

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87036 / September 20, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4081 / September 20, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19477

In the Matter of

THE BANCORP, INC.,

Respondent.

**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 (“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 The Bancorp, Inc. (“Bancorp” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) 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 it and the subject matter of these proceedings, which are admitted, Respondent consents 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 a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

Summary

1. This matter concerns Bancorp's failures between at least April 2012 and September 2014 to properly classify certain loans and to take appropriate charges for individually impaired loans, resulting in Bancorp materially understating its Allowance for Loan and Lease Losses ("ALLL") and its Provision for Loan and Lease Losses ("PLLL") in its requisite periodic reports filed with the Commission. Bancorp failed to assign appropriate risk ratings to certain loans and to identify certain large lending relationships as containing impaired or otherwise substandard loans, repeatedly overlooking indicators of borrowers' and guarantors' financial distress. Bancorp also failed to devise or maintain related internal accounting controls, including for credit file maintenance and for identifying and appropriately considering Troubled Debt Restructurings.

2. As a result of these failures, on September 28, 2015, Bancorp restated its financial results and financial statements for certain prior years. Pursuant to the restatement, the aggregate adjustment to the PLLL for its fiscal years 2010 through 2013 was approximately \$138.6 million. Pursuant to the adjustments to the historical ALLL set forth in the restatement, Bancorp's ALLL for 2012 increased by 78.23% from the balance previously reported, and the ALLL for 2013 increased by 73.97%.

3. As a result of the conduct described in this Order, Bancorp violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 13a-1 and 13a-13 of the Exchange Act.

Facts

A. Respondent

4. Bancorp is a Delaware corporation with its principal executive offices in Wilmington, Delaware. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ Stock Market under the ticker symbol TBBK. Bancorp is the bank holding company for The Bancorp Bank ("Bancorp Bank"), a regional bank headquartered in Wilmington, Delaware. Bancorp Bank is Bancorp's primary wholly-owned subsidiary.

B. Accounting Guidance

5. Banking institutions carry loans on their balance sheets as assets and record on their income statements any interest revenue on the loans. According to Generally Accepted Accounting Principles ("GAAP"), an individual loan is impaired when "based on current

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

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.” Accounting Standards Codification (“ASC”) 310-10-35. Furthermore, loan losses must be recognized for groups of loans with similar risk characteristics and evaluated for impairment collectively when it is probable that the asset is impaired as of the date of the financial statements and the amount of loss can be reasonably estimated. *Id.*

6. GAAP also requires that when a loan is modified—whether by restructure, extension, renewal, or other modification—the transaction must be evaluated to determine if the modification constitutes a Troubled Debt Restructuring (“TDR”). Pursuant to ASC 310-40-15, a loan is a TDR if there is a restructuring for a borrower in financial difficulty and the creditor grants a concession to the borrower that it would not otherwise consider. A loan restructured as a TDR is an impaired loan. ASC 310-40-35.

7. The ALLL is the current estimate of the aggregate probable loss inherent in a loan portfolio and is reflected on the balance sheet as a reduction in loans. The ALLL encompasses the effects of two types of loan losses: (1) loans identified and evaluated for impairment individually; and (2) loans grouped by common risk characteristics and analyzed for impairment on an aggregate basis. ASC 310-10-35. The PLLL reflects the income statement impact of impaired loans for the period being reported.

C. Bancorp’s Failure to Identify Loan Impairments and Credit Deterioration

8. The component of the ALLL that is comprised of the effects of losses from loans identified and evaluated for impairment individually is often referred to as the specific reserve. In turn, the component of the ALLL that is comprised of the effects of losses from loans grouped by common risk characteristics and analyzed for impairment on an aggregate basis is often called the general reserve.

9. Pursuant to Bancorp’s Credit Policy, Bancorp Bank was supposed to periodically review loan relationships by loan type and assign risk ratings ranging from I to VIII for purposes of computing the general reserve portion of the ALLL. Each individual loan risk rating signifies a level of credit quality. Loans rated I (Excellent – No Risk) to V (Special Mention) were considered to have passing ratings, and loans rated VI (Substandard) to VIII (Loss) were considered to have adverse ratings. Each loan-type pool was collectively evaluated for impairment by assigning a weighted loss risk factor by risk rating. The resulting aggregate estimated loss by loan type and risk rating category was then used to calculate the general reserve portion of the ALLL.

