UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74816 / April 27, 2015

ACCOUNTING AND AUDITING ENFORCEMENT ACT
Release No. 3652 / April 27, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16513

In the Matter of

Donald J. Torbert, CPA,
and
Nicole S. Stokes, CPA,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Donald J. Torbert and Nicole S. Stokes (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

Summary

1. This matter involves the role of Donald J. Torbert ("Torbert") and Nicole S. Stokes ("Stokes") in violations of the reporting, books and records, internal controls and certification provisions relating to The Park Avenue Bank (the "Bank"), the wholly-owned subsidiary of PAB Bankshares, Inc. ("PAB" or the "Company"), during the period ended June 30, 2009. The violations resulted from the Bank understating its loan losses for three large loans that quarter, and as a result reporting positive net income of $342,000, despite reporting quarterly losses since September 30, 2008. Had PAB properly recognized loan losses for any of the three loans, it would have continued to report losses.

2. As a result of this conduct, PAB violated the reporting, books and records and internal control provisions of the Exchange Act. Torbert, the Bank's former Chief Executive Officer, and Stokes, the former Chief Financial Officer, each caused these violations and in addition, Torbert and Stokes violated the Exchange Act's certification requirements relating to PAB's Form 10-Q for the second quarter 2009.

Respondents

3. **Donald J. ("Jay") Torbert, Jr.,** age 42, is a resident of St. Simons Island, Georgia. During the relevant period, he was President and Chief Executive Officer of PAB and the Bank, a position he held from April 2009 until the Bank was closed in April 2011. He previously served as Executive Vice President, Chief Financial Officer and Treasurer of the Company and the Bank from August 2001 to April 2009. Torbert is a certified public accountant licensed in Georgia.

4. **Nicole S. Stokes,** age 40, is a resident of Valdosta, Georgia. During the relevant period, Stokes was PAB and the Bank's Senior Vice President and Controller from December 2005 to April 2009 and PAB and the Bank's Senior Vice President and Chief Financial Officer from April 2009 to October 2010. From October 2009 to December 2010, Stokes served as Executive Vice President and Chief Financial Officer. Stokes is a certified public accountant licensed in Georgia.

Relevant Entity

5. **PAB Bankshares, Inc.**, was a bank holding company, organized and incorporated in 1982 under the laws of the State of Georgia as the bank holding company for The Park Avenue Bank, headquartered in Valdosta, Georgia. Prior to its ceasing operations, PAB operated thirteen branches located in seven counties in South Georgia; four branches and one loan production office located in four counties in North Georgia; and one branch and one loan production office located in two counties in Florida. The bank holding company's stock was

registered with the Commission pursuant to Section 12(b) of the Exchange Act and its shares traded on the NASDAQ Global Select Market.

FACTS

A. Background

6. Until April 2011, when it was closed by the FDIC, the Bank, which was the wholly-owned subsidiary of PAB, a publicly held bank holding company, had operations centered in Georgia and Florida. In PAB's Form 10-Q for the quarter ended September 30, 2010 (the Bank's last periodic filing that included financial statements), PAB reported total assets of approximately $1.0 billion.

7. In 2000, PAB began to expand its loans for the construction and development of real estate. Between December 2004 and December 2007, construction and development loans increased from 26% of the Bank's loan portfolio to 38%. When the financial crisis occurred in 2008, this area of the real estate market was hit particularly hard, and PAB's non-performing construction and development loans began to rise steadily. By late 2008, PAB was reporting quarterly net losses, a trend that continued through the quarter ended September 30, 2010, except for the quarter ended June 30, 2009, when it reported a net income of $342,000.

