

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA : **CRIMINAL NO.** _____
v. : **(Bank Fraud, 18 U.S.C. §§ 1344, 1346;**
JOHN M. RUSNAK : **False Entry in Bank Records,**
: **18 U.S.C. § 1005; Causing an Act**
: **To Be Done, 18 U.S.C. § 2)**
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INDICTMENT

COUNT ONE

The Grand Jury for the District of Maryland charges that:

1. At all times relevant to this indictment, Allfirst Bank, the banking subsidiary of Allfirst Financial, Inc., and prior to June 28, 1999, Allfirst Bank's predecessor, First National Bank of Maryland, the banking subsidiary of First Maryland Bancorp, were financial institutions as defined in 18 U.S.C. § 20, that is, Allfirst Bank and First National Bank of Maryland were insured depository institutions whose deposits were insured by the Federal Deposit Insurance Corporation.

2. At all times relevant to this indictment, **JOHN M. RUSNAK** (hereinafter "Rusnak" or "the defendant") was employed as a foreign currency trader by Allfirst Bank and its predecessor, First National Bank of Maryland (hereinafter referred to as "the Bank"). As an employee of the Bank, **RUSNAK** had a fiduciary obligation to provide to the Bank loyal, faithful, honest, and unbiased service and performance of his duties, free from willful omission, deceit, dishonesty, misconduct and fraud.

3. **RUSNAK**'s duties as a foreign currency trader for the Bank required him to enter into foreign currency transactions in a manner that would generate reasonable profits without exposing the Bank to unwarranted risk of loss. As an employee of the Bank, **RUSNAK** also had an obligation to provide accurate and timely information about his trading activities to other officers and employees of the Bank, and his duties required him to enter accurate and timely information about his trading activities into the books and records of the Bank.

4. **RUSNAK** engaged in proprietary trading, which means that he engaged in trades using the general assets of the Bank as opposed to using funds belonging to a customer of the Bank.

5. In trades involving an institution located in the United States, such as the Bank, foreign currency is typically valued against the United States dollar, that is, the value of a foreign currency is measured by the number of units necessary to buy one United States dollar. The exchange rate between a foreign currency and the U.S. dollar is subject to continuous movements caused by variable market forces.

6. Foreign currency traders buy and sell currencies and realize profits or losses as a result of the movement of exchange rates from the time a transaction is executed, known as the "trade date," to the time that the currencies involved in the transaction are exchanged, known as the "settlement date."

7. **RUSNAK** engaged in three types of foreign currency exchange transactions: foreign exchange ("fx") spot, fx forward, and fx option trades.

(a) An fx spot trade is an exchange of two currencies with a two day time frame at a fixed, agreed-upon exchange rate.

(b) An fx forward trade is an exchange of currencies that has a settlement date more than two days after the trade date, typically within a few weeks or a month after the trade date.

(c) Fx option trades involve the buying and selling of an opportunity to enter into a future fx spot trade at an agreed-upon exchange rate, known as the “strike price.” The buyer of an fx option has the ability to exercise the terms of the agreement to exchange currency at an agreed-upon price at a future date known as the “expiration date.”

8. Both fx spot and forward transactions require the parties to settle the trade on the agreed-upon settlement date at the agreed-upon exchange rate. The buyer of an fx option is not required to exercise the option; he may or may not choose to exercise his right to exchange the currencies at the agreed-upon strike price on the expiration date of the option.

9. Unlike an fx spot or fx forward transaction, an fx option transaction requires the buyer to pay a cash premium to the seller for the rights given in the option contract.

10. It is customary for fx traders to minimize the risk inherent in any transaction by entering into other fx trades that “hedge,” or counterbalance, a position. For example, the potential negative impact suffered as a result of taking a position that requires the buying of a foreign currency at a given rate of exchange may be offset by a transaction selling the same currency at a similar rate of exchange.

11. Fx traders enter into fx transactions by making judgments as to the direction of the movement that exchange rates will take. In making these judgments, fx traders have access through telecommunications systems to real-time information concerning currency exchange rates.

12. Using telephone, email, and other electronic communication systems, **RUSNAK**, on behalf of the Bank, negotiated with traders, brokers, and sales representatives from other institutions and reached agreements on the terms of fx transactions. These terms included the type of fx transaction, the type of currency to be traded, the amount of each currency to be exchanged (known as the “notional amount”), the agreed-upon exchange rate or “strike price,” the settlement date, and, in the case of an fx option trade, the expiration date and the cash premium to be paid. After **RUSNAK**, on behalf of the Bank, and a representative of the other institution, known as the “counterparty,” agreed to enter into such a trade, **RUSNAK** was responsible for entering the terms of the trade into computerized systems maintained by the Bank, including systems known as Opics and DEVON.

