IN THE UNITED STATES DISTRICT COURT FOR THE

MIDDLE DISTRICT OF FLORIDA

Ocala Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 5:10-mj-1028-GRJ
	)	
LEE BENTLEY FARKAS,	)	Magistrate Judge Gary R. Jones
	)	
Defendant.	)	
	)	

The Government's Motion for Pre-Trial Detention

The United States of America, by and through its undersigned attorneys, moves this Court, pursuant to the Bail Reform Act, to detain Defendant Lee Bentley Farkas pending trial. The defendant orchestrated a seven-year, nearly $2 billion fraud scheme that contributed to the failure of Colonial Bank, one of the 50 largest banks in the United States, and Taylor, Bean & Whitaker Mortgage Corp. ("TBW"), one of the largest, privately held mortgage lending companies in the United States. The defendant and his co-conspirators disguised this massive and complex scheme in part by creating false documents and moving hundreds of millions of dollars between TBW, Colonial Bank and other entities. And after learning of the government's investigation into TBW, the defendant instructed a co-conspirator to destroy evidence and sought to cover up the scheme. The defendant, if convicted, is likely facing a sentence that would result in him spending the rest of his life in prison, and he has amassed substantial wealth that would enable him to flee to avoid prosecution. He has both the motive and the means to flee, and no

condition or combination of conditions will reasonably assure his appearance at future judicial proceedings in this case.

I. BACKGROUND

A. Indictment & Charges

On June 15, 2010, a duly empanelled federal grand jury sitting in the Eastern District of Virginia returned a sixteen-count indictment charging the defendant with one count of conspiracy to commit bank fraud, wire fraud, and securities fraud, in violation of Title 18, United States Code, Section 1349; six counts of bank fraud, in violation of Title 18, United States Code, Sections 1344 and 2; six counts of wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2; and three counts of securities fraud, in violation of Title 18, United States Code, Sections 1348 and 2.

As a result of the indictment, the defendant faces a total statutory maximum sentence of 435 years, fines of at least $13.75 million and forfeiture of at least $22 million. More directly, a preliminary Sentencing Guidelines calculation results in a sentencing range of life in prison. As discussed in more detail below, for the defendant, who is in his late fifties, this factor alone creates a substantial risk of flight.

B. Investigation

In February 2009, the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") commenced an investigation into Colonial BancGroup ("BancGroup"), a public company that was the parent of Colonial Bank. SIGTARP's investigation initially focused on the accuracy of statements made by BancGroup to its regulators, as well as the accuracy of statements made to the United States Treasury Department in connection with BancGroup's application to receive over $550 million from the Troubled Asset Relief Program ("TARP"). In

April 2009, SIGTARP served subpoenas on both BancGroup and TBW. Shortly thereafter, the investigation expanded to include agents from the FBI, FDIC-OIG, and HUD-OIG. The expanded investigation led to the execution in August 2009 by federal agents of search warrants at Colonial Bank's Mortgage Warehouse Lending Division ("MWLD") in Orlando, Florida, and at TBW in Ocala, Florida.

On August 14, 2009, the Alabama State Banking Department seized Colonial Bank and the FDIC was appointed as receiver. Through the FDIC, Branch Banking & Trust Co. ("BB&T") assumed most of Colonial Bank's deposits and purchased approximately $22 billion of Colonial Bank's assets. Following Colonial Bank's seizure and subsequent sale to BB&T, BancGroup filed for bankruptcy in the Middle District of Alabama. On August 24, 2009, TBW filed for bankruptcy in the Middle District of Florida.

C. Underlying Fraud Scheme

The government has gathered substantial evidence of the charged scheme, including emails and other electronic communications, financial records detailing the fraud scheme, recorded phone calls between co-conspirators, and statements from many former TBW and Colonial employees, including from key co-conspirators that are cooperating with the government's investigation. The following description of the fraud scheme, as well as the evidence related to the government's argument for pre-trial detention, is based both on the indictment and on the government's proffer. *See United States v. Gaviria*, 828 F.2d 667, 669 (11th Cir. 1987) ("We hold that the government as well as the defense may proceed by proffering evidence subject to the discretion of the judicial officer presiding at the detention hearing.").

