

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

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:11CR119
	)	
TERESA KELLY,	)	Honorable Leonie M. Brinkema
	)	
Defendant.	)	Hearing: August 9, 2011

**POSITION OF THE UNITED STATES  
WITH RESPECT TO RESTITUTION**

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, files this Position of the United States With Respect to Restitution of defendants Lee Bentley Farkas, Catherine Kissick, Desiree Brown, Paul Allen, Raymond Bowman, Sean Ragland, and Teresa Kelly (“Defendants”).

**INTRODUCTION**

From 2002 to August 2009 the Defendants, led by former Taylor, Bean & Whitaker (“TBW”) chairman Lee Farkas, orchestrated a fraud of immense size – one of the largest bank fraud schemes in this country’s history. The fraud victimized major financial institutions and individuals alike in the following ways.

First, through Plan B, Farkas, Catherine Kissick (former executive vice president and head of Colonial Bank’s Mortgage Warehouse Lending Division), Desiree Brown (former

treasurer of TBW), Raymond Bowman (former president of TBW), and Teresa Kelly (a former operations supervisor of Colonial Bank) caused fake mortgage loan assets to be sold to Colonial Bank, ultimately creating a deficit of at least \$500 million in Colonial Bank's Assignment of Trade ("AOT") financing facility. This deficit also caused Colonial Bank's parent company, Colonial BancGroup, to file false financial statements and reports with the Securities and Exchange Commission, thereby misleading the investing public and individual investors regarding the true state of Colonial BancGroup's financial viability and health.

Second, through Ocala Funding, Farkas, Brown, Paul Allen (former CEO of TBW), and Sean Ragland (a former senior financial analyst at TBW) caused over \$1.7 billion in asset-backed commercial paper to be sold to institutional investors based on false representations and caused over \$900 million in mortgage loan assets to be sold to multiple purchasers at the same time.

In total, the actions of the Defendants in this case caused losses of over \$3.5 billion to various victims. A restitution order that accounts for the full extent of these staggering losses caused by the Defendants to victims across the globe is appropriate in this case. Specifically, the government respectfully requests that the defendants involved in Plan B pay restitution to Colonial Bank<sup>1</sup> and Colonial BancGroup shareholders, and the defendants involved in OF be ordered to pay restitution to Deutsche Bank, BNP Paribas, and Colonial Bank. For Farkas and Brown, this would require a restitution amount equal to the total loss caused by the fraud.

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<sup>1</sup> Colonial Bank was closed by its primary regulator, the Alabama State Banking Department, on August 14, 2009. The Federal Deposit Insurance Corporation ("FDIC") subsequently was appointed as receiver for Colonial Bank. In its capacity as receiver, the FDIC stands in Colonial Bank's place for purposes of restitution. 12 U.S.C. § 1821 (d)(2)(B)(ii).

## **BACKGROUND**<sup>2</sup>

### **I. PROCEDURAL HISTORY**

On April 19, 2011, after nearly two weeks of trial, Lee Farkas was convicted on 14 counts of bank, wire, and securities fraud. Prior to Farkas's trial, Kissick, Brown, Allen, Bowman, Ragland, and Kelly entered guilty pleas based on their respective roles in a \$3.5 billion fraud scheme. During sentencing, the Defendants and the government agreed to postpone imposition of restitution pending the government's efforts to identify and notify potential victims of the fraud.<sup>3</sup> Defendants also consented to consolidate into one hearing all restitution determinations. This Court subsequently ordered a hearing for August 9, 2011, to resolve issues related to restitution for each of the Defendants.

### **II. THE FRAUD SCHEME**

TBW was 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, the Defendants defrauded banks of more than \$3.5 billion and misled shareholders of Colonial BancGroup. At trial, the government proved Farkas led the following five-part fraud scheme:

#### **A. Overdraft / Sweeping Scheme**

Beginning in 2002, conspirators engaged in a "sweeping" scheme to hide overdrafts in TBW bank accounts held at Colonial Bank. TBW ran large overdrafts in its Master Account to

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<sup>2</sup> 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.

