

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE BANK OF NEW YORK  
DERIVATIVE LITIGATION

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: Case No. 99 Civ. 9977 (DC)  
: (Case No. 99 Civ. 10616 (DC)  
: (Con.))  
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X **JURY TRIAL DEMANDED**

**AMENDED VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**

Plaintiffs, by their attorneys, allege for their Amended Verified Shareholder Derivative Complaint, upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief based upon, inter alia, the investigation made by and through their attorneys, as follows:

**I. INTRODUCTION**

1. This is a double derivative action brought on behalf of shareholders of the Bank of New York Company, Inc. (the “Company”) and its wholly-owned subsidiary the Bank of New York (“BONY” or the “Bank,” and, together with the Company, the “Nominal Defendants”) to redress systemic wrongdoing that occurred within the Bank for over six years.

2. On August 19, 1999, The New York Times reported in a front page story that “[b]illions of dollars have been channeled through the Bank of New York in the last year in what is believed [by law enforcement officials] to be a major money laundering operation by Russian organized crime . . . . Investigators say the transactions seem to add up to one of the largest money laundering operations ever uncovered in the United States, with vast sums of money moving in and out of the bank in a day.” As alleged herein, the illegal activity The New York Times described was just one example

of BONY's otherwise undisclosed participation, reaching to the highest levels of the Bank, in a vast money laundering conspiracy perpetrated by members of the Russian industrial and banking establishment and Russian organized crime.

3. The misconduct alleged against the defendants arose from the Company's and BONY's aggressive and deliberate push into the highly risky business of correspondent banking with Russian financial institutions and other businesses.

4. The Nominal Defendants faced an uncertain future at the close of the 1980's as a result of growing competition, a global decline in real estate prices, and increasing interest rate volatility. To bolster the Nominal Defendants' earnings the Board of Directors of the Company, whose membership at all relevant times was identical to the Bank's Board of Directors (collectively, the "Board"), approved a strategy to expand BONY's correspondent banking business in Russia.

5. In 1990, with the Board's approval, BONY purchased a 20% stake in Inter Maritime Bank, Geneva ("IMB"), renaming it Bank of New York - Inter Maritime Bank ("BONY-IMB"), and installed defendant Deno D. Papageorge ("Papageorge") -- the CFO of the Bank and a senior officer of the Company at the time -- on its board. Through Papageorge, and the Bank's contacts with BONY-IMB and its controlling shareholder, Bruce Rappaport ("Rappaport") -- an international financier of questionable background -- the Nominal Defendants established relationships with suspect Russian businesses that would later prove critical to the expansion of BONY's Russian correspondent banking business.

6. Although contemporaneous government, press, and private-sector sources had sounded unmistakable warnings that Russia's nascent private banking system was being infiltrated by

organized crime, the Board intentionally or recklessly failed to assure itself that BONY had implemented an adequate and independent system of monitoring and control of its correspondent wire transfer business and Eastern European business operations.

7. BONY reorganized its once staid European Division into a separate Eastern and Western Division, installing Natasha Gurfinkel (“Gurfinkel”) as head of the Eastern European Division. As alleged herein, with the knowledge and active assistance of senior bank officers, BONY served as the central conduit for the unlawful transfer and theft of billions of dollars in Russian assets in violation of U.S. and Russian law. These funds were routed through BONY’s wire transfer business to the personal accounts of crooked Russian political and business leaders at bank secrecy havens like the Cayman Islands, Antigua, and Liechtenstein, widely known to be used for money laundering and other illicit purposes.

8. As detailed herein, defendant Thomas A. Renyi (“Renyi”) knew of and assisted the Bank’s participation, with private banking leaders, in the implementation of these illegal tax evasion, money laundering, and capital flight schemes. BONY executives and their Russian co-conspirators actively marketed these illicit schemes to hundreds of Russian banks, businesses, and individual customers -- touting BONY as the “Western Face” on these schemes.

9. The dangers of doing business in Russia were well known to the director defendants as source after source warned about rampant organized crime and the potential for money laundering in Russia. Emblematic of these warnings was a March 1995 Treasury Department report specifically warning about the risks inherent with electronic funds transfers ("EFTs") and payable through accounts, and cautioning that “Russia has more than 3,000 banks, and many of them are front companies for

money laundering and/or efforts to buy legitimate businesses.” On May 15, 1994, The New York Times, quoting a firm that advises banks and businesses on risks of doing business in foreign countries, reported that most of the 2,000 new commercial banks licensed in Moscow in the previous eighteen months were fronts for the illegal transfer of money.

10. As early as 1994, the Chairman of the Bank, defendant J. Carter Bacot (“Bacot”), members of the Board, and senior executives had specific notice of criminal activity in at least one of BONY’s Russian correspondent banks, Nizhegorodets Bank. The Board nonetheless maintained its policy of aggressive expansion into Russia. As a result, by 1996, the Bank’s EFT Division had become known within the Bank as the “golden child.”

11. The indispensable role of the Bank’s wire transfer system as the conduit for the massive money laundering operation out of Russia permitted the key architects of the fraud from within the Bank to demand a part of the “take.” Because the schemes could not be effected without the assistance of a major money center bank like BONY, Renyi, Gurfinkel, and other Bank employees successfully used their unfettered access to BONY’s wire transfer operations to obtain interests in foreign shell corporations and accounts to which laundered and stolen monies were being diverted.

12. In addition to multiple prior warnings, the Board in 1996 also received direct notice about its Russian customers from high level Russian government officials. In 1996 and thereafter, the Board had specific notice of multiple Russian investigations raising concerns about the involvement of BONY’s Russian bank correspondents in money laundering and bank asset theft operations. Instead of launching an investigation of the Bank’s Eastern European operation and undertaking a thorough inquiry into the effectiveness of any compliance structure, the Board permitted the continued expansion

of the Russian correspondent business, leaving in place a compliance system they knew, or recklessly disregarded, provided no effective, independent oversight.

13. In the wake of the infiltration of organized crime into the Russian banking system, Russian authorities conducted widespread investigations of the Russian private banking sector, hundreds of which banks had their correspondent accounts at BONY. In April 1996, the head of the Russian Ministry of Justice's Institute of Legal Policy and Implementation notified the Board, through its Chairman, Bacot, of one of the Russian Central Bank's largest investigations, involving one of the largest private banks in Russia and a major correspondent of BONY. The Russian official sought the assistance of the Bank's Chairman, expressing frustration at the Bank's unresponsiveness to multiple prior inquiries concerning BONY's role in possible wrongdoing.

14. On or about June 6, 1996, the Central Bank of Russia issued a report of its audit of Inkombank (the "CBR Report"), a now defunct Russian bank. The CBR Report, forwarded to the Board of the Bank by the Ministry of Justice of the Russian Federation, detailed evidence of widespread misconduct by Inkombank and its senior officers pervading all aspects of bank operations, including improper funding of the Inkombank capital account, illegal inside deals between Inkombank and its senior executives and shareholders, and the making of unsecured, interest free loans to Inkombank insiders and companies they controlled.

15. In the latter part of 1996, Russian authorities also notified senior Bank officers of investigations of other major bank correspondent customers suspected of widespread money laundering actively involving BONY's wire transfer system.

16. Recognizing the threat money laundering posed to the United States financial system, the Department of the Treasury issued regulations in 1996 requiring bank directors to ensure that their banks had adopted procedures for the submission of Suspicious Activity Reports (“SARs”) to the Treasury Department concerning wire and correspondent account transactions that might indicate money laundering activity. Undeterred, the Board continued to direct BONY’s Russian expansion without making any attempt to comply with its duty to investigate the mounting evidence that BONY was participating in the widespread looting of the Russian banking system.

17. The conduct of the Board represents a wholesale abandonment of the critical management oversight function directors are obligated to ensure. Despite facts brought to the Board's attention, and despite its independent obligation to do so, the Board failed to ensure the effective implementation of the most basic systems designed to ferret out the wrongdoing involved. The Board recklessly permitted the endemic misconduct described herein to continue despite its clear and unequivocal power and obligation to halt it. As detailed in this Complaint, multiple internal reports were made regarding the wrongdoing, but no effective action was ever taken. By the end of 1997, the Bank had earned over \$1 billion from wire-transfer processing fees, and the wrongdoing arising from the Bank’s Eastern European Division continued unchecked.

18. An SAR, issued by Republic Bank in 1998, triggered the beginning of a United States government investigation into at least one aspect of BONY’s correspondent operation. To date, that investigation has resulted in multiple criminal indictments and the resignation of Gurfinkel from her post at the Bank. Two of those indicted, defendant Lucy Edwards (“Edwards”) -- a former vice president of the Bank -- and her husband Peter Berlin, pleaded guilty to federal crimes, including money

laundering to promote criminal activity and to defraud the Russian Government. The guilty pleas of Edwards and Berlin, and the admissions they made in connection with their guilty pleas, corroborate and help to illuminate the schemes alleged herein. Edwards' admissions, however, revealed only a small fraction of the pervasive wrongdoing at the Bank.

19. Through this action, the stockholders of the Company, and, thus, BONY, seek to hold the director defendants liable for the wholesale wrongdoing that infiltrated the Company and the Bank. Because of the wrongful conduct alleged herein, the Nominal Defendants have been damaged. As part of the relief requested, plaintiffs demand the infusion of substantial amounts of cash to compensate the Bank for the harm the director defendants' intentional, reckless, or bad faith misconduct caused, the implementation of an effective system of internal controls, a restructuring of the Board, and a wholesale cleansing of management.

## **II. JURISDICTION AND VENUE**

20. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the dispute is between citizens of different States. This action was not brought collusively to confer jurisdiction on a court of the United States that it would not otherwise have. Venue is proper in this District pursuant to 28 U.S.C. § 1391, among other things, because the Nominal Defendants are incorporated and located in this District and because many of the acts alleged and complained of occurred here.

## **III. THE PARTIES**

### **Plaintiffs**

21. Plaintiffs Mildred Kaliski and Edward J. Kaliski, citizens of Delaware, own stock in the Company.

### **Renyi**

22. Defendant Renyi, a citizen of New Jersey, is Chairman and Chief Executive Officer of the Company and the Bank and has been on the Board since 1992. Renyi was named President of the Company in 1992, President of the Bank in 1995, and Chairman of the Board in February 1998. Handpicked by Bacot, Renyi was a relative newcomer to upper management, propelled forward in a meteoric rise through the senior management ranks of the Bank.

23. At least as early as 1993, Renyi actively conspired, directly participated in, and personally profited from schemes to illegally divert and steal Russian assets as described herein.

24. In September 1998, shortly after the Bank received grand jury subpoenas in connection with a federal investigation of its Russian correspondent business, Renyi relinquished his positions as President of the Company and the Bank, but he nevertheless continues to serve as Chairman of the Board and Chief Executive Officer of the Company and the Bank.

### **Papageorge**

25. Defendant Papageorge, a citizen of Pennsylvania, was Chief Financial Officer of the Bank from 1981 to May 1997, Senior Executive Vice President of the Bank from 1982 to 1997, and of the Company from 1988 to 1997, and Comptroller of the Company from 1980 to 1999.

Papageorge was a member of the Board from 1997 to 1999. On August 16, 1999, Papageorge



stepped down from his positions as Comptroller and CFO and retired from the Board, to which he had been reelected just three months earlier.