From in or about 2002 and continuing through in or about 2009, the defendant was the chairman and largest shareholder of TBW. 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. TBW originated and purchased tens of 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 2005, Ocala Funding, LLC, a wholly owned special purpose subsidiary of TBW.

Beginning in or about early 2002, however, TBW began to experience significant cash flow problems due to, among other things, operating deficits. In an effort to cover the shortfalls, the defendant and co-conspirators devised a number of different means to accomplish the same goal: to misappropriate money for TBW's benefit and for the personal benefit of the defendant and his co-conspirators. The defendant and his co-conspirators misappropriated nearly $2 billion from Colonial Bank, from Ocala Funding accounts, and eventually attempted to misappropriate over $500 million in additional funds from the U.S. government through TARP. The different means employed by the conspirators included the: (i) sweeping scheme; (ii) Plan B; (iii) fake AOT Trades; (iv) "Crap" loans; (v) recycling; (vi) Ocala Funding diversion; and (vii) TARP and Project Squirrel.

1. *The Sweeping Scheme*

Beginning in 2002, TBW began running overdrafts in its master bank account at Colonial Bank due to TBW's inability to meet its operating expenses. Conspirators at TBW and Colonial Bank covered up the overdrafts by transferring, or "sweeping," overnight money from a TBW

account with excess funds into the master account to avoid the master account falling into an overdrawn status. This sweeping of funds covered up the fact that TBW's master account was overdrawn. The day after sweeping funds, the conspirators returned the funds to the other account, only to repeat the process that day to hide the deficit again.

As a result of this sweeping scheme, the size of the deficit due to overdrafts grew to tens of millions of dollars. In response, the defendant and co-conspirators devised Plan B, a scheme designed to disguise the deficit as mortgage loan assets purchased by Colonial Bank.

2. *Plan B*

In this part of the scheme, which the defendant and his co-conspirators called "Plan B," the conspirators sought to disguise the tens of millions of dollars of overdrafts as payments related to the purchase by Colonial Bank through its COLB facility of legitimate TBW mortgage loans.[1] In late 2003, the defendant and his co-conspirators caused the deficit in TBW's master account at Colonial Bank to be transferred to COLB. The defendant 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. But, as the defendant knew, TBW had already committed or sold the Plan B mortgage loans to other third-party investors. As a result, these loans were not available for sale to Colonial Bank.

This late 2003 transfer did not solve TBW's problem with operating losses and as TBW continued to experience funding shortfalls, the defendant 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. In reality, the underlying Plan B loans were worthless to

[1] COLB was a mortgage loan purchase facility at MWLD. Through the COLB facility, Colonial Bank purchased an interest in residential mortgage loans from TBW pending resale of the loans to third-party investors.

Colonial Bank. The Plan B stage of the scheme caused Colonial to buy tens of millions of dollars worth of fake assets and to falsely record the worthless assets in its accounting records at face value.

The defendant frequently communicated with his co-conspirators about the use of Plan B loans to cover shortfalls at TBW. For example, on or about December 22, 2003, the defendant emailed a Colonial Bank co-conspirator ("CC1"), who tracked the Plan B loans, that "[w]e did $6 [million] and change of additional Plan B which should advance today. This is to cover the negative we expect through Jan 31. I am the only person at TBW involved in this transaction. Thanks." In another email communication in March 2004, the defendant responded to an inquiry from another Colonial Bank co-conspirator ("CC2") who asked whether certain loans were "real," by saying "[t]hey are plan b loans." And in a June 2004, email, the defendant told a TBW co-conspirator ("CC3"): "We need to recycle the Plan B loans. We need recently purchased WAMU [Washington Mutual] loans that are not in the Colonial vault yet. They want to replace all the plan B stuff with this as soon as possible."

