reflected in the institution's financial statements.

II. The Defendant and Co-Conspirators

11. LEE BENTLEY FARKAS, the defendant, resided in Ocala, Florida, and was the chief executive officer of TBW until in or about July 2003 and the chairman thereafter. FARKAS was the majority shareholder of TBW.

12. Co-conspirators included executives and employees of TBW and Colonial Bank.

III. The Scheme to Defraud

13. Beginning in or about early 2002, TBW began to experience significant cash flow problems and was unable to cover adequately, among other things, its operating expenses. In an effort to cover the shortfalls, FARKAS and co-conspirators devised a scheme to misappropriate funds from Colonial Bank, Ocala Funding accounts, and eventually the United States government. The scheme evolved over the years as FARKAS and co-conspirators sought to misappropriate more money and to hide the misappropriations from, among others, certain Colonial Bank and Colonial BancGroup management, Freddie Mac, Ginnie Mae, the FDIC, financial institution investors in Ocala Funding, auditors, regulators, and shareholders. The scheme ultimately led to the misappropriation of more than $1 billion.

14. Initially, the scheme involved TBW and Colonial Bank co-conspirators hiding millions of dollars of TBW overdrafts in its primary bank account at Colonial Bank, which arose from TBW's operating deficits, through frequent transfers of funds back and forth between that account and another. After the overdrafts reached into the tens of millions of dollars, however, FARKAS and co-conspirators revised the scheme and misappropriated hundreds of millions of

dollars more by selling Colonial Bank what amounted to fictitious assets. To do this, FARKAS and co-conspirators engaged in sales to Colonial Bank of mortgage loans that did not exist, that TBW already had sold to others, or that had significantly impaired value. As a result, FARKAS and co-conspirators caused Colonial Bank to falsely report the value of mortgage loans in its accounting records.

15. As part of their scheme, FARKAS and co-conspirators also misappropriated hundreds of millions of dollars from Ocala Funding accounts through improper fund transfers, fraudulent transactions, and false documentation. Beginning in or about late 2008 through in or about mid-2009, as TBW's funding shortfalls became even more severe and Colonial BancGroup struggled to stay solvent, FARKAS and co-conspirators expanded the scheme in an effort to defraud the United States government. The conspirators fraudulently sought to acquire a major stake in Colonial BancGroup and to gain access to over $500 million in taxpayer money through Colonial BancGroup's application for TARP funding under the CPP program. FARKAS and co-conspirators never obtained any TARP funds.

A. Overdrafts in TBW's Master Account at Colonial Bank – The Sweeping Scheme

16. 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. Conspirators at TBW and Colonial Bank 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.

17. By in or about December 2003, the size of the deficit due to overdrafts had grown to tens of millions of dollars. In response, FARKAS and co-conspirators devised a plan to disguise the deficit as payments for mortgage loan assets purchased by Colonial Bank.

B. Plan B/COLB

18. In or about December 2003, FARKAS and 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. 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.

19. In this part of the scheme, which the conspirators called "Plan B," the conspirators sought to disguise the tens of millions of dollars of overdrafts as payments related to Colonial Bank's purchase through the COLB facility of legitimate TBW mortgage loans. FARKAS and 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 FARKAS and 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.

20. As TBW continued to experience operating losses, FARKAS and co-conspirators engaged in additional sales of Plan B loans to Colonial Bank, causing Colonial Bank to advance to TBW tens of millions of additional dollars from the COLB facility. In reality, the Plan B loans could not be resold to recoup Colonial Bank's outlay for its interests in the loans. As a result, FARKAS and co-conspirators sold tens of millions of dollars worth of what amounted to fake assets to Colonial Bank and caused Colonial Bank to falsely record the value of these assets in its accounting records.

C. Recycling Plan B Loans

21. To avoid scrutiny from regulators, auditors, and Colonial Bank management of Plan B loans sold to Colonial Bank, FARKAS and co-conspirators devised a plan that gave the false appearance that TBW was periodically selling the Plan B loans off of the COLB facility. The conspirators referred to this aspect of the scheme as, among other things, "recycling," and the method for recycling evolved over time. One way FARKAS and co-conspirators effectuated a recycle was that they caused new Plan B data to be sent to Colonial Bank to replace old Plan B data. By doing so, FARKAS and co-conspirators created a document trail that gave the false appearance that mortgage loans had been sold to investors and that Colonial Bank, in turn, had purchased interests in new mortgage loans in their place.

D. Fictitious AOT Trades

22. In or about mid-2005, FARKAS and co-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.

23. Unlike with the COLB facility, Colonial Bank only extended financing through the AOT facility to TBW. Colonial Bank purchased Trades to provide TBW with immediate liquidity while TBW sought to finalize sales of the pools of loans backing the Trades, or mortgage-backed securities formed from them, to third-party investors. This interim funding provided TBW liquidity to originate or purchase new mortgage loans pending the resales. At settlement with a third-party investor, Colonial Bank was to have recouped its investment in a Trade.

24. In an effort to transfer the deficit caused by the Plan B loans on the COLB facility to the AOT facility, FARKAS and 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 FARKAS and co-conspirators knew, Colonial Bank held these fictitious Trades in its accounting records at the amount Colonial Bank paid for them.

25. 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 co-conspirators continued to cause TBW to sell hundreds of millions

of dollars of additional fictitious Trades to Colonial Bank through the AOT facility. Like the Trades described in paragraph 24 above, these Trades had no pools of loans collateralizing them.

26. To support these fraudulent transactions, FARKAS and co-conspirators caused false data and documentation to be sent from TBW to Colonial Bank. For example, TBW co-conspirators sent Colonial Bank co-conspirators schedules listing fictitious Trades with unique identifying numbers that TBW co-conspirators reused from Trades previously sold to other investors. The Trades also included pricing information not based on the value of any underlying mortgage loans but instead made up to meet TBW's funding needs. TBW co-conspirators also sent Colonial Bank co-conspirators fabricated agreements purporting to reflect commitments by investors to purchase the Trades in the near future, generally in 30 to 60 days.

E. Trades Backed by Impaired-Value Loans and REO

27. In addition to causing Colonial Bank to purchase fictitious Trades, FARKAS and co-conspirators caused significant numbers of impaired-value mortgage loans that TBW had been unable to sell to be hidden on the AOT facility by using them to collateralize Trades that Colonial Bank purchased through the AOT facility. These impaired-value loans included, among other things, loans in default and significantly "aged" loans. In general, significantly aged loans were considered impaired, and thus of lesser value, because TBW had been unable to sell them to investors. These Trades were also sometimes collateralized by bank-repossessed properties associated with foreclosed mortgage loans, known as real estate owned (REO). As REO no longer had mortgage loans associated with them, REO could not properly be included in mortgage-backed securities.

28. Because TBW was generally unable to sell these Trades containing impaired-value loans and REO, FARKAS and co-conspirators caused these pools to be repackaged as new Trades with fabricated agreements purporting to reflect commitments by third parties to purchase the mortgage loan assets. As a result, some of the impaired-value loans and REO remained disguised on the AOT facility for a period of years, despite the AOT facility being designed for assets to be resold within 30 to 60 days.

F. Recycling of Fictitious and Impaired AOT Trades

29. As with the Plan B loans, FARKAS and co-conspirators recycled the fictitious and impaired Trades on AOT. The conspirators did this by 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 impaired-value loans and REO and, in either case, had no corresponding, legitimate commitment to be purchased by third parties. For example, after co-conspirators provided fabricated documents to Colonial Bank, Colonial Bank advanced money from its bank accounts to TBW-controlled bank accounts, which gave the false appearance that Colonial Bank had purchased new AOT Trades. Near in time, co-conspirators directed payments back to Colonial Bank to give the false appearance that the expiring Trades had been sold to investors. These advances and paydowns amounted to round-trip transactions, which generally left TBW and Colonial Bank in a similar financial position as before the transactions. In Colonial Bank's accounting records, however, it falsely appeared that old Trades had settled and had been replaced with new, legitimate Trades.

30. Numerous wire transfers between Colonial Bank and TBW involved transfers to LaSalle Bank, which had been purchased by Bank of America, and as a result, some of these wires were processed through a Bank of America server located in Richmond, Virginia.

G. Colonial Bank's Accounting of the Fictitious and Impaired AOT Trades

31. On or about July 28, 2009, Colonial Bank accounting records identified approximately 120 purportedly unique Trades held for resale on the AOT Facility. Colonial Bank reported in its accounting records that these Trades had a total value of approximately $1.47 billion. Nearly all of the Trades held on AOT at this time were recycled Trades that re-used identifying information for Trades that TBW previously had sold to other banks. Moreover, nearly all of the approximately 120 Trades held for resale on Colonial Bank's AOT facility had fabricated agreements generated by co-conspirators purporting to reflect commitments by legitimate third-party investors to buy the Trades in the near future.

32. As a result of the fraud scheme, approximately one-third of the Trades on the AOT facility were fictitious and had no mortgage loans backing them. These Trades represented fraudulent advances made to TBW to cover its cash shortfalls. In its accounting records, Colonial Bank recorded these fictitious Trades as Securities Purchased under Agreements to Resell.

33. As a result of the fraud scheme, nearly all of the mortgage loans backing the remaining Trades on the AOT facility consisted of impaired-value loans and REO. Moreover, Colonial Bank records showed that nearly all of the impaired-value loans and REO backing the Trades on the AOT facility on or about July 28, 2009, had already been part of different Trades listed in Colonial Bank's accounting records in or about April 2009. According to Colonial

Bank records, those different Trades, and thus the impaired-value loans and REO backing them, had purportedly been sold to investors in or about April 2009. In fact, those sales never took place. Instead, FARKAS and co-conspirators created fabricated documents and transactions to give the false appearance that the third-party resales were taking place when in fact FARKAS and co-conspirators were merely moving the impaired-value loans and REO into different Trades over time to hide the fact that TBW could not sell the impaired-value loans and REO.

34. As a result, FARKAS and co-conspirators caused Colonial Bank to record fabricated purchases and sales on the AOT Facility of Trades backed by impaired-value loans and REO, which were held in Colonial Bank's accounting records as Securities Purchased under Agreements to Resell. In fact, TBW had been unable to resell the impaired-value mortgage loans and REO backing the Trades, and there were no legitimate agreements for resale to third-party investors.

35. FARKAS and co-conspirators also caused audit confirmations to be sent to Colonial Bank's outside auditors that falsely attested that the balances on the COLB and AOT facilities were accurate.

H. Ocala Funding

36. In addition to misappropriating funds from Colonial Bank through the COLB and AOT facilities, FARKAS and TBW co-conspirators caused TBW to misappropriate money from Ocala Funding. FARKAS and TBW co-conspirators caused the diversion of hundreds of millions of dollars from Ocala Funding bank accounts, located at LaSalle Bank, to pay down TBW operating expenses, such as mortgage loan servicing payments owed to investors in Freddie Mac and Ginnie Mae securities, payroll, and other unrelated obligations. As a result of

these diversions, Ocala Funding experienced significant shortfalls in the amount of collateral it possessed to back the outstanding commercial paper owned by its financial institution investors, primarily Deutsche Bank and BNP Paribas. In addition, FARKAS and co-conspirators caused Ocala Funding to sell loans owned by Colonial Bank to Freddie Mac without paying Colonial Bank for the loans. As a result, FARKAS and co-conspirators caused at least Freddie Mac and Colonial Bank to each believe it had an undivided ownership interest in thousands of the same loans.

37. To cover up the collateral shortfalls, FARKAS and co-conspirators caused false information to be sent to the financial institution investors, including Deutsche Bank and BNP Paribas, in 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. By doing so, FARKAS and co-conspirators sought to mislead investors into believing that there was sufficient cash and mortgage loan collateral to back the outstanding commercial paper owned by the investors. FARKAS and co-conspirators also sent LaSalle Bank falsified collateral lists that misrepresented the ownership status of mortgage loans held by Ocala Funding. In total, the misappropriated funds and double-sold mortgage loans amounted to more than $1 billion.

I. TARP Funding

38. In or about October 2008, Colonial BancGroup submitted an application to the FDIC seeking $570 million in TARP funding under the CPP program. In connection with the application, regulators and the United States Treasury Department 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 FARKAS 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.

39. FARKAS, aware of Colonial BancGroup's TARP application and its contingent approval, sought to lead a group of investors to raise the $300 million in private capital. In or about March 2009, FARKAS and co-conspirators represented that TBW would invest $150 million in Colonial BancGroup. Additionally, FARKAS and co-conspirators represented to Colonial BancGroup that two other investors had agreed to contribute $50 million each and solicited MWLD "friends and family" for the remaining $50 million. FARKAS and co-conspirators misrepresented the commitments of some investors.

40. On or about April 1, 2009, FARKAS and co-conspirators caused Colonial BancGroup to file with the United States Securities and Exchange Commission (SEC) a Form 8-K, which was filed electronically with the EDGAR Management Office of Information and Technology, in Alexandria, Virginia. This Form 8-K announced that Colonial BancGroup had secured definitive agreements from investors, pending due diligence, to satisfy the $300 million private capital contingency requirement.