26. Papageorge represented the Bank on the BONY-IMB board beginning in 1991. Papageorge actively participated in the expansion of BONY's Russian correspondent banking operation through BONY-IMB. Papageorge sat as Vice-Chairman of the Board of BONY - IMB, and had and continues to have detailed knowledge of BONY-IMB's activities in Russia.

### **Bacot**

27. Defendant Bacot, a citizen of New Jersey, was Chairman of the Board from 1982 to February 1998. He was Chief Executive Officer of the Company from 1982 through June 1997, and Chief Executive Officer of the Bank from 1982 through 1995, at which time he was succeeded by Renyi. Bacot was elected a director in 1978 and continues to sit on the Board.

28. Bacot spearheaded the Bank's expansion into Russia through BNY Financial Corporation ("BNY Financial"), the Bank's factoring operation, and personally participated in BONY-financed, Rappaport-sponsored transactions for the sale of hard assets out of Russia.

29. As set forth below, despite substantial warnings concerning the criminal infiltration of the Russian banking system, the Board, with Bacot at its helm, permitted the development and expansion of BONY's Russian correspondent banking operation.

### **Malone**

30. Defendant John C. Malone ("Malone"), a citizen of Colorado, has been a member of the Board since 1986, and has served on the Bank's Nominating and Compensation Committees. Malone has been Chairman of Liberty Media Corporation since 1990, and was the President of its

affiliate, Tele-Communications, Inc. (“TCI”), between 1973 and 1997, and Chairman and CEO of TCI between 1996 and March 1999. Malone and Bacot are close friends and business associates. BONY was TCI’s primary banker, acting not only as TCI’s lender but also as its transfer agent. From his experience at TCI, Malone knew the Bank was vulnerable to infiltration by foreign criminals and money launderers. Indeed, while he was TCI’s president, TCI became embroiled in the BCCI bank fraud and money laundering scandal.

31. Malone's service on the board of directors of the Cato Institute since 1996 also put him on notice of the dangers of allowing Russian banks to do business with BONY, as the Cato Institute has published several articles discussing the nature and extent of the organized crime problem in Russia, including Dempsey, Mafia Capitalism or Red Legacy, (Jan. 1, 1998); and Fontaine, Red Phoenix Rising? Dealing With Communist Resurgence in Eastern Europe, (June 13, 1996).

### **Hassell**

32. Defendant Gerald L. Hassell (“Hassell”), a citizen of New Jersey, has served on the Board since 1998. Hassell replaced Renyi as President of the Bank in 1998. Before being named President, Hassell served as a Senior Vice President of the Bank.

### **Griffith**

33. Defendant Alan R. Griffith (“Griffith”), a citizen of New Jersey, has served on the Board, and on the Company’s Executive Committee, since 1990. Griffith was named President and Chief Operating Officer of the Bank in 1990. For four years in the late 1980s, Griffith ran BONY’s international banking business. As of March 1998, Griffith was in charge of the Bank’s “Special

Industries and International Banking Sector.” Griffith became Vice Chairman of the Company and the Bank in December 1994.

### **Barth**

34. Defendant Richard Barth (“Barth”), a citizen of New York, who has been a member of the Board since 1989, formerly served on the Board of Directors of Irving Trust. Barth has served on the Board’s Executive Committee since 1989 and its Audit Committee since 1998. Barth was the long-time Chairman and CEO of Ciba-Geigy Corporation, which conducts business in Russia with BONY client Most Bank and its wholly-owned subsidiary, Spasskie Vorota of Moscow.

35. Barth had knowledge of Rappaport and his reputation in the banking community, facts the board of Irving Trust used in an effort to fight off BONY's takeover of Irving Trust in 1998.

### **Chaney**

36. Defendant William R. Chaney (“Chaney”), a citizen of Connecticut, has been a member of the Board since 1989 and has served on the Board’s Audit Committee since 1991. Like Barth, Chaney sat on the Board of Directors of Irving Trust at the time of the BONY takeover.

### **Luke**

37. Defendant John A. Luke, Jr. (“Luke”), a citizen of Connecticut, has been a member of the Board since 1996. Luke has served on the Board’s Executive Committee since 1998 and Audit Committee since 1996.

**Miller**

38. Defendant Donald L. Miller (“Miller”), a citizen of Virginia, has been a member of the Board for twenty-three years, since 1977, and has served on the Board’s Executive and Audit Committees since at least 1988.

**Rein**

39. Defendant Catherine Rein (“Rein”), a citizen of New York, has been a member of the Board since 1981. Rein has served on the Board’s Executive Committee for eighteen years and on the Board’s Audit Committee for the last seventeen years.

**Richardson**

40. Defendant William C. Richardson (“Richardson”), a citizen of Michigan, has been a member of the Board and has served on the Board’s Audit Committee since 1998.

**Biondi**

41. Defendant Frank J. Biondi, Jr. (“Biondi”), a citizen of California, has been a member of the Board since 1995. Biondi sat on the Board’s Audit Committee from 1995 through 1997.

**Kogan**

42. Defendant Richard J. Kogan (“Kogan”), a citizen of New Jersey, has served on the Board since 1996. Kogan is a member of the Council on Foreign Relations.

**Roberts**

43. Defendant Brian L. Roberts (“Roberts”), a citizen of Pennsylvania, was elected to the Board in May, 1999.

### **Donofrio**

44. Defendant Nicholas M. Donofrio ("Donofrio"), a citizen of Connecticut, was appointed to the Board on September 14, 1999, following Papageorge's sudden retirement.

### **Edwards**

45. Defendant Edwards was born Ludmilla Pritsker in Russia. Edwards was named a Senior Vice President of BONY's Eastern European Division in 1994.

### **Galitzine**

46. Defendant Vladimir Galitzine ("Galitzine"), an American of Russian descent, has been employed by the Bank for almost three decades. He serves as a Vice President in the Bank's Eastern European Division.

### **Kotov**

47. Defendant Sergei Kotov ("Kotov") was, at all relevant times, an officer in the Bank's Eastern European Division.

48. Edwards, Galitzine, and Kotov are not citizens of Delaware.

### **The Nominal Defendants**

49. The Company is incorporated under the laws of the State of New York and maintains its headquarters at One Wall Street, New York, New York 10286.

50. The Bank is also incorporated under the laws of the State of New York and has its headquarters at One Wall Street, New York, New York. BONY is wholly-owned by and the principal subsidiary of the Company. BONY and the Company are regulated by the Federal Reserve Board and the New York State Banking Department.

#### **IV. THE ROOTS OF BONY'S RUSSIAN EXPANSION**

51. Beginning in 1990, the Board pushed the development of its Russian operation through Rappaport's influence and extensive network of Russian contacts and through a restructuring of BONY's European operations, directing substantial Bank resources to the creation and growth of an Eastern European Division.

52. Directly contrary to Renyi's 1999 testimony to Congress that "there has not been any involvement by [Bruce] Rappaport with regard to [BONY's] Russian efforts," the Board, at least by 1992, used Rappaport as the Bank's conduit to a network of Russian bank correspondents.

53. The Board had longstanding knowledge of Rappaport's reputation, his Russian connections, and the type of influence he was likely to wield. As late as 1990, Rappaport owned over 10% of BONY's common stock.

54. In 1990, the Bank's Board Approved BONY's acquisition of a 20 percent stake in Inter Maritime Bank Geneva, a Swiss Bank controlled by Bruce Rappaport. Rappaport, an international financier and shipping magnate, has, as reported by The Wall Street Journal, had a history with regulators. The Houston Chronicle has reported that the CIA has investigated Rappaport, including collecting information about his "questionable business practices," and noting that the United States Overseas Investment Corporation had raised concerns about Rappaport's involvement in a proposed oil pipeline in the Middle East background after a major financial institution involved in the deal said it would not work with Rappaport.

55. The Board made the decision to invest in IMB despite the facts that in the mid-1980's the Bank of England had rejected the application of a Rappaport-controlled entity for a banking license

in England, terming Rappaport “undesirable,” and, even as BONY negotiated the acquisition of IMB stock, Swiss authorities, suspicious of Rappaport's activities, were actively investigating IMB. In addition, two IMB directors had recently been implicated in the BCCI scandal, including Alfred Hartmann, who continued to serve on the IMB board even after BONY’s investment.

56. Defendants Chaney and Barth sat on the Irving Trust board in 1988 when that bank attacked Rappaport, citing his questionable business dealings, as part of its opposition to BONY’s hostile takeover bid.

57. The Board lent BONY’s name to IMB, and ensconced Papageorge and Geoffrey Bennett (“Bennett”), a BONY Senior Vice-President, on the BONY-IMB board. Papageorge became a regular, frequent visitor to Moscow. Bennett transferred to Switzerland, at least ostensibly to assist in the effort to obtain new customers for BONY-IMB.

58. From the outset, the extent of Rappaport’s reach and the nature of the access he provided were apparent. Bacot involved BNY Financial, the Bank's factoring operation, almost immediately, in extensive dealings with Rappaport. Bacot may even have had Rappaport in mind in July 1989, when he said: “the factoring capabilities of BNY Financial” -- which previously had been a small, upstate New York factoring business specializing in textile and apparel funding -- “give us additional strengths to meet the ever changing needs of our domestic and international customers.” BONY executive Joseph Grimaldi (“Grimaldi”) echoed this sentiment in late 1992, when he was quoted as stating that “growth [in the factoring business] will have to come from beyond US borders,” and that BONY was looking for “joint ventures in foreign lands.”

59. Senior BONY executives Grimaldi, Matthew Stevenson (“Stevenson”), and Donald A. Stephen had extensive meetings with Rappaport to structure BNY Financial’s participation in Russian commodity transactions. Rappaport, with the aid of his lawyer, Burt Kanter, used BNY Financial as a funding vehicle for oil, shipping, and natural resources deals in Russia. For example, and Bacot personally handled the details of a transaction involving the sale of state-owned Russian oil deposits procured with Rappaport as middleman.

60. Rappaport apparently found BNY Financial so useful that in 1991 and 1992 he, Kanter, and Stevenson (whom Rappaport appointed Chief Executive Officer of BONY-IMB in September 1991) had numerous discussions concerning Rappaport’s possible acquisition of BNY-Financial. The sale, however, never occurred. According to an October 10, 1991 report on the PR Newswire, BONY “decided to retain” BNY Financial after previously announcing in April of 1991 that it had reached an agreement in principle to sell it to an undisclosed buyer. According to the report, Bacot identified BNY Financial as a “strong contributor to the company’s (BONY) earnings for many years to come.” Indeed, according to Grimaldi, 1992 was a “record year” for BNY Financial.

61. BONY assigned high level executives to work full-time in the BONY-IMB operation, accompanying members of Rappaport’s organization on numerous trips to Russia. Siva Pillay, who had been employed in BONY’s London office, became New Accounts Manager at BONY-IMB.

62. In May 1991, Rappaport, with the assistance of Stevenson, began marketing a service known as Moneyfacts in the USSR. The Moneyfacts service provided subscribers detailed information about available offshore trusts, investment funds, and banking facilities, and also provided advice about favorable bank secrecy havens, information useful for laundering hard-dollar assets out of Russia.



63. As early as 1990, Bacot and Papageorge were in regular, direct contact with Rappaport regarding BONY's entry into the Russian market. BONY executive Matthew Stevenson and Rappaport met or conferred on more than forty occasions between August 1990 and December 1991 to discuss, among other things, BONY's and BONY-IMB's Russian business expansion. In March 1991, for example, Stevenson requested a list of Russian banks from Rappaport and began discussing deals for BNY Financial with Rappaport.