13. Once **RUSNAK** entered the details of each trade into the Bank’s computer systems, an individual from the operations area of the Bank, known as the “back office,” would access the information entered by **RUSNAK** and was supposed to use that information to confirm the existence and accuracy of the trade with an individual from the “back office” of the counterparty. The purpose of the back office confirmation process was to insure the integrity and accuracy of the trade by having someone separate and apart from the traders confirm all the terms of the trade between the two institutions.

14. The process of confirming trades was accomplished by telephone, telefaxes, and other electronic communication systems between individuals in the back offices of each institution.

15. After **RUSNAK** entered information regarding his foreign currency trades into the Bank’s computer systems, that information was accessed by different officers and employees of

the Bank and relied upon by those individuals in performing a number of essential oversight functions.

16. The back office personnel relied on the information **RUSNAK** entered into the Bank's Opics and DEVON systems to perform their duties, including their duty to confirm the existence and terms of the trades **RUSNAK** entered into on behalf of the Bank.

17. The trade information entered into the Bank's Opics and DEVON systems was used to produce daily, monthly, quarterly and annual profit and loss (hereinafter "P&L") statements for each of the Bank's traders, including **RUSNAK**. In addition to calculating **RUSNAK**'s P&L, Bank personnel compared **RUSNAK**'s P&L on a daily basis to **RUSNAK**'s month-to-date "stop loss" limit, which was \$200,000 in January 2002. If **RUSNAK** had exceeded his "stop loss" limit during any month, Bank officers and managers would have been informed, and **RUSNAK** would have been prevented from engaging in further trading for the rest of that month.

18. On a daily basis, Bank personnel also used the trade information that **RUSNAK** entered into the Bank's Opics and DEVON systems to manage the risk exposure to the Bank that **RUSNAK**'s foreign currency trades generated. The Bank had imposed on **RUSNAK**'s trading activities a value at risk (hereinafter "VAR") limit, which was \$1.75 million in January 2002. This VAR limit represented the largest loss the Bank could reasonably anticipate suffering as a result of **RUSNAK**'s trading positions under adverse market conditions. The daily calculation of the VAR attributable to **RUSNAK**'s trading activities was based on the information **RUSNAK** entered into the Bank's Opics and DEVON systems as well as other information on his trading activity that **RUSNAK** provided to other Bank personnel.

19. **RUSNAK**'s compensation by the Bank consisted of a base salary augmented by a bonus that was directly related to the net trading profits he generated for the Bank. The calculation of **RUSNAK**'s net trading profits was based on the information **RUSNAK** entered into the Bank's Opics and DEVON systems. For the year 1997, **RUSNAK** received a salary of \$102,000 from the Bank and no bonus. For 1998, **RUSNAK** received a salary of \$104,000 and a bonus of \$128,102 from the Bank, for a total of \$232,102 in compensation. For 1999, **RUSNAK** received a salary of \$104,000 and a bonus of \$122,441 from the Bank, for a total of \$226,441 in compensation. For 2000, **RUSNAK** received a salary of \$108,000 and a bonus of \$78,000 from the Bank, for a total of \$186,000 in compensation. For 2001, **RUSNAK** received a salary of \$112,000 from the Bank, and his bonus was calculated to be \$220,456, but the Bank did not pay **RUSNAK** this bonus.

20. During the period from 1997 through February 2002, **RUSNAK**'s trading activities generated large actual and potential losses to the Bank.

THE SCHEME TO DEFRAUD

21. From in or about January 1997 through and including February 2002, in the State and District of Maryland, and elsewhere, the defendant

JOHN M. RUSNAK

did knowingly and willfully devise and intend to devise a scheme and artifice (a) to obtain money, funds, and property owned by the Bank by means of false and fraudulent pretenses, representations, and promises; and (b) to defraud the Bank of its right to the loyal, faithful, honest, and unbiased service and performance of his duties as an employee engaged in

proprietary foreign currency trading, free from willful omission, deceit, dishonesty, misconduct, and fraud.

OBJECT OF THE SCHEME TO DEFRAUD

22. The objects of the scheme to defraud were (a) to create the false impression that the defendant's trading activities were generating profits for the Bank, (b) to maintain the defendant's employment by the Bank, (c) to enable the defendant to receive his salary and bonuses from the Bank, and (d) to allow the defendant to enjoy the other benefits he received as a result of his position as a foreign currency trader at the Bank.