While Plan B did in large part conceal the deficit caused by the Sweeping Scheme, it did not eliminate TBW's continuing overdrafts of its accounts held at Colonial. For example, in July 2004, CC2 emailed the defendant about overdrafts in TBW tax and insurance accounts, stating: "You need to wire money into this account to get it off the OD [overdraft] report. It does not look good to have a T&I [tax & insurance] account on the OD report." The defendant responded: "when [sic] I get an adjoining suite with martha stewart [sic], it will be worse. i [sic] never should have used that money in the first place."

3. *Fake AOT Trades*

The Plan B loans, however, became more and more difficult to hide, and in 2005 the defendant 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.[2] The conspirators moved the Plan B deficit to the AOT facility in part because, unlike with the COLB facility, Colonial Bank generally did not track in its accounting records loan-level data for the Trades held on AOT. Therefore, it was more difficult for regulators, auditors, bank management, and others to detect the scheme.

In an effort to transfer the deficit caused by the Plan B loans on the COLB facility to the AOT facility, the defendant and co-conspirators caused TBW to engage in sham sales to Colonial Bank of fabricated Trades purportedly backed by pools of Plan B loans. In fact, the Trades had no collateral backing them and thus were worthless. Colonial Bank held these fake Trades in its accounting records at face value, that is, the amount Colonial paid for them.

After moving the Plan B deficit from COLB to AOT, TBW continued to experience significant operating losses, and from in or about 2005 through in or about 2009, the defendant and co-conspirators continued to cause TBW to sell hundreds of millions of dollars of additional fabricated Trades to Colonial Bank through the AOT facility. In total, the conspirators sold Colonial Bank more than $400 million in fabricated Trades.

To support these fraudulent transactions, the defendant and co-conspirators caused false data and documentation to be sent to Colonial Bank. For example, TBW co-conspirators sent Colonial Bank co-conspirators schedules listing fabricated Trades with unique identifying numbers that TWB co-conspirators reused from Trades previously sold to other investors.

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[2] The AOT facility was designed for the purchase of an interest in a pool of loans—referred to as a "Trade"—that was in the process of being securitized and/or sold to a third-party investor.

4. *The "Crap" loans*

In addition to causing Colonial Bank to purchase fabricated Trades, the defendant 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 loans included, among other things, loans in default and loans that were considered "aged" and thus of lesser value because TBW had been unable to sell them in the secondary mortgage market. These Trades were also sometimes collateralized by bank-repossessed properties associated with foreclosed loans, known as real estate owned (REO). Co-conspirators referred to these impaired-value loans and REO as, among other things, "Crap."

Because TBW was generally unable to sell the Trades containing Crap, the defendant 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. These fabricated agreements were often signed by the defendant, or, by a TBW co-conspirator ("CC4") on behalf of the defendant. As a result, some of the Crap 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.

5. *Recycling*

In a continuing effort to hide the fraudulent scheme, the defendant and co-conspirators recycled the fake and impaired Trades on AOT by engaging in sham sales to hide the fact that the vast majority of assets backing the Trades could not be resold because the assets were either wholly fabricated or consisted of Crap. For example, conspirators provided fabricated documents to Colonial Bank that purported to represent new AOT Trades. These documents

caused Colonial Bank to advance money from its bank accounts to TBW-controlled bank accounts. Near in time, conspirators directed payments from the TBW-controlled bank accounts back to Colonial bank accounts to give the false appearance that 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.

The defendant was well aware of the recycling. For example, during the execution of search warrants by federal agents at Colonial Bank's MWLD and TBW's main office on or about August 3, 2009, the defendant sent an electronic communication to CC2, stating that the federal agents "will figure out that the agency stuff was recycled if they get [CC1's] laptop[.]"

6. *Ocala Funding Diversion*

The defendant and his co-conspirators defrauded Colonial Bank of over $400 million in funds through the COLB and AOT facilities alone. Yet this was still not enough money to keep TBW in business, so the defendant and his co-conspirators caused TBW to misappropriate money from Ocala Funding. The defendant and co-conspirators caused the diversion of hundreds of millions of dollars from Ocala Funding bank accounts, located at LaSalle Bank, to cover TBW's mounting operating losses. As a result of these diversions, Ocala Funding experienced significant shortfalls in the amount of collateral it possessed to back the commercial paper it had issued to financial institution investors, primarily Deutsche Bank and BNP Paribas.