<sup>3</sup> Of the seven defendants, only Farkas was ordered to forfeit property. Specifically, on June 30, 2011, this Court ordered Farkas to forfeit \$38,541,209.69.

cover its operating expenses. To cover up the overdrafts, certain Defendants caused funds to be swept on a daily basis into this account from the Investor Funding Account, a Colonial Bank-controlled account. The sweeping scheme, which grew to approximately \$140 million, continued until approximately December 2003. The defendants who participated in the sweeping scheme included Farkas, Kissick, Bowman, and Kelly.

**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. Bowman and Kelly also participated in Plan B on COLB. While Plan B was initially supposed to be a one-time event, Farkas, Kissick, Bowman, and Kelly continued to engage in Plan B transactions for years. They 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.

**C. Plan B on AOT**

Plan B on COLB grew to approximately \$250 million and, because of the number of loans involved, became difficult to administer. In 2005, the deficit caused by Plan B was transferred 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, 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 were worthless to Colonial Bank. TBW paid down some of the Plan B balance on AOT over time, and by August 2009 Colonial Bank held at least \$500 million worth of worthless Plan B pools on the AOT facility. Farkas and Brown also failed to disclose to Kissick and Kelly that hundreds of millions of dollars worth of loans that TBW had sold Colonial Bank were in fact foreclosed upon, 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). Farkas, Brown, Kissick, and Kelly participated in Plan B on AOT in various capacities. Bowman was aware that Plan B had been moved to the AOT facility, though he did not participate in the administration of the AOT phase of the scheme.

**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). And OF cash could only be used for OF purposes. When TBW ceased operations in August 2009, there were two investors in OF: Deutsche Bank ("DB") and BNP Paribas, which owned a combined \$1.7 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, Brown, Allen, and Ragland

caused OF loans already sold to Freddie Mac to continue to appear as collateral at Colonial Bank and OF. Allen and Ragland also falsified collateral reports that were sent to BNP and DB to create the appearance that Ocala Funding was sufficiently collateralized. Moreover, as a result of the scheme, Colonial Bank was led to believe it owned approximately \$900 million in loans that had already been sold to Freddie Mac. DB and BNP Paribas, as the investors in OF, believed they had approximately \$1.70 billion in loan collateral backing their supposedly asset-backed commercial paper when in fact there was only collateral of roughly \$160 million.<sup>4</sup> 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 raised the remaining \$50 million from other companies with which it did business. 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

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<sup>4</sup> To date, neither DB nor BNP has recovered any funds from the commercial paper they purchased, including the \$160 million in remaining collateral in OF.

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.

### **III. THE GOVERNMENT'S EFFORTS TO IDENTIFY VICTIMS**

After the jury verdict in the Farkas case, the government promptly took action to contact potential victims in order to notify them of the outcome of the trial and related proceedings, as well as their rights as possible victims. The government contacted two sets of potential victims: (1) those harmed by the Plan B and OF schemes; and (2) Colonial BancGroup stockholders who were harmed by the fraud.

With respect to the Plan B and OF victims, the government initially contacted these potential victims by phone and followed up, where necessary, by emails and mailings. For example, the government personally contacted, among others, Colonial BancGroup, the FDIC (on behalf of Colonial Bank), DB, BNP, and Bank of America. Victim impact statements and related supporting documents were collected and reviewed by the government.

The government also attempted to identify all Colonial BancGroup shareholders that may have been harmed by the criminal conduct of the Defendants. Specifically, the government identified, through the transfer agent for Colonial BancGroup, potential shareholders. Shortly after the Farkas indictment was returned, the government sent materials to owners of Colonial BancGroup stock during the relevant timeframe and established and maintained a web site providing information about the relevant charges, criminal dispositions, and the rights of potential victims in this case. The government also requested that shareholders complete victim impact statements to the extent they were harmed by the fraud scheme. Investigators have

followed up with the shareholders who provided victim impact statements to gather supporting documentation and, where necessary, to obtain additional information.