64. With the collapse of the Soviet Union at the end of 1991, BONY's push into Russia accelerated. Contrary to Renyi's 1999 testimony to Congress, Rappaport and BONY-IMB were a major avenue for the expansion of BONY's Russian bank correspondent operation.

65. As reflected in the April 21, 1993 minutes of the BONY-IMB board meeting, which Papageorge and Bennett both attended, the board reviewed "the report on Russian banking," and was informed:

Considerable progress was made towards BONY-IMB's objective of establishing a strong presence in Russia. To the 93 banks with which a relationship was developed in 1992, new relationships with 12 new banks were added in the first quarter of 1993; deposits from Russian banks have also increased.

At that meeting the board also noted: "The business in the area of letters of credit, particularly with Russian banks should offer serious potentials," and "Russian banks have made increased placements into BONY-IMB." To this end, the BONY-IMB board observed that "permanent office space is now available in Moscow and St. Petersburg under favorable terms and conditions." Indeed, later in 1993, BONY-IMB applied for and received a license to open a representative office in Moscow, "a few steps from the Kremlin," becoming one of only two Swiss banks with official status in Russia.

66. The BONY-IMB minutes also record the board's resolution that "Management continues to seek deposits from Russian banks." For this purpose, the board welcomed a Swiss banker, Dr. Guido Condrau, to the BONY-IMB board specifically to "help BONY-IMB develop its business in the Eastern Countries."

67. Critically, virtually every major Russian bank correspondent of BONY-IMB also established a dual correspondent relationship directly at BONY in New York.

68. Although Papageorge quietly resigned from the BONY Board in August, 1999, as of at least July, 1999, he sat as a director and Vice-Chairman of the board of BONY-IMB.

#### **V. THE BOARD'S KNOWLEDGE OF ORGANIZED CRIMES' STRANGLEHOLD ON RUSSIAN BANKS**

69. As the director defendants knew or recklessly ignored, multiple banking, governmental, regulatory, press, and private security sources warned of the dangers of operating in Russia as early as 1991. These alarms intensified in 1992, 1993, 1994, and forward as the criminal infiltration of the Russian banking system accelerated.

70. For example, in its Annual Report for 1992-1993, the Financial Action Task Force On Money Laundering, a task force formed by the G-7 Economic Summit in 1989 to examine measures to combat money laundering, highlighted the growing presence of organized crime and the increasing risks of money laundering operations in Eastern Europe. On August 7, 1993, The Economist, in an article entitled "Rotten To The Core? Russia," reported on rampant political corruption in Russia, noting that the Central Bank was one of the most corrupt agencies, with four senior officials detained in June of 1993 for an attempted scam involving the illegal transfer of funds.

71. By 1994, organized crime exercised substantial control over virtually every major Russian bank. The banks provided a vehicle for laundering organized crime proceeds, while these proceeds supplied fresh deposits and capital to support bank expansion.

72. This symbiotic relationship between Russia's criminal organizations and bankers partnered the Solichnaya crime group with Inkombank, Semyon Mogilevich with Bank Menatep, and Sergei Rodionov with Imperial Bank, among others. Each of these banks used BONY as its major U.S. correspondent bank.

73. The role of organized crime in Russia's banking operations was well-recognized by the U.S. banking community. On June 27, 1994, CIA Director James Woolsey testified to Congress: "Of 2,000 banks in Russia today, a majority are controlled by organized crime." Aleksandr Gromov of the Russian tax police told a September 1994 conference of the Financial Crimes Enforcement Network of the Department of the Treasury ("FINCEN") that "almost all Russian banks are corrupt." In 1994, private security firms regularly consulted by American banking institutions continued to warn their customers about doing business in Russia. In February 1994, one such private security source issued a Risk Report warning: "Almost 2,000 new commercial banks have been established in recent years and criminal gangs are increasingly using them as 'fronts' for illegal practices such as fraud and money laundering."

74. The March - April 1994 issue of Foreign Affairs, a publication of the Council on Foreign Relations (of which Bacot, Barth, Luke, and Gurfinkel were members), contained an article entitled "The Russian 'Mafia,'" which stated: "Organized crime is the most explosive force to emerge from the wreckage of Soviet communism." The article reported a Russian government estimate that

\$25 billion had been transferred from the former Soviet states to Western banks by organized crime structures in 1993. On December 5, 1994, the Washington Times published an article entitled: “Most of Russia’s Biggest Banks Linked to Mob, CIA Report Says; Illegal Activities Spread to District.” The article focused on Menatep, a major correspondent banking customer of BONY, and quoted a CIA report as stating that senior Moscow officials believe that Menatep “is controlled by one of the most powerful crime clans in Moscow.”

75. In March 1994, a senior official of the Russian Central Bank was quoted as stating that the Russian Central Bank was essentially “impotent about stopping the proliferation of organized crime in the Russian banking industry.” An August 3, 1994 article in The Independent described how the island of Cyprus had become a haven for offshore banking involving the Russian mafia. Inkombank’s Cyprus subsidiary had its correspondent account at BONY. A March 6, 1995 Washington Times article discussed CIA findings determining that the largest Russian banks were linked to the Russian mafia.

76. Starting at least as early as 1994, and continuing through 1997, the Bank’s legal department directly received correspondence enclosing numerous press accounts quoting high-level American and Russian authorities regarding the extent of the Russian mob’s infiltration of the banking system.

77. In addition, as early as 1994, Bacot, members of the Board, and senior executives had specific notice that at least one of the Bank's Russian correspondent banking customers, Nizhegorodets Bank, was a front for Russian organized crime. Notwithstanding this and other warnings from official Russian and U.S. sources detailing the extent of organized crimes' penetration throughout the Russian

banking system, including some of BONY's largest customers, the Bank instituted no independent assessment of its compliance systems or wire operations, or the "Know Your Customer" policies Renyi later touted in his testimony to Congress. In contrast to other major banking institutions that pulled out of Russia, the Bank ultimately terminated only some of its smallest Russian correspondent accounts and ordered money laundering training limited to retail operations. Moreover, in disregard of the Bank's own express policies, the Bank failed to provide any adequate training for the EFT Division, the heart of the money laundering activities ongoing at the Bank.

78. In June 1995, Donald Gilmore, a Senior Vice President on the Bank's International Credit Committee, provided further notice, directly warning Renyi, Hassell, Samuel Chevalier (then a member of the Board), and other senior executives of the substantial risks of doing business in Russia. Based on his trip to Russia to observe conditions there first-hand, Gilmore, in his Country Impressions Report dated June 26, 1995, confirmed that organized crime had deeply infiltrated Russian banking, noting that "a couple of dozen bankers and businessmen have met their untimely demise, usually violently, so far this year ... usually result[ing] from business disputes with members of organized crime." Gilmore stressed the utter inability of the Russian Central Bank to control or even monitor the Russian banking sector, stating that "licenses have been given out like candy for four years." Gilmore further reported that "the central bank's Department of Inspection was only started in 1993. They have about 600 inspectors (examiners), only 50 of whom are based in Moscow, where over a thousand other banks were headquartered. There is no way they can adequately cover this universe any time soon and consequently you have to rely heavily upon the individual banks to monitor themselves..." (emphasis

added). In concluding, Gilmore emphasized the need for careful scrutiny of prospective relationships with Russian banks and the necessity of strict safeguards to govern existing relationships.

79. Other concerns were specifically raised internally regarding Russian organized crime. Gurfinkel, principally through her husband, Konstantin Kagalovsky, was known to have contacts with Mogilevich, a twice convicted felon on Ukrainian charges of fraud and foreign currency trading, who is widely suspected of running an international crime syndicate. The executive in charge of BONY's Turkish office was also a close associate of Mogilevich and Gurfinkel's husband.

80. In mid-1998, BONY security personnel contacted Renyi directly to raise concerns about Gurfinkel's husband's association and apparent close ties with Mogilevich. Renyi himself "interviewed" Gurfinkel about the matter, and no action was taken.

## **VI. THE EXPANSION OF BONY'S RUSSIAN BANKING OPERATIONS IN THE FACE OF KNOWN RISKS**

81. As part of its drive into Russia, in the autumn of 1992, BONY reorganized the European Division, creating a new Eastern European Division and installing Gurfinkel as its head.

82. Throughout 1992 and 1993, the Board continued to push for a rapid expansion of BONY's Russian correspondent banking business, using the Russian-born, native-speaking Gurfinkel to market a "no questions asked" correspondent bank product out of BONY's London office. On lavish trips, with huge expense accounts approved by senior management, Gurfinkel, working closely with BONY-IMB personnel, wined and dined banking executives throughout Russia and Eastern Europe, touting BONY's high speed wire transfer facilities and its ability to route U.S. dollar denominated currency to a web of offshore banking entities.

83. BONY's marketing program proved to be hugely successful. BONY also freely dispensed its proprietary Micro/Ca\$h-Register software to its Russian customers, permitting them to transfer money in and out of their BONY accounts with no real-time intervention, oversight, or control by the Bank. BONY became the bank of choice in Russia. With the assurance of a "no questions asked" relationship, and bank executives and accounting firms in Russia all touting the Bank's Eastern European Division, hundreds of Russian banks opened correspondent accounts at BONY.

84. In or about late 1991 or early 1992, Gurfinkel was introduced to Vladimir Doudkin ("Doudkin"), Deputy Chairman of Inkombank, then one of the ten largest and most powerful Russian banks. Doudkin explained that Inkombank needed to have unrestricted use of BONY correspondent accounts and other BONY accounts to facilitate the transfer of funds from within Russia to various third parties in the West. Doudkin noted that Inkombank had a correspondent relationship with Citibank, but that Citibank was not "entirely understanding" of the needs of the emerging Russian private banking sector. Doudkin was assured that BONY would be solicitous of Inkombank's needs.

85. Doudkin, Gurfinkel, Bob Klein (a close associate and representative of both Rappaport and Renyi), and others devised a scheme, termed "Prokutki," or "spinning around," designed to conceal the illegal movement of U.S. dollars and other assets out of Russia. The scheme, under the guise of various commercial and investment management contracts between Russian entities and Inkombank, utilized U.S. dollar accounts at BONY and a network of offshore front companies and bank accounts created by, and under the control of Inkombank and its BONY conspirators.

86. After a major "investment" was placed by a Russian customer with Inkombank or one of its satellite offshore companies, BONY would execute a series of electronic funds transfers (EFTs)

from the Inkombank U.S. dollar accounts to specific offshore front companies and bank accounts. Usually, several layers of these electronic funds transfers to offshore entities were executed in succession, hence the name “spinning around.” The ultimate goal of the “spinning around” scheme was to obscure and disguise the true origin of the funds being moved through the BONY accounts. The “spinning around” scheme allowed Inkombank’s customer to evade payment of Russian taxes and duties, and provided the ability to launder proceeds from illegal acts. The conspirators generated “commission” payments, or “skim,” based on a percentage of the total amount of money moved through the network out of Russia. The commissions, also referred to as “consulting fees,” were ultimately diverted for the benefit of the conspirators through BONY to offshore entities.

87. To manage the complex web of hundreds of offshore companies utilized for the benefit of the conspirators, Doudkin, Gurfinkel, and Klein devised what they referred to as a “global custody” system and created a series of slides used for presentations of the system.

88. In late 1992, Doudkin, Gurfinkel, and Klein also commissioned the development of a system for encrypting electronic communications to ensure the secrecy of correspondence among the BONY and Inkombank conspirators. Such encrypted communications were known as “Cyphergrams.”