For the quarter-ended: (in thousands of dollars, except for earnings per share amounts)							
	6/30/08	9/30/08	12/31/08	3/31/09	6/30/09	9/30/09	12/31/09
Net income/ (loss)	$1,463	($2,860)	($5,811)	($295)	$342	(19,956)	(31,262)
EPS	$0.15	($.32)	($0.60)	($0.03)	$0.04	($1.93)	($2.27)

8. In early 2009, PAB commenced a private placement of its common stock and disclosed that it would use the capital raise to bolster capital to absorb future non-performance and to increase its capital position. The private placement closed in the third quarter of 2009 and raised $13,412,000 from Bank officers and directors and their families and one institutional investor. The additional capital generated by the private placement subsequently offset reductions in PAB's capital levels caused primarily by the increase in PAB's loan loss allowance for that quarter.

9. PAB's loan portfolio continued to deteriorate throughout 2010, and on April 29, 2011, PAB's bank regulators closed the Bank.

B. PAB Reports Earnings in the Second Quarter 2009

10. During the second quarter 2009, PAB was continuing to grapple with a loan portfolio in quick decline. Many of the Bank's construction and development loans were collateral dependent, so as a borrower began to experience problems paying the loan, the collateral underlying the loan often had lost value as well, leading the loans in many cases to become impaired. A loan is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement.

11. When a loan becomes impaired, the amount of impairment is measured and recorded as an allowance for estimated losses on the loan. Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan, allows impairment to be

measured based on the fair value of underlying collateral if a loan is collateral dependent; and when the creditor determines that foreclosure is probable, it is required that measurement for impairment be based on the fair value of the collateral. Statement of Financial Accounting Standards No. 157, Fair Value Measurements, requires that the assumptions used to determine the collateral's fair value be based on those that would be used by a market participant to determine the price to be paid in an orderly transaction at the measurement date.

12. Thus, when PAB determined a loan was impaired, its policy was to assess the fair value of the collateral to calculate the appropriate amount of the loan loss allowance. Additionally, PAB assessed whether loan losses included in the allowance should be charged off. As reflected in its disclosures, the Bank typically measured fair value by independent appraisals of the collateral.

13. In certain cases where the Bank determined the borrower was unable to continue with any amount of payment, it would foreclose on the loan and the collateral would become the Bank's own real estate, known as Other Real Estate Owned ("OREO"). When loans are foreclosed upon, the collateral received is recognized based on its fair value and any difference between the recorded amount of the loan and the collateral recognized is charged off. Prior to foreclosure, Generally Accepted Accounting Principles ("GAAP") required PAB to charge off the loan in the period in which the loan was deemed uncollectible.

14. PAB employed an in-house appraiser, whose role was to review independent third party appraisals received by the Bank for reasonableness, and in other circumstances, to provide his own valuation of collateral properties associated with impaired loans. PAB occasionally received appraisals from third parties where it disagreed with the valuation, and thus requested the in-house appraiser to recalculate valuations based on his own discounted cash flow analysis.

15. In the second quarter of 2009, the Bank acted unreasonably in determining the amount by which it was required to recognize estimated losses for one large loan that had been foreclosed upon and two large impaired collateral dependent loans. In each of these instances, the Bank substituted its own valuation analysis for that of an independent third party, and in doing so, did not reasonably estimate the market participant view of the fair value of the collateral. Because each of these instances resulted in PAB measuring impairment based on a value for the loan's underlying collateral that was greater than a fair value estimate consistent with GAAP, PAB recognized a lower loss on each of these assets in the second quarter of 2009. Had the Bank properly accounted for the assets, additional charges would have resulted in a net loss for the quarter instead of the positive recorded net income. In addition, any one of these over-valuations were individually material to PAB's financial statements for that quarter.

C. PAB Failed to Charge Off the Proper Amount for the Grove Village Loan

16. In 2005, PAB made a loan to Grove Village LLC for construction and development of 250 single-family residential lots. As of mid-2008, the outstanding principal on the loan was $9 million, and the loan had several pieces of collateral by which it was secured, including the undeveloped lots.