Based on the government's stockholder notification efforts, over 50 individuals or entities identified themselves as putative victims based on their ownership of Colonial BancGroup stock. Of these, 17 individuals/entities provided documentation demonstrating ownership of Colonial BancGroup stock on August 3, 2009 – the date federal agents executed search warrants on Colonial Bank and TBW and the date the fraud scheme first became public.

#### **IV. VICTIM POSITIONS**

In connection with its efforts to identify potential victims and to arrive at an appropriate restitution figure for each of the Defendants in this case, the government requested that each potential victim provide information outlining: (1) their basis for being a victim in this case; and (2) the harm suffered by each. The government briefly summarizes below the positions of the potential victims.

##### **A. FDIC (on Behalf of Colonial Bank)**

The FDIC, on behalf of Colonial Bank, calculates \$1,808,152,444 in losses. With respect to the COLB facility, the FDIC cites to the TBW reconciliation report<sup>5</sup> for the proposition that Colonial Bank suffered \$909,600,000 in losses by providing loans from the COLB facility to OF – loans for which Colonial Bank was never paid and, in many instances, were sold to other institutions as well. With respect to the AOT facility, the FDIC calculates losses of \$895,833,675<sup>6</sup> based on the collateral shortfall in the AOT facility, determined by discounting

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<sup>5</sup> The FDIC relies on the reconciliation report of the bankruptcy trustee appointed in *In re Taylor, Bean & Whitaker Mortgage Corp.*, No. 3:09-bk-747 (Bankr. M.D. Fla), Docket No. 1644.

<sup>6</sup> The FDIC submitted a loss figure of \$898,552,444. It appears this figure is based on a miscalculation and therefore the government has recalculated it as \$895,833,675.



the actual loan collateral identified by the TBW bankruptcy trustee by 25% to more accurately reflect current market values.

The FDIC arrives at this loss figure by reducing the value of all trades assigned to AOT in August 2009, roughly \$1,473,868,368, by the discounted value (25% discount applied) of the underlying collateral. The underlying collateral consists of two types of assets. The first type is 1,837 loans that, as of August 2009, had been foreclosed with the underlying collateral being real estate owned (“REO”). The purchase value of the REO was \$295,831,301. The second type of asset is 3,278 loans that, as of August 2009, were being serviced and were typically aged loans that TBW had not been able to sell. The purchase value of these loans was \$474,881,623. Together, the collateral value of these two types of assets was \$770,712,924. Applying a 25% discount to these assets results in a discounted asset value of \$578,034,693.<sup>7</sup> The FDIC then calculated its loss amount as the difference between the trade value (*i.e.*, what Colonial Bank paid for the trades) and the discounted value of the actual collateral, arriving at a loss figure of \$895,833,675.

**B. Deutsche Bank**

DB calculates losses of \$1,201,785,000. This loss amount is based on the asset-backed commercial paper purchased by DB from OF which, in fact, was not asset backed. DB states that it held \$1,201,785,000 in worthless commercial paper.

**C. BNP Paribas**

BNP calculates losses of approximately \$500,000,000. Like DB, BNP’s loss amount is based on the asset-backed commercial paper purchased by DB from OF that was not, in fact, asset backed. BNP notes the April 13, 2011, trial testimony of Avi Pemper, who testified that, as

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<sup>7</sup> The FDIC calculated this number as \$575,315,924. It appears this was a miscalculation.

of August 3, 2009, BNP owned approximately \$500 million in Ocala Funding commercial paper that was not collateralized and was thus worthless.

**D. Colonial BancGroup Stockholders**

Seventeen stockholders of Colonial BancGroup have provided documentation demonstrating that they owned Colonial BancGroup stock as of August 3, 2009 – the date federal agents executed search warrants at Colonial Bank and TBW and the date on which the government contends Colonial BancGroup shareholders began to suffer losses as a result of their ownership of Colonial BancGroup stock.<sup>8</sup> These stockholders, as well as their reported loss amounts, are contained in Schedule A to this memorandum.

