UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D.C.

In the Matter of GUILLAUME HENRI ANDRE FONKENELL An Institution-Affiliated Party of BANKERS TRUST COMPANY New York, New York	DOCKET NO. 98-032-B-I 98-032-CMP-I Notice of Charges and of Hearing and Notice of the Assessment of a Civil Money Penalty Issued Pursuant to Sections 8(b) and (i) of the Federal Deposit Insurance Act, as Amended

The Board of Governors of the Federal Reserve System (the "Board of Governors") is of the opinion and has reasonable cause to believe that:

(A) Guillaume Henri Andre Fonkenell ("Fonkenell"), a former Vice President of Bankers Trust Company, a state member bank (for purposes of this Notice, Bankers Trust New York Corporation and its subsidiaries, including Bankers Trust Company collectively will be referred to as "BT"), knowingly and recklessly breached his fiduciary duties and engaged in violations of law and unsafe-and-unsound banking practices in connection with the marketing and sale of leveraged derivatives transactions ("LDTs"). Fonkenell also knowingly and recklessly breached his fiduciary duties, and engaged in violations of law and unsafe-and-unsound banking practices with respect to entries he caused to be made in BT's books and records.

(B) Fonkenell conspired to and did engage in a scheme to defraud in connection with the sale and marketing of LDTs to the Indonesian companies, P.T. Adimitra

Rayapratama ("Adimitra") and P.T. Dharmala Sakti Sejahtera ("Dharmala"). This scheme included the following conduct:

(I) Fonkenell and others conspired to and did engage in a fraudulent scheme to induce Adimitra and Dharmala to enter into certain LDTs by misrepresenting the material risks of those transactions. A colleague of Fonkenell's, who was a marketer, requested that Fonkenell, a trader, alter the format of an LDT structure so as to hide the leverage in the transaction from prospective clients. Fonkenell did alter the appearance of the LDT, and the newly formatted structure was presented to Dharmala and Adimitra in proposal letters sent by the marketer; and

(II) The reformatted formula created by Fonkenell was used in marketing presentations to Adimitra and Dharmala. In those presentations, the function of certain components of the LDT structure was misrepresented so as to conceal the leverage in the LDT from Adimitra and Dharmala.

(C) Fonkenell, with the assistance of others, manipulated BT's books and records so as to misstate materially the amount of trade date profit generated with respect to another transaction he executed.

(D) By reason of the practices set forth in Paragraphs B and C above, Fonkenell received pecuniary gain or other benefit, and BT suffered more than minimal loss, as set forth below:

(I) Fonkenell conspired to and did fraudulently induce Adimitra and Dharmala to enter into LDTs for the ultimate purpose of generating high revenue for BT so that he could be awarded a substantial bonus. In 1994, Adimitra and Dharmala collectively suffered losses in excess of one hundred million dollars, a portion of which was ultimately absorbed by BT.

(II) Fonkenell manipulated BT's books and records in order to present BT's management with a more favorable impression of his abilities as a trader, for the ultimate purpose of increasing his bonus. These actions adversely affected, or had the potential to adversely affect BT's risk management operations.

Accordingly, the Board of Governors hereby institutes this proceeding by issuing this combined Notice of Charges and of Hearing and Notice of Assessment of a Civil Money Penalty (the "Notice") for the purpose of:

(I) assessing a civil money penalty against Fonkenell pursuant to Section 8(i) of the Federal Deposit Insurance Act, as amended ("FDI Act"), 12 U.S.C. § 1818(i).

(II) determining whether an appropriate order should be issued, pursuant to Section 8(b) of the FDI Act, 12 U.S.C. § 1818(b), requiring Fonkenell to permanently cease and desist from serving in any capacity as an institution-affiliated party of an institution or agency specified in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)), including a bank, bank holding company, or nonbank subsidiary, without Federal Reserve approval, and serving as an institution-affiliated party of any institution or agency specified in section 8(e) (7) (A) of the FDI Act, (12 U.S.C. § 1818 (e) (7) (A)), including a bank, bank holding company, or nonbank subsidiary, where his duties include, directly or indirectly:
(a) participating in the structuring of derivative transactions for marketing or sale to customers;

(b) advising any customer regarding the purchase, sale or structuring of a derivative transaction, (c) preparing marketing materials regarding derivative transactions

In support of this Notice, the Board of Governors alleges the following

JURISDICTION

1. Fonkenell was employed by Bankers Trust Company from 1990 through 1994. During the time he was employed by BT, Fonkenell worked as a trader based in New York. As a trader, Fonkenell was responsible for managing trading positions held by BT as well as structuring transactions to be marketed to BT's clients. Fonkenell was also responsible for coordinating with employees in BT's operations area to ensure that the value of transactions he executed were appropriately recorded in the books and records of the bank. From 1991 through 1994, Fonkenell was an options trader on BT's dollar derivative desk. Fonkenell held the title of Vice President when he resigned from BT in May 1994.