10. During the relevant time period, Bancorp engaged in a business model called “relationship banking.” Bancorp sought to develop long-standing banking relationships with certain individuals and businesses within Bancorp Bank’s geographic region and provide them with the attention of senior Bancorp Bank management. Bancorp’s focus on long-standing relationships with borrowers and guarantors holding multiple Bancorp Bank loans was intended to encourage cross-selling, provide insight into borrowers’ risk, and increase customer loyalty.

Bancorp executives also believed that this model allowed Bancorp Bank to cross-collateralize loans and take a holistic approach to loan management.

11. However, Bancorp made risk rating and impairment decisions that relied too heavily on borrowers' and guarantors' reputations, their historic business and banking relationship with Bancorp Bank, and their expected future prospects for more business, while overlooking indicators of financial distress. This was particularly the case with respect to certain large or high-profile lending relationships and with respect to borrowers and guarantors with long relationships with Bancorp Bank. As a result, Bancorp failed to identify loan impairments and credit deterioration within individual loans and repeatedly failed to re-evaluate loans and downgrade risk ratings when confronted with negative information. This caused Bancorp to materially understate its PLLL from 2010 through 2013 and its ALLL from 2010 through the third quarter of 2014.

12. For example, in 2012, Bancorp did not evaluate a \$20 million loan relationship for potential impairment after the criminal conviction of the guarantor, a long-time Bancorp Bank customer. Bancorp also failed to change the risk ratings for the loans in the relationship at that time. Instead, Bancorp focused on attempting to obtain an additional guarantee from the guarantor's brother. However, the guarantee was not obtained until May 2013. After the brother failed to make promised loan payments the following year, Bancorp Bank increased the relationship's line of credit and used it to pay overdue balances on delinquent loans. Despite these developments, the loans in the relationship retained their passing loan ratings. During the restatement of its financial statements, Bancorp recorded a total of approximately \$16.1 million in impairment losses for loans in this relationship during the fourth quarter of 2012.

13. Similarly, for a lending relationship with another long-term Bancorp Bank customer who was criminally convicted in early 2012, Bancorp failed to downgrade the loans in the relationship, despite recognizing that the customer's finances were suffering. In fact, no downgrades occurred for nearly a year and a half after the customer's conviction. Instead, Bancorp Bank executives documented an expectation that the customer's son would assume control of certain faltering real estate and commercial ventures and improve their profitability. During the restatement of its financial statements, Bancorp recorded a total of approximately \$12.5 million in impairment losses for loans in this relationship during the fourth quarter of 2012.

14. Another example involved a real estate ownership group whose shares constituted the primary collateral for a \$9.8 million line of credit granted to a high-profile executive. In the third quarter of 2012, the ownership group ceased to operate. Moreover, that summer, Bancorp Bank became aware that an airplane that served as collateral in the amount of \$6.1 million for another loan in the relationship had been grounded. Despite the cessation of the ownership group's operations, the airplane's grounding, and the history of delinquency for loans in the relationship, when Bancorp reviewed the loans in April 2013, it rated them as Class III (Acceptable).

15. On multiple occasions during the relevant time period, Bancorp Bank extended additional credit to borrowers who had fallen behind on their loan payments. This additional credit was then used to bring existing loans current, in the expectation that the borrower's or guarantor's financial situation would improve in the future and allow resumption of normal payments. This

overly optimistic view resulted in Bancorp failing to downgrade risk ratings and failing to classify certain loans as impaired.

16. For example, Bancorp Bank increased the available funds in the high-profile executive's line of credit numerous times in order for the executive to be able to make quarter-end payments on his delinquent loans. The increases resulted from Bancorp's estimation of the borrower's potential future business opportunities based generally on his reputation and a business license, rather than on his financial condition at the time of the increases. At the time, Bancorp did not adjust the risk ratings for the loans and thus did not classify the loans as impaired. During the restatement of its financial statements, Bancorp recognized an impairment loss on this line of credit of approximately \$8.7 million during the third quarter of 2012.