17. By April 2009, the borrower was no longer able to make payments on the loan, leading it to become impaired. The loan was considered collateral dependent because there were no other sources of available cash flows. An independent appraisal received by PAB in April 2009 valued the lots at $4.2 million, using a discount rate of 14% and an absorption rate of seven years. In June 2009, the bank foreclosed on the development. After receiving the April appraisal, a bank employee sent an email to the Bank's Chief Credit Officer ("CCO") and to

Stokes, in which the loan officer estimated an additional charge-off of $1.1 million on the loan and asked whether this new appraisal value should be used.

18. The CCO responded, copying Torbert, that Torbert was concerned about the charge off. Further in the email discussion, Torbert wrote that he was not comfortable taking a loss of this size based on one appraisal and that the property should be valued from an investment hold perspective rather than a liquidation perspective.

19. Torbert then asked PAB's in-house appraiser for his opinion on the discount and absorption rates used by the independent appraiser. The in-house appraiser responded that the current market was saturated, making discount and absorption rates high.

20. Torbert replied that he did not agree with these rates, "It may be the market, but I think a 14% discount rate is a bit steep . . . . We have to look at it as a long-term investor, but I think we would be fine to accept a much lower discount rate than a 3rd party investor." Torbert asked the in-house appraiser to re-run the numbers with a 4-5 year absorption rate and a discount rate of 9-10%. The appraiser complied and prepared a discounted cash flow analysis using a 9% discount rate and a 5-year absorption rate. The resulting new fair value of $5.4 million was adopted by PAB as the current value of the collateral when the lots were booked into OREO in June 2009.

21. PAB acted unreasonably in substituting management's valuation of the collateral for that of a current market participant view, as reflected in the independent third party appraisal. PAB was valuing the property based on its own expectations of the property's value as a long term investment, not with reference to the current market or market participant assumptions, as GAAP requires.

22. Had PAB used the independently appraised value for the 250 lots available as of April 2009, the loss recognized on this loan would have increased by $1.2 million in the second quarter 2009. The OREO was ultimately charged off down to the independent appraisal value of $4.2 million in December 2010.

23. Torbert directed the in-house appraiser to substitute the discount and absorption rates on this loan. Stokes was copied on the email exchange between Torbert and PAB's in-house appraiser about this loan. Thus, both Torbert and Stokes knew or should have known that the collateral was not being valued in accordance with GAAP.

D. <u>PAB Failed to Adequately Reserve for the Mitchell Building Loan</u>

24. In 2005, PAB made a $3.5 million loan to Mitchell Building LLC to develop 74 single-family residential subdivision lots. The development was originally appraised at $4.8 million in 2005. In December 2007, the borrower informed PAB that it could no longer make payments on the loan. In February 2008, PAB entered into the first of four successive 90-day forbearance agreements to provide the borrower with more time to complete the project.

25. From inception, the development was plagued with zoning issues. The number of lots available for development continued to decrease, from the initial 74 lots, to 64 lots by the end of the first quarter 2009, to 60 lots by the end of the second quarter 2009. During the first quarter 2009, a local developer made a verbal offer for the purchase of 10 lots at $32,000 each, with future lot purchases to be negotiated at a later date.

26. By the second quarter 2009, the borrower was no longer involved in the project and PAB had assumed responsibility for completing the subdivision with the Bank's own funds.[1] At this point, although still in negotiations, no definitive agreement had been reached between the Bank and the local developer, in part due to the ongoing zoning issues.[2]

27. In early May 2009, a new appraisal was completed on this subdivision, which appraised the now-60 lots at $1.3 million "as is." The appraisal was dated May 10, 2009 and the invoice provided to PAB was dated May 18, 2009.

28. In early June, an addendum to the appraisal was prepared, taking into consideration the proposed sale of 10 lots for a contract price of $32,000 per lot, and using a 13% discount rate and a 3.75 year absorption rate. The appraisal addendum increased the value of the collateral to $1,350,000.

29. PAB's in-house appraiser reviewed the May 2009 appraisal and addendum on July 8, 2009. On July 9, 2009, he prepared his own discounted cash flow of the collateral valuation, using a 9% discount rate and a 3.75 year absorption rate based on the same $32,000 per lot sale price for an estimated value of $1,890,000.