2. Fonkenell was at all times pertinent hereto an institution-affiliated party of Bankers Trust Company, as defined for the purposes of this Notice by Section 3(u) of the FDI Act, 12 U.S.C. § 1813(u). As an institution-affiliated party of Bankers Trust Company, Fonkenell is subject to the cease-and-desist and civil money penalty assessment provisions of the FDI Act, 12 U.S.C. §§ 1818(b) and (i).

3. (a) The Board of Governors is the appropriate Federal banking agency to take action against an institution-affiliated party of a state member insured bank pursuant to Section 3(q) of the FDI Act, 12 U.S.C. § 1813(q).

(b) The Board of Governors has jurisdiction over Fonkenell for purposes of this proceeding.

FACTUAL ALLEGATIONS

I. Background

4. Fonkenell was, at all times relevant to this Notice, an options trader on the dollar derivative desk of Bankers Trust Company.

5. A derivative is a financial product, the value of which is based on another financial instrument or index, often an interest rate, foreign exchange rate, or the yield on a security.

A. Leveraged Derivative Transactions

6. A leveraged derivative transaction ("LDT") is generally considered to be a derivative with either explicit or implicit leverage components.

7. Leverage increases both the risk and the potential return of an investment. For example, financing an investment with debt increases the leverage of the investment. Leverage tends to increase the impact of market movements on a derivative transaction.

8. The payments associated with an LDT are generally expressed in the form of one or more mathematical formulae that capture the financial components of the LDT and describe the financial arrangements over the life of the transaction and at maturity.

9. There are numerous means of adding leverage to a derivative transaction. One method is to add a multiplier to a variable in the LDT's formula. For certain structures, extending the maturity of the transaction has the effect of increasing the leverage.

10. Beginning in 1992, and accelerating through 1993 and 1994, BT sold and marketed LDTs to its corporate customers as a means of hedging exposure and also as a way to take positions on one or more markets such as interest rates or foreign exchange.

11. While many of BT's customers wanted to enter into highly leveraged transactions in order to take advantage of the higher potential returns, others wished to avoid the high risk inherent in such trades.

12. Fonkenell was expected to develop new ideas for trades, both on his own and in response to requests or suggestions from marketers.

13. Marketers were responsible for working with traders to develop and price derivatives. They were expected to be able to understand a customer's objectives and to have sufficient technical knowledge of LDTs to express those objectives to traders.

14. In the context of BT's derivative business, highly leveraged transactions were generally more profitable than unleveraged transactions. Traders were accordingly encouraged to create new derivative structures incorporating high degrees of leverage. The extent to which a trader succeeded in developing trades that were profitable to BT was a significant factor used by BT's management to determine a trader's bonus. Fonkenell was aware of this correlation.

15. Every derivative sold by BT to one of its customers was an arms-length transaction. BT did not typically undertake any fiduciary obligations towards its sophisticated counterparty derivative customers. Nonetheless, Fonkenell took affirmative steps to misrepresent to BT's customers the material risks of certain transactions.

B. Books and Records of the Bank

16. In addition to developing new trades, Fonkenell was also responsible for managing the trading positions contained on the options book to which he was assigned. One of Fonkenell's responsibilities in managing the options book was to ensure that transactions were valued consistently with market parameters.

17. One parameter that materially affects the value of all options is volatility. Volatility is a measure of the degree of uncertainty of future price movements. Fonkenell was responsible for ensuring that all options transactions on BT's books and records were valued using accurate volatilities.

18. During 1993, a liquid market in volatilities was in existence. However, at any given time, the market for a particular volatility varied within a trading range. Therefore, Fonkenell was permitted and expected to exercise his professional judgment in determining the appropriate volatilities to be entered on BT's books and records.

19. "New deal" profit was used by BT's management as an approximation of the anticipated profit on a newly booked transaction. It was also used as the basis for the profit allocations given to marketers. These profit allocations were used as a benchmark to determine the profits generated by an individual marketer.