**E. Bank of America**

Bank of America does not request restitution. Bank of America, however, notes that it has incurred substantial legal costs, both by defending related legal actions against it and pursuing legal actions against others in connection with OF assets. Bank of America also notes that it may, in the future, incur damages in the form of lawsuit judgments based on presently pending claims against it. Bank of America has informed the government that it will seek recovery through civil litigation, where appropriate, for harm it contends was caused by Defendants.

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<sup>8</sup> The Government attempted to verify the stockholder status of every Colonial BancGroup stockholder who responded to its notice initiative. Although some stockholders identified themselves as victims, many were not able to provide documentary support to establish their ownership of Colonial BancGroup stock on August 3, 2009. These individuals have not been listed in Schedule A. Also, two individuals claim losses related to alleged irregularities with their loans, handled by TBW. Based on documents provided by these individuals, as well as a telephonic interview, these individuals' losses do not appear related in any way to the fraud charged in the Farkas indictment.

**F. Colonial BancGroup**

Colonial BancGroup does not request restitution. Colonial BancGroup, however, notes that it has incurred losses in a variety of ways, including losses associated with “a worthless stock deduction in the amount of \$1,127,408,470” and legal fees and costs incurred in connection with Colonial BancGroup’s bankruptcy filing.

**ARGUMENT**

**I. LEGAL STANDARD**

Under 18 U.S.C. § 3663A, restitution is required for defendants when: (1) the defendant committed an “offense against property” (including those offenses involving “fraud and deceit”) and identifiable victims suffered pecuniary loss; and (2) the victims were “directly and proximately harmed as a result of the commission of [the] offense.” 18 U.S.C. § 3663A(a)(1)-(2), (c)(1). In these instances, “the court shall order restitution to each victim in the full amount of each victim’s losses as determined by the court and without consideration of the economic circumstances of the defendant.” 18 U.S.C. § 3664(f)(1)(A). Moreover, “[i]f the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim’s loss and economic circumstances of each defendant.” 18 U.S.C. § 3664(h).

Finally, in fashioning an appropriate payment schedule, the court must consider, among other things, the financial resources of the defendant, projected earnings of the defendant, and the financial obligations of the defendant, including financial obligations to dependents. 18 U.S.C. § 3664(f)(2).

## II. GOVERNMENT'S POSITION ON RESTITUTION

### A. Victims and Loss

Based on its review of the victim impact submissions by the putative victims, the government has identified the following victims who were directly and proximately harmed by the fraud scheme. In light of the copious ongoing litigation related to TBW and the bank, the government requests that the Court's restitution order require any victim to alert the Clerk's Office to any recovery related to its claims in this action so that the restitution order may be offset by that amount. 18 U.S.C. § 3664(j)(2).

#### 1. Plan B Victims

The FDIC as the receiver for Colonial Bank requests restitution for losses caused from that portion of the Plan B scheme involving the purchase and sale of fake and impaired mortgage loan assets in the amount of \$895,833,675. The government agrees that Colonial Bank is a direct and proximate victim of the Plan B scheme and that the FDIC may appropriately recover on the bank's behalf. *See* 12 U.S.C. § 1821(d)(2)(B)(ii).

The FDIC's calculation of the loss figure differs from the methodology used by the government at the Farkas trial. The government's calculation of the AOT collateral deficit conservatively included in its analysis approximately 3,000 additional loans that were not actually assigned to the AOT facility. *See* Govt's Trial Ex. 1-700 p.3. Moreover, in calculating the value of the AOT collateral, the government did not apply any discount to the REO or the impaired loans still being serviced. The government took this conservative approach – *i.e.*, including these extra loans and not discounting the value of any loans in its calculations – in order to minimize defense challenges at trial.