41. The Form 8-K attached a stock purchase agreement that, among other things, represented that each purported investor had already deposited into an escrow account set up for the capital raise 10% of its proposed investment. To give the appearance that the escrow requirement had in fact been satisfied, FARKAS and a TBW co-conspirator caused $25 million—which purportedly represented the 10% deposit for TBW's $150 million investment

($15 million) and for the two purported $50 million investors ($5 million each)—to be deposited into the escrow account at Platinum Community Bank, a wholly owned subsidiary of TBW.

42. FARKAS and a TBW co-conspirator had in fact diverted that $25 million from an Ocala Funding bank account. Further, FARKAS and other co-conspirators supplied the 10% down payment on behalf of the two $50 million investors without the investors' knowledge or consent. The $25 million wire transfer from an Ocala Funding bank account to Platinum Community Bank was processed through a Bank of America server located in Richmond, Virginia.

43. Colonial Bank never received TARP funding.

J. False Financial Filings with SEC and Ginnie Mae

44. FARKAS and co-conspirators caused Colonial BancGroup to file materially false financial data with the SEC regarding the assets in Colonial Bank's MWLD in its annual and quarterly reports, Forms 10-K and 10-Q respectively, which were filed electronically with the SEC's EDGAR Management Office of Information and Technology, in Alexandria, Virginia. The fraudulent Plan B loans on the COLB facility were reflected as assets in the financial data as "Loans Held for Sale," and the fictitious and impaired Trades on the AOT facility were reported as assets in the financial data as "Securities Purchased under Agreements to Resell."

45. 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.

46. As a result of the fraudulent scheme perpetrated by FARKAS and co-conspirators, approximately several hundred million dollars of the $1.6 billion worth of assets purportedly held on the AOT facility, and thus reported in the 2008 Form 10-K and March 31, 2009, Form 10-Q as Securities Purchased under Agreements to Resell, did not exist. FARKAS and co-conspirators also knew that the vast majority of the remaining Trades held on AOT were backed by impaired-value loans and REO. Further, FARKAS and co-conspirators knew that most, if not all, of the Trades held on the AOT facility did not have legitimate agreements to be resold to third-party investors as required for Trades held on the AOT facility and as reported in the Forms 10-K and 10-Q.

47. In addition, FARKAS and co-conspirators caused Colonial BancGroup on or about April 1, 2009, to file with the SEC a Form 8-K, which was filed electronically with the EDGAR Management Office of Information and Technology, in Alexandria, Virginia, announcing that Colonial BancGroup had secured definitive agreements from investors, pending due diligence, to satisfy the private capital contingency requirement.

48. FARKAS and co-conspirators also caused TBW to file materially false financial data with Ginnie Mae relating to TBW's overall economic viability. Ginnie Mae used this financial data as a factor when determining whether TBW's status as an approved issuer of Ginnie Mae securities would be extended. TBW sent the financial data for Ginnie Mae's review to a location in McLean, Virginia. In part as a result of its unwitting reliance upon TBW's

materially false financial data, Ginnie Mae continued to approve TBW on an annual basis as an issuer of Ginnie Mae securities. Ginnie Mae also increased the amount of securities TBW could issue, and, as a result, from in or about July 2008 to in or about August 2009, TBW increased the amount of Ginnie Mae securities it issued from approximately $14.8 billion to approximately $26.8 billion. Ginnie Mae terminated TBW as an issuer and servicer of Ginnie Mae securities in or about August 2009, and Ginnie Mae assumed TBW's entire Ginnie Mae portfolio at that time.

COUNT 1

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

I. The Conspiracy

49. The allegations in paragraphs 1 through 48 in the Introduction section are realleged as if fully set forth herein.

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

LEE BENTLEY FARKAS

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

a. bank fraud, that is, to knowingly and intentionally execute, and attempt to 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;

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;

II. Manner and Means of the Conspiracy

51. Among the manner and means by which defendant FARKAS and others known and unknown to the Grand Jury would and did carry out the conspiracy included, but were not limited to, the following:

a. FARKAS and co-conspirators caused the transfer of funds between TBW accounts in an effort to hide TBW overdrafts.

b. FARKAS 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. FARKAS 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. FARKAS and co-conspirators caused TBW to sell to Colonial Bank, via the AOT facility, Trades backed by impaired-value loans and REO that had fabricated agreements reflecting commitments by investors to purchase them in the near future.

e. FARKAS and co-conspirators periodically "recycled" the 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. FARKAS and co-conspirators covered up their misappropriations of funds from the COLB and AOT facilities by providing false documents and information to Colonial Bank.

g. FARKAS and TBW co-conspirators misappropriated funds from Ocala Funding bank accounts.

h. FARKAS and TBW co-conspirators covered up shortfalls in collateral held by Ocala Funding to back commercial paper by sending investors and others documents containing material misrepresentations.

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

j. FARKAS and co-conspirators caused Colonial BancGroup to file with the 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.

k. FARKAS and co-conspirators caused TBW to submit materially false information to Ginnie Mae to obtain an extension of authority to issue Ginnie Mae mortgage-backed securities.

l. FARKAS and co-conspirators caused Colonial BancGroup to submit materially false information to the FDIC and to the SEC in furtherance of its application for TARP funds.

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

COUNTS 2 - 7

(Bank Fraud)

THE GRAND JURY FURTHER CHARGES:

52. On or about the dates set forth below, in the Eastern District of Virginia and elsewhere, defendant

LEE BENTLEY FARKAS,

knowingly and intentionally executed, and attempted to execute, a scheme and artifice to defraud Colonial Bank, a financial institution with deposits insured by the FDIC, and to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of Colonial Bank, by means of materially false and fraudulent pretenses, representations, and promises, as set forth in Counts 2 - 7 below.

53. The scheme and artifice to defraud is described in paragraphs 13 through 48 of this Indictment, which are re-alleged and incorporated, along with paragraphs 1 through 12, as if fully set forth herein.

Count	Date	Description
2	November 19, 2008	Wire payment of approximately $76,603,100.00 from Colonial Bank to LaSalle Bank
3	January 6, 2009	Wire payment of approximately $66,400,000.00 from Colonial Bank to LaSalle Bank
4	May 29, 2009	Wire payment of approximately $154,927,380.54 from Colonial Bank to LaSalle Bank
5	June 18, 2009	Wire payment of approximately $46,081,431.04 from Colonial Bank to LaSalle Bank
6	June 30, 2009	Wire payment of approximately $59,655,985.97 from Colonial Bank to LaSalle Bank

Count	Date	Description
7	July 6, 2009	Wire payment of approximately $31,933,110.73 from Colonial Bank to LaSalle Bank

(All in violation of Title 18, United States Code, §§ 1344 and 2.)

COUNTS 8 - 13

(Wire Fraud)

THE GRAND JURY FURTHER CHARGES:

54. On or about the dates set forth below, in the Eastern District of Virginia and elsewhere, defendant

LEE BENTLEY FARKAS,

having intentionally devised and intending to devise a scheme and artifice to defraud TARP (counts 8-9, 13) and Colonial Bank, a financial institution (counts 10-12), and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, knowingly transmitted and caused 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, as set forth in Counts 8 - 13 below.

55. The scheme and artifice to defraud is described in paragraphs 13 through 48 of this Indictment, which are re-alleged and incorporated, along with paragraphs 1 through 12, as if fully set forth herein.

Count	Date	Description
8	March 30, 2009	$25 million wire from LaSalle Bank in Illinois to Platinum Community Bank in Florida, which was routed to a Bank of America server in Richmond, Virginia
9	April 1, 2009	Email from CEO of Platinum Community Bank, in Florida, to the Deputy Regional Director of the FDIC, which email was routed to FDIC servers located in Arlington, Virginia

Count	Date	Description
10	May 13, 2009	Wire payment of approximately $46,751,197.85 from Colonial Bank in Florida to LaSalle Bank in Illinois, processed by servers in Richmond, Virginia, and transmitted to the Federal Reserve Bank of Richmond, Virginia
11	May 18, 2009	Wire payment of approximately $46,608,205.11 from Colonial Bank in Florida to LaSalle Bank in Illinois, processed by servers in Richmond, Virginia, and transmitted to the Federal Reserve Bank of Richmond, Virginia
12	May 19, 2009	Wire payment of approximately $51,016,179.69 from Colonial Bank in Florida to LaSalle Bank in Illinois, processed by servers in Richmond, Virginia, and transmitted to the Federal Reserve Bank of Richmond, Virginia
13	May 22, 2009	Email from a "friends and family" investor located in McLean, Virginia, to FARKAS's assistant in Florida

(All in violation of Title 18, United States Code, §§ 1343 and 2.)

COUNTS 14 - 16

(Securities Fraud)

THE GRAND JURY FURTHER CHARGES:

56. On or about the dates set forth below, in the Eastern District of Virginia and elsewhere, defendant

LEE BENTLEY FARKAS,

knowingly and intentionally executed a scheme and artifice to defraud any person in connection with any security of Colonial BancGroup, an issuer with a class of securities registered under §12 of the Securities Exchange Act of 1934 (Title 15, United States Code, § 78l), as described in Counts 14 - 16 below.

57. The scheme and artifice to defraud is described in paragraphs 13 through 48 of this Indictment, which are re-alleged and incorporated, along with paragraphs 1 through 12, as if fully set forth herein.

Count	Date	Description
14	March 2, 2009	Form 10-K for the period ending December 31, 2008, filed electronically by Colonial BancGroup with the SEC's EDGAR Management Office of Information and Technology Alexandria, Virginia
15	April 1, 2009	Form 8-K current report, filed electronically by Colonial BancGroup with the SEC's EDGAR Management Office of Information and Technology Alexandria, Virginia
16	May 8, 2009	Form 10-Q for the period ending March 31, 2009, filed electronically by Colonial BancGroup with the SEC's EDGAR Management Office of Information and Technology Alexandria, Virginia

(All in violation of Title 18, United States Code, §§ 1348 and 2.)

FORFEITURE NOTICE

58. Pursuant to Rule 32.2(a), the defendant is hereby notified that, if convicted of any of the charges in this Indictment, the defendant shall forfeit to the United States, pursuant to Title 18, United States Code, §§ 981(a)(1)(C), 982(a)(2)(A), and Title 28, United States Code, § 2461, any property, real or personal, which constitutes or is derived from proceeds traceable to the count of conviction including wire fraud, in violation of Title 18, United States Code, § 1343; bank fraud, in violation of Title 18, United States Code, § 1344; securities fraud, in violation of Title 18, United States Code, § 1348; as well as conspiracy to commit such offenses, in violation of Title 18, United States Code, § 1349. Such forfeitable property includes a sum of money equal to at least $22 million in United States currency, representing the amount of proceeds obtained as a result of the offenses alleged in the Indictment, for which the defendant is jointly and severally liable.

59. Pursuant to Title 21, United States Code, § 853(p), as incorporated by Title 18, United States Code, § 982(b)(1), and by Title 28, United States Code, § 2461(c), the defendant shall forfeit substitute property, up to the value of the amount described, i.e., $22 million in United States currency, if, by any act or omission of the defendant, the $22 million in United States currency or any portion thereof, cannot be located upon the exercise of due diligence; has been transferred, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty. The property subject to forfeiture as substitute assets includes, but is not limited to, the following:

a. A sum of money equal to the amount of proceeds obtained as a result of the conspiracy, bank fraud, securities fraud and wire fraud offenses;

b. real property known as 480 SW 87th Place, Ocala , Florida;

c. real property known as 2010 NE 18th St, Ft. Lauderdale, Florida;

d. real property known as 7785 SW 62nd Ct, Ocala, Florida;

e. real property known as 950 Peachtree St., N.W. #18903, Atlanta, Georgia;

f. real property known as 2711 S.E. 17th St., Ocala, Florida;

g. a 1963 Rolls Royce bearing VIN: LSCX11;

h. a 1929 Ford Model A bearing VIN: A1766832;

i. a 1973 Triumph TR6 bearing VIN: CF10020U;

j. a 1970 Cadillac El Dorado bearing VIN: H0270364;

k. a 1958 Mercedes Benz Cabriolet 220 bearing VIN: 128030N8500042;

l. a 2008 Infiniti bearing VIN: 5N3AA08C18N900648;

m. a 1961 Porsche CV bearing VIN: 89466;

n. a 1937 Pack CV bearing VIN: 1019334;

o. a 2005 Marc CV bearing VIN: SA9RA260150A11055.

(Pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(2)(A), 28 U.S.C. § 2461, and 21 U.S.C. § 853.)

A TRUE BILL:

Pursuant to the E-Government Act, the original of this page has been filed under seal in the Clerk's Office.

FOREPERSON OF THE GRAND JURY
DATE: June 15, 2010

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

Patrick F. Stokes
Deputy Chief
Brigham Q. Cannon
Charles D. Reed
Robert A. Zink
Trial Attorneys

NEIL H. MACBRIDE
United States Attorney

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

AO 245 S (Rev. 2/99)(EDVA rev.1) Sheet 1 - Judgment in a Criminal Case

FILED
JUN 30 2011
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

UNITED STATES OF AMERICA

v. Case Number 1:10CR00200-001

LEE BENTLEY FARKAS,

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant, LEE BENTLEY FARKAS, was represented by William B. Cummings, Esquire.