20. A factor in determining a trader's compensation was the amount of profits that trader participated in generating for BT. In this regard, a trader would be given credit for new deal profit generated by a transaction that he or she helped to structure. He or she would also be given credit for profit generated as a result of managing positions in his or her trading

book. On the other hand, a trader's compensation would be affected by the perception that the trader was unable to manage his or her trading book so as to maintain the expected profit of a transaction throughout the life of the trade. Fonkenell was aware of the factors affecting his compensation.

II. Alteration of the Libor Barrier Swap So As to Hide the Leverage in the Transaction

21 On or about January 18, 1994, Fonkenell caused an electronic mail message to be sent to a marketer who sold and marketed derivatives to BT's corporate customers in Malaysia, Singapore and Indonesia (the "January 18 E-Mail"). The subject of the message was a new trade, known as a "Libor barrier swap," to be presented to that marketer's Indonesian customers.

22. The Libor barrier swap was a type of swap transaction that included an option component. At maturity, BT and the customer would exchange interest rate payments.

23. Under the terms of the Libor barrier swap, the customer's interest rate payment, and thus the amount the customer owed BT, would increase by a "spread" if Libor crossed a specified barrier during the first year of the transaction. The barrier specified in the January 18 E-Mail was 4.75%.

24. The proposal contained in the January 18 E-Mail was leveraged by virtue of an express multiplier in the spread formula. If 6-month Libor were to trade above 4.75% during the first year of the transaction, the spread would be equal to:

$$10 * (6\text{-month Libor} - 3.75\%)$$

In this formula, the leverage is expressed as the multiplier "10" at the beginning of the formula.

25 After receiving the January 18 E-Mail, the marketer to whom it was sent requested that Fonkenell alter the spread formula in the January 18 E-Mail so as to "hide the leverage" in the formula.

26. On or about January 19, 1994, Fonkenell discussed the proposal over the telephone with a colleague based in Tokyo. In that conversation, Fonkenell stated that it was "easy to hide the leverage" in the proposed transaction. He and his colleague discussed possible means of hiding the leverage, but were unable to agree on a method of doing so.

27. Fonkenell stated that he would work on the problem. He and his colleague agreed that they would discuss the proposal again later.

28. On or about January 24, Fonkenell again spoke with his colleague in Tokyo regarding the proposal contained in the January 18 E-Mail. Fonkenell told his colleague that he had "wanted to send something to [the marketer] about, you know, hiding the leverage on this trade," but had not had time to finish working on it.

29 Fonkenell's colleague explained that the Libor barrier trade had already been shown to several customers, presumably in its original form, with an explicit leverage component. Fonkenell then asked, "Oh, okay. Do we need to find a way to hide the leverage, or it's okay as it is right now?" Fonkenell's colleague responded that Fonkenell should continue to work on hiding the leverage, stating, "it's for another guy, we will still need to hide the leverage."

30 Fonkenell caused an electronic mail message, dated January 23, 1994, to be sent to the marketer referenced in paragraph 21 above (the "January 23 E-Mail"). Upon

information and belief, although the message was dated January 23, Fonkenell caused the message to be sent some time after the conversation with his colleague on January 24.

31. The January 23 E-Mail stated in part that Fonkenell had "thought about ways to hide the leverage." The January 23 E-Mail contained a proposal that in many ways resembled the proposal contained in the January 18 E-Mail. In the January 23 E-Mail, however, the spread formula no longer contained an explicit multiplier as a means of incorporating leverage into the transaction.

32. Under the terms of the proposal in the January 23 E-Mail, if Libor were to trade above 5% during the first year of the transaction, the spread would be equal to:

(6-month Libor / 4.3125%) – 1

where 6-month Libor is determined at the end of the first year. In this formula, the leverage is expressed as the divisor "4.3125%."

33. Dividing the formula by 4.3125% is mathematically equivalent to multiplying the formula by 23.2. Accordingly, the transaction outlined in the January 23 E-Mail is leveraged 23.2 times.

34. In the event that Libor traded above 5% during the first year of the transaction outlined in the January 23 E-Mail, the break-even interest rate for the spread component of the transaction would be 4.3125%.

35. By creating a formula in which the leverage was expressed in the form of a divisor that was also the break-even interest rate for the spread component of the transaction,

Fonkenell was facilitating the stated objective of the marketer with whom he worked of hiding the leverage.

36. Fonkenell knew or should have known that the marketer would use the LDT structure outlined in the January 23 E-Mail to misrepresent the material risks of proposed transactions to BT's prospective clients.

