

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75086 / June 1, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3660 / June 1, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16569

In the Matter of

**FIRST BANCORP, ANNA
HOLLERS, AND TERESA
NIXON**

Respondents.

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

I.

The Securities and Exchange 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 against First Bancorp, Anna Hollers and Teresa Nixon (“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, as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹:

Summary

Over a three year period, First Bancorp failed to disclose related party transactions involving family members of the company's former Chief Operating Officer Anna Hollers, former Chief Loan Officer Teresa Nixon, and a member of its Board of Directors – specifically, Ms. Hollers' husband, Ms. Nixon's daughter and son-in-law, and the Board member's brother. By failing to make these disclosures in its Forms 10-K for fiscal years 2009, 2010 and 2011, First Bancorp violated SEC disclosure rules requiring public companies to disclose such relationships if the amounts involved exceeded \$120,000. First Bancorp also failed to have controls and procedures designed to ensure the company disclosed related party transactions as required.

Hollers caused certain of First Bancorp's violations. As COO, she oversaw the process for identifying related party transactions. First Bancorp used a Director and Officer Questionnaire ("D&O Questionnaire") as part of its related party disclosure process that required directors and executive officers to report transactions with family members in which the amounts involved exceeded \$120,000 during the prior fiscal year. Hollers was responsible for reviewing the D&O Questionnaires and informing the company's Chief Financial Officer of issues that may require disclosure. Hollers was also a member of First Bancorp's Disclosure Committee. Despite her disclosure responsibilities, Hollers did not adequately familiarize herself with the disclosure rules regarding related party transactions sufficient to ensure that First Bancorp met its disclosure obligations. Moreover, though First Bancorp had paid her husband's law firm over \$200,000 in fiscal year 2009 and over \$400,000 in fiscal year 2010, Hollers failed to disclose these facts, either in her D&O Questionnaire or otherwise, in connection with the company's preparation of its Forms 10-K for those periods.

Nixon, who was also a member of First Bancorp's Disclosure Committee, caused certain of First Bancorp's reporting violations. Though she knew about company transactions involving her daughter and son-in-law, she failed to report these on her D&O Questionnaires or otherwise disclose them in connection with the company's preparation of its periodic filings.

Respondents

1. **First Bancorp**, a bank holding company, is incorporated in North Carolina and trades on the Nasdaq Global Select Market. First Bancorp owns and operates First Bank, a state-chartered bank with its main office in Southern Pines, North Carolina.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

2. **Anna Hollers**, age 64, resides in Candor, North Carolina. From 2005 until she retired from First Bancorp in April 2014, Hollers was the Chief Operating Officer of First Bancorp and First Bank. Hollers served as Corporate Secretary of both entities from 1987 until she retired in 2014. During the relevant period, Hollers was a member of First Bancorp's Disclosure Committee.

3. **Teresa Nixon**, age 57, resides in Sanford, North Carolina. From 1997 until she left First Bancorp in March 2012, Nixon was First Bancorp's Chief Loan Officer. Among other responsibilities, Nixon oversaw the process for the sale, management, and disposition of foreclosed properties acquired from the FDIC through First Bancorp's acquisition of failed banks' assets. During the relevant time period, Nixon was a member of First Bancorp's Disclosure Committee.

FACTS

First Bancorp's Related Party Transaction Disclosure Process

4. Item 404(a) of Regulation S-K requires issuers to describe in their Forms 10-K any transaction exceeding \$120,000 in which the registrant was or is to be a participant and in which any related person had or will have a direct or indirect material interest. The instructions to Item 404(a) define related person to include any director or executive officer of a registrant and any immediate family members of a director or executive officer, such as spouses, children, certain in-laws, and siblings.

5. Similarly, Accounting Standards Codification ("ASC") Topic 850, *Related Party Disclosures*, requires companies to include in their financial statements disclosures of material related party transactions. ASC Topic 850-10-05-3 provides that related party transactions include transactions between an entity and its management or members of their immediate families.

6. During the relevant period, First Bancorp directors and executive officers reported related party transactions either by disclosing the transactions to the company's Board of Directors or through the company's annual D&O Questionnaire. Among other things, the D&O Questionnaire asked First Bancorp directors and executive officers to:

Describe any transaction, or series of transactions ... or any currently proposed transaction or series of similar transactions, to which the Company ... was, or is, to be a participant in which the amount involved exceeds \$120,000 and in which you or any member of your **Immediate Family** had, or will have, a direct or indirect interest.²

² Emphasis in original. The D&O Questionnaire also had an appendix of definitions that defined "Immediate Family" to include "your spouse, parents, stepparents, children, stepchildren, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and any other person sharing your household (other tenants or employees)."

7. Hollers oversaw the process for identifying related party transactions. She distributed the D&O Questionnaires to the company's directors and executive officers. After the directors and executive officers completed the D&O Questionnaires, they sent them to Hollers, who was responsible for reviewing them to assess whether there were any notable conflicts, issues or transactions. If so, she was responsible for reporting them to First Bancorp's CFO. First Bancorp's CFO would then prepare any required disclosures of related party transactions that Hollers had identified for the company's filings with the Commission.

8. Although First Bancorp relied on Hollers to identify related party transactions, Hollers did not adequately familiarize herself with the disclosure rules regarding related party transactions sufficient to ensure that First Bancorp met its disclosure obligations in its filings with the Securities and Exchange Commission. No one other than Hollers at First Bancorp reviewed the D&O Questionnaires to determine whether the company needed to make related party disclosures. First Bancorp's CFO relied on Hollers to inform him of related party transactions that may have required disclosure so that he could ensure the company complied with its disclosure obligations.

First Bancorp Failed to Report Six Related Party Transactions in its Forms 10-K for Fiscal Years 2009, 2010 and 2011

A. First Bancorp Failed to Disclose Payments to the Law Firm of Hollers' Husband

9. Hollers' husband was a partner at a law firm that had performed legal work for First Bancorp for over thirty years. First Bancorp typically paid the firm less than \$15,000 in fees annually for this work. Each year, First Bancorp's Board approved the company's hiring of the law firm. The Board knew Hollers was married to a partner in the firm.

10. In 2008, First Bancorp began to pay the law firm larger amounts for an increased amount of legal work and trustee work related to foreclosure proceedings. These amounts included reimbursed costs related to the trustee work. In fiscal year 2009, First Bancorp paid the law firm a total of \$214,754, consisting of \$109,745 in fees and \$105,009 in reimbursed costs. In fiscal year 2010, First Bancorp paid the firm \$407,087, consisting of \$195,030 in fees and \$212,057 in reimbursed costs.

11. Though Hollers disclosed on her D&O Questionnaires for fiscal years 2009 and 2010 that her husband's law firm did work for First Bancorp, she did not disclose the amount it had received in fees and reimbursed costs, nor did she otherwise inform First Bancorp's Board or CFO that the combined amounts exceeded \$120,000. No one other than Hollers reviewed her D&O Questionnaires for the years in question. As a consequence, First Bancorp did not disclose the related party transactions involving Hollers in its Forms 10-K for fiscal years 2009 and 2010 as required by Regulation S-K Item 404(a).

B. First Bancorp's Failures to Disclose Related Party Transactions Involving Nixon

*First Bancorp Failed to Disclose Payments to
Nixon's Daughter and Son-in-Law for Landscaping Services*

12. During fiscal year 2010, First Bancorp paid Southland Landscaping, a company owned and operated by Nixon's daughter and son-in-law, \$225,970 for landscaping services on First Bancorp's foreclosed properties. Nixon, who knew that her daughter and son-in-law owned Southland and that it was performing services for First Bancorp, did not disclose this relationship in her D&O Questionnaire or otherwise. Accordingly, First Bancorp did not disclose this related party transaction in its Form 10-K for fiscal year 2010 as required by Regulation S-K Item 404(a).

*First Bancorp Failed to Disclose a Home
Sale Agreement with Nixon's Daughter and Son-in-Law*

13. In its fiscal year 2010 Form 10-K, First Bancorp failed to disclose that it had agreed to sell property to Nixon's daughter and son-in-law. In November 2010, Nixon approved a sales agreement between First Bancorp and her daughter and son-in-law whereby the company contracted to sell them a foreclosed property for \$250,000. Nixon did not disclose this agreement in her D&O Questionnaire for fiscal year 2010 or otherwise. Accordingly, First Bancorp did not disclose this related party transaction in its Form 10-K for that year as required by Regulation S-K Item 404(a).