MANNER AND MEANS OF THE SCHEME TO DEFRAUD

23. As a part of the scheme and artifice to defraud, **RUSNAK** entered false and fictitious foreign currency trades and trading information into the books and records of the Bank.

24. As a part of the scheme and artifice to defraud, **RUSNAK** circumvented the confirmation process by creating fictitious telefaxes purportedly sent to the Bank by counterparties to fictitious foreign currency trades and by causing these fictitious confirmations to be forwarded to personnel in the Bank's back office.

25. As a part of the scheme and artifice to defraud, **RUSNAK** fraudulently convinced individuals in the Bank's back office that it was not necessary to confirm certain types of foreign currency trades.

26. As a part of the scheme and artifice to defraud, **RUSNAK** manipulated the calculation of his P&L statements by entering false and fictitious trades and trading information into the Bank's Opics and DEVON systems, thereby concealing his actual trading losses. By manipulating his P&L statements in this manner, **RUSNAK** ensured that he did not exceed his

“stop loss” limit and thereby maintained his ability to continue trading on behalf of the Bank despite his large trading losses.

27. As a part of the scheme and artifice to defraud, **RUSNAK** manipulated the calculation of the VAR attributable to his trading activities by entering false and fictitious trades and trading information into the Bank’s Opics and DEVON systems, thereby allowing **RUSNAK** to stay within his VAR limit and to maintain his ability to continue trading on behalf of the Bank despite the large risk inherent in his actual trading positions.

28. As a part of the scheme and artifice to defraud, **RUSNAK** manipulated the calculation of his VAR by providing Bank personnel with a spreadsheet that contained false and fictitious information about “holdover” trades, that is, transactions that the defendant falsely represented that he had entered into after the VAR closing time each day. These “holdover” figures that **RUSNAK** provided, together with the false and fictitious trades and trading information that he entered into the Bank’s Opics and DEVON systems, allowed **RUSNAK** to stay within his VAR limit and to maintain his ability to continue trading on behalf of the Bank despite the large risk inherent in his actual trading positions.

29. As a part of the scheme and artifice to defraud, **RUSNAK** used Prime Brokerage Accounts (hereinafter “PBAs”) between the Bank and Citibank, Bank of America, and Merrill Lynch to conceal the details of his daily trading activity and to enter false and fictitious transactions into the books and records of the Bank. PBAs allowed **RUSNAK**, on behalf of the Bank, to enter into foreign exchange spot transactions throughout a trading day with third parties without entering those transactions into the books and records of the Bank, and without the Bank confirming and settling each transaction; those functions were performed by the relevant prime

broker. The Bank and each of the prime brokers typically had one net settlement of all of the PBA transactions on just one date each month. **RUSNAK** entered false and fictitious prime brokerage transactions into the books and records of the Bank and then amended, cancelled or reversed those transactions before the monthly net settlement with a prime broker, thereby allowing **RUSNAK** to conceal his actual trading losses and to maintain his ability to continue trading on behalf of the Bank.

30. As part of the scheme and artifice to defraud, **RUSNAK**, on behalf of the Bank, sold “deep in the money” Japanese yen/U.S. dollar option contracts with five different counterparties. These types of fx option trades allowed **RUSNAK** to generate large cash payments to the Bank from these counterparties in exchange for similarly large liabilities to those counterparties that would come due a year after the cash payments. After entering into each of these five “deep in the money” transactions, **RUSNAK** entered false and fictitious option transactions into the book and records of the Bank to cancel out and to remove these large outstanding liabilities from the Bank’s book and records, thereby improving **RUSNAK**’s P&L statements and his VAR calculations and concealing his actual trading losses. These five “deep in the money” transactions are detailed in the following chart:

<i>Counterparty</i>	<i>Trade Date</i>	<i>Expiration Date</i>	<i>Strike Price</i>	<i>Premium Paid</i>
Citibank	Feb. 20, 2001	Feb. 20, 2002	73.7700	\$ 125,052,000.00
Bank of America	Mar. 7, 2001	Mar. 7, 2002	75.0000	\$ 74,878,340.00
Deutsche Bank	Dec. 6, 2001	Dec. 6, 2002	96.7500	\$ 24,943,750.00
Merrill Lynch	Dec. 12, 2001	Dec. 12, 2002	92.0000	\$ 25,015,000.00
Bank of New York	Dec. 24, 2001	Dec. 24, 2002	94.1900	\$ 50,000,000.00

31. As part of the scheme and artifice to defraud, **RUSNAK** entered into these five “deep in the money” transactions to raise nearly \$300 million in cash premiums paid by these counterparties to the Bank, thereby reducing the defendant’s “balance sheet,” that is, the amount of the money that the Bank had borrowed to fund the defendant’s trading activities and trading losses.