A. The Dharmala Transaction

1. Marketing the Libor Barrier Transaction to Dharmala

37. Dharmala is an Indonesian holding company with subsidiaries engaged in banking, finance and insurance.

38. In February of 1994, Dharmala had an open transaction with BT that had incurred substantial unrealized losses.

39. On or about February 14, 1994, BT sent a proposal letter to Dharmala suggesting that Dharmala replace its open transaction with a Libor barrier swap (the "February 14 Proposal").

40. The marketer who requested that Fonkenell "hide the leverage" and to whom Fonkenell sent the January 23 E-Mail prepared or supervised the preparation of the February 14 Proposal.

41. The transaction contained in the February 14 Proposal utilized the structure of the proposal outlined in the January 23 E-Mail. At maturity, BT and the customer would exchange interest rate payments. The customer's interest rate payment, and thus the amount the

customer owed BT, would increase by a "spread" if Libor crossed 5.25% during the first year of the transaction.

42. Under the terms of the February 14 Proposal, if Libor were to trade above 5.25% during the first year of the transaction, the spread would be equal to:

$$(\text{6-month Libor} / 4.5\%) - 1$$

In this formula, as in the January 23 E-Mail, the leverage is expressed as a divisor, in this case "4.5%".

43. In the event that Libor traded above 5.25% during the first year of the transaction outlined in the February 14 Proposal, the break-even interest rate for the spread component of the transaction was 4.5%. Thus, if during the first year of the transaction, Libor traded above 5.25% and remained above 4.5% at the end of that year, as to the spread component of the transaction Dharmala would owe a payment to BT. If, on the other hand, Libor rose 5.25% and then fell below 4.5% at the end of the first year of the transaction, BT would owe a payment to Dharmala.

44. Dividing the formula by 4.5% is mathematically equivalent to multiplying the formula by 22.2. Accordingly, the transaction outlined in the February 14 Proposal is leveraged 22.2 times.

45. Nowhere in the February 14 Proposal was the amount of leverage in the Libor barrier swap disclosed. Indeed, the proposal did not state that the Libor barrier swap was a leveraged trade.

46. In a marketing presentation regarding the transaction outlined in the February 14 Proposal, the denominator in the formula was represented to Dharmala as the break-even interest rate for the spread component of the transaction in the event that Libor traded above 5.25% during the first year of the transaction. This explanation fraudulently concealed the true significance of the denominator in the spread formula.

47. The true significance of the 4.5% denominator is that it serves as a means of incorporating a high degree of leverage into the transaction. Nothing in the transaction requires that the spread formula incorporate a denominator equal to the break-even interest rate for the spread component of the transaction.

48. The formula prepared by Fonkenell was used in conjunction with this false explanation of that formula in order to misrepresent the material risks of the Libor barrier swap transaction to Dharmala.

49. On or about February 20, 1994, Dharmala entered into a Libor barrier swap with BT.

50. The transaction executed by Dharmala was substantially similar to the transaction outlined in the February 14 Proposal.

2. The Libor Barrier Trade Resulted in Substantial Losses to Dharmala and BT

51. Dharmala's Libor barrier swap rapidly lost value. In or about April, 1994, the value of the Libor barrier swap was negative to Dharmala by approximately $38 million. In or about August 1994, the value of the trade had declined to approximately negative $65 million to Dharmala.

52. Dharmala eventually filed a civil action against BT in the Central Jakarta District Court in Indonesia, styled P.T. Dharmala Sakti Sejahtera v. Bankers Trust Company. Dharmala sought rescission of the Libor barrier swap as well as damages, based, inter alia, on alleged misrepresentations regarding the manner in which the spread formula was to be calculated. BT later brought a law suit against Dharmala in the High Court of Justice, Queen's Bench Division in Britain, entitled Bankers Trust International PLC v. Dharmala Sakti Sejahtera, seeking approximately $65 million in damages. BT ultimately settled its dispute with Dharmala in return for a $12.5 million payment from Dharmala.

53. BT's cost of the settlement with Dharmala was over $57 million to BT. BT also incurred substantial additional costs and expenses arising from the litigation and from liabilities incurred in hedging the transaction.

54. By conspiring with others and participating in the fraudulent scheme to induce Dharmala to enter into the Libor barrier swap, Fonkenell caused BT to incur substantial financial harm as well as reputational harm.