89. Gurfinkel, Doudkin, Edward, and Klein actively marketed the “global custody” scheme to a host of Russian banking institutions. At conferences in Moscow, Geneva, and other locations in 1993 and thereafter, they gave detailed presentations of the offshore web that could be constructed and the wire transfer system within BONY. These conferences, held with the knowledge of BONY senior



executives, were attended by officers of the largest Russian banks, including Menatep and Inkombank, and Russian industrial enterprises, including Transneft and Oboronexports.

90. Menatep, Tokobank, Inkombank, Tveruniversal Bank, Alphabank, Sobin Bank, Moscow International Bank, and the like, the first tier of the private Russian banking hierarchy, also expanded their correspondent relationships with BONY, each devising its own offshore network, modeled after the Inkombank global custody system, for the diversion and theft of industrial and bank assets. A handful of powerful players at the top of each institution, in conjunction with BONY executives, designed an offshore conduit for the receipt of diverted, laundered, and stolen funds.

91. The conspirators devised other mechanisms for the diversion of U.S. dollars out of Russia, all using BONY as the central conduit for the wire transfer of the funds. The conspirators established “independent” offshore companies to which they caused their banks to make unsecured loans, never intending the loans to be repaid. The conspirators also caused offshore companies to engage in fictitious business transactions using bogus sales contracts, letters of confirmation for EFTs, and other documents as detailed more fully below. It was precisely these types of transactions, in high risk locations such as Russia and offshore havens that FINCEN, the agency responsible for administering the Bank Secrecy Act, had specifically identified as being potential money laundering schemes.

92. As referenced in an October 13, 1994 conference call among Renyi, Gurfinkel, Vladimir Vinogradov (Inkombank’s Chairman), Doudkin, and others, Doudkin, under the direction of Vinogradov, controlled the transfer of stolen bank assets for multiple Russian banks and the wire operations through BONY to multiple offshore entities. As Doudkin admitted in February 1994 in

response to questioning by the Commission for Internal Investigation of Inkombank, he created Hoverwood Ltd. ("Hoverwood"), another offshore entity, to "manage" funds for his clients other than Inkombank. The payments skimmed from these funds were referred to by the Russians involved as "dry fall out."

93. Transfers of money from Inkombank's account at BONY to Hoverwood are reflected in the books and records of the Bank. Edwards, Gurfinkel, and Doudkin set up and managed the offshore conduits for numerous Russian banks, including Alphabank, Kredobank, and Rossisky Kredit.

94. At Inkombank, stolen funds routed through offshore companies were referred to as the "Retirement Fund." These offshores were specifically designed to implement the theft of Inkombank's assets, routed through BONY to such offshore shell companies, for the benefit of Inkombank insiders and top BONY officials.

95. On numerous occasions, Gurfinkel and co-conspirators at Inkombank created sham contracts and backdated contracts and other documentation to falsely verify transactions that, in fact, had never occurred in order to validate illegal money transfers. As part of these schemes, Gurfinkel provided Inkombank with confirmations of fictitious wire transfers. For example, on one occasion in 1996, Inkombank, at Gurfinkel's request, created false documents, backdated to 1993, concerning a supposed transaction involving a Russian company, Transneft. The conspirators, including Gurfinkel, regularly used the term "Konformashka" to refer to such phony documentation.

96. In late 1993, Doudkin approached a Russian-speaking New York-based computer expert, who was experienced in global security computer transfer operations, to design a computer system to track the flow of the cash through the offshore companies and record each conspirator's cut

of the profits. Doudkin explained it was necessary that the computer system be located outside of Russia. Thereafter, over a several-month period, Doudkin provided charts and documents from which the underlying computer programming could be accomplished. At one point, the specialist was involved in a conference call with Gurfinkel who was to provide him with information about the persons who were the authorized users of the offshore system.

97. In April 1994, Doudkin sent the computer specialist a chart showing the movement of funds through a web of offshore companies and accounts. The chart aroused the specialist's suspicions because the particular scheme depicted involved a preplanned default on a loan by the entity to which the loan was to be made. The chart also made explicit reference to "fake promissory notes." The specialist refused to proceed with the project, telling Doudkin that the global custody system appeared to be an illegal money laundering scheme. Doudkin replied: "What do you care? You'll be handsomely paid."

98. As part of the comprehensive global custody system, in mid-1993 or before, Doudkin, Gurfinkel, Klein, and others caused to be devised a computer database specifying the name of each offshore company, the percentage ownership of each individual beneficiary of the scheme, individual code numbers, and designated code names. The database reflected the varying percentage interests in the complex of offshore entities as these interests and entities shifted over time. Renyi, who also received a debit card funded by Inkombank, was assigned various percentage interests in different offshore accounts under the code name "Smith," as were Gurfinkel (under the code name "Gurova"), Galitzine (under the code name "Vladimirov"), and Edwards (under the code name "Zemsky").

99. Also listed on the database were Inkombank executives Vinogradov (under the code name “Winoff”), Doudkin (under the code name “Illyinsky”), Alexei Kuznetsov (under the code name “Aleksyev”), and Roman Zdraevsky (under the code name “Romanov”), among others.

100. In marketing sessions with as many as 100 prospective banker clients, Doudkin, Gurfinkel, and others presented information in slide form to illustrate the workings of the offshore network, using generic names for the offshore companies rather than their actual names. For meetings with insiders, however, Doudkin put stickers or labels with the actual company names over the corresponding boxes on the chart.

101. From 1993 through 1996 and beyond there were numerous telephone conversations and meetings among the conspirators concerning the offshore structure, the percentages to which each individual was entitled, and the movement of the money abroad. Although the participants in these conversations and meetings varied, they often included Gurfinkel, Klein, Vinogradov, Doudkin, and, sometimes, Renyi.

102. For example, in January 1994, Renyi met with Vinogradov at Pascack Valley Hospital in Westwood, New Jersey, where Vinogradov was admitted as a patient under his code name “Winoff.” Vinogradov was in the hospital for a chronic kidney condition that necessitated a biopsy. During conversations at the hospital, Vinogradov, Renyi, and other participants, discussed the complex system of offshore companies to move money out of Russia through BONY.

103. In the course of their discussion, Vinogradov diagramed a chart on the back of a hospital menu that illustrated the flow of money through various entities, resulting in a \$10 million “fall out” payment designated to go to an offshore account. In conversation regarding which of the offshore

companies to use for the receipt of payments, Renyi indicated that he preferred to use FirstTen S.A., a Panamanian company, because it was an older, less suspicious company than others. It was okay, however, to use Advison Trust, a more recently established offshore company, for Gurfinkel and Galitzine. Vinogradov and Renyi also discussed Kudos, another offshore entity, as well as a pending loan to Inkombank from Eximbank USA.

104. In early fall 1994, Renyi, Gurfinkel, Doudkin, Vinogrado, Kuznetsov, and other persons from Inkombank participated in trans-Atlantic conference call regarding a scheme to profit from the devaluation of the ruble. Renyi stated that BONY was deeply committed to the scheme and gave assurances that the Bank would provide around \$200 million towards its accomplishment. He also indicated that Gurfinkel would be the primary contact at BONY. The profits from the scheme were to be forwarded to various of the offshore companies.

105. In early 1995 in a meeting at the Waldorf Astoria Hotel, Renyi again met with Vinogradov and Kuznetsov to discuss, among other things, the conspirators' percentage interests in the offshore companies.

106. In June 1995, Renyi and Klein also met with representatives of Inkombank at the La Royal Hotel in Luxembourg City. Among the subjects discussed was the redistribution of ownership in the various offshore companies, and American Depository Receipts ("ADR's") to be issued by various Russian entities.

107. In June 1996, Gurfinkel met with at least one Inkombank representative at the Balchuga Hotel in Moscow, where they discussed details concerning Aspirations Holdings, one of the offshore companies, and other companies.

108. Multiple computer entries prepared during 1993, 1994, 1995, 1996, and thereafter reflect the conspirators' shares in the offshore companies through which the stolen money was being routed. These entries changed over time, reflecting shifting percentages and changes in the offshore entities and intermediary companies.

109. The following accounts and account numbers were used, among others:

<u>Shell Company</u>	<u>Bank</u>	<u>Account Number</u>
Lysmata, Ltd. Gibraltar	Vereins Und Westbank AG Hamburg, Germany	D10296624
Tetra Finance Establishment 244 Madison Ave., NY, NY	Centrum AG Bank Liechtenstein	0173100001.000/840
Whalesdon Financial Co.Ltd. British Virgin Islands	Bank of Liechtenstein Liechtenstein	826.416.3-10.333.01
First Ten, S.A. Panama	Royal Bank of Scotland, Ltd. London, England	D 10928048
Belcan Finanz Anstalt Liechtenstein	Verwaltungs und Privatbank AG Liechtenstein	D18949981
Kudos Holdings, Ltd Veronos str. 36 Nicosia, Cyprus	Hellenic Bank Cyprus	41-07-1303260-01
Global de Source Connection Inc. New York, NY	Bank of Copenhagen Denmark	C0917
Hoverwood, Ltd.	Bank of Liechtenstein	401.302.6-10.333.01
Aspirations Holdings, Ltd Veronos str. 36 Nicosia, Cyprus	Bank of Cyprus	544711564

110. Other secret accounts were opened under the names Nashua Trading Co. (Panama), Linkvale Ltd. (Cyprus), Transgalino Holdings, Ltd., Manintesser Co. Ltd., Avalon Capital, and Inwesta Establishment (Liechtenstein).

111. As reflected in the computer entries and other documents, at various times, Renyi was paid through Tetra Finance (7.5% interest), Aspirations Holdings (12% interest), Transgalino Holdings, Ltd. (14.5% interest), Bekan Finanz Anstalt (10% interest), Lysmata Ltd. (10% interest), and Signal

International Corporation Ltd. (“Sigval”), which was incorporated in the British Virgin Islands on May 10, 1993, among others.

112. Gurfinkel, Galitzine, and Edwards also received percentage interests in various accounts, including Tetra Finance, Global De Source, Walesdon, Nashua, Lysmata, and Aspirations Holdings. Gurfinkel held a power of attorney for Tetra through which “Demand Notes” were issued payable to her. One such Demand Note, No. SP/2974, was made out to “Natasha Gurfinkel” in the amount of “US\$200,000,” and was stamped negotiated. There were numerous other payoffs Inkombank made through the same or similar means. Vinogradov described the payoff arrangements as part of the “mutual understanding” between Inkombank and BONY.

113. BONY also actively assisted its Russian co-conspirators in other ways as well. In numerous discussions from 1994 through early 1997, Renyi marketed to Vinogradov, and a host of other Russian correspondent bank clients, the idea of issuing American Depository Receipts (“ADRs”) for Inkombank in the U.S. financial markets. Renyi actively assisted Inkombank throughout the ADR registration process, including advising Inkombank on the ADR application to the Securities Exchange Commission. In early 1997, for example, Renyi met in Luxembourg with representatives of Inkombank and others to discuss issues related to ADR applications submitted by BONY on behalf of Inkombank and several other Russian entities.

114. In a 1996 conversation with a subordinate, Doudkin explained that the conspirators' control of BONY had given them full access to the Western banking structure. As Doudkin described it, Renyi, Gurfinkel, and Papageorge, who had smoothed the way for the development of the relationship, were “svoiyee,” “our folks,” “our people,” “one of us.” Doudkin also said that part of the

fraud that Inkombank had devised included the theft of foreign aid monies and funds from the European Bank for Reconstruction and Development.