To cover up the collateral shortfalls, the defendant 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, the defendant 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. The defendant and co-conspirators also caused Ocala Funding to sell mortgage loans that they knew belonged to Colonial Bank to Freddie Mac. As a result, conspirators caused Colonial Bank and Freddie Mac to have disputed ownership interests in the same approximately 4,800 mortgage loans worth more than $700 million.

As a result of the misappropriations, cover up, and double-selling of mortgage loans, in or about August 2009, Deutsche Bank and BNP Paribas had purchased in total approximately $1.68 billion in asset-backed commercial paper without knowing that there was only about $150 million in cash and collateral actually backing it. This resulted in a shortfall in collateral of approximately $1.5 billion, and Deutsche Bank and BNP Paribas were not able to redeem their commercial paper to recover their investment when the commercial paper matured in or about August 2009.

7. *TARP and Project Squirrel*

In October 2008, Colonial BancGroup submitted an application to the FDIC seeking $570 million in TARP funding. 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 the defendant and co-conspirators. Based in part on these false and misleading financial statements, 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.

Recognizing that Colonial Bank was critical to TBW's survival, the defendant sought to lead a group of investors to raise the $300 million in private capital. The defendant and co-conspirators represented that TBW would invest $150 million in Colonial BancGroup. Additionally, the defendant and co-conspirators represented to Colonial BancGroup that two other investors had agreed to contribute $50 million each and that a group of MWLD "friends and family" had agreed to contribute the remaining $50 million. In fact, however, the defendant and co-conspirators misrepresented the commitments of some investors.

Nevertheless, on or about April 1, 2009, the defendant and co-conspirators caused Colonial BancGroup to file with the United States Securities and Exchange Commission ("SEC") a Form 8-K announcing that Colonial BancGroup had secured definitive agreements from investors, pending due diligence, to satisfy the $300 million private capital contingency requirement. 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, the defendant 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.

The defendant and a TBW co-conspirator had in fact diverted that $25 million from an Ocala Funding bank account as part of a plan dubbed "Project Squirrel." Further, the defendant and other co-conspirators supplied the 10% down payment on behalf of the two $50 million investors without the investors' knowledge or consent. Ultimately, BancGroup did not receive TARP funds.

D. Cumulative Effects of the Fraud

As a result of these schemes, by mid-2009, the defendant and co-conspirators had misappropriated more than $400 million from Colonial Bank and an additional approximately $1.5 billion from Ocala Funding, and had attempted to defraud the United States government of over $550 million. Moreover, the fraud orchestrated by the defendant caused Colonial BancGroup to make material misstatements in its filings with the SEC and mislead BancGroup investors, and contributed to the failure of Colonial BancGroup, Colonial Bank, and TBW.

E. The Defendant Diverted to Himself Tens of Millions of Dollars of Fraudulent Proceeds

In addition to the fraudulent activity explained above, the defendant unlawfully misappropriated over $20 million in TBW funds for his personal use. Beginning in or about 2003, the defendant obtained approximately $7 million in proceeds through fraudulent mortgage loans from TBW. TBW maintained a list of loans described as "Do Not Sell" loans. Loans on this list were not available to be either resold as individual loans or packaged as securities that could be resold to third-party investors. A number of the loans on the "Do Not Sell" list were made to or at the request of the defendant and were merely a way for the defendant to siphon money from TBW. These loans, moreover, were taken out for properties that did not exist, for properties the defendant did not own, or in the names of others without their knowledge or consent. We have not uncovered any evidence that the defendant ever made payments on any of these loans.