*First Bancorp Failed to Disclose a
Loan to Nixon's Daughter and Son-in-Law*

14. To finance the home purchase described above, First Bancorp loaned \$241,000 to Nixon's daughter and son-in-law in May 2011. This loan was required to be separately disclosed as a related-party transaction because it was not made on the same terms as those available to the general public. The loan documents reflected an inaccurate loan-to-value percentage, which, under First Bancorp's policy at the time, should have been based on the property's sale price. The loan underwriting documentation instead used the property's appraisal price. In addition, the loan underwriting documentation failed to disclose the family's prior bankruptcy. The First Bank Regional Executive who approved the loan would not have done so if the loan documents had been factually correct. Nixon did not disclose this loan in her D&O Questionnaire for fiscal year 2011 or otherwise. Although other First Bancorp management learned of the loan to Nixon's daughter and son-in-law as part of its own internal investigation prior to filing its Proxy Statement for fiscal year 2011, the company treated the loan as one in the ordinary course of business and thus failed to adequately disclose this related party transaction in its Form 10-K for fiscal year 2011 as required by Regulation S-K Item 404(a).

C. First Bancorp Failed to Disclose Payments Made to the Brother of One of its Directors

15. First Bancorp also failed to disclose in its Form 10-K for fiscal year 2010 that it had paid a brother of one of First Bancorp's Directors (the "Director") over \$120,000.

16. In September 2009, First Bancorp hired the Director's brother as the real estate agent and property manager for a portfolio of foreclosed properties that First Bancorp obtained as a result of its FDIC acquisition of Cooperative Bank's assets in June 2009. In fiscal year 2010, First Bancorp paid the Director's brother \$317,686 in commissions for property sales services and reimbursed him \$389,000 for out-of-pocket expenses for property management services. At 4.7% of First Bancorp's net income in fiscal year 2010, these combined payments to the Director's brother, which were legitimate business expenses, were material. The payments made to the Director's brother in fiscal year 2010 were required to be disclosed in First Bancorp's Form 10-K because of the sibling relationship between the two individuals.

17. Though he did not know the amounts involved, the Director disclosed that his brother had a relationship with the company in his D&O Questionnaire for fiscal year 2010, and First Bancorp's Board discussed that the Director's brother was performing work for the company during a February 2011 Board meeting. However, First Bancorp did not determine the amounts it paid the Director's brother before it filed its Form 10-K for fiscal year 2010. First Bancorp did not disclose this related party transaction in this filing as required by Regulation S-K Item 404(a) and ASC 850.

Violations

18. As a result of the conduct described above, First Bancorp violated and Nixon and Hollers caused First Bancorp's violations of Exchange Act Section 13(a) and Rule 13a-1 thereunder, which require that issuers of securities registered pursuant to Exchange Act Section 12 file with the Commission, among other things, current and accurate information in annual reports.

19. As a result of the conduct described above, First Bancorp violated and Hollers caused First Bancorp's violation of Exchange Act Rule 13a-15(a), which provides that every issuer of a security registered pursuant to Exchange Act Section 12 must maintain disclosure controls and procedures.³

³ Rule 13a-15(e) defines "disclosure controls and procedures" as "controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the [Exchange] Act ... is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the [Exchange] Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosures."

20. As a result of the conduct described above, First Bancorp violated Exchange Act Section 13(b)(2)(B), which requires all reporting companies 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.

First Bancorp's Remedial Efforts

In determining to accept First Bancorp's Offer, the Commission considered remedial acts promptly undertaken by First Bancorp and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

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

A. First Bancorp cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 13(b)(2)(B) of the Exchange Act and Rules 13a-1 and 13a-15 thereunder.

B. Anna Hollers cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-15 thereunder.

C. Teresa Nixon cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

D. Within seven days of entry of this Order, First Bancorp shall pay a civil money penalty of \$275,000; Hollers shall pay a civil monetary penalty of \$15,000; and Nixon shall pay a civil monetary penalty of \$20,000 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. §3717.

Payment must be made in one of the following ways:

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

(2) Respondents 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) Respondents 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 the 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 Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. 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 any of the 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, solely 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 violations 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