The defendant was found guilty as to Counts 1-11 and 14-16 of the Indictment. Accordingly, the defendant is adjudged guilty of the following counts, involving the indicated offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Numbers
18 U.S.C. § 1349	Conspiracy to Commit Bank Fraud, Wire Fraud, and Securities Fraud (Felony)	08/2009	1
18 U.S.C. §§1344 and 2	Bank Fraud (Felony)	11/19/2008	2
18 U.S.C. §§1344 and 2	Bank Fraud (Felony)	01/08/2009	3
18 U.S.C. §§1344 and 2	Bank Fraud (Felony)	05/29/2009	4
18 U.S.C. §§1344 and 2	Bank Fraud (Felony)	06/18/2009	5
18 U.S.C. §§1344 and 2	Bank Fraud (Felony)	06/30/2009	6
18 U.S.C. §§1344 and 2	Bank Fraud (Felony)	07/08/2009	7
18 U.S.C. §§1343 and 2	Wire Fraud (Felony)	03/30/2009	8
18 U.S.C. §§1343 and 2	Wire Fraud (Felony)	04/01/2009	9
18 U.S.C. §§1343 and 2	Wire Fraud (Affecting a Financial Institution)(Felony)	05/13/2009	10
18 U.S.C. §§1343 and 2	Wire Fraud (Affecting a Financial Institution) (Felony)	05/18/2009	11
18 U.S.C. §§1348 and 2	Securities Fraud (Felony)	03/02/2009	14
18 U.S.C. §§1348 and 2	Securities Fraud (Felony)	04/01/2009	15
18 U.S.C. §§1348 and 2	Securities Fraud (Felony)	05/08/2009	16

On motion of the United States, the Court has dismissed Count(s) 12 and 13 of the Indictment.

As pronounced on June 30, 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 30th day of June, 2011.

/s/ LMB

Leonie M. Brinkema
United States District Judge

** Page 8 of this document contains sealed information

Defendant: LEE BENTLEY FARKAS
Case Number: 1:10CR00200-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of THREE HUNDRED SIXTY (360) MONTHS, which consists of 360 months as to each of counts 1-7 and 10-11; 240 months as to each of counts 8-9; and 300 months as to each of counts 14-16, with credit for time served. The sentence on each count is to concurrently with the sentence on each other count.

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

The defendant to be designated to the facility in Ashland, Kentucky.

The defendant is remanded into the custody of the United States Marshal.

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

____
United States Marshal

By ____________________________
Deputy Marshal

Defendant: LEE BENTLEY FARKAS
Case Number: 1:10CR00200-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a total term of THREE (3) YEARS as to each count, to run concurrently as to each count.

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: LEE BENTLEY FARKAS
Case Number: 1:10CR00200-001

SPECIAL CONDITIONS OF SUPERVISION

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

1) The defendant shall provide the probation officer access to any requested financial information, and waive all privacy rights.

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) 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.

4) The defendant shall seek and maintain full time employment, but not in the financial or real estate industries.

5) 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: LEE BENTLEY FARKAS
Case Number: 1:10CR00200-001

CRIMINAL MONETARY PENALTIES

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

Count		Special Assessment	Fine
1-11		$1,100.00	
14-16		$300.00	
Total	**PAID IN FULL**	**$1,400.00**	**$0.00**

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: LEE BENTLEY FARKAS
Case Number: 1:10CR00200-001

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 is directed in accordance with the Preliminary Order of Forfeiture entered by this Court on June 30, 2011.

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	Case No. 1:10-cr-200
v.	Honorable Leonie M. Brinkema
LEE BENTLEY FARKAS,	
Defendant.	

RESTITUTION JUDGMENT

1. The defendant is sentenced to pay restitution amounts to the victims, as set forth in Attachment A, jointly and severally with any co-defendants who are ordered to pay restitution for the same losses.

2. In order to insure that the defendant is able to pay the amounts which the Clerk may distribute to the victims, the defendant is hereby restrained and enjoined from dissipating, disposing of, encumbering or otherwise diminishing the value of any assets with a value of more than $5,000 in which the defendant has an interest without first obtaining permission of the United States Probation Office and providing notice to the government. The United States may take all steps it deems appropriate to obtain a lien on the defendant's assets and may provide a copy of this order to any person or entity holding assets of the defendant, and may take any other steps provided by law to preserve the availability of property to satisfy the defendant's restitution obligation.

3. The Clerk is directed to pay victims the full amounts, as set forth in Attachment A.

4. The amount of restitution paid to any victim, collectively, shall not exceed the victim's total loss from the offenses of conviction.

5. Interest:

__X__ is waived.

_____ accrues as provided in 18 U.S.C. § 3612(f).

6. Restitution is due immediately, and notwithstanding any other provision of this Restitution Judgment, the Government may enforce restitution at any time.

7. If incarcerated, the defendant shall participate in the Bureau of Prisons' Inmate Financial Responsibility Program at a rate of at least $25 per quarter, or if assigned as a UNICOR grade 1 through 4 employee, at least 50% of the prisoner's monthly pay.

8. The defendant shall pay to the Clerk at least $1,000 per month beginning 60 days after release from custody.

9. All payments shall be made to the Clerk of Court, United States District Court, 401 Court House Square, Alexandria, VA 22314.

10. The defendant shall notify, within 30 days, the Clerk of Court and the United States Attorney's Office, Financial Litigation Unit, 8000 World Trade Center, Norfolk, VA 23510 of: (a) any change of name, residence, or mailing address; and (b) any material change in economic circumstances that affects the ability to pay restitution.

11. No delinquent or default penalties will be imposed except upon Order of the Court.

12. Priority of Payments to Victims: Because there is more than one victim, and full amount due as restitution has not been paid, the Clerk shall make payments in $100.00 increments to each of the victims until all victims have been paid in full.

13. Forfeited Funds/Proceeds

A. Following the completion of forfeiture proceedings against the assets obtained from the defendant, the United States shall supply to the Clerk's Office and defense counsel a written list of any payments made to victims from any such forfeited items or proceeds, if the forfeited funds are paid directly to victims, rather than to the Clerk of Court for distribution to victims. The Clerk's Office will then offset such payments against the amounts specified in this Restitution Judgment to ensure that the victims receive no more than full compensation and that the defendant is given credit for any such payments on the balance of restitution to be paid.

B. If, in the alternative, any forfeited funds/proceeds are paid directly to the Clerk's Office for distribution, then the Clerk's Office shall distribute those funds to the individual direct victims on a pro rata basis. That is, each individual direct victim shall be entitled to share in the forfeited funds/proceeds in an amount equal to the percentage that each individual's loss is of the total losses of the individual direct victims.

SO ORDERED:

/s/ LMB

Leonie M. Brinkema
United States District Judge

ENTERED this 26th day of ~~August~~ September, 2011
in Alexandria, Virginia

ATTACHMENT A

	Lee Farkas 1:10CR200	Desiree Brown 1:11CR84	Paul Allen 1:11CR165	Sean Ragland 1:11CR162	Raymond Bowman 1:11CR118	Catherine Kissick 1:11CR88	Teresa Kelly 1:11CR119
FDIC	$1,805,433,675	$1,805,433,675	$909,600,000	$909,600,000	$500,000,000	$500,000,000	$500,000,000
Deutsche Bank	$1,201,785,000	$1,201,785,000	$1,201,785,000	$1,201,785,000	N/A	N/A	N/A
BNP Paribas	$500,000,000	$500,000,000	$500,000,000	$500,000,000	N/A	N/A	N/A
Bryant, Glenda & David	$17,157	$17,157	$17,157	$17,157	$17,157	$17,157	$17,157
Caruthers, Timothy	$760	$760	$760	$760	$760	$760	$760
Christy, Frazier	$41	$41	$41	$41	$41	$41	$41
Crockett, Frederick	$10,320	$10,320	$10,320	$10,320	$10,320	$10,320	$10,320
Crockett, Phylis	$36,968	$36,968	$36,968	$36,968	$36,968	$36,968	$36,968
Crockett, William	$22,106	$22,106	$22,106	$22,106	$22,106	$22,106	$22,106
Farmer, Nancy	$2,518	$2,518	$2,518	$2,518	$2,518	$2,518	$2,518
Gaynor, Lenore J. (in Trust)	$322,524	$322,524	$322,524	$322,524	$322,524	$322,524	$322,524
Gaynor, Robert & Leah	$53,031	$53,031	$53,031	$53,031	$53,031	$53,031	$53,031
Green, Murray	$6,352	$6,352	$6,352	$6,352	$6,352	$6,352	$6,352

	Lee Farkas 1:10CR200	Desiree Brown 1:11CR84	Paul Allen 1:11CR165	Sean Ragland 1:11CR162	Raymond Bowman 1:11CR118	Catherine Kissick 1:11CR88	Teresa Kelly 1:11CR119
Griggs, Nadine	$103	$103	$103	$103	$103	$103	$103
Klauder, Gerald	$51,035	$51,035	$51,035	$51,035	$51,035	$51,035	$51,035
Marx, Alysha (on behalf of Lona Kille)	$316	$316	$316	$316	$316	$316	$316
Murphy, Rebecca & Irie	$1,072	$1,072	$1,072	$1,072	$1,072	$1,072	$1,072
Mushill, John and Elizabeth	$68	$68	$68	$68	$68	$68	$68
Story, Alfred	$124	$124	$124	$124	$124	$124	$124
Turner, Tyna	$387	$387	$387	$387	$387	$387	$387
TOTAL	$3,507,743,557	$3,507,743,557	$2,611,909,882	$2,611,909,882	$500,524,882	$500,524,882	$500,524,882

Attachment B

Name	Address
1. ~~FDIC~~	
2. Deutsche Bank	
3. BNP Paribas	
4. Bryant, Glenda and David	
5. Caruthers, Timothy	
6. Christy, Frazier	
7. Crockett, Frederick	
8. Crockett, Phyllis	
9. Crocket, William	
10. Farmer, Nancy	
11. Gaynor, Lenore (Trust)	
12. Gaynor, Robert and Leah	
13. Green, Murray	

14. Griggs, Nadine	
15. Klauder, Gerald	
16. Marx, Alysha (on behalf of Lona and Jimmy Killen)	
17. Murphy, Rebecca & Irie	
18. Mushill, John and Elizabeth	
19. Story, Alfred	
20. Turner, Tyna	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------X

BNP PARIBAS MORTGAGE CORPORATION and BNP PARIBAS,

Plaintiffs,

- against -

BANK OF AMERICA, N.A.,

Defendant.

09 Civ. 9783 (RWS)

OPINION

-----------------------------------X

DEUTSCHE BANK AG,

Plaintiff,

- against -

BANK OF AMERICA, N.A.,

Defendant.

09 Civ. 9784 (RWS)

OPINION

-----------------------------------X

A P P E A R A N C E S:

Attorneys for Plaintiffs BNP Paribas Mortgage Corporation and BNP Paribas

BOIES SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504
By: Robin A. Henry, Esq.
Motty Shulman, Esq.
Jack Wilson, Esq.

Exhibit A

made by a third party" is best read as apply when a third-party recoverable entails notice and assumption of defense, namely, when there is a "claim" by a third-party. Cf. Promuto, 44 F. Supp. 2d at 650-51 (third-party notice provision applied to "third-party claims" and claims were not a subset of the recoverables in indemnification clause).

Accordingly, the fact that third party actions are explicitly referenced in the indemnification provision does not amount to language that demonstrates an "unmistakably clear" intent to cover first-party losses. Bridgestone/Firestone, 98 F.3d at 20-21; Hooper, 549 N.Y.S.2d at 367; Sequa, 851 F. Supp. at 111 n.7.

VIII. PLAINTIFFS LACK STANDING TO SUE BASED ON OCALA NOTES ISSUED BEFORE JULY 20, 2009

BoA argues that even if it breached the Facility Documents between January 25, 2008 and July 20, 2009, it cannot be liable for those breaches because Plaintiffs received full payment on the Ocala Notes each time they were rolled over. Thus, BoA argues, Plaintiffs lack standing to bring a claim based on events prior to the issuance of the July 20, 2009 Ocala

Notes, because their status as noteholders has expired as to all Ocala Notes prior to those issued on July 20, 2009.

The authorities cited by BoA stand for the proposition that a noteholder who is paid in full may not sue the borrower for breaches of the note or undertakings made by the borrower to support the note. See e.g., 83 N.Y. Jur. 2d Payment and Tender § 141 (West 2010) (legally sufficient tender discharges collateral undertakings by the borrower, such as mortgages, liens and pledges); In re Paradis' Estate, 186 A. 672, 675 (Me. 1936) ("When commercial paper is paid by the party whose debt it appears to be, it becomes functus officio, commercially dead.").