30. In calculating the allowance for this impaired loan at June 30, 2009, however, PAB gave no consideration to the May 2009 appraisal, the June 2009 addendum or its own in-house appraiser's July 9, 2009 discounted cash flow. In part, due to lax internal controls, as discussed below, this was because PAB personnel preparing the allowance calculations were not aware of the May/June appraisals or the in-house appraiser's assessment. Instead, using the original 2005 appraisal, discounted by 15% for the deteriorating market and 6% for estimated selling costs, PAB valued the collateral at June 30, 2009 at $3.1 million.

31. Because this appraisal was over four years old, and PAB had current appraisals available to it at the time with more current assessments of market value, it was unreasonable to rely on the 2005 appraisal in determining allowance amounts for this loan.

32. In addition, in determining the allowance amount, PAB personnel relied on documentation provided by the credit department, including a Criticized/Classified Loan Status Report ("Criticized/Classified Report") dated March 31, 2009 and prepared on April 22, 2009 by the PAB loan officer responsible for the loan. In that report, the loan officer noted that the Bank was waiting on a new appraisal of the collateral.

33. At the time, it was the Bank's practice to rely on Criticized/Classified Reports from the prior quarter-end to calculate the current quarter-end loan loss allowance. Due to the rapid pace at which economic conditions were deteriorating in this market at the time, this reliance on untimely information was unreasonable.

34. Had PAB used the May 2009 appraisals, or its own in-house discounted cash flow analysis, the specific reserve for the Mitchell Building loan would have increased by at least $1.2

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[1] Had PAB determined to charge off this loan in the second quarter instead of continuing to reserve for it, the impact on the balance sheet and the income statement effectively would have been the same, as either application required the loan be reduced or reserved for as an amount reflecting the fair value of the collateral, and any difference between the current fair value and the existing book balance less existing allowances would be recognized as a charge to earnings.

[2] The local developer ultimately walked away from the project, and it was not completed by the time the Bank was closed.

million and as much as $1.9 million in the second quarter 2009. During the following quarter, the Bank determined the allowance amount on this loan by using the in-house appraiser's discounted cash flow prepared in July 2009, resulting in an addition of $1.2 million to its loan loss allowance. In December 2009, PAB charged off the loan down to the $1.3 million based on the May 2009 appraisal.

35. Stokes prepared and Torbert signed the June 2009 allowance amounts for this loan, and in doing so, they reviewed or should have reviewed the March 31, 2009 Criticized/Classified Report, which noted in capital letters that a new appraisal was pending. In fact, the new appraisal had been completed by the end of the second quarter 2009, and had been reviewed by at least one Bank employee.

36. Stokes and Torbert also knew or should have known that the Criticized/Classified Report was based on information from the previous quarter, and that it was unreasonable to continue to base a valuation on a 2005 appraisal when an updated appraisal had been received.

E. PAB Failed to Adequately Reserve for the <u>R&B Construction of Northwest Florida Loan</u>

37. R&B Construction was a starter-home builder in the south metro markets of Atlanta that had expanded into northwestern Florida with plans to build homes in that market for Eglin Air Force base.

38. In October 2008, with a loan balance of $6.1 million, PAB received an independent appraisal that valued the Florida property at $3.3 million. In determining a value for the collateral, the appraiser considered the impact of a potential increase in Air Force personnel in the area. But at year-end 2008, PAB recorded a loan charge-off of $1.6 million to reduce the loan to $4.5 million. This valuation of the collateral was determined by the in-house appraiser and based on his own predictions of future increases in property values due to the proposed upcoming transfer of military personnel.

39. In April 2009, a third-party loan review firm, which had been retained to conduct a special review of loans as part of the capital raise efforts, reviewed this loan and disagreed with the in-house valuation. Instead, the third-party reviewer recommended use of the October 2008 appraisal to determine the loan loss allowance, stating that it was reflective of the current market value, and that the in-house assessment based in part on an assumed large increase in housing demand due to upcoming transfer of military personnel was not consistent with a market participant view. Both Torbert and Stokes received the third party loan review firm's recommendation.