17. By failing to identify loan impairments and credit deterioration within individual loans and by failing to re-evaluate loans, assign appropriate risk ratings, and classify certain loans as impaired, and, as a result, failing correctly to state its ALLL and PLLL, Bancorp failed to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets.

18. As a result, Bancorp failed to file with the Commission accurate periodic reports required of issuers of securities registered pursuant to Section 12 of the Exchange Act.

D. Bancorp's Incomplete Credit Files

19. Bancorp devised internal accounting controls for credit file maintenance; however, for its fiscal years 2012, 2013, and 2014, it failed to maintain the controls. The controls were intended to provide reasonable assurance that Bancorp's credit files contained relevant information, including timely appraisals and relevant financial information regarding borrowers. Nevertheless, the internal controls were not maintained, and Bancorp's credit files were incomplete. This, combined with Bancorp's reliance on relationships, led Bancorp Bank to estimate impairment and assign risk ratings based on incomplete information. The assignment of overly optimistic risk ratings led Bancorp to record insufficient general reserves, and faulty individual loan impairment decisions led Bancorp to book insufficient specific reserves.

20. Accurate appraisals were important for properly evaluating the real estate collateral underlying many Bancorp Bank loans and therefore for fairly and accurately assigning risk ratings and estimating impairment. Nevertheless, Bancorp frequently relied upon outdated appraisals when valuing real estate collateral in connection with impairment decisions and the assignment of risk ratings. In multiple instances, Bancorp relied upon pre-financial crisis real estate appraisals long after the crisis had come and gone.

21. Bancorp failed on two occasions to include in the credit files contemporaneous information concerning criminal cases involving borrowers or guarantors. For example, although Bancorp Bank was aware in December 2012 that a guarantor in a large lending relationship had pleaded guilty to bank fraud, there was no mention of the criminal case in the paperwork for a March 2013 maturity extension or in the paperwork for a line of credit increase in September 2013.

22. Bancorp also failed to record instances of delinquency within credit files. Even when additional credit was granted in order to allow delinquent borrowers to bring their loan payments current, the delinquencies were often not documented in the requests for increases. This lack of documentation contributed to Bancorp's failure to identify and account for impaired and adversely classified loans.

23. Additionally, on multiple occasions, Bancorp did not obtain financial statements required under the terms of loan agreements with borrowers. For example, when it extended the maturity of an entity's \$1.5 million line of credit, Bancorp failed to obtain timely financial information required under the terms of the line of credit. Instead, it relied upon outdated tax returns and financial statements and projections that had not been reviewed and audited as required.

24. In its annual Report on Form 10-K for its fiscal year 2014, Respondent disclosed a material weakness in its internal control over financial reporting for its fiscal years 2012, 2013, and 2014. The material weakness related to Bancorp's "failure to maintain controls over credit file maintenance, including the risk-rating of borrowers and the evaluation of collateral and industry-specific information that [Bancorp] believed to be relevant in determining the occurrence of a loss event and measuring impairment under ASC 310."

25. By failing to maintain internal accounting controls sufficient to provide reasonable assurances that credit files would be properly maintained, Bancorp failed to maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP.

26. By failing to make and keep complete, accurate, and current credit files, Bancorp failed to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of Bancorp's assets.

E. Bancorp's Process for Identifying Troubled Debt Restructurings

27. For many years, Bancorp had no TDR identification process. Rather than reviewing loan modifications to identify TDRs as they occurred, Bancorp focused on responding to questions by its independent public accountant regarding the modifications.

28. In September 2011, Bancorp implemented a TDR identification committee. The committee was tasked with evaluating loan modifications to identify TDRs in conformity with GAAP. However, the process by which the committee evaluated TDRs was deficient in several respects.

29. The process as devised was not sufficient to provide reasonable assurances that loan restructurings, extensions, renewals, and other modifications were evaluated for TDR status, and the committee therefore reviewed only a limited pool of loan modifications. Additionally, Bancorp's processes did not provide the TDR identification committee with information sufficient to accurately identify TDRs. The committee was presented only with summaries that often failed

to include important information about the loans being considered, including information concerning the financial difficulties of borrowers or guarantors of modified loans.

30. In March 2012, Bancorp management reported to the Audit Committee of its Board of Directors a significant deficiency in its internal control over financial reporting concerning its newly-created TDR identification process. The significant deficiency arose from Bancorp's failure to evaluate all renewed, extended, or modified loans.