Plaintiffs argue that they are not suing BoA for Ocala's failure to pay the principal due on the Ocala Notes themselves or in respect of related undertakings made by Ocala in connection with issuance of the Ocala Notes. Rather, they are suing for BoA's alleged breaches of the Facility Documents that resulted in the loss of the collateral that was supposed to be backing the Ocala Notes. Plaintiffs contend that BoA executed the Facility Documents on June 30, 2008, and those documents still govern and control BoA's duties and responsibilities to Ocala and the noteholders, that such duties did not cease on repayment of a particular note issue and begin anew on the issuance of new notes and that, for this reason, BoA did not enter into new Facility Documents for each roll of the notes. For this reason, Plaintiffs contend that BoA's argument that "payment of the earlier notes extinguished any related contract claims as a matter of law" misses the point.[11]

DB has alleged that BoA's breaches of the Facility Documents caused Ocala to lose the cash and mortgages that would have been available to repay the principal due on the Ocala Notes issued on July 20, 2009, and that this loss of collateral proximately caused the Ocala Notes to lose their value. Based on this allegation, each rollover of Ocala Notes did not extinguish claims on those notes because each rollover was premised on BoA's continued performance of its duties under the Facility Documents. DB has also alleged that BoA's breaches of the Facility Documents on July 20, 2009 caused it to roll over its investment in Ocala Notes and thereby proximately caused its loss.

---

11 Plaintiffs argue that the cases cited by BoA also miss the point, as each involved non-recurring debt obligations that were extinguished and whose governing documents expired or terminated upon payment at final maturity. See Green v. Foley, 856 F.2d 660 (4th Cir. 1988) (non-recurring bank notes); Bank of Lexington v. Jack Adams Aircraft Sales, Inc., 570 F.2d 1220 (5th Cir. 1978) (non-recurring aircraft mortgage); In re Paradis' Estate, 186 A. 672 (Me. 1936) (a single issuance of commercial paper); Great W. Bank v. Kong, 108 Cal. Rptr. 2d 266 (Ct. App. 2001) (single commercial mortgage); Caplan v. Unimax Holdings Corp., 188 A.D.2d 325, 325 (N.Y. App. Div. 1992) (single debenture).

However, even Plaintiffs have acknowledged that each new issuance of Ocala Notes was a "separate transaction." (See BNP AC ¶ 42; DB AC ¶ 5.) Accordingly, BoA contends that they were not revolving or "recurring" debt obligations, and that the situation is no different from one where a noteholder whose note was repaid decided not to reinvest, and a new noteholder purchased a later issue of notes. In that case, the new noteholder could not sue for a breach that occurred before it purchased the new notes. Thus, according to BoA, the fortuity that Plaintiffs were both the new and the old noteholders is irrelevant.

Plaintiffs' standing to sue under the Base Indenture and Security Agreement derives from their third-party beneficiary status as "Noteholders." For this reason, Plaintiffs' status as noteholders, and their resulting standing to sue for breaches while they held the notes, was legally extinguished each time they received payment in full on their notes. See 70 C.J.S. Payment § 32 (payment "extinguishes the debt for which it is presented"). Plaintiffs could not have retained noteholder status after the attendant Ocala Notes were paid and extinguished and only obtained noteholder status again upon the acquisition of the new Ocala Notes. See Caplan v. Unimax Holding Corp., 188 A.D.2d 325, 325 (N.Y. App. Div. 1992).

DB's argument that BoA's alleged breaches "caused DB to roll over its investment in the Ocala Notes," (DB Opp. 35) suggests that DB might have been fraudulently induced into rolling over its notes and acquiring new notes, but it has not pleaded such a claim in its Amended Complaint.

Finally, Plaintiffs argue that any breaches by BoA prior to July 20, 2009 and BoA's knowledge of Ocala's insolvency during the lifetime of the Facility are evidentiary and/or causation issues that cannot be determined on a motion to dismiss. In re Morgan Stanley ERISA Litig., No. 07 Civ. 11285, 2009 WL 5947139, at *15 (S.D.N.Y. Dec. 9, 2009) (Generally, "loss causation is an issue of fact and is thus not properly considered at this early stage in the proceeding" (quotation marks omitted)); see also Xpedior Creditor Trust v. Credit Suisse First Boston (USA) Inc., 341 F. Supp. 2d 258, 271-72 (S.D.N.Y. 2004) (whether there is a causal connection between alleged contract breaches and damages are questions to be addressed at summary judgment or at trial, not on a motion to dismiss).

However, this is an issue of standing, rather than causation or evidence, and is therefore properly raised and resolved at this stage. See Wolfson v. Conolog Corp., No. 08 Civ. 3790, 2009 WL 465621, at *3 (S.D.N.Y. Feb. 25, 2009).

Plaintiffs therefore lack standing to bring claims based upon Ocala Notes issued prior to July 20, 2009.

IX. BNPP IS NOT A PROPER PARTY TO THIS ACTION

The claims of BNPP, which was added to the Amended Complaint filed by the BNP Parties, fail as a matter of law because BNPP has not alleged that it suffered any injury in its capacity as Swap Counterparty or otherwise. Nor can BNPP sue for injuries suffered by its subsidiary, BNP. See, e.g., Hudson Optical Corp. v. Cabot Safety Corp., No. 97-9046, 1998 WL 642471, at *3 (2d Cir. Mar. 25, 1998) (unpublished) (holding that a parent corporation lacks standing to sue for injuries allegedly sustained by its subsidiary); Alexander & Alexander of N.Y. Inc. v. Fritzen, 495 N.Y.S.2d 386, 388 (1985) ("[O]ne corporation will generally not have the legal standing to exercise the rights of other associated corporations."), aff'd, 68 N.Y.2d 968 (1986); see also Diesel Sys., Ltd. v. Yip Shing Diesel Eng'g Co., 861 F. Supp. 179, 181 (E.D.N.Y. 1994) ("A corporation does not have standing to assert claims belonging to

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Case No. 1:10cr200(LMB)
	:	
LEE BENTLEY FARKAS,	:	
	:	
Defendant.	:	

POSITION OF THE DEFENDANT WITH RESPECT TO SENTENCING FACTORS AND BRIEF ADDRESSING 18 USC §3553(a) FACTORS

COMES NOW, Defendant LEE BENTLEY FARKAS, (hereinafter, Mr. Farkas) by and through undersigned counsel, and hereby submits this, his position with respect to the sentencing factors to be used in this matter and his brief addressing 18 U.S.C. §3553(a) factors to assist the Court in the resolution of the sentencing issues in this case, and for this he states:

I. INTRODUCTION

The Court, although not bound by any mandatory application of the requirements and procedures established by the United States Sentencing Commission in the United States Sentencing Guidelines (hereinafter, the guidelines), will be guided by the advisory application of those requirements and procedures.

The United States Probation Office, through Karen Moran, Senior U.S. Probation Officer, has filed its presentence investigation report (hereinafter, the Report or PSIR) in this matter, and the corrections and/or additions thereto, and has provided a copy of each to counsel for Mr. Farkas. Counsel and Mr. Farkas have reviewed said report, and agree, except as addressed and corrected herein, in all material regards with the facts and the application of the guidelines as contained therein. The Government, through its counsel, Patrick Stokes, Esquire, Assistant United States Attorney, has filed its position concerning sentencing and has proposed that this Court impose a life sentence (with a cap of 385 years and a minimum of 50 years) on Mr. Farkas.

Counsel for Mr. Farkas, counsel for the government and Ms. Moran, have consulted as necessary concerning these matters and this position document reflects those consultations.

II. FACTUAL DISPUTES

Mr. Farkas notes that he has been in custody since his trial, and has not had access to many of his records since that time. Therefore, his disclosures concerning his assets for the preparation of the Report were limited to his memory, during a period when he has been under more than normal stress. He categorically denies that he lied to Ms. Moran during the preparation of the Report, or that he purposefully failed to provide her with information she requested. Generally, he disclosed his ownership interest in various entities which own certain pieces of property. He did not then again identify those certain pieces of property because he does not own them, the entities he told Ms. Moran about own the properties or certain interests in the properties. Those entities may include LLCs, partnerships and his retirement trust. In a different situation, he did not remember, and thus did not disclose, that he and Benjamin Charles Farkas own the piece of property referenced in ¶104 of the Report and located at 3064 Bay Street, Gulf Breeze, FL. That property, including a house, was purchased on September 8, 2006 for $265,000. However, the house was demolished and the property is now a vacant lot assessed at $59,850.

In a matter which was brought to Mr. Farkas's counsel's attention on June 22, 2011, there is a piece of property at 1222 SE 7th Street, Ocala, FL, which was one of two properties Mr. Farkas purchased pursuant to this Court's order authorizing him to sell his then current residence. The property is included in the list in ¶ 94 of the Report, with a value of $537,000. However, that was the money available to Mr. Farkas pursuant to the sale authorized by this Court, and the seller wanted an additional $112,500 for the property. Mr. Farkas gave the seller a note and a mortgage, subject to the Government's mortgage on the property pursuant to the Court's order. However, the Government's mortgage has been released and the seller has recorded his mortgage.

One indication of the complexity of the problem is, in reference to ¶ 104, the Report is internally inconsistent. Paragraph 104, sentence 1, identifies Mr. Farkas's retirement trust (which is a revocable trust and thus, simply put, is Mr. Farkas himself) as owning 50% of Nada Car Wash, LLC, which owns the property located at 815 S. Pine Avenue, Ocala, FL. Two sentences later, the Report indicates that Mr. Farkas's retirement trust owns that property. The latter sentence is, of course incorrect. Mr. Farkas's retirement trust (and, therefore, Mr. Farkas) owns only one-half of the company that owns the property, and Mr. Farkas specifically advised Ms. Moran about his retirement trust. Whether or not he was able to list every property owned by the retirement trust is problematic, since he is not, even now, sure exactly what his holdings may be. The problem with the error in the Report is that the end of ¶ 104 includes a total value of various properties referenced therein, and indicates that the total value increases Mr. Farkas's net worth by $1,476,213. Among the properties included (in addition to the foregoing Pine Avenue property) are the property located at 808 South Street, Unit 204, Key West, FL, which Mr. Farkas quitclaimed to Scott Dehne, and the property located at 517 NE 14th Avenue, Ft. Lauderdale, FL, which is owned by Sean Murla. Mr. Farkas understands that his mortgage (as the borrower) on the Dehne property was never recorded, even though his lender foreclosed on the property. At this time, to Mr. Farkas's knowledge, he has no interest in the property, either as a result of the foreclosure or as a result of the recorded quitclaim deed. The Murla property has never been owned by Mr. Farkas, nor does he have any interest in the property. Neither of those properties should be used to calculate Mr. Farkas's net worth, since neither he, nor any entity in which he has any interest, has any ownership interest in those properties.

The Report also has factual inaccuracies in ¶ 105. There, the Report indicates that Mr. Briggs advised Ms. Moran that Mr. Farkas, through his retirement trust and Robbie Roberson own the Compass Fitness Center. That is incorrect: Mr. Farkas's retirement trust owns Compass Fitness Center in its entirety. Mr. Briggs advised Ms. Moran that Mr. Farkas, through his retirement trust owns 50% of Nada Car Wash, LLC, which owns the property and car wash located at 815 S. Pine Avenue, Ocala, FL, as discussed above. Rob-O-Co, Inc. (which is controlled by Robbie Roberson) owns the other 50% of Nada Car Wash, LLC. It is important to know that in ¶ 103 of the Report, Ms. Moran states that Mr. Farkas provided information about his partial or complete ownership, through his retirement trust, of 3201 Partnership, LLC, Ocala Car Wash, LLC, Nada Car Wash, LLC, Compass Health and Fitness, Dine Design Group, Thunder Flower, LLC, CPMG, LLC and Leeco Investments. However, the Report, in ¶ 105, seems to find fault with Mr. Farkas because he allegedly did not report that public land records reflect that his retirement trust owns three (3) other properties in Ft. Lauderdale, even though the Report concludes that they are owned not by the retirement trust, but by Thunder Flower, LLC.

Mr. Farkas does not dispute the facts contained in the PSIR (except as otherwise noted) to the extent that it is clear that much of the PSIR simply restates facts set forth in the Government's indictment of him and in the Government's statement of the case, or provided to Ms. Moran by the Government from Government files. *See*, Report, ¶¶ 15 through 35. Further, he does not dispute that a jury has found him guilty of all fourteen counts of the indictment which the Government prosecuted at trial. However, Mr. Farkas, as will be detailed below, does object to the characterization of the aforementioned guilty verdict as having found him liable for misappropriating any particular sum of money, and particularly including the sum of $2,073,867,430, which apparently provides the basis for the Report's conclusion that the potential fine for Count I (Report, ¶112) is in the maximum amount of $4,147,734,860 (twice the alleged loss). Since, as noted by the Court, there is no requirement that there be an actual loss to support a conviction of fraud to a regulatory agency so long as the statement was material (Trial Tr. vol. 7, p. 1899:19-1900:25, Apr. 13, 2011.), Mr. Farkas submits that the guilty verdict can only stand for the proposition that he submitted false information to Colonial Bank (hereinafter, Colonial) and/or caused inaccurate information to be submitted by Colonial to regulators. Further, for the Government to argue to the jury at trial that Mr. Farkas did not have to benefit from any money Taylor Bean & Whitaker Mortgage Co. (hereinafter, TBW) received from Colonial for bank or wire fraud to be "complete" (*See, e.g.*, Trial Tr. Vol. 10, 106:7-16, 4.18.2011), and then for the Report to use the verdict the Government obtained to propose that such a fine is justified on the apparent basis that there must have been a finding that Mr. Farkas misappropriated or caused a loss in any particular amount, simply strains credulity.