32. As part of the scheme and artifice to defraud, **RUSNAK** entered false and fictitious option transactions into the Bank’s books and records in conjunction with these five “deep in the money” transactions, thereby causing the Bank to have approximately \$380 million in unrecorded but outstanding liabilities as of the end of 2001.

33. As part of the scheme and artifice to defraud, **RUSNAK**, on or about January 20, 2001, rented a mailbox at Mail Boxes Etc. at 2472 Broadway, Suite 162, New York, New York, 10025, to receive mail in the name of David Russell, a fictitious name, for the purpose of providing the Bank’s independent auditors with a false confirmation of a fictitious option contract that the defendant had entered into the books and records of the Bank.

34. As part of the scheme and artifice to defraud, **RUSNAK**, on or about January 20, 2001, provided to Bank personnel the fictitious name, “Mr. David Russell,” with a fictitious counterparty, “RBCDS FX,” at the address of the mailbox he had rented in New York, as the person who could confirm directly with the Bank’s independent auditors a fictitious Japanese yen/U.S. dollar option contract with a strike price of 84.1000 and an expiration date of January 8, 2001.

35. As part of the scheme and artifice to defraud, **RUSNAK**, on or about February 1, 2001, (a) retrieved from the mailbox that he had rented a letter sent by the Bank to “Mr. David

Russell, RBCDS FX, 2472 Broadway, Suite 162, New York, New York 10025” asking “David Russell” to confirm this fictitious option contract, (b) signed a false confirmation of this fictitious option contract using the fictitious name “David Russell” and the fictitious title “VP,” and (c) sent this false confirmation directly to the Bank’s independent auditors, all for the purpose of concealing his fraudulent conduct from the Bank.

36. As part of the scheme and artifice to defraud, **RUSNAK**, through the manner and means described above, was able to conceal from the Bank and from officers and employees of the Bank a loss amounting to approximately \$691,204,113.

37. As part of the scheme and artifice to defraud, **RUSNAK**, through the manner and means described above, received compensation from the Bank as set forth in paragraph 19 above.

EXECUTING THE SCHEME AND ARTIFICE TO DEFRAUD

38. On or about February 1, 2002, in the State and District of Maryland and elsewhere, the defendant

JOHN M. RUSNAK

for the purpose of executing and attempting to execute the scheme and artifice to defraud the Bank, did knowingly and willfully submit to Bank officers and employees documents he fraudulently created that fraudulently confirmed twelve (12) fictitious foreign currency option trades in order to deceive and to mislead Bank officers and employees and to conceal the false and fictitious trades that the defendant had entered into the books and records of the Bank.

18 U.S.C. §§ 1344, 1346, 2

COUNT TWO

The Grand Jury for the District of Maryland further charges that:

39. The allegations contained in paragraphs 1 through 20 and paragraphs 23 through 37 of Count One are realleged and incorporated herein as if fully set forth.

40. On or about April 9, 2001, in the State and District of Maryland, the defendant

JOHN M. RUSNAK

did knowingly make a false entry in the books, reports and statements of the Bank, with the intent to injure and defraud the Bank and to deceive an officer of the Bank, in that the defendant did enter a fictitious foreign currency option trade with Citibank into the Bank's DEVON system when, in truth and in fact, as the defendant well knew, no such option trade had been agreed to by Citibank and the fictitious option trade was entered into the Bank's books, reports and statements by the defendant for the purpose of concealing and removing from the books, reports and statements of the Bank an outstanding liability arising from an actual foreign currency option trade with Citibank that the defendant had entered into, on behalf of the Bank, on or about February 20, 2001.

18 U.S.C. §§ 1005, 2

COUNT THREE

The Grand Jury for the District of Maryland further charges that:

41. The allegations contained in paragraphs 1 through 20 and paragraphs 23 through 37 of Count One are realleged and incorporated herein as if fully set forth.