For instance, in or about November 2006, seven loans were taken out in the defendant's name for non-existent units in a development in Ocala, Florida. Each of these loans was in the amount of $382,000, and the defendant used the approximately $2.7 million in proceeds to make a payment on a Dassault Falcon 2000 private jet registered to a non-TBW company owned by

the defendant. Another of these fraudulent loans—taken out on the same day as the seven fraudulent loans—was recorded on TBW's systems with a fake borrower name and a fake address. In another example, in or about August 2004, the defendant signed notes for $300,000 on each of three properties in Gulf Breeze, Florida. At all relevant times, these properties were owned by others.

Three other loans were placed on the "Do Not Sell" list with the notation "per Lee Farkas" and were issued with confidential witness 1 ("CW1") listed as the borrower. One loan, for $295,000, was on a property the defendant had purchased from CW1 the day before. A second loan, for $280,000, was purportedly taken out on the building housing CW1's office. The third, for $170,000, was taken out on an address for which Marion County, Florida, has no apparent ownership record. CW1 has told law enforcement that he has no knowledge of these loans. TBW has electronically-imaged documents for only one of these loans, and the documents contain false information and what appears to be a forged signature for CW1.

The defendant also extracted millions of dollars from TBW through purported personal loans made to him by the company and reflected in a TBW account as "due from shareholder." In or about April 2007, for his direct benefit, the defendant caused Colonial Bank to make a fraudulent transfer of $15 million to TBW to be applied as a pay-down of this "due from shareholder" account.

F. The Defendant Has Obstructed Justice in this Case

1. Destruction of documents after learning of investigations by SIGTARP and outside counsel

In or about mid-2009, TBW employees received an email from the company's outside counsel instructing them to preserve documents in connection with a contentious audit by TBW's outside auditors. In April 2009, the company was also served with a SIGTARP

subpoena requesting, among other things, documents and communications concerning business between Colonial Bank and TBW.

After receiving both the request from outside counsel and the SIGTARP subpoena, CC4 approached the defendant and expressed concern about the incriminating nature of electronic files located on CC4's computer. In response, the defendant instructed CC4 to delete incriminating spreadsheets and other electronic files in contravention of corporate counsel's preservation request. CC4 followed the defendant's direction and deleted the information. Similarly, on the day federal law enforcement officers executed a search warrant at TBW's corporate offices, the defendant instructed CC4 not to report to work, in an effort to prevent that individual from interacting with the officers.

2. Hiding the hole in AOT from auditors and outside counsel

In response to TBW's outside counsel's investigation, the defendant and other co-conspirators devised a scheme to deceive auditors by covering the more than $400 million hole in the collateral backing the Trades held on AOT. They did this by compiling a list of nearly 20,000 mortgage loans that did not belong on AOT and providing that list to Colonial to include in its AOT accounting records to give the false appearance that there was sufficient collateral backing the Trades on AOT. In late July 2009, the defendant personally delivered to CC1 a thumb drive that contained the loan-level data assembled to hide the fraud.

In connection with the delivery of this fraudulent loan-level data, the defendant explained in a telephone call to CC1 that the government recorded: "So we're going to have to change what's in AOT to look like this [the contents of the thumb drive] because you're not going to have to talk to those auditors anymore, and it'll just have to change and look like this. But what

we did is we put it in basically the same structure that it's in now, just with different loans, and the trades really different – a little different trade numbers."

3. Conspirators used PINs—"peer-to-peer" Blackberry messages—that were not saved in either Colonial's or TBW's systems

To discuss their fraudulent scheme, the defendant and his co-conspirators often used a feature on their Blackberry phones that allowed them to send to each other what are called PIN messages, which are essentially text messages. According to co-conspirators, they did this in part because PIN messages were not routed through or saved on a Colonial or TBW computer server; instead, PIN messages were saved only on the users' Blackberries.

The defendant's actions on the day the search warrant was executed at TBW's offices illustrate the conspirators' use of PINs. That day, the defendant participated in a voluntary interview with federal law enforcement agents, in which he denied knowledge of the scheme alleged in the indictment. Almost immediately after the conclusion of the interview, however, the defendant began communicating by PIN with CC2 regarding how to deal with the investigation. As part of this PIN exchange, and only minutes after denying his involvement in the unlawful activity to federal agents, the defendant sent a PIN message to CC2 stating: "They will figure out that the agency stuff was recycled if they get [CC1's] laptop[.]"