40. In late June 2009, an internal email circulated noting that the foreclosure hearing on the property would be held in July. Torbert and Stokes were both copied on the email and thus were aware that foreclosure on this loan was probable. In subsequent emails that did not copy Torbert and Stokes, the loan officer responsible for this loan and the Chief Credit Officer discussed whether the amount for which the Bank would be willing to sell the property should be slightly below the October 2008 $3.3 million appraisal value and related charge-offs. The Chief Credit Officer said they should check with Torbert and Stokes. At this point both Torbert and Stokes knew or should have known that the October appraised value was being considered as an estimate of the fair value of the property.

41. Stokes was also aware by July 21 that the foreclosure had been finalized at a court hearing and as a result on July 20, 2009, the PAB loan officer responsible for the loan prepared

the paperwork to transfer this loan into OREO and recorded the OREO at a fair value of $3.3 million. PAB filed its Form 10-Q for the quarter on August 10, 2009. Torbert learned of these facts on August 17, 2009.

42. When evaluating this loan for the quarter-ended June 30, 2009 financial statements, however, PAB did not appropriately account for the loan loss allowance using the October 2008 appraised value of $3.3 million, which reflected a fair value estimate based on market participant assumptions. Instead, the Bank continued to take an allowance on the loan based on its previous in-house valuation of $4.5 million, which was based on stale assumptions that were inconsistent with market participant assumptions at the measurement date.

43. Had PAB used the October 2008 appraisal valuation and recognized the resulting additional loan loss for this loan at the end of the second quarter 2009, an additional loss of $1.1 million would have been recorded. The loan amount was ultimately foreclosed on in the third quarter 2009 and the fair value of the OREO property was recognized at $3.3 million. Stokes prepared and Torbert approved the allowance calculations for this loan for the quarter ending June 2009. In doing so, they were or should have been aware that this collateral had a fair value of $3.3 million and should have recognized a loan loss allowance based on the $3.3 million fair value.

44. As CEO and CFO, Torbert and Stokes both signed and certified the Form 10-Q filed with the Commission for the quarter ended June 30, 2009.

Violations

45. Section 13(a) of the Exchange Act and Exchange Act Rule 13a-13 require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate periodic reports, including quarterly reports on Form 10-Q. Rule 12b-20 further requires that the required reports must contain any material information necessary to make the required statements made in the reports not misleading. As a result of the conduct described above, PAB violated and Torbert and Stokes caused violations of these provisions by PAB.

46. Section 13(b)(2)(A) of the Exchange Act requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets. As a result of the conduct described above, PAB violated and Torbert and Stokes caused violations of these provisions by PAB.

47. Section 13(b)(2)(B) requires issuers of securities registered pursuant to Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP. As a result of the conduct described above, PAB violated and Torbert and Stokes caused violations of Section 13(b)(2)(B) of the Exchange Act by PAB.

48. As a result of the conduct described above, Torbert and Stokes violated Rule 13a-14 under the Exchange Act, which sets forth the requirements for certain reports filed under Section 13(a) of the Exchange Act to include specified certifications by each principal executive and principal financial officer of the issuer.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Torbert's and Stokes's Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents Torbert and Stokes cease and desist from committing or causing any violations and any future violations of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-13 and 13a-14 thereunder.

B. Respondent Torbert shall pay a civil penalty of $40,000, and Respondent Stokes shall pay a civil penalty of $20,000, to the Securities and Exchange Commission. Payment shall be made in the following installments: Torbert shall pay $10,000 within 30 days of the entry of this Order, and the remaining $30,000 within 364 days of the entry of this Order. Stokes shall pay $5,000 within 30 days of the entry of this Order, and the remaining $15,000 within 364 days of the entry of this Order. Payment shall be made to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. Section 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Torbert and Stokes as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Laura B. Josephs, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary