

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90017 / September 28, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4174 / September 28, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20084

In the Matter of

**FULTON FINANCIAL
CORPORATION,**

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 Fulton Financial Corporation (“Fulton” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “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 finds that:

Summary

1. Fulton Financial Corporation (“Fulton”) is a financial holding company that operates regional banks in the mid-Atlantic. From late 2016 through mid-2017 (the “Relevant Period”), Fulton made material misrepresentations and omissions in its public filings and failed to maintain accurate books and records and sufficient internal accounting controls. Specifically, Fulton’s public filings during the Relevant Period inaccurately described the process that Fulton used to value its mortgage servicing rights (“MSR”) asset and determine its MSR valuation allowance.

2. Over two quarters, Fulton departed from its stated valuation practices and maintained a \$1.3 million MSR valuation allowance that was not supported by its publicly disclosed MSR valuation process and then belatedly reversed the allowance in the following quarter, which increased its earnings per share (“EPS”) by a penny at a time when it otherwise would have fallen short of analyst consensus expectations. Taken together, Fulton’s disclosures during the Relevant Period misrepresented both the role played by Fulton’s management and by a third-party expert in valuing the MSRs. The disclosures also inaccurately presented the company’s quarter-over-quarter financial performance.

3. In addition, Fulton failed to devise and maintain a sufficient system of internal accounting controls related to its closing process, use of a third-party valuation expert in its fair value analysis, management’s review for reasonableness of the inputs to a third-party expert’s discounted cash flow analysis, and the documentation and review of proposed but unrecorded accounting adjustments. Fulton also maintained inaccurate books and records that reflected an erroneous valuation allowance over two quarters that was \$1.3 million higher than it would have been had Fulton followed its disclosed valuation process.

4. Accordingly, Fulton violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder and Exchange Act Sections 13(b)(2)(A) and (B).

Respondent

5. **Fulton Financial Corporation** is a financial holding company incorporated in Pennsylvania and headquartered in Lancaster, Pennsylvania with a reported balance sheet of approximately \$18.9 billion as of year-end 2016. Fulton provides retail and commercial financial services in Pennsylvania, Delaware, Maryland, New Jersey and Virginia. During the Relevant Period, Fulton operated through six subsidiary community banks, including Fulton Bank, N.A., and eight non-bank entities. Fulton’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and is traded on Nasdaq under the symbol “FULT.” Fulton files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

Facts

Background

6. MSR s are assets that represent the economic value of residential mortgage servicing rights retained by Fulton after the underlying loans are sold (e.g., for securitization). As of year-end 2016, Fulton maintained a portfolio of MSR s with a fair value of approximately \$38.2 million. Fulton evaluates its MSR portfolio for impairment on a quarterly basis and establishes a valuation allowance if and to the extent the carrying value of the MSR portfolio exceeds its estimated fair value (*i.e.*, if the asset is impaired). Prior to the Relevant Period, Fulton recorded and reported an MSR valuation allowance of \$1.7 million in the second quarter of 2016, and then increased the allowance by \$1.3 million in the third quarter.

7. The MSR valuation allowance is established through a charge against Fulton's earnings. If subsequent valuations indicate that the MSR s are no longer impaired, Fulton is required by generally accepted accounting principles to reduce the valuation allowance.

8. Prior to 2013, Fulton performed valuations of its MSR portfolio without external assistance. Beginning in 2013, as disclosed in Fulton's public filings, Fulton retained a third-party valuation expert to assess the fair value of its MSR s on a quarterly basis through a discounted cash flow analysis based on Fulton's MSR portfolio data and market-based inputs. Fulton disclosed that management's role was to review the inputs to the valuation expert's analysis for reasonableness. The valuation expert's fair value, sometimes referred to as the "spot value," was expressed both in dollars and in basis points (the fair value of the MSR s divided by the unpaid principal balance of the serviced loans). The valuation expert also provided a range of values around the spot value separated by ten (and later, 15) total basis points, which represented the range in which the valuation expert expected the portfolio would trade were it offered for sale.

9. As stated in Fulton's written accounting policy, Fulton used the valuation expert's fair value analysis to assess the need for, and determine the amount of, an MSR valuation allowance in the event the asset was impaired. From 2013 through the third quarter of 2016, in accordance with Fulton's accounting policy, Fulton determined the need for a valuation allowance using its own "range" that was similar to, but narrower than, the valuation expert's range. Pursuant to Fulton's "range approach" accounting policy, Fulton assessed MSR fair value based on a six basis point "range" and determined the need for, and amount of, any MSR valuation allowance based on the high end of the range (*i.e.*, the spot value provided by the third-party expert plus three basis points).

10. As a general rule, during the Relevant Period, Fulton followed a two-day closing process for quarter and year-end. At the end of the second business day of the month following quarter or year-end ("Day 2"), Fulton internally reported its preliminary EPS results to members of senior management. Fulton nevertheless made accounting entries after "Day 2" of the close during the Relevant Period and in other quarters.

11. However, Fulton did not have a written policy or procedure setting forth appropriate guidance as to when accounting adjustments proposed after “Day 2” of the close would or would not be recorded. While Fulton did prepare and provide its Audit Committee and independent auditor with a quarterly memorandum setting out proposed but unrecorded adjustments, it did not consistently record MSR and other adjustments proposed after “Day 2” of the close. For example, in some quarters, Fulton recorded MSR adjustments proposed on “Day 3” of the close, but in other quarters, it elected not to record an adjustment on “Day 3,” on the grounds that the valuation analysis supporting the proposed adjustments was received “late” in the closing process. This inconsistency caused Fulton’s quarter-over-quarter financial performance to be inaccurately presented.

Fulton Incurs \$3 Million MSR Impairment and Establishes Valuation Allowance

12. In the first quarter of 2016, Fulton did not have an MSR valuation allowance because the fair value of its MSRs (as determined under Fulton’s “range approach” accounting policy) exceeded the carrying value. In the second and third quarters of 2016, however, the value of Fulton’s MSRs declined. In the second quarter, Fulton established a \$1.7 million MSR valuation allowance (which decreased Fulton’s pre-tax income), and then in the third quarter, it increased the allowance by an additional \$1.3 million (again decreasing Fulton’s pre-tax income), in each case consistent with Fulton’s accounting policy and the valuation provided by Fulton’s third-party valuation expert.

13. As of September 30, 2016, Fulton’s MSR valuation allowance totaled \$3 million. Both of the adjustments to Fulton’s MSR valuation allowance in the second and third quarters of 2016 were made on “Day 3” of Fulton’s quarter-end closing process.

Fourth Quarter 2016: Accounting Policy Change and Three MSR Valuation Reports

14. In each of the first three quarters of 2016, Fulton’s EPS exceeded analyst consensus expectations by a penny.

15. As the result of increasing interest rates in late 2016, Fulton’s MSRs had increased in value and Fulton anticipated reversing at least some of the valuation allowance, which would have the effect of increasing pre-tax income. In late December, Fulton internally projected that its EPS would beat consensus estimates by a penny in the fourth quarter with a partial reversal of the MSR valuation allowance.

MSR Accounting Policy Change

16. In light of the interest rate increases in late 2016, Fulton asked its valuation expert to prepare an “interim” valuation report as of November 30, 2016 (the “November Interim Report”). The November Interim Report, which Fulton received on December 14, indicated a significant increase (over 8%) in the fair value of Fulton’s MSR portfolio and would have

supported the reversal of the entire \$3 million valuation allowance in the fourth quarter under Fulton's "range approach" accounting policy.

17. Reversing the \$3 million allowance would have increased Fulton's pre-tax income and raised its EPS by a little over a penny. At the time, Fulton's financial performance in the quarter was in line with analyst consensus expectations.

18. After receiving the November Interim Report, Fulton proposed a change to its accounting policy to use the valuation expert's spot value for measuring impairment, rather than the "range approach." Fulton's external auditor supported the change in policy, so long as it was applied consistently going forward.

19. The change to the accounting policy had the effect of lowering the fair value of Fulton's MSRs that was used to determine the valuation allowance, thereby decreasing the amount of the valuation allowance that would be reversed. As a result of the change, Fulton stood to retain more than \$1 million in the valuation allowance heading into 2017 based on the November Interim Report.

Multiple Fourth Quarter 2016 MSR Valuation Reports

20. In preparation for the 2016 fourth quarter close, Fulton asked its valuation expert whether, given where interest rates were at the time, it was reasonable to use the November Interim Report to estimate the fair value of Fulton's MSRs as of the end of December instead of completing another valuation as of December 31, 2016. The valuation expert noted some uncertainty as the result of several December benchmark transactions, which would increase fair value over the anticipated increase as the result of interest rate trends. The valuation expert suggested that Fulton could either "assume" an increase in value of two to three basis points (although the valuation could be slightly more in light of recent benchmark transactions) or solicit a refreshed valuation report with market data as of the end of the quarter (December 31). Fulton then asked the valuation expert to provide a refreshed valuation report (the "Standard December Report") to be delivered by the morning of Wednesday, January 4, which was "Day 2" of the closing period.

21. Prior to receiving the Standard December Report, however, Fulton proceeded with its closing process and decreased its MSR valuation allowance by \$1.7 million based on the November Interim Report and the application of the new spot value accounting policy change. Approximately \$1.3 million remained in the valuation allowance.

22. At the end of the day on January 4 ("Day 2"), Fulton ran its preliminary EPS calculation, which showed \$0.24 for the quarter, in line with analyst expectations.

23. Fulton received the Standard December Report in the morning on January 5, 2017, which was "Day 3" in Fulton's two-day closing process. The Standard December Report contained a higher than expected valuation, more than four basis points above the valuation in the November Interim Report. Under the new spot value accounting policy, this valuation would have

supported the reversal of the entire \$3 million allowance, not just the \$1.7 million reversal that Fulton recorded the day before.

24. Fulton was concerned about the “box” the Standard December Report had put them in, and internally expressed reservations about recording an additional valuation allowance reversal without looking at the broader issue of other adjustments.

25. A manager in Fulton’s financial reporting and control function subsequently contacted the valuation expert and expressed surprise that the Standard December Report “came in so much higher” than the November Interim Report given the recent change in interest rates. The manager explained that Fulton had closed its books using the November Interim Report and asked the valuation expert if there was “any opportunity to re-evaluate some of [the expert’s] assumptions to lower the value.”

26. The valuation expert responded that “giving you a lower value is not a problem,” but that interest rates are not the only consideration when estimating fair value. The valuation expert noted that there were three significant benchmark deals in December with favorable bid levels, and when estimating fair value, “it’s necessary that we take into consideration not just what transpired with rates but also buyer appetite.”

27. Nevertheless, the valuation expert also stated in its response that it would be “happy to accommodate” Fulton by “lowing [sic] by a couple of [basis points],” since a two-basis point lower valuation “still falls with[in] our range.” The manager responded that “[l]owering by a couple (or 3)” basis points would be Fulton’s preference. A couple of hours later, the valuation expert provided Fulton with an “adjusted” report with a three-basis point lower value (the “Revised December Report”).

28. The manager did not disagree with the valuation expert’s views that fair value should take into consideration buyer appetite, and thus did not challenge the reasonableness of this input.

29. Instead, the manager sought, and the valuation expert provided, a reduction in the result of the valuation expert’s otherwise objective discounted cash flow analysis to accommodate Fulton’s “preference” for a lower valuation. By obtaining a lower valuation in the Revised December Report, Fulton was able to memorialize a smaller proposed but unrecorded adjustment related to the MSR valuation allowance, and in particular, one that was not materially different than the MSR valuation adjustment that Fulton already had recorded based on the November Interim Report.

30. This was the only time that Fulton’s engagement with its valuation expert resulted in the issuance of a report with a revised valuation. Fulton’s engagement with the valuation expert in the fourth quarter of 2016 was inconsistent with its practices in other quarters and also was inconsistent with the process described in its public disclosures. During the Relevant Period, Fulton had no written policy governing how Fulton management was to review the valuation expert’s inputs for reasonableness as disclosed in its public filings.

No Documentation or Disclosure of Fulton's Communication with the Valuation Expert

31. Fulton ultimately closed its books using the November Interim Report and then prepared an internal memorandum entitled, "Accounting Policy – Mortgage Servicing Rights," which explained its methodology for calculating the reduction in the MSR valuation allowance. The memorandum stated that there was a November and "a" December valuation, but did not note that there were actually two December valuations. Moreover, the memorandum did not explain that "the" December valuation reflected a spot value that was revised following communications with the third-party expert in which Fulton expressed a preference for a two to three basis point lower valuation.

32. Throughout the Relevant Period, Fulton had no written policy requiring that communications between Fulton and the valuation expert be memorialized and shared with Fulton's external auditor or the Audit Committee.

33. Neither the existence of the Standard December Report nor the higher valuation reflected therein nor Fulton's communications with the valuation expert that influenced the Revised December Report were disclosed to Fulton's external auditor or to Fulton's Audit Committee.

Fulton's 2016 Form 10-K

34. Fulton's public filings did not disclose the existence of the multiple December valuation reports or that Fulton's communications with the valuation expert had influenced the MSR valuation ultimately reported.