II. ARGUMENT

There is a serious risk that the defendant, if released, will flee. The defendant has directed a seven-year fraud that caused losses of nearly $2 billion. If convicted, the defendant effectively faces a life sentence. Moreover, to execute the fraud, the defendant and co-conspirators engaged in elaborate financial transactions and fabricated documents to deceive Colonial Bank, Colonial BancGroup, internal and external auditors, government regulators, investors, and external corporate counsel. The defendant and co-conspirators continually refined

their scheme to make its detection increasingly difficult. And, after learning of the SIGTARP and outside counsel investigations, the defendant and co-conspirators obstructed those investigations. The defendant has demonstrated that no condition or combination of conditions is adequate to secure the defendant's appearance at future court proceedings.

A. Bail Reform Act

Under the Bail Reform Act, Title 18, United States Code, Section 3141, *et seq.*, federal courts are empowered to order a defendant's detention pending trial upon a determination that the defendant is either a danger to the community or a risk of flight. See 18 U.S.C. § 3142(e) ("no condition or combination of conditions would reasonably assure the appearance of the person as required and the safety of any other person and the community"). A finding of risk of flight must be supported by a preponderance of the evidence. *United States v. Quartermaine*, 913 F.2d 910, 917 (11th Cir. 1990); *United States v. King*, 849 F.2d 485, 489 (11th Cir. 1988); *see also United States v. Stewart*, No. 01-4537, 2001 WL 1020779 (4th Cir. Sept. 6, 2001) (unpublished) (citing *United States v. Hazime*, 762 F.2d 34, 37 (6th Cir. 1985)).

The Bail Reform Act lists four factors for courts to consider in the detention analysis: (1) the nature and circumstances of the crimes charged; (2) the history and characteristics of the defendant; (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. *See* 18 U.S.C. § 3142(g). These factors are considered in turn below and indicate that the defendant is prepared to flee the jurisdiction and has the means to do so.

All Four § 3142(g) Factors Support Pre-trial Detention of the Defendant

1. The Nature and Circumstances of the Crimes Charged

a. The length of sentence

The charges alleged in the Indictment subject the defendant to significant criminal exposure. Given the far-reaching nature of the charged conduct, the defendant's role in the fraudulent scheme, and the nearly $2 billion in losses, the defendant, if convicted, is likely to face a significant period of incarceration. Indeed, a preliminary Sentencing Guidelines calculation places the defendant well above the maximum Offense Level, leading to a Guidelines sentence of life in prison. Because the defendant is in his late fifties, it is likely that whatever sentence he would receive would effectively be a life term. *See e.g.*, *United States v. Okun*, No. 3:08-cr-00132, Docket Entry No. 328 (E.D. Va. Sept. 2, 2009) (sentencing defendant to 100 years' imprisonment for charges related to theft of more than $120 million); *United States v. Rothstein*, No. 0:09-cr-60331, Docket Entry No. 290 (S.D. Fl. June 9, 2010) (sentencing defendant to 50 years' imprisonment for charges related to defrauding investors of over $1.2 billion). This fact in and of itself leads to a serious risk that the defendant will flee. *See United States v. Stanford*, 341 Fed. Appx. 979, 982 (5th Cir. 2009) (affirming district court's detention order where "the district court properly took into account the daunting sentence – 375 years of imprisonment – Stanford faces if found guilty on all twenty-one counts [including conspiracy, wire and mail fraud, securities fraud, and money laundering] in determining that he presents a risk of flight"); *United States v. Poulsen*, No. 8:07-MJ-1472, Docket Entry No. 4 (M.D. Fla. Oct. 19, 2007) (ordering defendant detained where "there is every reason to think that the defendant would flee in order to avoid the severe sentence [on conspiracy, wire fraud, securities fraud,

money laundering and obstruction charges] that he is facing, which, in view of the defendant's age, would essentially be a life sentence").