115. Reflecting the importance of this relationship, Galitzine stated in a telephone call in April 1996 in response to an Inkombank stockholder's representative who accused Doudkin and Vinogradov of stealing the depositors' money: "I assume -- in fact I'm sure they are, certainly that was a very strong impression that we're under, but -- I mean, what to do with it I don't know. You understand, from a business point of view, they are a major correspondent of ours."

## **VII. SCHEMES WITH MOSCOW INTERNATIONAL BANK**

116. Beginning as early as the spring of 1996 and during the several years thereafter, Gurfinkel and Kotov met, on a series of occasions, with senior executives of the Moscow International Bank ("MIB") to devise and implement a series of complex illegal schemes designed to facilitate both capital flight out of the country and evasion of Russian taxes. Gurfinkel and Kotov reported directly to Renyi regarding the developing relationship. In addition, Renyi personally attended and actively participated in meetings regarding the structuring of the schemes and in which illegal sham transactions were specifically discussed. These transactions required the use of BONY accounts, BONY's EFT facilities, and BONY's ability to make the required confirmation of transactions to Russian regulatory authorities, including confirmations of non-existent transactions.

117. While these schemes followed similar structures, the conspirators tailored them over time to accommodate a variety of players and scenarios. Schemes entailing the sale of goods were designed principally around the need to create the appearance of a "foreign" purchaser of the goods, who ultimately would "resell" the goods back to a Russian company, thus creating a vehicle for the



movement of capital out of Russia in payment to the “foreign” company. In reality, all the various participants in the transaction were inter-related entities owned or controlled by the same principals, and the goods would never in fact leave Russia. Final payment would be effected through correspondent accounts at BONY, where the money would then be transferred through BONY to various offshore accounts owned or controlled by the principals.

118. The conspirators also designed variations on these schemes to permit money laundering through service contract shells as well. Major Russian banks, such as Menatep or Inkombank, would advise their Russian customers seeking to get capital out of Russia to enter into fictitious contracts for services that were never intended to be provided. These services included construction, travel out of the country, the reinsurance of risk abroad, the use of foreign copyrighted and trademarked brand and company names, and marketing and consulting services. The customer would then enter into a contract with a bogus -- but properly licensed -- foreign service company related to the bank through a series of foreign ownership structures. The foreign service company would then usually subcontract the service back to an affiliated Russian company. Payments under the contracts would be transferred to BONY through the Russian bank’s correspondent account, and then laundered to designated offshore accounts. The key term of these contracts was that payment to the Russian sub- contractors would be due only upon initiation of work, which never occurred.

119. To disguise their involvement in illicit schemes such as these, major Russian institutions created and then rapidly disbanded smaller, special-purpose banking entities. These small banks, created in support of illegal capital flight or money laundering schemes, were typically obvious shell companies having no independent existence apart from their “parent” banks. Not only were they

registered at the same address as their parent bank; they shared the same office space, as well as the same office staff, infrastructure, equipment, and even stationery. These entities also typically had no assets and only one client of record. Their repeated pattern of creation, immediate establishment of a correspondent relationship with BONY, and then disappearance within months was highly suspicious.

120. Two prominent examples of special-purpose smaller institutions created to handle sham transactions were Flamingo Bank, an entity related to Sobin Bank (which was actively engaged in questionable transfers of assets abroad in early 1999 until it came under official scrutiny), and Cylos Bank for Financial Security in Gibraltar, created by Most Bank in 1997 for foreign operations with Western banks, including BONY.

121. BONY clients were recruited from a wide array of institutions, companies, banks, and individuals in Russia, including the over 100 enterprises that make up what is frequently termed the “Mayor of Moscow’s holding company,” AFK Systema, GUTA Bank (another entity close to the Mayor of Moscow), Gazprombank (responsible for the foreign operations of Gazprom, Russia’s powerful natural gas monopoly), Alfa Bank, Bank of Moscow, Rosbank (the successor to Uneximbank, which defaulted on its obligations), Most Bank, SBS Agro, and Menatap. BONY was actively and consistently marketed as the “Western face” on these deals.

122. The relationship with MIB proved profitable to both parties, with BONY, for example, earning millions of dollars in wire transfer fees and interest income. Through such schemes, BONY and its Russian correspondents facilitated the illegal transfer of billions of dollars out of Russia and into suspect offshore accounts, in violation of U.S. law and Russian tax and currency regulations, such as Presidential Order #1163, the Currency-Operations Control Act #3615-1, and instructions by the

Central Bank of Russia. Renyi, Gurfinkel, and bank employees in the Moscow operation participated in multiple internal meetings in which the illegality of the capital flight structures was specifically discussed, including the sham nature of the transactions designed with MIB to route the money.

123. In early 1998, security personnel at BONY were informed by individuals associated with Russian law enforcement that Russian institutions with which the Bank was doing business were being investigated for violations of local Russian banking laws and suspected money laundering activities. Russian authorities at that time were actively investigating MDM-Bank and Sobin Bank -- both customers of BONY -- among other private Russian banks. BONY's security personnel undertook an inquiry with respect to the Russian operations. The inquiry raised concerns among the security personnel regarding the nature and volume of the Bank's Russian business and the relationships BONY had developed, including with MIB. These security personnel raised concerns directly with Renyi and other top management of the Bank, but, again, no action was taken. Customers in Russia were given assurances that the matter had been dealt with and business would continue as usual.

#### **VIII. EDWARDS' GUILTY PLEA**

124. Defendant Edwards admitted to perpetrating illegal schemes such as those described above through BONY between 1995 and September 1999. Edwards admitted participating in these schemes with her husband and others both within and outside of the Bank for personal gain and to develop more business for the Bank's Eastern European Division.

125. Specifically, on February 16, 2000, Edwards, her husband Peter Berlin, and three of the shell companies they controlled -- Benex, Becks, and Lowland -- pleaded guilty to a number of federal crimes, including conspiracy: (a) to launder money through international funds transfers in

violation of Russian law, defrauding the Russian Government of customs duties and tax revenues; (b) to make corrupt payments to members of BONY's Eastern European Division for their participation and facilitation of, and to earn and launder commissions from, the unlawful banking schemes; and (c) to conduct unauthorized and unregulated banking activities through accounts at BONY.

126. On March 28, 2000, Svetlana Kudryavtsev, another employee of the Bank's Eastern European Division, also pleaded guilty and admitted to receiving a monthly fee from Edwards to relay information and resolve any problems that arose in the Benex, Bece, and Lowland accounts.

127. Pursuant to the conspiracy, Edwards, Berlin, and their co-conspirators, who controlled correspondent accounts for such Russian banks as DKB, Sobin Bank, and Flamingo Bank, opened accounts at BONY on behalf of Benex and Bece in 1996, and on behalf of Lowland in 1998. By Edwards' own admission, these companies engaged in no lawful business and existed solely to facilitate the illegal transfer of funds as contemplated by the conspiracy.

128. BONY provided Benex, Bece, and Lowland with its Micro/Ca\$h-Register proprietary electronic banking software upon their opening accounts at the Bank. This software, which Edwards herself installed on the Benex computers, permitted the conspirators to transfer money freely and directly in and out of these accounts without any real-time intervention, monitoring, or oversight by the Bank.

129. Unfettered access to the Micro/Ca\$h-Register software greatly enhanced the conspirators' ability to launder money and illegally transfer funds. For example, DKB would transfer funds into the Benex account in bulk amounts on a daily or almost daily basis. DKB would then issue

daily instructions from its Moscow office directing employees in its Queens, New York office to transfer funds out of the Benex account to various third-party transferees throughout the world.

130. Pursuant to these schemes, Edwards and her co-conspirators established a banking network that illegally transmitted more than \$7 billion -- including \$300,000 in ransom money paid to secure the release of a Russian businessman kidnaped in Russia -- through accounts at BONY and then on to offshore accounts in bank secrecy jurisdictions throughout the world.

131. Edwards admitted that she and her husband received more than \$1.8 million in commissions pursuant to their participation in the conspiracy. These commissions, paid from BONY accounts, including Benex and DKB's correspondent account, were made directly into offshore bank accounts owned by Edwards and Berlin under the names Globestar Corporation, Highborough Services, and Sandbrook Ltd.

#### **IX. BONY'S AFFILIATIONS WITH SUSPECT BANKS IN OTHER COUNTRIES**

132. BONY can also be linked to at least two Hungarian banks, MKB Bank and CIB Bank, that have been the subject of FBI investigations concerning their possible ties to Semyon Mogilevich, the twice convicted felon with whom Gurfinkel had contacts (principally through her husband), and who is widely suspected of running an international crime syndicate. Specifically, both MKB Bank and CIB Bank were involved in circular transactions for substantial amounts that were listed on Inkombank's statement for its BONY accounts in November and December 1993.

133. In addition, law enforcement authorities in Latin America have investigated transactions whereby Mogilevich, or persons under his control, gave Gurfinkel wire transfer instructions to move funds through BONY for the Cali drug cartel through Brazilian banks to offshore companies.

134. Notably, BONY maintains more correspondent relationships with Colombian and Panamanian banks than any other U.S. bank. The U.S. State Department's Bureau for International Narcotics and Law Enforcement Affairs has identified Colombia and Panama as suspect countries for drug trafficking and money laundering.

135. BONY also has ties to suspect Ukrainian banks. The Ukrainian National Police has investigated several banks for engaging in capital flight, money laundering, and asset theft, including Gradobank, Ekspobank, Inko Bank, and Ukribank-Invest. Significantly, all four of these banks have maintained correspondent accounts with BONY and accounts at BONY offshore branches.

**X. OFFICIAL NOTIFICATION TO THE BOARD  
AND SUPPRESSION OF INQUIRY**

136. What began as a bid to grow a fee-based business in response to significant competition became a major source of Bank revenue. Processing fees encompassing wire transfer revenues rose from \$530 million in fiscal 1994 to over \$1 billion by fiscal 1997. Senior management of the Bank referred to the EFT Division as the "golden child" of the Bank, a "highly profitable sector" of BONY's business. According to a letter from Gurfinkel to Federal Reserve Board Chairman Alan Greenspan dated April 23, 1996, Inkombank was BONY's "largest and most active commercial relationship," and its largest generator of wire transfer fee income, "processing in excess of 250 payments per day."

137. As detailed below, in 1996, as the Eastern European business expanded, the Bank received multiple official warnings from the Russian Government of corruption, wrongdoing, asset theft, and bank fraud involving BONY's Russian correspondent banks. Beginning in 1995, and continuing

through 1996 and thereafter, multiple investigatory arms of the Russian government, including the Office of the Prosecutor General and the Department of Economic Crimes of the FSB, undertook widespread investigations of hundreds of Russian banks, including the top tier of the largest private banking institutions. These authorities made inquiries to BONY, investigating criminal infiltration of the Russian banking system and the use of Russian banks as a conduit for massive theft of bank assets. These investigations included inquiries regarding BONY's Turkish office, and uncovered BONY's active handling of funds for Russian organized crime.

138. In 1996, Russian Central Bank officials notified senior BONY executives of specific ongoing investigations of several of their correspondent bank customers for illegal activity, including money laundering. BONY senior management undertook no internal investigation of the wrongdoing to which they had been alerted.