B. The Adimitra Transaction

1. Marketing the Libor Barrier Transaction to Adimitra

55. Adimitra is a company organized under the laws of Indonesia.

56. In mid-January of 1994, Adimitra had an open transaction with BT that had incurred substantial unrealized losses.

57. On or about January 31, 1994, BT sent a proposal letter to Adimitra suggesting that Adimitra enter into a Libor barrier swap (the "January 31 Proposal").

58. The marketer who requested that Fonkenell "hide the leverage" and to whom Fonkenell sent the January 23 E-Mail prepared or supervised the preparation of the January 31 Proposal.

59. The transaction contained in the January 31 Proposal utilizes the structure of the proposal outlined in the January 23 E-Mail. At maturity, BT and the customer would exchange interest rate payments. The customer's interest rate payment, and thus the amount the customer owed BT, would increase by a "spread" if Libor crossed 5% during the first year of the transaction.

60. Under the terms of the January 31 Proposal, if Libor were to trade above 5% during the first year of the transaction, the spread would be equal to:

(6-month Libor / 4.3%) - 1

In this formula, as in the January 23 E-Mail, the leverage is expressed as a divisor, in this case "4.3%."

61. In the event that Libor traded above 5% during the first year of the transaction outlined in the January 31 Proposal, the break-even interest rate for the spread component of the transaction was 4.3%.

62. Dividing the formula by 4.3% is mathematically equivalent to multiplying the formula by 23.3. Accordingly, the transaction outlined in the January 31 Proposal is leveraged 23.3 times.

63. Upon information and belief, in a marketing presentation regarding the transaction outlined in the January 31 Proposal, the denominator in the formula was represented

to Adimitra as the break-even interest rate for the spread in the event that Libor traded above 5% during the first year of the transaction. This explanation fraudulently concealed the true significance of the denominator in the spread formula.

64. The true significance of the 4.3% denominator is that it serves as a means of incorporating a high degree of leverage into the transaction. Nothing in the transaction requires that the spread formula incorporate a denominator equal to the break-even interest rate for the transaction.

65. The formula prepared by Fonkenell was used in conjunction with this false explanation of that formula in order to misrepresent the material risks of the Libor barrier swap transaction to Adimitra.

66. On or about February 28, 1994, Adimitra entered into a Libor barrier swap with BT.

67. The transaction executed by Adimitra was substantially similar to the transaction outlined in the January 31 Proposal.

2. The Libor Barrier Trade Resulted in Substantial Losses to Adimitra and BT

68. Adimitra's Libor barrier swap rapidly lost value. In or about December 1994, BT's internal valuation of the transaction was approximately negative $75 million to Adimitra.

69. Adimitra eventually filed a civil action against BT in the United States District Court for the Southern District of New York, styled P.T. Adimitra Rayapratama v. Bankers Trust Company. Adimitra sought recission of the Libor barrier swap as well as damages,

alleging that BT had committed fraud by hiding the leverage in the Libor barrier swap and otherwise concealing the material risks of the transaction. BT ultimately settled its dispute with Adimitra.

70. The cost of the settlement with Adimitra was approximately $49 million to BT. BT also incurred substantial additional costs and expenses arising from the litigation and from liabilities incurred in hedging the transaction.

71. In creating an LDT structure in which the leverage was hidden, Fonkenell acted together with others to defraud BT's clients by misrepresenting the material risks of the transaction.

III. Falsifying BT's Books and Records So As To Misstate the Profit in the Transaction

72. On or about November 2, 1993, BT entered into an LDT with Proctor & Gamble, Inc. (the "P&G Trade"). In effect when P&G entered the transaction, it sold BT an option, referencing both the 30-year Treasury bond and the 5-year Treasury note. The premium received by P&G was embedded into a swap.

73. As set forth in paragraph 17 above, volatility is an important component of option pricing.

74. Fonkenell was responsible for ensuring that the P&G Trade was accurately recorded on BT's books and records. In connection with recording the P&G Trade, Fonkenell was responsible for ensuring that BT valued the trade using appropriate volatilities for the option on the 5-year and the 30-year Treasuries.

75. Prior to the entry of the P&G Trade, BT's books and records reflected that the volatility for the 5-year Treasury was 18 per cent and the volatility for the 30-year Treasury was ten per cent. Fonkenell was aware that, at these levels, the P&G Trade would be valued such that BT's books and records would reflect a profit of approximately $12 to 13 million for the transaction. This profit would have been recorded as "new deal" profit on BT's books and records.