Mr. Farkas also disputes the calculation of his net worth (Report, ¶¶ 94 – 96 and 101-105) and the conclusion that he has a significant net worth (Report, ¶ 106), thus making it possible for him to pay a fine imposed by this Court, specifically to the extent that it includes assets that are not his, are only partially his, or that the Government is currently seeking to confiscate as part of a forfeiture action currently pending in this case. The only assets listed in the Report that the Government, to date, is not seeking in the forfeiture action are the $1,000.00 in Mr. Farkas's Mercantile Bank account and his (50%) interest in Nada Car Wash, LLC, which is valued at $250,000.00. Assuming the Court will grant the Government's forfeiture request results in an ***initial*** proper calculation of Mr. Farkas's net worth of $1,000 + $125,000 (1/2 of $250,000) = $126,000 (total assets) - $2,000,000 (approximate outstanding attorney fees and trial costs {including experts, IKON, travel, housing, etc.} not yet paid to counsel by National Union Fire and Casualty {this amount replaces the $403,000 figure referenced in ¶ 95 of the Report, which was not a comprehensive figure when provided to Ms. Moran} through June 1, 2011) = - $1,874,000 (a deficit amount). From that starting amount the Court should also reduce Mr. Farkas's net worth by any restitution award issued by the Court. Whether or not the Court grants the forfeiture request, in whole or in part, the Court should also factor into the equation to determine Mr. Farkas's net worth the following contingent liabilities:

1. approximately $1,000,000 claimed through the reimbursement claim for defense fees and costs already paid, which was filed against Mr. Farkas

by National Union Fire and Casualty in its counterclaim in this Court in 1:11cv529;

2. potential penalties and awards in the *SEC v. Farkas* case brought in this Court (1:10cv667); and

3. potentially hundreds of millions of dollars sought as damages in private litigation brought against Mr. Farkas, allegedly relating to this case, in numerous cases throughout the country -- specifically including *Sovereign v. Farkas, Cole Taylor Bank v. Farkas, Estate of Dorothy Roberson v. Farkas* and *TBW Official Creditors v. Farkas*.

Based on the foregoing, Mr. Farkas submits that the proper calculation of his net worth will show that he possesses a massive negative net worth at this time, and under any set of circumstances, and that, therefore, no fine or costs should be imposed upon him, despite the conclusion reached in ¶ 106 of the PSIR.

III. SENTENCING FACTOR DISPUTES

Mr. Farkas disputes the PSIR's calculation of the sentencing factors under guidelines §2B1.1(b)(1)(P), §2B1.1(b)(2)(C) and §2B1.1(b)(14)(B)(i) (Worksheet A, Part 1) which govern calculation of the loss caused by the crime, the number of victims of the crime, and the offense substantially jeopardizing the safety and soundness of a financial institution respectively.

A. Calculation of Loss

Mr. Farkas has been given a 30 point offense level enhancement under the sentencing guidelines on the basis that the crimes for which he has been convicted caused a loss in excess of $400,000,000. Report, Worksheet A, Part 1. The PSIR bases this calculation on the analysis of Raymond Peroutka who testified at trial regarding a “hole” on the Colonial AOT line of $551,429,805. However, the Government's reliance on Mr. Peroutka's testimony does not take into account that he failed to factor in the value and nature of collateral underlying the AOT agreements. Indeed his own testimony was that his charts were not intended to represent all valid collateral but only the "loan collateral amount" and that he did not evaluate the AOT documents to determine what did or did not constitute valid collateral (*See* Trial Tr. pp 2099-2100). Since Mr. Peroutka's conclusion that the AOT line is undercollateralized is, by his own admission, premised on ignoring the fact that the agreements between TBW and Colonial provided for cross-collateralization of all of Colonial's facilities, his testimony should not be a basis for such a drastic enhancement to Mr. Farkas's sentence as suggested by the PSIR.

Mr. Farkas submits that even if the Court were to accept Mr. Peroutka's testimony as to the size of the AOT hole, there simply is no evidence that the loss was intended and that in such cases the loss calculation should be based on the "pecuniary harm that the Defendant knew or, under the circumstances, reasonably should have known were a potential result of the offense." U.S.S.G. 2B1.1, Application Note 3(A)(iv).

The financial operations of TBW prior to August 2009 gave no basis for Mr. Farkas to reasonably expect his actions would result in pecuniary harm to any party. Ocala Funding, whatever other irregularities may have occurred, was meeting its obligations to pay its investors every month and all notes issued to investors by Ocala Funding prior to the July 20, 2009 notes, which were the last notes issued prior to the TBW shutdown, were paid in full, as noted by the Court on pages 100-105 of the March 23, 2001, Order in *BNP Pariba v. Bank of America*, Doc. No. 48, 09-09783 currently pending in SDNY (a copy of the first page of the said Order and pages 100-105 are attached as Exhibit A and incorporated by reference herein). TBW had not received any Plan B funding since Cathy Kissick's July 2008 decision to stop providing it (*See* Testimony of Teresa Kelly, Trial Tr. p.480) and payments were being made in a timely manner to Colonial. Further, as discussed in Mr. Farkas's version of the offense (Report, ¶69), it appeared to Mr. Farkas that TBW's previous issues with having access to enough capital to meet its loan funding obligations were on the verge of being mitigated as a result of either the Colonial acquisition or Platinum Bank expansion. In short, far from showing any reason for him to believe that he was or would be causing a substantial financial loss to anyone, a view of the situation that confronted Mr. Farkas prior to the FBI raid of TBW and Colonial shows he had reason to believe TBW's financial situation would be improving.

Mr. Farkas's personal actions were also inconsistent with someone who believed his activity would result in a financial loss of the level asserted by Mr. Peroutka. To the contrary, when he was asked to provide additional collateral to Colonial in the form of TBW's Mortgage Servicing Rights, he did. When asked to provide additional security to Colonial in the form of his TBW stock and an insurance policy on his life, he gave it to Colonial. Finally, when Colonial was on the verge of collapse and asked for Mr. Farkas's help in trying to find investors for its capital raise, he provided it. These actions of Mr. Farkas in pledging himself and his company as security, as well as using his personal connections to try to help Colonial, indicate that, whatever other actions he may have engaged in over the years, he fundamentally did not expect those actions to result in the failure of Colonial much less the level of loss that the Government asserts. Thus, the enhancement should not be imposed.

B. Calculation of Number of Victims and Threat to Financial Institution

The PSIR proposes that Mr. Farkas’s offense level be increased by a net of 8 points (reduced from 10 points pursuant to Guideline 2B1.1(b)(14)(C)) based on the determination that the offense substantially jeopardized the safety and soundness of a financial institution and the determination that the offense involved more than 250 victims, a number arrived at by including all shareholders who bought, sold or held stock from during the time period covered by the indictment. The level of enhancement referenced in the Report essentially has the effect of punishing Mr. Farkas as if the crimes of which he was convicted were the sole cause of Colonial's failure. This characterization of the effect of Mr. Farkas's activities is fundamentally at odds with the determination made by the relevant regulatory authorities, who determined that Colonial's exposure in the commercial real estate and acquisition, development and construction sectors (ADC) "would have brought down the bank by themselves." *See*, Material Loss Review of Colonial Bank, Montgomery, Alabama, April 2010 Report of the FDIC's Office of the Inspector General (OIG), p. 24 (a copy of the first page of the said report and page 24 are attached as Exhibit B and incorporated by reference herein). Based on the foregoing, Mr. Farkas submits that the 8 point offense level enhancement based on the number of victims of the crime and the offense substantially jeopardizing the safety and soundness of a financial institution is inappropriate.

IV. GUIDELINES AND THE PSIR RECOMMENDATION

The guideline range calculated in the Report, as amended, in the addendum and corrections thereto, is based on a offense level total 43, criminal history I, calling for a life sentence of imprisonment. By running individual statutory maximum sentences for the various counts consecutively, the Court could, effectively, sentence Mr. Farkas to life in prison. Therefore, based solely upon the application of the advisory guidelines, Mr. Farkas's sentence would be life in prison. The Report also presents a calculation of a potential guideline fine range of between $25,000 and $4,147,734,860 and an as yet determined amount of restitution, in addition to the mandatory $1,400.00 payment of the special assessment.

V. §3553(a) CONSIDERATIONS

In light of the decision in *United States v. Hughes*, 401 F.3d 540 (4th Cir. 2005), the Court must "first calculate . . . the range prescribed by the guidelines. Then, the court shall consider that range as well as other relevant factors set forth in the guidelines and those factors set forth in [18 U.S.C.] §3553(a) before imposing the sentence. . . . [Then, if] the court imposes a sentence outside the guideline range, it should explain its reasons for doing so . . .." *Id*., at 546. The proper calculation of the guideline range has been addressed, and the application of the other 18 U.S.C. §3553(a) factors is considered herein.

Under 18 U.S.C. §3553(a), the sentencing court must consider seven (7) factors before imposing a sentence after conviction. The final sentence should be "sufficient, but not greater than necessary, to comply with the purposes" of sentencing set forth in the statute. 18 U.S.C. §3553(a). The following analysis sets forth specific issues which, in addition to those listed above, the Court believes warrants consideration under §3553(a).

(1) "the nature and circumstances of the offense and the history and characteristics of the defendant"

(a) The nature and circumstances of the offense

Mr. Farkas specifically reincorporates the statements set forth under Part III, herein, the "Sentencing Factor Disputes" section, and requests that in the alternative they be considered as factors warranting departure or a variance from the PSIR calculated guidelines should the Court determine that a Total Offense Level of 43 is appropriate. Similarly, Mr. Farkas reincorporates the statements set forth under Part II, herein, the "Factual Disputes" section, and requests that this Court consider those statements with respect to the potential fine imposed herein.

Context is critical in evaluating the nature and circumstances of the offenses for which Mr. Farkas has been convicted. Throughout the case, and as reflected in the PSIR, the Government has sought to characterize Mr. Farkas as a person who misappropriated large sums of money to fund a "lavish" lifestyle. However, even if one were to accept the allegations made in the Government's forfeiture arguments, the total amount of personal benefit that Mr. Farkas received from the crimes of which he has been convicted amount to significantly less than 10% of the total money the Government claims he misappropriated, and perhaps as little as 3% of that total. To the contrary, the whole point of the financial transactions forming the basis for the charges against Mr. Farkas was not to enrich himself but to keep TBW a viable company so that the hard working people who had helped him build TBW from nothing would continue to have good, stable, well paying jobs. Put another way, and even using the Government's own figures and the testimony of its own witness, Ms. Kissick, there simply is no dispute that more than 100% of the alleged "hole" proceeds TBW received from Colonial were spent paying interest to Colonial or to fund mortgage loans, which kept people working and helped people realize the dream of home ownership.

The initial offense level as calculated in the PSIR is 47, with adjustments (some contested herein) bringing the Adjusted Offense Level to 55. The statutory provisions call for sentences of up to 30 years each for Counts 1-7 and 10-11; 20 years each for Counts 8 and 9; and 25 years each for Counts 14-16. The PSIR also indicates that the top of the guideline fine range (combined) totals $4,147,734,860. When contemplating that fine range, and the imposition of any fine, the Court should strongly consider the previously objected to calculation of Mr. Farkas's net worth. Mr. Farkas submits that based on the factors set forth above, the punishment ranges calculated in the PSIR constitute a significant over-punishment of Mr. Farkas and a sentence of no more than 15 years (180 months) would be sufficient to adequately punish Mr. Farkas and serve general deterrence purposes. In light of the financial situation in this case, no fine or costs should be imposed.

(b) **The history and characteristics of the Defendant**

Mr. Farkas's background, including his six year service in the New Mexico Air National Guard prior to his honorable discharge, is largely set forth in the PSIR. His prior criminal history is distant enough and minor enough that it does not qualify to increase Mr. Farkas's criminal history category from a category I, as indicated in the PSIR. There is also no recommendation in the PSIR for any sentence enhancement based on previous criminal behavior.