139. Separately, in April 1996, Vladimir Postyshev, the Director of the Russian Ministry of Justice's Institute of Legal Policy and Implementation, notified the Board, by a letter addressed to Bacot as Chairman of the Board and CEO of the Bank, of official Russian efforts to investigate wrongdoing involving Inkombank and the Bank, attaching a summary of the results of the Central Bank of Russia's audit of Inkombank. Postyshev notified Bacot that prior inquiries to Gurfinkel and Renyi had been ignored. Postyshev advised Bacot that "Inkombank appeared to be involved with transactions that would amount to the commission of a number of serious infractions of Russian commercial and possibly penal statutes," and that Inkombank had not cooperated with the inquiry. Postyshev also advised Bacot:

As [The Bank of New York] is Inkombank's primary correspondent bank in the US, you possess the documentation which is most needed in the current probe. Before escalating this matter to your attention we attempted to contact Ms. Natasha Gurfinkel, your senior Vice President in charge of Eastern European Division, and also BONY's President, Mr. Thomas Renyi. Regrettably, we have not obtained the desired cooperation from your colleagues and we are now compelled to seek your personal intervention.

140. In response to this letter, neither Bacot nor any of the other director defendants took any action to protect the Bank from its Russian correspondents or from Renyi and Gurfinkel. In fact, no one from the Board or the Bank even bothered to reply to Mr. Postyshev.

141. In or about June 1996, another official of the Ministry of Justice of the Russian Federation notified the Board of the findings of the Russian Central Bank investigation. Russian officials provided the Board with a 164-page audit examination report of Inkombank (the "CBR Report"), which set forth detailed analysis of the correspondent's accounts and operations and the Russian Central Bank's findings of pervasive wrongdoing.

142. These findings, as the Board knew or recklessly disregarded, supplied evidence of money laundering activity on a widespread scale throughout one of BONY's major Russian correspondents, and should have spurred an investigation into Inkombank's extensive wire transfer operations, at that time more than \$4 billion per month. The report detailed findings of permanently high levels of unsecured credit, interest-free credit, fraudulent transactions, multiple extensions of defaulted loans with no accrual of interest, and huge U.S. dollar account discrepancies.

143. The CBR Report detailed improprieties in Inkombank's Charter Fund, the Balance Sheet account that compiles and accounts for the purchase of the bank's own shares by its



shareholders. It found internal accounting misrepresentations, including violations of laws concerning payments for registered stock, improper accounting for reserve funds and balance sheet items, overstatement of profits and understatement of expenses, problematic credit policies (including the granting of interest-free and unsecured loans), violation of laws governing accounting for bad debts, and improper accounting for currency exchange transactions. In addition, the CBR Report criticized Inkombank management for its failure to cooperate in the investigation.

144. The CBR Report described Inkombank activity that violated Russian Penal Code, including the failure to repatriate hard currency funds (Article 193), tax evasion (Article 199), and securities fraud (Article 185). The CBR Report also stated: “The investigation has revealed a systematic non-compliance with the accounting rules and unjustifiable credits of large amounts [of money] to the accounts of some share holders.” In summary, the Central Bank’s June 7, 1996 Audit Report on Inkombank found “[n]umerous inaccuracies and violations of the law in the activity of Inkombank are such that their negative influence upon financial situation of the Bank has deep and lasting nature and cannot resolve itself by a passage of a few months.”

145. The CBR Report specifically identified several of the offshore companies plaintiffs here allege participated in the “spinning around” and other money laundering schemes. For example, Inkombank repeatedly sold shares to Inwesta Establishment and Transgalino Holdings, Ltd. in violation of Russia’s hard currency and control regulations. The CBR Report noted at least one \$10 million transaction for which the Central Bank could find no proof Inwesta actually paid for the stock. Similarly, the CBR Report found that Inkombank made an improper multimillion dollar loan to Hoverwood. Questioning the actual status and true amount past due on the loan, the CBR Report

noted that “there is no way to follow the history of extension and existence of the loan due to unavailability of any documents, confirming either the existence of the loan or the company.” The CBR Report further cited Tetra Finance Establishment and Sigval International for their involvement in suspect share repurchases by Inkombank at inflated prices. Specifically, Inkombank repurchased shares from Sigval for more than 28.4 million rubles on August 10, 1995, and paid more than 1.4 billion rubles to repurchase Inkombank shares from Tetra Finance on September 20, 1995. The CBR Report also found that Inkombank violated Central Bank formulation and capitalization regulations in a suspect \$2.4 million hard currency sale of Inkombank stock to Aspirations Holdings. As alleged herein, Inwesta, Hoverwood, Tetra Finance, Sigval, and Aspirations Holdings, among other tax haven companies, were used to pay off global custody conspirators, including senior BONY officers.

146. The CBR Report also described Inkombank’s practice of assigning past-due debts to “non-resident companies” in exchange for suspect promissory notes. Specifically, the CBR Report described transactions in which Russian companies, including Moscow Watch Factory and Neftegas, defaulted on multimillion dollar loans extended by Inkombank. Inkombank then assigned these past due agreements to two offshore companies, Overseas Holdings LLC and Mathur Ltd., in exchange for what the Central Bank dubbed “rather dubious assets” in the form of unsecured and interest-free promissory notes carried by Inkombank as worth more than \$57 million.

147. In November 1996, a stockholder of Inkombank notified Papageorge by telephone, and the Board again in writing, of the Central Bank audit, referring specifically in a cover letter to the “incestuous” relationship between senior BONY and Inkombank managers.

148. Notwithstanding all of this information -- and innumerable press reports of corruption in the Russian banking industry -- the Bank did not back off its expansion of its Eastern European operations. Indeed, the volume of BONY's Eastern European wire transaction financing and ADR activity exploded in 1996 and 1997. By this time, BONY had established hundreds of Russian bank correspondent relationships, routing billions of dollars for multiple banks in wire transfers to offshore companies worldwide. In early 1997, BONY made a joint application with Menatep for a banking license in Russia. In March 1997, members of the Bank's Executive Committee, including defendants Bacot, Papageorge, Barth, Rein, and Luke, traveled to Russia with Rappaport associates from BONY-IMB to negotiate with Russian regulators regarding the application.

149. Apart from the multiple warnings, the Board and the Bank received, federal, Congressional, press, trade, and security warnings which grew more alarming. In March 1995, the Treasury Department issued its "Strategy Report: Concerns for 1995 and Beyond," which warned: "Russia has more than 3,000 banks, and many of them are front companies for money laundering and/or efforts to buy legitimate businesses." On June 8, 1995, the Financial Action Task Force reported: "There are clearly large amounts of criminal proceeds coming out of Russia and Eastern Europe for laundering and investment in the West. . . . In terms of the outflow of money from Russia, a significant amount is still being exported in cash and taken for deposit by individuals at banks in major financial centres."

150. Other banks certainly knew the risks of doing business in Russia. A Citibank vice president at the Thirteenth International Symposium on Economic Crime in September 1995 stated: "I tell my bankers that when a Russian company wants to open an account, there's a 50/50 chance it's

mob money. . . . We don't do retail banking in Russia. We deal only with six banks in the whole country -- out of more than 2,000. When someone from a high risk country or business wants to do business with us, we will check them out and will often turn them away."

151. In October 1996, FBI director Louis Freeh, in testimony before Congress, summarized the gravity of the government's concerns about Russia, stating: "Russian organized crime is the greatest long-term threat to the security of the United States."

152. Despite this barrage of alarming information, the Bank failed to initiate a full compliance review and examination. Instead, reports of suspicious activity were suppressed from the top of the Bank down, personnel were demoted, and any notion of independent oversight and compliance was disregarded.

153. On more than one occasion, BONY's New York operations investigated and raised serious concerns with regard to the Russian unit. Their concerns -- triggered by both the nature and extraordinarily high volume of money transferring transactions -- raised the specter of illegal capital flight out of Russia in violation of Russian and U.S. laws. These concerns resulted in oral and written inquiries between BONY's New York and Moscow offices. However, no actions were ever taken to control or rein in the Eastern European Division.

154. BONY's Corporate Funds Control ("CFC") Section -- which was responsible for oversight of all international EFTs -- observed and recognized suspicious activities in the Eastern European Division involving EFTs between BONY and such Russian correspondent banks as Inkombank, Rossisky Credit, DKB, Moscow International Bank, Moscow Business Bank, Sobin Bank, Tokobank, and others. Particularly suspicious was regular "circular" EFT activity among these

Russian banks. For example, Inkombank would effect a \$10 million EFT transaction to Tokobank. On the same day, Tokobank would send two \$5 million EFTs to Sobin Bank, which would then send several EFTs totaling \$10 million back to Inkombank. All of these transactions were inter-bank transfers, occurring within accounts at BONY. These transactions were traceable because they all bore the same original reference number, occurred on the same day, and had the same “ordering” customers.

155. Other suspicious activity noticed included: (a) numerous suspect EFTs from accounts held at BONY for Russian government agencies to offshore international banking facilities or to offshore branches of the same government agencies; (b) the “pooling” of numerous EFTs in concentration accounts for delivery at the end of a business day, making it very difficult for bank oversight personnel to closely scrutinize the transactions; and (c) repetitive EFTs. “Monthly Managers Reports,” evincing the foregoing suspicious activity, were distributed to the management of the EFT Division.

156. In 1996, a Section Manager of BONY’s CFC Section raised significant concerns regarding his suspicions of money laundering activity in the accounts of twelve of BONY’s largest Russian correspondent banking customers. This Section Manager also observed the same questionable conduct described above, including: (a) repetitive wire transfers -- regularly scheduled EFTs by specific customers for similar amounts; (b) apparent collusion among multiple Russian correspondent banks in pooling money into concentration accounts at BONY, thereby building up a large amount that was then transferred in a flurry of EFTs all at once, making it more difficult to review and monitor the

transactions; and (c) extraordinary volumes of EFT activity between BONY and BONY-IMB. The Section Manager reported this conduct, but no corrective actions were ever taken.

157. Likewise, when the Department Manager in BONY's EFT Division attempted to place account limits and restrictions on various Russian accounts, Gurfinkel complained through the chain of command at BONY, and he was fired.

158. At no time was there any independent transactional testing of the Russian account activity, despite the tremendous number and size of offshore transfers. EFT personnel were specifically instructed by their superiors that Gurfinkel had ultimate authority over the Russian accounts to such an extent that Bank procedure could be circumvented on her instructions. Internal auditors were sent into the EFT Division, but their examination was limited to "desk procedures." There was no analysis of specific data to identify problem accounts.

159. As EFT personnel were told, Gurfinkel was responsible for acquiring this very profitable Russian business and it was not to be interfered with. The Bank had hundreds of Russian bank correspondent relationships and, as management in EFT told their staff, the Bank could charge extremely high fees, up to \$60 per transaction, including inquiries and confirmations, because no other Western bank wanted to do business in Russia.

160. Despite specific federal regulations, and the Board's direct responsibility for their enforcement, the Bank conducted no training in the EFT Division relating to the requirement under federal law to recognize and file Suspicious Activity Reports ("SARs").

161. In the face of the expansion of the Russian account activity in 1996, and the repeated warnings and inquiries of Russian investigators to senior management and the Board, the Bank

continued to market “Micro/Ca\$h-Register,” proprietary computer software that enabled the customer to control electronic transfers directly from its own computer. As early as 1995, the Federal Reserve issued specific warnings with respect to “Payable Through Accounts.” Noting that some U.S. banks conducted no due diligence on foreign customers who were being given access to payable through accounts, the Federal Reserve stated in a Guidance Letter: “Board staff is concerned that the use of payable through accounts by foreign banks at U.S. banking entities may facilitate unsafe and unsound banking practices and other misconduct, including money laundering and related criminal activities.” Even in the face of such warnings, BONY actively marketed Micro/Ca\$h-Register -- triggering the same payable through account concerns -- to its Russian bank correspondents.