76. Fonkenell reduced artificially the amount of new deal profit generated by the P&G Trade, intending to capture that profit at some later point as trading profit and thereby provide management with a more favorable impression of his abilities as a trader. Fonkenell was also aware that BT's bonus period would end on November 30.

77. In furtherance of his scheme, on or about November 2, Fonkenell told his direct supervisor that while the P&G Trade would generate approximately $12 to 13 million in profit, he had informed the marketer who worked on the trade that the trade would only generate $7.5 million.

78. Later in the day on November 2, Fonkenell discussed the P&G transaction with a colleague who was employed in the operations area of BT. Fonkenell stated:

> [I]t will show like, $10 million ... but the marketers know it at $7 million. ... So the official number is, like, a bit more than 7 ... if anybody asks you ... even the controllers.

Fonkenell then asked his colleague to reduce the volatilities used to price the P&G Trade.

79. Fonkenell requested that the volatility on the 30-year Treasury be reduced from 10 per cent to 9 per cent and that the volatility on the 5-year Treasury be reduced from 18

per cent to 17 percent. This would result in reducing new deal profit for the trade by approximately $3 million. Fonkenell then stated, "[a]nd tomorrow, remind me tomorrow, we'll move up the bond."

80. Fonkenell's request that the volatilities be lowered was not based on his professional judgment regarding market factors, but was instead the result of his desire to lower artificially the new deal profit for the P&G Trade.

81. Fonkenell stated that he had prospectively determined to "move up" a volatility parameter the day after it was lowered. Fonkenell's actions in altering the volatility input to BT's computer modeling system, without regard to market factors, created a situation in which BT could not accurately determine the value of certain derivative transactions for a period of time. This inability to determine such values adversely affected, or had the potential to adversely affect BT's risk management operation.

82. Pursuant to Fonkenell's instructions, his colleague lowered the volatilities for the 5-year and the 30-year Treasuries at the close of the day on November 2.

83. The new deal profit recorded on BT's books and records for the P&G Trade was approximately $6.7 million. Had the volatilities for the 5-year and 30-year Treasuries been properly marked, the new deal profit entered on BT's books and records would have been in excess of $10 million.

84. The next day, November 3, as Fonkenell intended, the volatility of the 5-year Treasury was increased to 18 per cent. This increase caused the value of the P&G Trade, as recorded on BT's books and records, to increase approximately $1.5 million.

85. On or about November 9, 1993, at Fonkenell's request, the volatility of the 30-year Treasury was raised to 10 per cent. BT's books and records indicate that BT earned over $2 million in profit generated by this increase.

86. Fonkenell's request that the volatilities be raised was not based on his professional judgment regarding market factors, but was instead the result of his need to return the volatilities to market levels after artificially causing them to be lowered.

87. The increases in volatility orchestrated by Fonkenell on November 3 and 9 created the appearance that Fonkenell was generating profit through his trading activities. In fact, a significant portion of this profit should have been recorded as new deal profit from the P&G Trade.

88. By intentionally causing false entries to be made on the books and records of BT with the intent to mislead and defraud BT and its employees, Fonkenell violated the prohibition on making false entries on a bank's books and records contained in 18 U.S.C. § 1005. He also engaged in unsafe-and-unsound banking practices and breached his fiduciary duties to BT.

FONKENELL'S MISCONDUCT

A. Fonkenell Committed Wire Fraud and Engaged in Unsafe-and-Unsound Banking Practices and Breaches of his Fiduciary Duties in Connection With the Sale of the Libor Barrier Trades to Adimitra and Dharmala

89. As set forth in paragraphs 4 through 71 above, Fonkenell violated the prohibitions of the federal wire fraud statute, 18 U.S.C. § 1343, when he conspired to and did defraud BT's customers by participating in and facilitating the misrepresentation of material risks of transactions that were sold to those customers. Fonkenell's fraudulent conduct also constitutes an unsafe-and-unsound banking practice and a breach of Fonkenell's fiduciary duties to Banker's Trust.

B. Fonkenell Violated the Law and Engaged in Unsafe-and-Unsound Banking Practices When He Caused False Entries to Be Made On the Books and Records of BT In Connection With the P&G Trade

90. As set forth in paragraphs 4 through 20 and 72 through 88 above, Fonkenell violated the prohibition against making false entries on a bank's books and records contained in 18 U.S.C. § 1005 when he caused false entries to be made on BT's books and records with the intent to defraud BT by artificially inflating his bonus. In so doing, Fonkenell also engaged in unsafe-and-unsound banking practices and breached his fiduciary duties to BT.