31. Nevertheless, during its fiscal year 2012, Bancorp's process for identifying and evaluating TDRs was still not sufficient to provide reasonable assurances that TDRs would be appropriately evaluated and identified. The process did not ensure documentary support for TDR determinations.

32. For example, in 2012 the TDR identification committee determined that the loans in a \$44 million loan relationship involving one long-term borrower were not TDRs, based on the committee's consideration of a summary that described the modification of the loans as merely short-term, interest-only requests from a borrower who was not experiencing financial difficulties. In fact, at the time the committee made that determination, the guarantor had been criminally convicted and Bancorp had extended maturity and interest-only periods for the loans in order to allow the guarantor time to determine which of the collateral properties to reposition or sell. This information was not included in the summary presented to the committee. In the restatement of its financial statements, Bancorp determined that the loans in the relationship were TDRs as of the time of the committee meeting in 2012.

33. In March 2013, Bancorp management again reported to the Audit Committee a significant deficiency in its internal control over financial reporting concerning TDR identification. This significant deficiency pertained to a lack of documentary support for TDR determinations.

34. In October 2013, Bancorp management implemented a TDR Policy and a TDR Worksheet for use in identifying, evaluating, and documenting TDRs.

35. By failing to provide reasonable assurances that loan modifications were being correctly evaluated regarding TDR status, Bancorp failed to devise a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP.

36. By failing to make correct and appropriate TDR determinations, identify certain loans as impaired, and, as a result, correctly state its ALLL and PLLL, Bancorp failed to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets.

37. As a result, Bancorp failed to file with the Commission accurate periodic reports required of issuers of securities registered pursuant to Section 12 of the Exchange Act.

F. Bancorp's Additional Loss Provisions and Restatement

38. In its earnings release for the first quarter of 2014, issued on April 24, 2014, Bancorp reported that “[t]he quarter was significantly impacted by an additional loan loss provision of \$11.8 million principally related to newly identified adversely classified loans.” In its earnings release for the second quarter of 2014, issued on July 23, 2014, Bancorp reported its “provision for loan losses amounted to \$15.5 million reflecting the impact of certain loan relationships in its commercial loan portfolios.”

39. On November 10, 2014, Respondent disclosed in its quarterly Report on Form 10-Q for the third quarter of 2014 that it would be discontinuing its commercial lending operations and would “focus on its specialty finance lending.”

40. On April 1, 2015, Respondent announced that its previously issued financial statements for its fiscal years 2012 and 2013, and for the first three quarters of 2014 should no longer be relied upon and would be restated because “certain charges related to provisions for loan losses should have been taken in earlier periods than the ones in which they were taken.”

41. On September 28, 2015, Bancorp filed its annual Report on Form 10-K for its fiscal year 2014, which included restated financial results for its fiscal years 2010 through 2013 and restated financial statements for its fiscal years 2012 and 2013, as well as for the first three quarters of 2013 and 2014. The restatement included an aggregate adjustment to the PLLL of approximately \$138.6 million in Bancorp’s commercial loan portfolio from 2010 to 2013. That total adjustment included an adjustment adding \$90.5 million to the loan loss provision for 2012 and an adjustment adding \$28.9 million to the provision for 2013. The adjustment for 2012 exceeded the \$24.4 million in income before taxes previously reported by Bancorp, resulting in an overall loss for that fiscal year.

G. Violations

42. As a result of the conduct described above, Bancorp violated Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, which require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate periodic reports, including annual Reports on Form 10-K and quarterly Reports on Form 10-Q.

43. As a result of the conduct described above, Bancorp also violated Section 13(b)(2)(A) of the Exchange Act, which requires an issuer of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the issuer’s transactions and dispositions of assets.

44. As a result of the conduct described above, Bancorp also violated Section 13(b)(2)(B) of the Exchange Act, which requires an issuer 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 executed in accordance with management’s general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to

such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent The Bancorp, Inc.'s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1,400,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to 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) 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 The Bancorp, Inc. 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 Carolyn M. Welshhans, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it 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 Respondent 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.

By the Commission.

Vanessa A. Countryman
Secretary