162. Contrary to Renyi’s testimony to Congress, in which he lauded BONY’s alleged implementation and strict adherence to Know Your Customer policies, the Bank installed Micro/Ca\$h-Register throughout its Eastern European banking customer base without any adequate Bank Secrecy Act and anti-money laundering controls.

163. Throughout 1996 and 1997, the Bank paid incentive bonuses in its EFT Division based on increased transaction volume. The Funds Transfer Division Manager of the EFT Division openly stated in January 1997 that many of BONY’s Russian accounts were held by Russian criminals, but that he was willing to overlook that fact because the Bank was making so much money on the business.

164. The Board and senior management continued to receive multiple inquiries from Russian governmental authorities in connection with widespread Russian governmental bank investigations. Between 1996 and 1998, the Russian Central Bank revoked the licenses of hundreds of Russian banks, including at least seven of the largest Russian banking institutions, each having a major correspondent

relationship at BONY. Tveruniversal Bank, Tokobank, Rossisky Creditbank, Uneximbank, Sobin Bank, Mostbank, and Menatep, among others, lost their licenses or were faced with liquidation or restructuring as the result of massive bank asset theft schemes.

165. Yet, billions of dollars continued to course through BONY's wire transfer system to multiple offshore entities. No internal investigation was launched. As detailed below, the Board, which had direct responsibility under federal law, regulations, and guidelines for the oversight and monitoring of the design, implementation, and enforcement of effective compliance procedures, directed no inquiry despite specific and repeated notice to it that the Bank's wire transfer system was a conduit for money laundering, bank theft, tax evasion, and illegal currency transfers.

\* \* \*

166. In August 1998, Republic Bank of New York, pursuant to the Bank Secrecy Act, filed a Suspicious Activity Report with the Treasury Department, having detected unusual volumes in account transfers to Russian accounts at BONY. The FBI contacted BONY and conducted an ongoing review of three commercial BONY accounts involving Russian nationals, Benex, Beccs, and Torfinex. Executives within the Bank immediately acted to cover their trail.

167. A manager who had been demoted in 1997 for attempting to alert senior executives of money-laundering activity was told in September 1998 to draft a training manual and computer procedures for the EFT Division. The manager wrote a lengthy memorandum detailing the circumvention of fund transfer procedures.

168. At no time during this FBI review did Renyi, other senior management, or the Board, with its independent compliance obligations, inform the FBI, the Federal Reserve, or New York State



Banking regulators of the scope of the potential wrongdoing beyond the accounts specifically under investigation.

169. In September 1999, shortly after the government's ongoing investigation into money laundering through Benex and other accounts in BONY's Eastern European Division became publicly known, but more than a year after the Bank had been notified of the investigation, the director defendants caused the Bank to form an Anti-Money Laundering Oversight Committee ("AMLOC"), which then purported to conduct an investigation into the activities of certain Russian banks with correspondent accounts at BONY.

170. In keeping with the Bank's consistent failure to adequately monitor and oversee the operations of the Eastern European Division, not only did the AMLOC limit its review to the activities of only a fraction of the more than 2,000 Russian banks which held correspondent accounts at BONY, the Bank then ignored the AMLOC's findings. For example, a September 23, 1999 memorandum from AMLOC member Jessica Goodwin noted transfers by the Russian bank, Alfa Bank, to Benex (which Lucy Edwards and Peter Berlin admitted did no legitimate business) through Alfa's correspondent account at BONY. However, a January 21, 2000 Call Report, reflecting a visit to Alfa Bank by Griffith and another BONY executive, reported the President of Alfa's contradictory statement that Alfa had not executed any payments from or to Benex. The Call Report, stating that "Alfa Bank has been BNY's client since 1993 and the latest developments have not had a negative effect on the longstanding relationship," recommended that BONY consider establishing \$7 million in credit facilities for Alfa Bank.

171. In all, the AMLOC's investigations resulted in the closure of the correspondent accounts of only a few, minor Russian banks, which, in the words of the Committee, "displayed unusual activity." Other larger banks, however, including Alfa Bank and Moscow International Bank, have been permitted to maintain their correspondent money-transferring accounts at BONY notwithstanding AMLOC findings of suspicious activity.

172. In addition to the foregoing, the Board has been notified of ongoing investigations of the very serious matters alleged herein and, nevertheless, has taken no action to correct or redress such matters.

173. On September 22, 1999, Renyi testified before the Banking Committee of the United States House of Representatives, affirmatively misleading Congress as to the activities of the Bank and its Russian correspondents. Renyi falsely testified that no one at the management level in the Bank knew of Russian money laundering through the Bank. Renyi falsely blamed BONY's problems on mid-level employees who, he said, failed to properly raise their concerns with the Bank's Russian business through the chain of command. Renyi falsely testified that the Bank had a "Know Your Customer" policy that was carried out in the case of the Bank's Russian correspondents. Renyi also falsely testified: "[T]here has not been any involvement by Mr. Rappaport with regard to our Russian efforts. I think, as it was reported in the press, he assisted us in establishing our presence in Russia; that, in fact, was simply us being able to sublet some of his space that his bank, the Inter Maritime Bank, has in Moscow for one year period. It does not go beyond that."

174. Renyi also misled Congress when he testified that the Bank's efforts to obtain U.S. banking licenses for its Russian correspondents were made only on behalf of Russian banks that the

Bank was “comfortable with.” To the contrary, Renyi caused the Bank to vouch for Russian banks that he knew, or recklessly disregarded, were involved in asset theft and other illegal conduct.

175. Renyi further misled Congress by testifying that the Bank had few, if any, correspondent banking relationships with entities domiciled in Antigua, Cyprus, and the Cayman Islands. The Bank had multiple such relationships and routinely transferred funds to those jurisdictions through its Russian correspondents as part of the unlawful schemes described herein. Renyi himself conspired to obtain an interest in a secret account at the Bank of Cyprus.

176. The whole of Renyi’s testimony was a whitewash. Renyi concluded his testimony with as cynical a statement as can be imagined: proposals for how Congress could improve U.S. laws governing international funds transfer.

177. After Renyi’s testimony to Congress, BONY took steps to assure its Russian co-conspirators that, despite any investigation into BONY’s correspondent banking business, it would be “business as usual.” In November 1999, during a regularly scheduled gathering of Russian and foreign bank representatives and Russian government officials at a Moscow hotel, a separate meeting was held between major Russian bank customers, including Moscow International Bank, and certain Western bank representatives. Alexei Kouznetsov and Aleksandr Turbanov, formerly of Inkombank, chaired the meeting. Also present were Sergei Kotov and Bob Klein. At the meeting, Kotov and Kouznetsov downplayed the media “scandal” involving money laundering at BONY, and assured customers that the unfettered movement of funds through BONY using the Micro/Ca\$h-Register system would not be affected.

178. After that meeting, at a cocktail party, the same individuals discussed with BONY representatives, including Kotov, the assurances that the flow of funds through BONY would continue.

#### **XI. THE BANK'S DISREGARD OF ITS OWN GUIDELINES**

179. In December 1994, the Bank adopted its Anti-Money Laundering Policy and Procedures Guide (the “Anti-Money Laundering Policy”). This document, which set forth the global anti-money laundering policy and procedures for the Company and its majority owned subsidiaries, including the Bank, and its foreign branches and offices, was incorporated into the Bank’s Administrative Guide.

180. The Anti-Money Laundering Policy specifically listed as “High Risk Geographic Areas,” Russia and other former Soviet Republics, as well as Cyprus, Liechtenstein, the Channel Islands, and a number of other countries where the Bank and its Russian customers regularly did business. In addition, BONY’s Anti-Money Laundering Policy also identified money transmitting businesses a “high risk industry.”

181. Despite these clear triggers, shockingly, the director defendants never ensured that BONY’s Eastern European Division -- operations highly at risk of exposure to money laundering activity -- implemented any policies and procedures to effect the Bank’s Anti-Money Laundering Policy.

182. Notwithstanding the Board's clear recognition of the high risks of doing business in Russia, the director defendants took no steps to ensure the implementation of an effective anti-money laundering policy at the Bank. This failure was made more egregious in the face of the repeated red

flags to the Board regarding the endemic money laundering activities occurring at the Bank detailed herein.

## **XII. DERIVATIVE ALLEGATIONS**

183. Plaintiffs bring this action derivatively pursuant to Rule 23.1 of the Federal Rules of Civil Procedure on behalf and for the benefit of the Company and BONY to remedy the wrongdoing alleged herein.

184. Plaintiffs will fairly and adequately represent the interests of the Company and BONY and have retained competent counsel, experienced in derivative litigation, to enforce and prosecute this action.

## **XIII. DEFENDANTS' SPECIFIC DUTIES AS DIRECTORS OF A BANK COMPANY AND A BANK**

185. As directors of New York corporations, the director defendants were charged with performing their duties in good faith and with the degree of care that an ordinarily prudent person serving as a director of a bank holding company and bank doing substantial business in Russia -- especially with respect to the highly risky wire transfer business, the proprietary Micro/Ca\$h-Register product line and Russian correspondent accounts specified herein -- would use under similar circumstances. In performing their duties, the director defendants were required to reasonably inform themselves before making a business judgment. The director defendants were charged with a duty of reasonable inquiry and cannot exempt themselves from liability by failing to do more than passively rubber-stamp the decisions of the Company's and BONY's senior management.

186. The director defendants owed the Company and BONY fiduciary duties of loyalty to act in the best interests of the Bank and the Company and their shareholders and to refrain from self-dealing. The director defendants were thus obligated to refrain from acting to benefit themselves at the expense and to the detriment of the Company and BONY.

187. In addition to their common law fiduciary duties, federal statutes, regulations and guidelines have, at all times relevant to the allegations herein, imposed heightened obligations upon the director defendants. These legal requirements, embodied in the Bank Secrecy Act, the Federal Reserve Guidelines for Rating Risk Management, the federal money laundering statutes, and other federal and state laws and regulations include, but are not limited to the following:

a. The Bank Secrecy Act, 31 U.S.C. §§ 5318 (a)(2) & (h)(1), and its implementing regulations, 12 C.F.R. § 208.63, required the director defendants to ensure that BONY established a rigorous compliance system over its substantial wire transfer and other businesses in Russia. The director defendants were thus required by law to receive information and reports, actively inquire and investigate, and to install and oversee an independent monitoring function to ensure that the compliance system was implemented and effective.

b. The Bank Secrecy Act, and its implementing regulations, specified the scope of the Bank Secrecy Act compliance program the director defendants were obligated to approve, implement, and oversee. Specifically, the director defendants were required to approve a written compliance program requiring BONY, at a minimum:

(1) to establish a system of internal controls to ensure on-going compliance by the Bank with the Bank Secrecy Act, the legislative centerpiece of the United States' effort against money laundering;

(2) to provide for independent compliance testing;

(3) to identify the individual or individuals responsible for coordinating and monitoring the Bank's day to day compliance; and

(4) to provide training for appropriate personnel.

c. Critically, the Bank Secrecy Act and the regulations promulgated thereunder, 12 C.F.R. §§208.62(h) and (i), also imposed direct obligations on the director defendants to assure the timely filing of Suspicious Activity Reports -- key enforcement and compliance tools against money laundering and suspicious offshore activity.

d. The Federal Reserve Guidelines for Rating Risk Management at State Member Banks and Bank Holding Companies obligated the director defendants to protect the safety and soundness of the Bank. To fulfill this duty, the director defendants were required:

(1) to identify and have a clear understanding and working knowledge of the types of risks inherent in the institution's activities and make appropriate efforts to remain informed about these risks as financial markets, risk management practices, and the institution's activities evolve;

(2) to review and approve appropriate policies to limit risks inherent in the institution's lending, investing, trading, trust, fiduciary, and other significant activities or products;

(3) to be familiar with and use adequate record keeping and reporting systems to measure and monitor the major sources of risk to the organization; and

(4) to review and approve risk exposure limits to conform with any changes in the institution's strategies, address new products, and react to changes in market conditions.