The Government has consistently gone out of its way to paint Mr. Farkas as a greedy and manipulative man out for little more than personal gain. However, even a cursory review of the large numbers of letters submitted to this Court show that Mr. Farkas is far from the greed afflicted monster which the Government attempts to paint him as. Mr. Farkas is a man with an education limited to a high school diploma and some college, who nonetheless was able to purchase a company that had only six employees in 1993 and turn it into a company that had approximately 2,600 employees at its close in 2009. Its significance to the local economy was such that, as Margaret Potter testified, the street in front of TBW's new headquarters was dubbed the "Miracle Mile" by local business boosters. He is a man who cared deeply about his employees and making sure that they had jobs, even to the point of turning down an opportunity to cash out by selling TBW when he realized that his leaving would cost the jobs of the people who had helped him make TBW into what it was. In addition, as was testified to in Court, Mr. Farkas's involvement in the local Ocala community extended well beyond TBW and mortgages to participating in numerous other businesses including restaurants, a car wash and a gym, all of which provided additional employment in the town.

The Government's portrait of Mr. Farkas also fails to take into account Mr. Farkas's generosity in helping the community and charitable causes, including helping to defray the costs for the annual "Light Up Ocala" and "Ocala on Ice" Christmas events on the Ocala Square, funding the historic Marion Theater project in Ocala, making significant donations of both money and time as a "bell ringer" to the Salvation Army, and supporting, sometimes alone, the Humane Society for Marion County. Beyond his individual contributions and efforts, Mr. Farkas also funded the Taylor Bean Foundation, which then funded a multitude of other local charities and causes. His efforts are reflected in numerous awards he has received from organizations such as the Salvation Army and his being named Ocala Magazine's "Person of the Year" in 2007. The community recognition received by Mr. Farkas was due, in no small part, to the fact that his charitable involvement was not a matter of just writing checks, but was an active hands-on involvement from conceptualizing to participating in the charitable events he sponsored. It is obvious that he was not just trying to buy his way into acceptance. In making its case against Mr. Farkas, the Government zooms in on those aspects that make him as unappealing of a person as possible, and ignores the totality of his actions.

However, when one steps back and views the total picture that is Mr. Farkas, a more balanced picture emerges, and in viewing that total picture it is apparent that a sentence of 15 years is “sufficient, but not greater than necessary, to comply with the purposes,” set forth in 18 USC §3553(a).

(2) “the need for the sentence imposed:”

(a) to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense

(i) to reflect the seriousness of the offense

The sentence to be imposed in this case must reflect the very serious nature of these offenses. Mr. Farkas was found guilty of serious crimes and the sentence proposed herein is intended to reflect the seriousness of these offenses and will lead to a significant term of imprisonment. However, the guideline sentence range calculation found in the PSIR presupposes that Mr. Farkas should be punished based on purported losses that are well in excess of what Mr. Farkas could have reasonably anticipated would be sustained by his activity, and are at least 10 times greater, and possibly as much as 33 times greater than the largest amount of personal gain even the Government alleges Mr. Farkas received. Based on the foregoing, a sentence of 15 years as previously described appears adequate to satisfy the concern for the seriousness of the crime involved.

(ii) to promote respect for the law

While not included in the statute it appears clear that the phrase “by the public” is implied in this subsection since in order for a society to live by “the rule of law,” the public must be able to maintain respect for the law. This requires, *inter alia*, the public to believe that the law is applied even-handedly, and that there be a relationship between the conduct of a defendant to the harm, if any intended, the harm, if any actually caused by that conduct, and the punishment imposed, balanced by the “history and characteristics of the defendant.” For the reasons previously stated, combined with the fact that Mr. Farkas's age means that any significant incarceration will consume a significant portion of his remaining years, a sentence of 15 years, which given the media coverage this case has received will be known by the public, will promote respect for the law, without over-incarcerating Mr. Farkas for financial harm that has not been clearly proven and could not have been reasonably anticipated.

(iii) promote just punishment for the offense

It is respectfully submitted that very little distinction exists between this part (iii) and part (ii), since a just punishment for the offense should, of necessity, "promote respect for the law." Again, one must weigh the criminal behavior in context, consider the harm intended, if any, the harm caused, if any, and the background of the defendant. Based on the foregoing, the arguments set forth above are realleged as if set forth fully herein and it is submitted that a sentence of imprisonment of 15 years is a considerable period of time, and when balanced in light of reasonably anticipated harm and allegations of a proportionally small personal benefit, appears sufficiently harsh as to be "just punishment."

(b) **to afford adequate deterrence to criminal conduct**

The language of this sub-section does not clearly delineate whether the deterrence is meant to apply to the defendant, or to the general public, and both are certainly appropriate interpretations. Certainly, if one considers the deterrence of possible future criminal conduct by Mr. Farkas, the effect of:

1. the proposed sentence of 15 years;
2. the loss of his business and his credibility among his peer group and with the public;
3. the potential loss of all of his assets to forfeiture and/or restitution obligations;
4. the total preclusion of his having any regulated financial business in the future in this country and the effective restriction of his future employment in the mortgage industry, either through the SEC suit

currently pending against him or as a result of the verdict in this case; and

5. the substantial personal indebtness he has incurred (and continues to incur) as a result of this case;

are more than enough to deter him from future criminal conduct.

As for the deterrent effect on the general public, there is no easy way to calculate the deterrent effect in a case that has been as heavily publicized as this one. However, it is clear that even before Mr. Farkas is sentenced the chronicling of his "fall" has been sufficiently dispersed in the financial and business press to serve as a cautionary tale to the middle age or older executive and ownership level professionals and financial managers who would have, until recently, been considered Mr. Farkas's peer group. People in the aforementioned group will undoubtedly appreciate the fact that for a 58 year old man (Mr. Farkas will soon turn 59, Report, p. 3), particularly one with health issues significant enough to have already necessitated having a stint put in his heart, a sentence of 15 years will consume most of his effective life. Further, for a group who, due to their income and power in society, have virtually no restrictions on their movement, the idea of having every waking moment controlled and dictated in prison for 15 years only to emerge at age 73 with no assets and no prospect for any income but social security income (if that still exists) to count on will be, frankly, nothing short of chilling. For this reason and the reasons set forth above, it is submitted that a sentence of 15 years is sufficient to serve as adequate deterrence to the general public.

(c) **to protect the public from further crimes of the defendant**

This goal is very similar to that in the preceding sub-section. For the reasons set forth above, the facts of Mr. Farkas's case are such that he will be unlikely to even be in a position to commit crimes like those for which he has now been convicted, and there is nothing in his history to suggest that he is prone to criminal activity as a general matter. Therefore it is submitted that the proposed sentence is "sufficient but not greater" than necessary to protect the public from future crimes of this defendant.

(d) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner

Educational or vocational training are not particularly applicable in this case, and there does not appear to be any need from a sentencing standpoint to address this issue in this case. With respect to medical care or other correctional treatment, Mr. Farkas is not aware of any issues other than those referenced in the PSIR, notably the monitoring of the stint in his heart and cholesterol issues that would be typical for someone of his age and medical history.

(3) "the kinds of sentences available"

Based upon the PSIR and the guideline ranges calculated therein, a sentence of probation is not permitted in this matter, nor is Mr. Farkas eligible for a split sentence or for some form of alternative sentence, such as home detention or community confinement. The Court is required to impose a term of imprisonment. Mr. Farkas would request that the Court suggest imprisonment at a low security facility in Ashland, KY; Butner, NC; or Coleman, FL, to enable him to be near his limited primary support network.

(4) "the kinds of sentence and the sentencing range established for

(a) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines

(1) issued by the Sentencing Commission . . ."

This is not a case involving a mandatory minimum sentence, and the sentencing range calculation has already been discussed herein.

(5) "any pertinent policy statement"

To our knowledge, sentencing in this case does not involve a policy statement. Therefore, there is no need to consider this factor.

(6) "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"

Mr. Farkas was convicted for committing and conspiring to commit crimes with co-conspirators Cathy Kissick, Teresa Kelly, Ray Bowman, Desiree Brown, Paul Allen, and Sean Ragland. As of this date the co-conspirators have been sentenced as follows:

Kissick	96 months (8 years)
Kelly	3 months jail, 9 months home detention
Brown	72 months (6 years)
Bowman	30 months (2 years and 6 months)
Allen	40 months (3 years and 4 months)
Ragland	3 months jail, 9 months home detention

Mr. Farkas understands that the sentences of these individuals reflect, in each case, a downward departure for cooperation with and assistance to the Government pursuant to plea agreements and §5K motions, as well as other factors. However, insisting on his Constitutional guarantee to a trial by a jury of his peers should not result in a sentence that is grossly out of proportion to his co-conspirators. Mr. Farkas submits that a sentence of 15 years (180 months), which is almost double the largest sentence given to any other participant in the crimes for which he has been convicted, is sufficient to serve the punitive goals of sentencing without creating an unwarranted disparity in sentencing from those who have committed similar conduct, even in light of the cooperation by the those others. In addition, just as the others involved herein had no fines imposed, since Mr. Farkas has lost virtually all of his assets and is potentially subject to a forfeiture of virtually all of his remaining property, as well as a restitution obligation of extraordinary size, and since Mr. Farkas will be in federal custody for a significant period of time without future prospects for significant employment, no fine or costs of imprisonment should be imposed against him as a result of this matter.

(7) the need for restitution

The arguments relevant to restitution are identical to those set forth above relating to the calculation of loss set forth above and those set forth in Defendant's response to the Government's request for forfeiture and the same are incorporated as if set forth fully herein. Mr. Farkas will more fully develop this portion of his position with respect to the facts when appropriate.

VI. CONCLUSION

Mr. Farkas, having been found guilty in a jury trial; and the Court having reviewed the presentence investigation report, this position with respect to sentencing and the government's position with respect to sentencing and the sentencing factors enumerated in 18 U.S.C. §3553(a); and having heard the presentations of counsel and the defendant, should impose a sentence of no more than 15 years, for the reasons stated herein. In addition, since Mr. Farkas will be in federal custody for a significant period of time without future prospects for significant employment, and to reflect his actual lack of any net worth (post-forfeiture and restitution), no fine or costs of imprisonment should be imposed against him as a result of this matter.

Respectfully submitted,

LEE BENTLEY FARKAS

By: /s/

WILLIAM B. CUMMINGS, ESQUIRE
VA Bar No. 6469
Co-Counsel for LEE BENTLEY FARKAS
WILLIAM B. CUMMINGS, P.C.
Post Office Box 1177
Alexandria, Virginia 22313
(703) 836-7997
Fax (703) 836-0238
wbcpclaw@aol.com

BRUCE S. ROGOW, ESQUIRE
Pro Hac Vice
Co-Counsel for LEE BENTLEY FARKAS
BRUCE S. ROGOW, PA
500 E. Broward Boulevard, Suite 1930
Ft. Lauderdale, Florida 33394
(954) 767-8909
FAX (954) 764-1530
brogow@rogowlaw.com

CRAIG KUGLAR, ESQUIRE
Pro Hac Vice
Co-Counsel for LEE BENTLEY FARKAS
LAW OFFICE OF CRAIG KUGLAR, LLC
1130 Piedmont Avenue, #913
Atlanta, Georgia 30309
(404) 432-4448
FAX (404) 393-8007
ck@kuglarlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to at least the following registered ECF users:

Paul J. Nathanson, Esquire
paul.nathanson@usdoj.gov
Charles Connolly, Esquire
charles.connolly@usdoj.gov
United States Attorney's Office for
the Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, Virginia 22314

/s/

WILLIAM B. CUMMINGS, ESQUIRE
VA Bar No. 6469
Co-Counsel for LEE BENTLEY FARKAS
WILLIAM B. CUMMINGS, P.C.
Post Office Box 1177
Alexandria, Virginia 22313
(703) 836-7997
Fax (703) 836-0238
wbcpclaw@aol.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------X

BNP PARIBAS MORTGAGE CORPORATION and BNP PARIBAS,

Plaintiffs,

- against -

BANK OF AMERICA, N.A.,

Defendant.

-----------------------------------X

09 Civ. 9783 (RWS)

OPINION

DEUTSCHE BANK AG,

Plaintiff,

- against -

BANK OF AMERICA, N.A.,

Defendant.

-----------------------------------X

09 Civ. 9784 (RWS)

OPINION

A P P E A R A N C E S:

Attorneys for Plaintiffs BNP Paribas Mortgage Corporation and BNP Paribas

BOIES SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504
By: Robin A. Henry, Esq.
Motty Shulman, Esq.
Jack Wilson, Esq.

Exhibit A

made by a third party" is best read as apply when a third-party recoverable entails notice and assumption of defense, namely, when there is a "claim" by a third-party. Cf. Promuto, 44 F. Supp. 2d at 650-51 (third-party notice provision applied to "third-party claims" and claims were not a subset of the recoverables in indemnification clause).

Accordingly, the fact that third party actions are explicitly referenced in the indemnification provision does not amount to language that demonstrates an "unmistakably clear" intent to cover first-party losses. Bridgestone/Firestone, 98 F.3d at 20-21; Hooper, 549 N.Y.S.2d at 367; Sequa, 851 F. Supp. at 111 n.7.

VIII. PLAINTIFFS LACK STANDING TO SUE BASED ON OCALA NOTES ISSUED BEFORE JULY 20, 2009

BoA argues that even if it breached the Facility Documents between January 25, 2008 and July 20, 2009, it cannot be liable for those breaches because Plaintiffs received full payment on the Ocala Notes each time they were rolled over. Thus, BoA argues, Plaintiffs lack standing to bring a claim based on events prior to the issuance of the July 20, 2009 Ocala

Notes, because their status as noteholders has expired as to all Ocala Notes prior to those issued on July 20, 2009.