ASSESSMENT OF CIVIL PENALTIES

91. (a) Section 8(i) of the FDI Act, 12 U.S.C. § 1818(i), authorizes the assessment of civil money penalties in the amount of $5,000 per day against an institution-affiliated party who violates any law or regulation.

(b) Section 8(i) of the FDI Act, 12 U.S.C. § 1818(i), authorizes the assessment of civil money penalties in the amount of $25,000 per day against an institution-affiliated party who violates any law or regulation, recklessly engages in any unsafe or unsound practice, or breaches any fiduciary duty which violation, practice, or breach is part of a pattern of misconduct, causes or is likely to cause more than a minimal loss to a depository institution, or results in pecuniary gain or other benefit to such party.

92. (a) Fonkenell's conspiracy to defraud BT's customers commenced on or about January 18, 1994 and continued to at least February 20, 1994 as to Dharmala, and to at least February 28, 1994 as to Adimitra.

(b) Fonkenell's actions in causing false entries to be made on BT's books and records commenced on or about November 2, 1998 and continued to at least November 9, 1998.

93. (a) As set forth in this Notice, Fonkenell knowingly and recklessly engaged in violations of law, unsafe and unsound practices, and breaches of fiduciary duties by participating in a scheme to defraud BT's Indonesian customers. These violations of law, unsafe and unsound practices and breaches of fiduciary duties caused more than a minimal loss to BT by

subjecting BT to substantial litigation risk. Moreover, Fonkenell's fraudulent conduct caused BT to pay significant amounts in connection with BT's hedging costs and the litigation which arose from that misconduct.

(b) As set forth in this Notice, Fonkenell knowingly and recklessly engaged in violations of law, unsafe and unsound practices, and breaches of fiduciary duties by causing false entries to be made in BT's books and records.

94. After taking into account the size of Fonkenell's financial resources, his lack of good faith, the gravity of the violations described herein, his history of previous violations, and such other matters as justice may require, the Board of Governors hereby assesses a civil money penalty of Two Hundred Fifty Thousand Dollars ($250,000) against Fonkenell for (a) conspiring to and engaging in a scheme to defraud in connection with the sale and marketing of LDTs to Adimitra and Dharmala, and (b) manipulating the books and records of BT in connection with the P&G transaction for his own benefit and in a manner which was adverse to BT's risk management systems

95. The penalties set forth in paragraph 94 hereof are assessed by the Board of Governors pursuant to Section 8(i) of the FDI Act, 18 U.S.C. § 1818(i). Remittance of the penalties set forth herein shall be made within 60 days of the date of this Notice, in immediately available funds, payable to the order of the Secretary of the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, who shall make remittance of the same to the Treasury of the United States

96. Notice is hereby given, pursuant to section 8(i)(2) of the FDI Act (12 U.S.C. § 1818(i)(2)) that Fonkenell is afforded an opportunity for a formal hearing before the Board of Governors concerning this assessment. Any request for a hearing with regard to this civil money penalty assessment must be filed with the Secretary of the Board of Governors, Washington, D.C. 20551, within 20 days after issuance and service of this Notice.

97. In the event Fonkenell fails to request a hearing within the aforementioned 20-day period, Fonkenell shall be deemed, pursuant to section 263.19(c)(2) of the Rules of Practice, to have waived the right to a formal hearing, and this Notice shall, pursuant to section 8(i)(2) of the FDI Act, constitute a final and unappealable order.

CEASE-AND-DESIST

98. By reason of the misconduct referenced in paragraphs 89 and 90 above, a cease and desist order pursuant to section 8(b) of the FDI Act, 12 U.S.C. § 1818(b), should be issued against Fonkenell as a result of his violations of law, unsafe and unsound practices, and breaches of fiduciary duties in conspiring to defraud BT's customers and in causing false entries to be made on BT's books and records.

99. Notice is hereby given that a hearing will be held on December 28, 1998, in New York, New York, at the Federal Reserve Bank of New York, for the purpose of taking evidence on the charges hereinbefore specified in order to determine whether an appropriate order to cease-and-desist should be issued pursuant to section 8(b) of the FDI Act, 12 U.S.C. 1818(b), requiring Fonkenell to cease and desist from:

(a) serving in any capacity as an institution-affiliated party of an institution or agency specified in Section 8(e)(7)(A) of the FDI Act , 12 U.S.C § 1818(e)(7)(A), including a bank, a bank holding company, or nonbank subsidiary, without Federal Reserve approval; and

(b) serving as an institution-affiliated party of any institution or agency specified in Section 8(e) (7) (A) of the FDI Act, 12 U.S.C. § 1818 (e) (7) (A), including a bank, bank holding company, or nonbank subsidiary, where his duties include, directly or indirectly: (1) participating in the structuring of derivative transactions for marketing or sale to customers; (2) advising any customer regarding the purchase, sale or structuring of a derivative transaction; (3) preparing marketing materials regarding derivative transactions.

PROCEDURES

100. Fonkenell is hereby directed to file an Answer to this Notice within 20 days of the service of this Notice, as provided by section 263.19 of the Rules of Practice, 12 C.F.R. § 263.19, with the Office of Financial Institution Adjudication (the "OFIA"), 1700 G Street, N.W., Washington, D.C. 20552. Pursuant to section 263.11(a) of the Rules of Practice, 12 C.F.R. § 263.11(a), any Answer filed with the OFIA shall also be served on the Secretary of the Board of Governors. As provided in section 263.19(c)(1) of the Rules of Practice, 12 C.F.R. § 263.19(c)(1), the failure of Fonkenell to file an Answer required by this Notice within the time provided herein shall constitute a waiver of his right to appear and contest the allegations of the Notice, and authorization for the presiding officer, upon proper motion, to find the facts as alleged in the Notice and to file with the Secretary of the Board of Governors a recommended decision containing such findings and appropriate conclusions.

101. The hearing described above shall be held before an administrative law judge to be appointed from the OFIA, pursuant to section 263.54 of the Board of Governors Rules of Practice for Hearing (the "Rules of Practice"), 12 C.F.R. § 263.54. The hearing shall be public, unless the Board of Governors determines that a public hearing would be contrary to the public interest, and in all other aspects shall be conducted in compliance with the provisions of the FDI Act and the Rules of Practice.

102. Fonkenell may submit, within 20 days of the service of this Notice, to the Secretary of the Board of Governors, a written statement detailing the reasons why the hearing in this proceeding should not be public. The failure to submit such a statement within the aforesaid period shall constitute a waiver of any objection to a public hearing.

103. Authority is hereby delegated to the Secretary of the Board of Governors to take any and all actions that the presiding officer would be authorized to take under the Board of Governors' Rules of Practice with respect to this Notice and any hearing conducted thereon, until such time as the presiding officer shall be designated by the OFIA as provided herein.

Dated at Washington, D.C. this 29th day of October 1998

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: Jennifer J. Johnson
Jennifer J. Johnson
Secretary of the Board

UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D.C.

In the Matter of	:	Docket No. 98-032-B-I 98-032-CMP-1
GUILLAUME HENRI ANDRE FONKENELL	:	
An Institution-Affiliated Party of	:	
BANKERS TRUST COMPANY New York, New York	:	

APPROVAL OF AMENDMENT TO NOTICE OF CHARGES AND OF HEARING AND NOTICE OF THE ASSESSMENT OF A CIVIL MONEY PENALTY

Pursuant to section 265.4 of the regulations promulgated by the Board of Governors of the Federal Reserve System ("the Board"), 12 C.F.R. § 265.4, I approve the following amendment to the Notice of Charges and of Hearing and Notice of Assessment of a Civil Money Penalty that was issued by the Board in this proceeding on October 29, 1998 ("Original Notice"):

1. Paragraph 99 of the Original Notice is deleted.

2. New paragraph 99 provides:

"99. Notice is hereby given that a hearing will be held on December 28, 1998, in New York, New York, at the Federal Reserve Bank of New York, for the purpose of taking evidence on the charges hereinbefore specified in order to determine whether an appropriate order to cease-and-desist should be issued pursuant to section 8(b) of the FDI Act, 12 U.S.C. §1818(b):

(a) requiring Fonkenell to cease and desist from serving as an institution-affiliated party of any institution or agency specified in Section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), including a bank, bank holding company, or nonbank subsidiary, where his duties include, directly or indirectly: (1) participating in the structuring of derivative transactions for marketing or sale to customers; (2) advising any customer regarding the purchase, sale or structuring of a derivative transaction; (3) preparing marketing materials regarding derivative transactions; and

(b) ordering other appropriate restrictions on Fonkenell's future activities as an institution-affiliated party as are warranted based on the record in this proceeding."

Dated at Washington, D.C. this 7th day of May, 1999.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: Edward W Kelley
Edward W. Kelley, Jr.