Bank regulators assigned these obligations to the Board specifically to protect the Bank from:

(1) "Reputational Risk" meaning the "potential that negative publicity regarding an institution's business practices, whether true or not, will cause a decline in the customer base, costly litigation, or revenue reductions;" and (2) "Legal Risk" meaning the "potential that lawsuits or adverse judgments can disrupt or otherwise negatively affect the operations or condition of a banking institution."

188. In addition, the director defendants serving on the Company's Audit Committee including, during the relevant period, Bacot, Barth, Biondi, Chaney, Luke, Miller, Rein, and Richardson were charged with specific oversight responsibilities including:

reviewing examinations made by the regulatory authorities, reviewing and approving the program of the internal auditor . . . reviewing . . . the soundness of internal accounting controls, and reporting its findings to the Board of Directors.

189. As detailed herein, the director defendants breached these responsibilities and obligations.

#### **XIV. DEMAND IS FUTILE**



190. Plaintiffs incorporate by reference and reallege each and every allegation stated above as if fully set forth herein. Plaintiffs did not make a demand on the Board to bring this action because such demand would be futile given the facts as alleged herein and, therefore, such a demand is excused.

191. As summarized below and specified herein, demand is excused because this Amended Verified Shareholder Derivative Complaint alleges with particularity that a majority of the members of the current Board intentionally or recklessly either: (1) directly participated in the wrongs alleged herein to benefit themselves at the expense of the Company and BONY; (2) ignored the clear risks of doing substantial wire transfer and other similar business with Russian correspondent banks; (3) failed to adopt reasonable internal controls and independent monitoring systems over BONY's wire transfer business; or (4) ignored repeated specific warnings that BONY's system of internal controls over its wire transfer business was a sham and that BONY was aiding or participating in its customers' illegal banking activity.

192. As set forth herein, Renyi directly participated in numerous illegal schemes to enrich himself at the expense and to the detriment of BONY and the Company. Renyi's blatant violations of his fiduciary duties of care and loyalty render him incapable of considering a demand in respect to his direct personal interest in the conduct and transactions challenged herein. Indeed, Renyi's conduct was so facially egregious that it could not have been the product of sound business judgment.

193. As detailed above, certain of the director defendants, including, Bacot, Renyi, Griffith, Malone, Barth, Chaney, Luke, Rein, Miller, Kogan, and Hassell approved the restructuring of BONY's European Division, the creation of an Eastern European Division, and/or BONY's subsequent rapid and unchecked expansion into the Russian banking market beginning in 1992 and

continuing thereafter. In approving this blind rush into Russia, these director defendants failed to fully inform themselves to the extent reasonably appropriate under the circumstances as they ignored multiple, specific warnings issued by governmental, regulatory, and private security sources that the Russian banking system was being infiltrated by organized crime -- a fact recognized by other banks in the United States, which began to scale down their Russian operations. These director defendants failed to implement and enforce an adequate compliance system or to adequately oversee the development of the business in derogation of their duties to implement compliance controls.

194. Beginning at least as early as 1993, Renyi, along with other senior BONY officers and employees, actively participated in, and profited from, illegal schemes with principals of BONY's Russian correspondent banks to siphon money and other assets from Russian banks.

195. The Board, including the director defendants Bacot, Renyi, Griffith, Malone, Barth, Chaney, Luke, Rein, Miller, Kogan, Biondi, and Hassell failed to reasonably inquire into and monitor the activities of the Bank's Eastern European Division, failed to protect the Bank from the reputational and legal risks the Bank's Russian business presented, failed to take any adequate corrective measures, and failed to ensure that the Bank's legally mandated compliance program was effective at detecting, monitoring, and reporting misconduct by Bank executives and customers.

196. The Board failed to exercise its duties of care notwithstanding specific notice of wrongdoing within the Bank and on the part of its Russian customers, the presence of the very indicia of suspicious activity identified by federal regulators, and increasingly alarming warnings from governmental, intelligence, and private security forces and the press concerning the penetration of corruption and criminal activity within the Russian banking system.

197. As set forth above, by 1996, the director defendants Bacot, Renyi, Griffith, Malone, Barth, Chaney, Luke, Rein, Miller, Kogan, and Biondi, each of whom then sat on the Board, received specific warnings about wrongdoing within the Bank's Russian correspondent network. Russian government officials notified senior BONY executives that major BONY correspondent Russian bank customers were engaged in corruption, theft, and fraud. Despite all of these specific warnings, the director defendants were unwilling to interfere with the ever-increasing profitability of its Russian operation.

198. The director defendants failed to comply with their obligations to ensure that BONY had established procedures to monitor its compliance with federal law including the Bank Secrecy Act and to protect the safety and soundness of the Bank. Multiple and widespread blatant indicia of money laundering identified in the Federal Reserve's Bank Secrecy Act Examination Manual, went unheeded, including, as described herein:

- (1) the frequent overrides of established approval authority and other internal controls; and
- (2) customers' usage of wire transfers to move large amounts of money to bank secrecy haven countries such as Antigua, the Cayman Islands, and Liechtenstein.

199. Instead, the director defendants permitted the Russian expansion, marketing EFT software to the Bank's Russian customers, despite specific warnings from the Federal Reserve over a year earlier that such systems were inherently risky and could be misused for money laundering.

200. Each of the director defendants knew that the BONY officers and employees in its EFT division earned substantial bonuses based on the volume of business, and thus had little motive to

comply with any controls that would have threatened BONY's relationships with its Russian correspondent banks. Gurfinkel and Edwards received promotions to prestigious and high paying positions in the Bank's London office, defendant Renyi was promoted to President of the Bank, and the salary and bonuses of director defendants Bacot, Renyi, Hassell, Griffith, and Papageorge increased dramatically along with the Bank's Russian business.

201. The director defendants' conduct described herein and summarized above could not have been the product of legitimate business judgments as it was based on intentional, reckless and self-interested misconduct. Thus, none of the director defendants, who constitute a majority of the current boards of directors of the Company and BONY, can claim exculpation from their violations of duty pursuant to the Company's or BONY's charter or compliance program. As a majority of the directors on the Board face a substantial likelihood of liability, they are self-interested in the transactions challenged herein and cannot be presumed to be capable of exercising independent and disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company or BONY. Accordingly, demand is excused as being futile.

### **FIRST CLAIM FOR RELIEF**

#### **(Breach of Fiduciary Duty)**

202. Plaintiffs incorporate by reference and reallege each and every allegation as set forth above as if fully set forth herein.

203. Each defendant owed the Bank, the Company, and its shareholders the highest duties of loyalty, honesty, and care in conducting their affairs, including the heightened duties owed by bank and bank holding company directors under applicable Federal and state statutes, rules and regulations.

204. At a minimum, to discharge these duties, each defendant should have exercised reasonable and prudent supervision over the management, policies, practices, controls and financial affairs of the Bank and the Company. By virtue of these obligations, each defendant was required, inter alia:

a. to exercise reasonable control and supervision over the officers, employees, agents, business, and operations of the Bank and the Company;

b. to be and remain informed as to how the Bank and the Company were operating and, upon receiving notice or information of an imprudent, questionable or unsound decision, condition, or practice, make reasonable inquiry and, if necessary, make all reasonable remedial efforts; and

c. to conduct the affairs of the Bank and the Company to provide the highest quality services and maximize the profitability of the Bank and the Company for the benefit of its shareholders.

205. The defendants knowingly, intentionally, or recklessly breached their fiduciary duties by, inter alia: (a) aggressively deciding to pursue Russian business without regard to the known, evident risks of doing so and without implementing reasonable safeguards to protect the Bank and the Company; (b) failing to conduct appropriate due diligence of the Bank's Russian customers; (c) failing to establish reasonable procedures and controls to supervise the Bank's officers and employees operating its Russian business; (d) failing to establish an adequate and independent system of monitoring and control of the Bank's correspondent wire transfer business, despite numerous public and private warnings made and/or known to them that doing business in Russia was extremely risky and that the

Bank's own customers were engaged in illegal activity; and, (e) in the case of defendants Renyi, Edwards, Kotov, and Galitzine, directly engaging in illegal activity to benefit themselves at the expense of the Bank, the Company and its shareholders.

206. The defendants, by their knowing, intentional, or reckless misconduct, caused the Bank and the Company to waste their assets, expend massive corporate funds, suffer credit losses, and impair their reputation and credibility for no legitimate business purpose, as a result of which the Bank and the Company have been and continue to be substantially damaged. As a direct result of defendants' wrongdoing, the Bank and the Company have lost substantial amounts of business and good will. Further, the Bank and the Company have been, and are exposed to, substantial liability in connection with civil lawsuits, criminal, and administrative investigations and other proceedings.

207. Accordingly, plaintiffs, as shareholders of the Company and thus the Bank, seek, on behalf of those entities, monetary damages, injunctive remedies, and other forms of equitable relief.

## **SECOND CLAIM FOR RELIEF**

### **(Indemnification)**

208. Plaintiffs incorporate by reference and reallege each and every allegation set forth above as if fully set forth herein.

209. As alleged herein, the defendants, acting as officers and/or directors of the Bank and the Company, and therefore as their agents, breached their fiduciary duties to the Bank, the Company, and its shareholders.

210. The Bank, and the Company have suffered significant and substantial injury as direct result of the defendants' knowing, intentional, or reckless breaches of their fiduciary duties as alleged

herein. Plaintiffs, as shareholders of the Company and thus the Bank, seek relief from the defendants on behalf of Bank and the Company on the theory of indemnity to the extent that the Bank and/or the Company is found liable for the defendants' violations of their fiduciary duties.

**WHEREFORE**, plaintiffs pray for judgment as follows:

- A. Declaring that the defendants have breached their fiduciary duties as alleged herein;
- B. Directing defendants, jointly and severally, to account for all losses and/or damages sustained by the Bank and/or the Company by reason of the acts and omissions complained of herein;
- C. Requiring defendants to remit to the Bank and the Company all of their salaries and other compensation received for the periods when they breached their duties;
- D. Ordering that defendants and those under their supervision and control refrain from further violations as are alleged herein and to implement corrective measures, including a system of internal controls and procedures sufficient to prevent the repetition of the acts complained of herein, that will rectify all such wrongs as have been committed and prevent their recurrence;
- E. Awarding pre-judgment and post-judgment interest as allowed by law;
- F. Awarding plaintiffs attorneys' fees, expert fees, and other costs and expenses; and
- G. Granting such other and further relief as this Court may deem just and proper.



Dated: September 1, 2000  
New York, New York

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