The FDIC's analysis, which is based on the actual loans assigned to the AOT trades with

a modest discount in light of market conditions, more accurately reflects the actual value of the losses sustained by Colonial Bank as result of the Plan B fraud. As Farkas and Brown were fully involved in Plan B, including selling REO, double-sold, charged-off, and paid-in-full loans to AOT, the government submits that they should be fully responsible for the \$895,833,675 loss, as calculated by the FDIC.

Kissick, Kelly, and Bowman are in a different position. Kissick and Kelly knew of the Plan B trades backed by pools of loans sold to other investors. However, the evidence does not sufficiently support a finding that they were aware of the sale by TBW to AOT of the REO, double-sold, charged-off, and paid-in-full loans. Thus, the government submits that their restitution figure should include only the losses associated with the Plan B trades backed pools of loans sold to other investors. As Kelly's database (and evidence at trial) showed, the loss associated with these Plan B trades was approximately \$500 million. Although Bowman's active participation in Plan B ended with Plan B on COLB, he was aware that the Plan B deficit was moved to AOT and continued to grow. As a result, the government submits that Kissick, Kelly, and Bowman should be responsible for \$500 million in restitution, which is a subset of the full amount of the loss suffered by Colonial Bank.

## 2. OF Victims

DB, BNP, and Colonial Bank request restitution for losses suffered from the OF scheme. The government agrees that DB, BNP, and Colonial Bank are direct and proximate victims of the OF scheme. Both DB and BNP purchased asset-backed commercial paper from OF based on representations that the commercial paper was, in fact, asset-backed. The paper was not asset backed. Colonial Bank, on the other hand, provided OF with thousands of loans for which they were never paid. Many of these loans were subsequently sold by OF to one or more other

purchasers, while at the same time being held on OF's books as loan collateral.

The government agrees that DB, BNP, and Colonial Bank suffered losses of \$1,201,785,000, \$500,000,000, and \$909,600,000, respectively, due to the participation and involvement of Farkas, Brown, Allen, and Ragland in the OF scheme. Therefore, the government believes that it is appropriate to incorporate \$2,611,385,000 – the total amount requested by victims of the OF fraud – into the restitution orders of these Defendants.

### 3. Stockholder Victims

The government believes restitution is appropriate for the 17 individuals and entities who have provided documentation demonstrating that they owned Colonial BancGroup stock on August 3, 2009 – the date federal agents executed search warrants on Colonial Bank. This is because, the government contends, the first date on which information relating to the existence of the fraud became public was August 3, 2009. Any shareholder who owned Colonial BancGroup stock on August 3, 2009 necessarily was a victim due to the precipitous decline in the value of the common stock price on that day and shortly thereafter. For example, on July 31, 2009 – the last trading day before federal agents executed a search warrant at Colonial Bank – Colonial BancGroup common stock closed at \$0.61/share. By the close of trading on August 3, 2009, the stock price had fallen to \$0.49/share. Further, on August 14, 2009, the Alabama State Banking Department, the state regulator for Colonial Bank, seized Colonial Bank and appointed the FDIC as receiver. By the close of the next trading day on August 18, 2009, the common stock price had dropped to under 10 cents per share.

After August 18, 2009, other market effects relating to Colonial Bank may well have caused Colonial BancGroup's stock to decline, and therefore it is the government's position that from August 2, 2009, (the day before search warrants were executed) through August 18, 2009,

(the next trading day after which the FDIC was appointed receiver of Colonial Bank) any decline in the share price of Colonial BancGroup stock was principally attributable to the execution of search warrants by federal agents on Colonial Bank in connection with the fraud investigation. The difference between the price of Colonial BancGroup stock on August 18, 2009, and August 2, 2009, therefore represents the shareholder loss for purposes of the fraud in this case.