42. On or about April 11, 2001, in the State and District of Maryland, the defendant

JOHN M. RUSNAK

did knowingly make a false entry in the books, reports and statements of the Bank, with the intent to injure and defraud the Bank and to deceive an officer of the Bank, in that the defendant did enter a fictitious foreign currency option trade with Citibank into the Bank's DEVON system when, in truth and in fact, as the defendant well knew, no such option trade had been agreed to by Citibank and the fictitious option trade was entered into the Bank's books, reports and statements by the defendant for the purpose of concealing and removing from the books, reports and statements of the Bank an outstanding liability arising from an actual foreign currency option trade with Citibank that the defendant had entered into, on behalf of the Bank, on or about February 20, 2001.

18 U.S.C. §§ 1005, 2

COUNT FOUR

The Grand Jury for the District of Maryland further charges that:

43. The allegations contained in paragraphs 1 through 20 and paragraphs 23 through 37 of Count One are realleged and incorporated herein as if fully set forth.

44. On or about April 9, 2001, in the State and District of Maryland, the defendant

JOHN M. RUSNAK

did knowingly make a false entry in the books, reports and statements of the Bank, with the intent to injure and defraud the Bank and to deceive an officer of the Bank, in that the defendant did enter a fictitious foreign currency option trade with Bank of America into the Bank's DEVON system when, in truth and in fact, as the defendant well knew, no such option trade had been agreed to by Bank of America and the fictitious option trade was entered into the Bank's books, reports and statements by the defendant for the purpose of concealing and removing from the books, reports and statements of the Bank an outstanding liability arising from an actual foreign currency option trade with Bank of America that the defendant had entered into, on behalf of the Bank, on or about March 7, 2001.

18 U.S.C. §§ 1005, 2

COUNT FIVE

The Grand Jury for the District of Maryland further charges that:

45. The allegations contained in paragraphs 1 through 20 and paragraphs 23 through 37 of Count One are realleged and incorporated herein as if fully set forth.

46. On or about December 13, 2001, in the State and District of Maryland, the defendant

JOHN M. RUSNAK

did knowingly make a false entry in the books, reports and statements of the Bank, with the intent to injure and defraud the Bank and to deceive an officer of the Bank, in that the defendant did enter a fictitious foreign currency option trade with Deutsche Bank into the Bank's DEVON system when, in truth and in fact, as the defendant well knew, no such option trade had been agreed to by Deutsche Bank and the fictitious option trade was entered into the Bank's books, reports and statements by the defendant for the purpose of concealing and removing from the books, reports and statements of the Bank an outstanding liability arising from an actual foreign currency option trade with Deutsche Bank that the defendant had entered into, on behalf of the Bank, on or about December 6, 2001.

18 U.S.C. §§ 1005, 2

COUNT SIX

The Grand Jury for the District of Maryland further charges that:

47. The allegations contained in paragraphs 1 through 20 and paragraphs 23 through 37 of Count One are realleged and incorporated herein as if fully set forth.

48. On or about December 13, 2001, in the State and District of Maryland, the defendant

JOHN M. RUSNAK

did knowingly make a false entry in the books, reports and statements of the Bank, with the intent to injure and defraud the Bank and to deceive an officer of the Bank, in that the defendant did enter a fictitious foreign currency option trade with Merrill Lynch into the Bank's DEVON system when, in truth and in fact, as the defendant well knew, no such option trade had been agreed to by Merrill Lynch and the fictitious option trade was entered into the Bank's books, reports and statements by the defendant for the purpose of concealing and removing from the books, reports and statements of the Bank an outstanding liability arising from an actual foreign currency option trade with Merrill Lynch that the defendant had entered into, on behalf of the Bank, on or about December 12, 2001.

18 U.S.C. §§ 1005, 2

COUNT SEVEN

The Grand Jury for the District of Maryland further charges that:

49. The allegations contained in paragraphs 1 through 20 and paragraphs 23 through 37 of Count One are realleged and incorporated herein as if fully set forth.

50. On or about December 27, 2001, in the State and District of Maryland, the defendant

JOHN M. RUSNAK

did knowingly make a false entry in the books, reports and statements of the Bank, with the intent to injure and defraud the Bank and to deceive an officer of the Bank, in that the defendant did enter a fictitious foreign currency option trade with Bank of New York into the Bank's DEVON system when, in truth and in fact, as the defendant well knew, no such option trade had been agreed to by Bank of New York and the fictitious option trade was entered into the Bank's books, reports and statements by the defendant for the purpose of concealing and removing from the books, reports and statements of the Bank an outstanding liability arising from an actual foreign currency option trade with Bank of New York that the defendant had entered into, on behalf of the Bank, on or about December 24, 2001.

18 U.S.C. §§ 1005, 2

Thomas M. DiBiagio
United States Attorney

A TRUE BILL:

Foreperson

Date: _____