The authorities cited by BoA stand for the proposition that a noteholder who is paid in full may not sue the borrower for breaches of the note or undertakings made by the borrower to support the note. See e.g., 83 N.Y. Jur. 2d Payment and Tender § 141 (West 2010) (legally sufficient tender discharges collateral undertakings by the borrower, such as mortgages, liens and pledges); In re Paradis' Estate, 186 A. 672, 675 (Me. 1936) ("When commercial paper is paid by the party whose debt it appears to be, it becomes functus officio, commercially dead.").

Plaintiffs argue that they are not suing BoA for Ocala's failure to pay the principal due on the Ocala Notes themselves or in respect of related undertakings made by Ocala in connection with issuance of the Ocala Notes. Rather, they are suing for BoA's alleged breaches of the Facility Documents that resulted in the loss of the collateral that was supposed to be backing the Ocala Notes. Plaintiffs contend that BoA executed the Facility Documents on June 30, 2008, and those documents still govern and control BoA's duties and responsibilities to Ocala and the noteholders, that such duties did not cease on repayment of a particular note issue and begin anew on the issuance of new notes and that, for this reason, BoA did not enter into new Facility Documents for each roll of the notes. For this reason, Plaintiffs contend that BoA's argument that "payment of the earlier notes extinguished any related contract claims as a matter of law" misses the point.[11]

DB has alleged that BoA's breaches of the Facility Documents caused Ocala to lose the cash and mortgages that would have been available to repay the principal due on the Ocala Notes issued on July 20, 2009, and that this loss of collateral proximately caused the Ocala Notes to lose their value. Based on this allegation, each rollover of Ocala Notes did not extinguish claims on those notes because each rollover was premised on BoA's continued performance of its duties under the Facility Documents. DB has also alleged that BoA's breaches of the Facility Documents on July 20, 2009 caused it to roll over its investment in Ocala Notes and thereby proximately caused its loss.

[11] Plaintiffs argue that the cases cited by BoA also miss the point, as each involved non-recurring debt obligations that were extinguished and whose governing documents expired or terminated upon payment at final maturity. See Green v. Foley, 856 F.2d 660 (4th Cir. 1988) (non-recurring bank notes); Bank of Lexington v. Jack Adams Aircraft Sales, Inc., 570 F.2d 1220 (5th Cir. 1978) (non-recurring aircraft mortgage); In re Paradis' Estate, 186 A. 672 (Me. 1936) (a single issuance of commercial paper); Great W. Bank v. Kong, 108 Cal. Rptr. 2d 266 (Ct. App. 2001) (single commercial mortgage); Caplan v. Unimax Holdings Corp., 188 A.D.2d 325, 325 (N.Y. App. Div. 1992) (single debenture).

However, even Plaintiffs have acknowledged that each new issuance of Ocala Notes was a "separate transaction." (See BNP AC ¶ 42; DB AC ¶ 5.) Accordingly, BoA contends that they were not revolving or "recurring" debt obligations, and that the situation is no different from one where a noteholder whose note was repaid decided not to reinvest, and a new noteholder purchased a later issue of notes. In that case, the new noteholder could not sue for a breach that occurred before it purchased the new notes. Thus, according to BoA, the fortuity that Plaintiffs were both the new and the old noteholders is irrelevant.

Plaintiffs' standing to sue under the Base Indenture and Security Agreement derives from their third-party beneficiary status as "Noteholders." For this reason, Plaintiffs' status as noteholders, and their resulting standing to sue for breaches while they held the notes, was legally extinguished each time they received payment in full on their notes. See 70 C.J.S. Payment § 32 (payment "extinguishes the debt for which it is presented"). Plaintiffs could not have retained noteholder status after the attendant Ocala Notes were paid and extinguished and only obtained noteholder status again upon the acquisition of the new Ocala Notes. See Caplan v. Unimax Holding Corp., 188 A.D.2d 325, 325 (N.Y. App. Div. 1992).

DB's argument that BoA's alleged breaches "caused DB to roll over its investment in the Ocala Notes," (DB Opp. 35) suggests that DB might have been fraudulently induced into rolling over its notes and acquiring new notes, but it has not pleaded such a claim in its Amended Complaint.

Finally, Plaintiffs argue that any breaches by BoA prior to July 20, 2009 and BoA's knowledge of Ocala's insolvency during the lifetime of the Facility are evidentiary and/or causation issues that cannot be determined on a motion to dismiss. In re Morgan Stanley ERISA Litig., No. 07 Civ. 11285, 2009 WL 5947139, at *15 (S.D.N.Y. Dec. 9, 2009) (Generally, "loss causation is an issue of fact and is thus not properly considered at this early stage in the proceeding" (quotation marks omitted)); see also Xpedior Creditor Trust v. Credit Suisse First Boston (USA) Inc., 341 F. Supp. 2d 258, 271-72 (S.D.N.Y. 2004) (whether there is a causal connection between alleged contract breaches and damages are questions to be addressed at summary judgment or at trial, not on a motion to dismiss).

However, this is an issue of standing, rather than causation or evidence, and is therefore properly raised and resolved at this stage. See Wolfson v. Conolog Corp., No. 08 Civ. 3790, 2009 WL 465621, at *3 (S.D.N.Y. Feb. 25, 2009).

Plaintiffs therefore lack standing to bring claims based upon Ocala Notes issued prior to July 20, 2009.

IX. BNPP IS NOT A PROPER PARTY TO THIS ACTION

The claims of BNPP, which was added to the Amended Complaint filed by the BNP Parties, fail as a matter of law because BNPP has not alleged that it suffered any injury in its capacity as Swap Counterparty or otherwise. Nor can BNPP sue for injuries suffered by its subsidiary, BNP. See, e.g., Hudson Optical Corp. v. Cabot Safety Corp., No. 97-9046, 1998 WL 642471, at *3 (2d Cir. Mar. 25, 1998) (unpublished) (holding that a parent corporation lacks standing to sue for injuries allegedly sustained by its subsidiary); Alexander & Alexander of N.Y. Inc. v. Fritzen, 495 N.Y.S.2d 386, 388 (1985) ("[O]ne corporation will generally not have the legal standing to exercise the rights of other associated corporations."), aff'd, 68 N.Y.2d 968 (1986); see also Diesel Sys., Ltd. v. Yip Shing Diesel Eng'g Co., 861 F. Supp. 179, 181 (E.D.N.Y. 1994) ("A corporation does not have standing to assert claims belonging to

Office of Inspector General

Office of Material Loss Reviews
Report No. MLR-10-031

Material Loss Review of Colonial Bank, Montgomery, Alabama

Exhibit B

April 2010

In its comments, the ASBD discussed its perspective on bank management based on the department's long, regulatory involvement with Colonial. In brief, the ASBD stated that attempts by regulators over the years to discourage or limit Colonial's CRE and ADC exposures were viewed as attempts to micromanage the bank and change its basic business model. Management's philosophy also called for aggressive growth into Florida and other high-growth real estate markets while operating the bank with significant leverage. Consequently, the bank generally operated with lower capital ratios than other banks regulated by the ASBD.

With regard to the specific cause of Colonial's failure, the ASBD indicated that the report accurately stated the ASBD's reasons for closing the bank on August 14, 2009. The ASBD pointed out that although the MWL operations caused significant losses, the CRE and ADC exposures would have brought down the bank by themselves.

With respect to supervision, the ASBD stated that when Colonial pursued charter changes in 2003 and 2008, the Boards of Directors and management were not receptive to the findings and recommendations conveyed to them by examiners prior to the respective conversions. Additionally, the relationship between examiners and senior management had become increasingly strained and communication had deteriorated. The ASBD noted that banks should not be allowed to ignore examiner concerns and recommendations no matter how determined bank management is to do so. In that regard, the ASBD strongly agreed with most of the improvements in the policy statement on regulatory conversions discussed in the body of our report. The ASBD also indicated that it would not do another conversion without a full-scope examination and that it is very important, in its view, that the existing regulator be allowed to follow up on any outstanding issues post-conversion.

The ASBD stated that, in the case of Colonial, the transition meeting with the FDIC and the OCC after the conversion was effected was a very positive step. In its view, prompt and appropriate regulatory actions were taken by the FDIC during the period of its supervision. Further, the ASBD believes that there were no significant delays in downgrading CAMELS ratings and putting enforcement actions in place to address the bank's problems.

Finally, the ASBD provided its views on PCA and the FDIC's backup authority, noting that:

- The PCA capital guidelines do not properly account for current experience in this banking crisis, the guidelines should be increased, and the term "well capitalized" should be eliminated; and

- The FDIC should be able to exercise backup authority any time it sees excessive risks at insured institutions.

Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, APRIL 19, 2011
WWW.JUSTICE.GOV

CRM
(202) 514-2008
TDD (202) 514-1888

FORMER CHAIRMAN OF TAYLOR, BEAN & WHITAKER CONVICTED FOR $2.9 BILLION FRAUD SCHEME THAT CONTRIBUTED TO THE FAILURE OF COLONIAL BANK

WASHINGTON – Lee Bentley Farkas, the former chairman of a private mortgage lending company, Taylor, Bean & Whitaker (TBW), was convicted today for his role in a more than $2.9 billion fraud scheme that contributed to the failures of Colonial Bank, one of the 25 largest banks in the United States in 2009, and TBW, one of the largest privately held mortgage lending companies in the United States in 2009.

The conviction was announced today by Assistant Attorney General Lanny A. Breuer of the Criminal Division; U.S. Attorney Neil H. MacBride for the Eastern District of Virginia; Acting Special Inspector General Christy Romero for the Troubled Asset Relief Program (SIGTARP); Assistant Director in Charge James W. McJunkin of the FBI's Washington Field Office; Michael P. Stephens, Acting Inspector General of the Department of Housing and Urban Development (HUD-OIG); Jon T. Rymer, Inspector General of the Federal Deposit Insurance Corporation (FDIC-OIG); Steve A. Linick, Inspector General of the Federal Housing Finance Agency (FHFA-OIG); and Victor F. O. Song, Chief of the Internal Revenue Service Criminal Investigation (IRS-CI).

After a 10-day trial, a federal jury in the Eastern District of Virginia found Farkas guilty of one count of conspiracy to commit bank, wire and securities fraud; six counts of bank fraud; four counts of wire fraud; and three counts of securities fraud. At sentencing, scheduled for July 1, 2011, Farkas faces a maximum prison term of 30 years for the conspiracy charge and for each count of bank fraud, 20 years for each count of wire fraud related to TARP, 30 years for each count of wire fraud affecting a financial institution and 25 years for each securities fraud count. Farkas was remanded into custody.

According to court documents and evidence presented at trial, Farkas and his co-conspirators engaged in a scheme that misappropriated more than $1.4 billion from Colonial Bank's Mortgage Warehouse Lending Division in Orlando, Fla., and approximately $1.5 billion from Ocala Funding, a mortgage lending facility controlled by TBW. Farkas and his co-conspirators misappropriated this money to, among other things, cover TBW's operating expenses. The fraud scheme contributed to the failures of Colonial Bank and TBW.

Six individuals have pleaded guilty for their roles in the fraud scheme, including: Paul Allen, former chief executive officer of TBW; Raymond Bowman, former president of TBW; Desiree Brown, former treasurer of TBW; Catherine Kissick, former senior vice president of Colonial Bank and head of its Mortgage Warehouse Lending Division (MWLD); Teresa Kelly, former operations supervisor for Colonial Bank's MWLD; and Sean Ragland, a former senior financial analyst at TBW.

"Lee Farkas, the former chairman of TBW, masterminded one of the largest bank fraud schemes in history," said Assistant Attorney General Breuer. "His shockingly brazen scheme poured fuel on the fire of the financial crisis. It not only led to the downfall of TBW, one of the largest private mortgage lending companies in the United States, but also contributed to the failure of one of the country's largest commercial banks. Mr. Farkas may have thought he could steal nearly $3 billion from investors and taxpayers and sail into the sunset. But now a jury has told him otherwise, and he must face the severe consequences."

"Today a jury convicted Lee Farkas of orchestrating one of the longest and largest bank fraud schemes in the country," said U.S. Attorney Neil H. MacBride. "In 2008, Lee Farkas boasted that he 'could rob a bank with a pencil.' And he did just that. His staggering greed led him to steal nearly $3 billion from Colonial Bank and other investors. Farkas's mammoth fraud contributed to the toppling of a financial institution and the ripple effects were felt from Wall Street to Main Street. Now he's being held responsible for the financial ruin he left in his wake."

"This investigation required thousands of hours of work by investigators, forensic accountants and analysts to sort through complex mortgage and lending documents," said Assistant Director in Charge McJunkin. "I'd like to thank the many other agencies who worked with FBI personnel to build a strong investigative team; a team still out there working today to protect federal funds and innocent victims."