b. The Indictment charges a lengthy and complex criminal conspiracy that resulted in billions of dollars of loss

The manner in which the defendant and co-conspirators executed their fraud indicates a level of sophisticated activity that weighs in favor of detention. As explained in detail above, the defendant spearheaded a wide-ranging, complex, and ever-evolving fraudulent scheme that unlawfully misappropriated funds from Colonial Bank and Ocala Funding and ultimately attempted to defraud U.S. taxpayers through TARP. The scheme resulted in nearly $2 billion in actual losses, and more than $500 million in attempted losses. The scheme also contributed to the failures of Colonial Bank, Colonial BancGroup, and TBW.

2. The History and Characteristics of the Defendant

a. The defendant's tendency to deceive and obstruct justice

To execute this scheme, the conspirators moved hundreds of millions of dollars among TBW, Colonial and other entities, both in an effort to divert funds for their unlawful purposes and to conceal their activities. The defendant and co-conspirators also fabricated documents and falsified the books and records of both Colonial and TBW. And they were successful for seven years, despite regular monitoring by inside and outside auditors, federal regulators, and other employees within Colonial BancGroup, Colonial Bank and TBW.

Moreover, as described above, the defendant actively sought to obstruct the SIGTARP and outside counsel investigations. He suggested that CC4 destroy documents, and he delivered to CC1 a drive with fraudulent loan data that he hoped would hide the fraud. The defendant's success in managing the charged conspiracy and his demonstrated tendency to obstruct justice

make it unlikely that any combination of conditions will reasonably assure his presence at future proceedings.

b. The defendant has the financial resources to successfully flee and has been liquidating assets and transferring assets to others

The defendant has significant financial resources, many of which have not been located by law enforcement, and the defendant has been liquidating assets and "parking" others with known close associates over the past months. As chairman of TBW, the defendant earned approximately $2 million in salary, wages, and commissions in 2006, nearly $3 million in 2007, and over $3 million in 2008.[3] As discussed above, in addition to this substantial salary, the defendant unlawfully misappropriated over $20 million in TBW funds for his personal use.

Since law enforcement executed the search warrant at TBW's offices in August 2009, the defendant has undertaken efforts to liquidate and hide his assets. In or about February 2010, the defendant and a known companion of the defendant, KC1, sold a property located in Pensacola, Florida. The defendant recently sold 1959 and 1964 Cadillacs, which had been insured for a total of $225,000, and which are part of a much larger classic car collection.

More significantly, the defendant has recently quit claim deeded multiple properties to close associates for seemingly inadequate consideration. For example, in or about October 2009, the defendant quit claim deeded a property in Key West, Florida, to a known close friend for $125,000. In 2008, this property was valued at $350,000. The defendant has also quit claim deeded, for nominal consideration, two valuable properties to another known companion of the defendant, KC2. KC2 then sold or encumbered the properties to entities related to the defendant. In or about February 2010, the defendant quit claim deeded a property in Ocala,

[3] These numbers represent the defendant's income from TBW and do not include the amounts reported on tax returns as income or loss from other entities.

Florida to KC2 for $10. Shortly thereafter, KC2 took out a $500,000 mortgage on the property from a lender associated with the defendant. In or about March 2010, a company controlled by the defendant and that managed his Dassault jet quit claim deeded another Ocala, Florida property to KC2, again for only $10. KC2 then quit claim deeded the property to an Atlanta-based mortgage company also for $10. The government has evidence that the defendant, with other TBW co-conspirators, is now involved with this mortgage company.

Investigators have also identified a TBW offshore account. Moreover, the defendant travels frequently and has recently used a credit card and cellular telephone registered in the name of another. The defendant recently traveled on airline tickets purchased using an American Express card in the name of a mortgage company associated with KC2, and he is believed to be using a cellular telephone subscribed to by that mortgage company.

In short, the defendant's income, fraudulent activities, and standard of living strongly suggest that he has amassed significant wealth and has the means to flee.