In order to calculate loss for each of the 17 shareholders, the government calculated the total shares owned by each shareholder on August 2, 2009, and August 18, 2009. For each stockholder, the government multiplied the day's share price by the total number of shares for each day to arrive at a total share value for the day. The government then subtracted the total share value of each stockholder's holdings on August 18, 2009, from the total share value of each stockholder's holdings as of August 2, 2009. The difference in share value of the two days represents the loss suffered by each shareholder as a result of the fraud. The government calculates the loss suffered by these 17 individuals to be \$524,882. A schedule of the 17 shareholders, along with individualized information relating to each shareholder's holdings, is attached as Schedule A to this memorandum.

As a result of Plan B and the OF fraud, each defendant caused Colonial BancGroup to file materially false financial statements with the Securities and Exchange Commission. The government submits that the restitution order for the Defendants therefore should reflect a shareholder loss amount of \$524,882.

**B. Apportionment and Payment of Restitution**

Based on the foregoing, the government requests that Defendants be held jointly and severally liable for the full amount of the harm each directly and proximately caused to each of

the victims in this case. Specifically, the government requests restitution orders for the following individuals as follows:

1. Farkas

The government submits that Farkas should be ordered to pay restitution of \$3,507,743,557. Farkas's restitution amount is made up of \$895,833,675 in Plan B losses, \$2,611,385,000 in OF losses, and \$524,882 in shareholder losses. The government further requests that Farkas's payments be directed, on a pro rata basis, to the FDIC (on behalf of Colonial Bank), DB, BNP, and the shareholder victims.

2. Kissick

The government submits that Kissick should be ordered to pay restitution of \$500,524,882. Kissick's restitution amount is made up of \$500,000,000 in Plan B losses and \$524,882 in shareholder losses. The government further requests that Kissick's payments be directed, on a pro rata basis, to the FDIC (on behalf of Colonial Bank) and the shareholder victims.

3. Brown

The government submits that Brown should be ordered to pay restitution of \$3,507,743,557. Brown's restitution amount is made up of \$895,833,675 in Plan B losses, \$2,611,385,000 in OF losses, and \$524,882 in shareholder losses. The government further requests that Brown's payments be directed, on a pro rata basis, to the FDIC (on behalf of Colonial Bank), DB, BNP, and the shareholder victims.

4. Allen

The government submits that Allen should be ordered to pay restitution of \$2,611,909,882. Allen's restitution amount is made up of \$2,611,385,000 in OF losses and



\$524,882 in shareholder losses. The government further requests that Allen's payments be directed, on a pro rata basis, to DB, BNP, FDIC (on behalf of Colonial Bank), and the shareholder victims. Finally, the government notes that Allen possesses substantial personal assets and therefore should be order to pay at an installment rate higher than the other Defendants, who maintain significantly less assets.

5. Bowman

The government submits that Bowman should be ordered to pay restitution of \$500,524,882. Bowman's restitution amount is made up of \$500,000,000 in Plan B losses and \$524,882 in shareholder losses. The government further requests that Bowman's payments be directed, on a pro rata basis, to the FDIC (on behalf of Colonial Bank) and the shareholder victims.

6. Ragland

The government submits that Ragland should be ordered to pay restitution of \$2,611,909,882. Ragland's restitution amount is made up of \$2,611,385,000 in OF losses and \$524,882 in shareholder losses. The government further requests that Ragland's payments be directed, on a pro rata basis, to DB, BNP, FDIC (on behalf of Colonial Bank), and the shareholder victims.

7. Kelly

The government submits that Kelly should be ordered to pay restitution of \$500,524,882. Kelly's restitution amount is made up of \$500,000,000 in Plan B losses and \$524,882 in shareholder losses. The government further requests that Kelly's payments be directed, on a pro rata basis, to the FDIC (on behalf of Colonial Bank) and the shareholder victims.

**CONCLUSION**

For the reasons stated herein, the government respectfully requests this Court to enter restitution orders for Farkas, Kissick, Brown, Allen, Bowman, Ragland, and Kelly in a manner consistent with foregoing, which will appropriately compensate victims for the direct and proximate harm caused by Defendants' criminal conduct in this case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of August 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 the following counsel of record in this case:

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