"Today's verdict ensures that Farkas will pay for his crime – an unprecedented scheme to defraud regulators during the height of the financial crisis and to steal over $550 million from the American taxpayers through TARP," said Acting Special Inspector General Romero for SIGTARP. "SIGTARP and its partners in the Financial Fraud Enforcement Task Force stopped the scheme dead in its tracks and will continue to bring to justice those criminals who seek to profit by exploiting TARP through fraud."

According to court documents and evidence presented at trial, the fraud scheme began in 2002, when Farkas and his 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. Evidence presented at trial showed that after 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 over time more than $1.5 billion in what amounted to worthless mortgage loan assets, including loans that TBW had already sold to other investors and fake pools of loans supposedly being formed into mortgage-backed securities. Farkas and his co-conspirators caused Colonial Bank to report these assets on its books at face value when in fact the mortgage loan assets were worthless. By August 2009, approximately $500 million in fake pools of loans remained on Colonial Bank's books.

According to court documents and evidence presented at trial, Farkas and his co-conspirators at TBW also misappropriated more than $1.5 billion 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.

Evidence presented at trial established that Farkas and his co-conspirators 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 conspirators sent false information to Deutsche Bank, BNP Paribas Bank and other financial institution investors and led them to falsely believe that they had sufficient collateral backing the commercial paper they had purchased. When TBW failed in August 2009, the banks were unable to redeem their commercial paper for full value. Farkas and his co-conspirators also caused approximately $900 million in loans to be held on Colonial Bank's books when in fact the loans had already been sold to Freddie Mac and other investors.

According to court documents and evidence at trial, 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 (CPP), a sub-program of the U.S. Treasury Department's Troubled Asset Relief Program (TARP). In connection with the application, Colonial BancGroup submitted financial data and filings that included materially false information related to mortgage loans and securities held by Colonial Bank as a result of the fraudulent scheme perpetrated by Farkas and his co-conspirators. Colonial BancGroup's TARP application was conditionally approved for $553 million contingent on the bank raising $300 million in private capital.

Evidence at trial established that Farkas and his co-conspirators falsely informed Colonial BancGroup that they had identified sufficient investors to satisfy the TARP capital contingency. Farkas and his TBW co-conspirators diverted $25 million from Ocala Funding into an escrow account and falsely represented that the money was on behalf of capital raise investors. Farkas and his TBW co-conspirators caused Colonial BancGroup to issue a false and misleading financial statement to the Securities and Exchange Commission (SEC) and press release announcing the success of the capital raise. Ultimately, Colonial BancGroup did not receive any TARP funds.

Evidence at trial also established that Farkas and his co-conspirators caused Colonial BancGroup to file materially false financial data with the SEC regarding its assets in annual reports contained in Forms 10-K and quarterly filings contained in Forms 10-Q. Colonial BancGroup's materially false financial data included overstated assets for mortgage loans that had little to no value that Farkas and his co-conspirators caused Colonial Bank to purchase. Farkas and his co-conspirators also caused TBW to submit materially false financial data to the Government National Mortgage Association (Ginnie Mae) in order to extend TBW's authority to issue Ginnie Mae mortgage-backed securities.

According to court documents and evidence presented at trial, Farkas also personally misappropriated more than $20 million from TBW and Colonial Bank to finance his lifestyle, including purchasing multiple homes, scores of cars, a jet and sea plane, and restaurants and bars.

In August 2009, the Alabama State Banking Department, Colonial Bank's regulator, seized the bank and appointed the FDIC as receiver. Colonial BancGroup also filed for bankruptcy in August 2009.

"The successful prosecution of Farkas and his associates highlights the commitment and combined efforts of DOJ and federal law enforcement to hold those responsible from all levels of a mortgage company," said Acting Inspector General Stephens for HUD-OIG. "Efforts to protect FHA and Ginnie Mae are strengthened by this verdict."

"Today's verdict confirms that the former chairman of one of the leading mortgage lending firms in the Southeast engaged in criminal conduct during the mid-2000s," said Inspector General Rymer of FDIC-OIG. "We are proud to work with our partners at the Justice Department's Criminal Division and in the U.S. Attorney's Office for the Eastern District of Virginia to bring to justice individuals whose fraud contributed significantly to the financial crisis and the failure of a major financial institution."

"This conviction represents a victory for Freddie Mac and American taxpayers, who have invested $64.2 billion in Freddie Mac to date," said Inspector General Linick of the FHFA-OIG. "The fraud that Farkas perpetrated on Freddie Mac directly affected its bottom line and, in turn, American taxpayers. FHFA-OIG looks forward to future cooperative efforts with law enforcement partners to combat fraud against Freddie Mac, Fannie Mae, and the Federal Home Loan Banks."

The case was prosecuted by Deputy Chief Patrick Stokes and Trial Attorney Robert Zink of the Criminal Division's Fraud Section and Assistant U.S. Attorneys Charles Connolly and Paul Nathanson of the Eastern District of Virginia. This case was investigated by the FBI's Washington Field Office, SIGTARP, FDIC-OIG, HUD-OIG, FHFA-OIG, and the IRS Criminal Investigation. The Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury also provided support in the investigation. The Department of Justice would like to thank the SEC for their assistance.

This conviction is part of efforts underway by President Barack Obama's Financial Fraud Enforcement Task Force. President Obama established the interagency task force to wage an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes. The task force includes representatives from a broad range of federal agencies, regulatory authorities, inspectors general and state and local law enforcement who, working together, bring to bear a powerful array of criminal and civil enforcement resources. The task force is working to improve efforts across the federal executive branch, and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes. For more information about the task force visit: www.stopfraud.gov.

###

11-490

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

Non Responsive

Since her arrival to FHFAOIG, (b)(5) (b)(5). In addition, to providing investigative and prosecutive support to the TBW/Colonial Bank investigation, which led to the conviction of Lee Farkas, TBW Chairman, (b)(7)(C) (b)(7)(C) Delton de Armas, former TBW Chief Financial Officer. De Armas was sentenced on June 15, 2012 to 5 years, for his role in the $3.5 billion fraud.

Non Responsive

Because of (b)(7)(C) experience in investigating the securities and bank fraud in the TBW/ Colonial investigation Non Responsive Non Responsive

Non Responsive

Non Responsive

Non Responsive

(b)(5)

(b)(5)

(b)(5)

eb

(b)(5)

(b)(5)

(b)(5)

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non Responsive

FHFA-OIG INVESTIGATION ACTIVITIES

(b)(5) has made significant contributions to a range of mortgage-related investigations. As of September 30, 2011, OI had investigation projects underway. While many of them remain confidential, FHFA-OIG and its law enforcement partners, which include Federal agencies, U.S. Attorney's Offices, and state and local entities nationwide, have released details of several high-profile mortgage fraud investigations involving Colonial Bank and Taylor, Bean & Whitaker Mortgage Corporation ("TBW"); (b)(5) Each is detailed below. (b)(5)

Colonial Bank/Taylor, Bean & Whitaker

On June 30, 2011, Lee Bentley Farkas, the former chairman and owner of Taylor, Bean & Whitaker ("TBW"), was sentenced to 30 years in prison and ordered to forfeit approximately $38.5 million for his role in a $2.9 billion fraud scheme that contributed to the failure of TBW and Colonial Bank. TBW originated, purchased, sold, and serviced residential mortgage loans as well as pooling loans as collateral for mortgage-backed securities guaranteed by Freddie Mac and Ginnie Mae. At one time, TBW was one of the largest privately held mortgage lending companies in the United States and Colonial Bank was one of the 25 largest banks in the United States.

Beginning in early 2002, TBW began to experience significant cash flow problems. In an effort to cover these shortfalls, a group of conspirators devised various schemes, which involved defrauding Colonial Bank (which provided short term funding to mortgage lending companies like TBW), Ocala Funding LLC ("Ocala"), a TBW special purpose entity, and U.S. taxpayers. By the middle of 2009, the conspirators had diverted nearly $3 billion from Colonial Bank and Ocala; attempted to misappropriate over $500 million from Treasury; and filed numerous false records with Freddie Mac, Ginnie Mae, and the Securities and Exchange Commission (b)(5) Additionally, the conspirators allegedly covered up the diversions by selling loans owned by Colonial Bank to Freddie Mac without paying Colonial Bank for the loans. As a result, the conspirators caused Freddie Mac and Colonial Bank to believe that each had an undivided ownership interest in thousands of the same loans. TBW and Colonial Bank both failed in 2009. Freddie Mac reported losses and filed a proof of claim of nearly $1.8 billion in TBW's bankruptcy proceeding.

Federal prosecutors have charged and convicted six other defendants for their roles in the fraud scheme:

- (b)(5)
- (b)(5)
- (b)(5)
- (b)(5)
- (b)(5)
- (b)(5)

FHFA-OIG's investigation partners in these cases include the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"), the Federal Bureau of Investigation ("FBI"), the Office of Inspector General for the Federal Deposit Insurance Corporation ("FDIC-OIG"), the Office of Inspector General for the U.S.

Department of Housing and Urban Development ("HUD-OIG"), and the Internal Revenue Service - Criminal Investigation ("IRS-CI") and the Securities and Exchange Commission. The Financial Crimes Enforcement Network ("FinCEN") also provided investigative support. Additionally, the cases are being prosecuted by the Fraud Section of the Criminal Division at the U.S. Department of Justice ("DOJ") and the United States Attorney for the Eastern District of Virginia.

Non Responsive

Non Responsive

Non Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non Responsive

FHFA-OIG INVESTIGATION ACTIVITIES

(b)(5) has made significant contributions to a range of mortgage-related investigations. As of September 30, 2011, OI had [redacted] investigation (b)(5) projects underway. While many of them remain confidential, FHFA-OIG and its law enforcement partners, which include Federal agencies, U.S. Attorney's Offices, and state and local entities nationwide, have released details of several high-profile mortgage fraud investigations involving Colonial Bank and Taylor, Bean & Whitaker Mortgage Corporation ("TBW"); (b)(5) Each is detailed below.

Colonial Bank/Taylor, Bean & Whitaker

On June 30, 2011, Lee Bentley Farkas, the former chairman and owner of Taylor, Bean & Whitaker ("TBW"), was sentenced to 30 years in prison and ordered to forfeit approximately $38.5 million for his role in a $2.9 billion fraud scheme that contributed to the failure of TBW and Colonial Bank. TBW originated, purchased, sold, and serviced residential mortgage loans as well as pooling loans as collateral for mortgage-backed securities guaranteed by Freddie Mac and Ginnie Mae. At one time, TBW was one of the largest privately held mortgage lending companies in the United States and Colonial Bank was one of the 25 largest banks in the United States.

Beginning in early 2002, TBW began to experience significant cash flow problems. In an effort to cover these shortfalls, a group of conspirators devised various schemes, which involved defrauding Colonial Bank (which provided short term funding to mortgage lending companies like TBW), Ocala Funding LLC ("Ocala"), a TBW special purpose entity, and U.S. taxpayers. By the middle of 2009, the conspirators had diverted nearly $3 billion from Colonial Bank and Ocala; attempted to misappropriate over $500 million from Treasury; and filed numerous false records with Freddie Mac, Ginnie Mae, and the Securities and Exchange Commission (b)(5) Additionally, the conspirators allegedly covered up the diversions by selling loans owned by Colonial Bank to Freddie Mac without paying Colonial Bank for the loans. As a result, the conspirators caused Freddie Mac and Colonial Bank to believe that each had an undivided ownership interest in thousands of the same loans. TBW and Colonial Bank both failed in 2009. Freddie Mac reported losses and filed a proof of claim of nearly $1.8 billion in TBW's bankruptcy proceeding.

Federal prosecutors have charged and convicted six other defendants for their roles in the fraud scheme:

- (b)(5)
- (b)(5)
- (b)(5)
- (b)(5)
- (b)(5)
- (b)(5)

FHFA-OIG's investigation partners in these cases include the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"), the Federal Bureau of Investigation ("FBI"), the Office of Inspector General for the Federal Deposit Insurance Corporation ("FDIC-OIG"), the Office of Inspector General for the U.S.

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

Non-Responsive

(b)(5)

(b)(5)

(b)(5),(b)(7)(C),(b)(7)(E)

(b)(5)

(b)(5),(b)(7)(C),(b)(7)(E)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5),(b)(7)(C),(b)(7)(E)

(b)(5),(b)(7)(C),(b)(7)(E)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

Page 357 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 358 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 359 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 360 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 361 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 362 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 363 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 364 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 365 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 366 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 367 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 368 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 369 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 370 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 371 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 372 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 373 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 374 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 375 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 376 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 377 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 378 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 379 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 380 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 381 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 382 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 383 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 384 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 385 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 386 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 387 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 388 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 389 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 390 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 391 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 392 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 393 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 394 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 395 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 396 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 397 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 398 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 399 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 400 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 401 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 402 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 403 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 404 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 405 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 406 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 407 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 408 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 409 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 410 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 411 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 412 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 413 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 414 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 415 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 416 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 417 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 418 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 419 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 420 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 421 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 422 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 423 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 424 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 425 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 426 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 427 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 428 of 428

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act