3. The Danger Posed by Defendant's Release

The Bail Reform Act directs the Court to also consider "the nature and seriousness of the danger to any person or the community that would be posed by the person's release." 18 U.S.C. § 3142(g)(4). As the Eleventh Circuit has recognized, "[t]he term 'dangerousness,' as used in the Bail Reform Act of 1984, has a much broader construction than might be commonly understood in everyday parlance." *United States v. King*, 849 F.2d 485, 487 n.2 (11th Cir. 1988). While "danger to any person" is intended to address physical danger to a particular individual, danger to the community "refers to the danger that the defendant might engage in criminal activity to the detriment of the community." *Id.* Thus, "the concern about safety [is] given a broader construction than merely danger of harm involving physical violence." *Id.*; *see also*

United States v. LeClerq, No. 07-80050-CR, 2007 WL 4365601, at *4 & n.5 (S.D. Fla. Dec. 13, 2007) (unpublished).

Anything short of pretrial detention in this case would allow the defendant to remain a danger to the community. The defendant's longstanding pattern of fraudulent activity, history of continually modifying his fraudulent scheme to avoid detection, ongoing distribution of assets to known companions, and believed involvement in the Atlanta-based mortgage company to which he is funneling assets indicate that that there is a significant danger the defendant may engage in future criminal activity. As explained above, the defendant's demonstrated tendency to obstruct justice makes it unlikely that any condition or combination of conditions will adequately protect the community's interest in resolving this case free from the defendant's obstructive conduct.

4. The Evidence of the Defendant's Guilt is Strong

The strength of the evidence also weighs in favor of pre-trial detention. To prove the charges contained in the indictment, the government must prove, among other things, that the defendant knowingly and intentionally joined the criminal scheme. The government has collected substantial evidence that the defendant not only knew of the criminal purpose of the scheme, but directed it. The electronic communications discussed above make clear that he was aware of the overdrafts, Plan B, recycling and fictitious AOT agency trades. The government has also secured the cooperation of many of the defendant's co-conspirators, including CC1, CC2, CC3 and CC4. These co-conspirators were central to the scheme and have described to the government the defendant's leadership role in the fraud. Moreover, the allegations in the indictment are supported by the defendant's own emails, the defendant's own PIN messages, and recorded conversations between the defendant and co-conspirators, as described above.

And, as chairman of TBW and TBW's largest shareholder, the defendant gained the most from the charged scheme, not only in his disclosed salary, but also in the substantial misappropriation of funds for his own benefit. TBW had over 1,000 employees, but it was the defendant that sought to ensure that "I am the only one at TBW involved in this transaction."

In addition to the evidence already collected, the government is continuing its investigation into the allegations contained in the indictment. This continuing investigation is likely to develop even more evidence of the defendant's role.

III. CONCLUSION

The government respectfully requests that, based on the foregoing, and pursuant to 18 U.S.C. § 3142(f)(2), the court order that the defendant be detained pending trial because no condition or combination of conditions will reasonably assure his appearance as required at future court proceedings.

Respectfully submitted,

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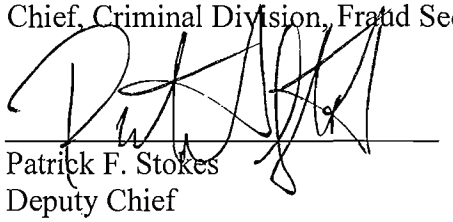
United States Department of Justice
Chief, Criminal Division, Fraud Section

By: 

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CERTIFICATE OF SERVICE

This is to certify that a copy of the government's motion will be furnished to counsel listed below by electronic mail and by facsimile:

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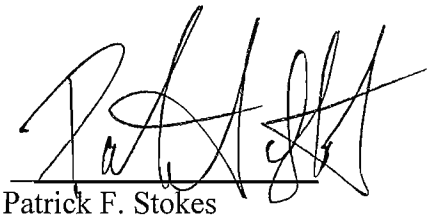

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