35. Disclosures in Fulton's 2016 Form 10-K, which was filed with the Commission on February 27, 2017, indicated that the fair value of Fulton's MSRs in 2016 was supported by third-party expert analysis and that the only involvement of Fulton's management was to review the expert's report for reasonableness. The disclosures further stated that when the third-party expert's valuations indicate that impairment no longer exists, the valuation allowance will be reversed.

36. For example, the notes to Fulton's financial statements stated that MSR "[f]air values are determined at the end of each quarter through a discounted cash flows valuation, prepared by a third-party valuation expert" and that "[b]ased on a fair value analysis, the Corporation determined that net additions of \$1.3 million to the valuation allowance were appropriate during 2016."

37. Under "Critical Accounting Policies" and the notes to Fulton's financial statements, Fulton's Form 10-K stated that "[m]anagement tests the reasonableness of the significant inputs to the third-party valuation in comparison to market data."

38. The notes to Fulton’s financial statements also provided that “[i]f subsequent valuations indicate that impairment no longer exists, the valuation allowance is reduced through an increase to servicing income.”

39. These statements were misleading because, in the fourth quarter of 2016, the MSR fair value reflected in Fulton’s Form 10-K, \$38.2 million, was not arrived at through a discounted cash flow analysis by a third-party expert that was subject only to Fulton’s management reviewing the expert’s inputs for reasonableness. Rather, this fair value reflected a change that was made to the third-party expert’s valuation only after the interaction described above with a Fulton manager.

40. Finally, in the fourth quarter of 2016, it was not accurate that “[i]f subsequent valuations indicate that impairment no longer exists, the valuation allowance is reduced through an increase to servicing income.” Rather, in that quarter, when a subsequent valuation indicated that impairment no longer existed, Fulton first changed its accounting policy to support a lower valuation, and then later, when another subsequent valuation indicated that impairment no longer existed, Fulton requested a lower valuation, which was not supported by Fulton’s disclosed MSR valuation process.

First Quarter 2017: Fulton Does Not Reverse the MSR Valuation Allowance

41. Heading into the close of the first quarter of 2017, Fulton’s internal projections indicated that Fulton would beat analyst EPS consensus estimates by three cents, even without reversing the rest of the MSR valuation allowance

42. On April 4, 2017 (“Day 2” of Fulton’s close), shortly before 5:00 p.m., Fulton received the MSR valuation expert’s report for the first quarter of 2017. The expert’s valuation report showed a further increase in the value of Fulton’s MSR portfolio, and, based on Fulton’s MSR accounting policy, the valuation would have supported the reversal of the MSR valuation allowance.

43. Fulton did not reverse the MSR allowance, however, and instead carried forward the remaining \$1.3 million allowance from the fourth quarter of 2016. Thus, Fulton’s first quarter 2017 valuation allowance was not determined in accordance with Fulton’s disclosed MSR valuation process.

44. Fulton’s reported EPS in the first quarter of 2017 beat analyst consensus estimates by two cents without reversing the MSR valuation allowance.

Inconsistent Explanations for Failure to Reverse the MSR Valuation Allowance

45. In connection with the first quarter 2017 close, an employee within Fulton’s financial reporting and control function questioned why there was a \$1.3 million valuation allowance in place when there was a fair value surplus of \$2.8 million based on the MSR valuation report. The reason provided was that the non-reversal of the valuation allowance largely offset the

impact of another adjustment and that both of the adjustments would be reflected on Fulton's proposed but unrecorded adjustments schedule.

46. This explanation for maintaining the allowance, which involved an unrelated adjustment, was inconsistent with Fulton's accounting policy and also was inconsistent with internal documentation and disclosures concerning MSR valuation and impairment analysis in the first quarter of 2017.

47. For example, Fulton's Audit Committee was told that "[a]s a result of not receiving the mortgage servicing valuation report until late in the process, the increase in the valuation was not reflected in the first quarter. This amount was approximately \$1.3 million. This will be included in the proposed accounting adjustments for the quarter."

48. The timing of the receipt of the valuation report in the first quarter of 2017 (shortly before 5:00 p.m. on "Day 2"), however, did not prohibit Fulton from recording an adjustment to the allowance. It was not unusual for Fulton to record entries after "Day 2" of the closing process. Indeed, both of the adjustments that Fulton made to the MSR valuation allowance in the second and third quarters of 2016 were recorded on "Day 3."

49. Fulton's practice with respect to recording adjustments to the MSR valuation allowance based on when the expert's valuation report was received was thus inconsistent from quarter to quarter. During this quarter and throughout the Relevant Period, Fulton had no written policy governing the length of its quarter and year-end closing process or that set out a process for consistently documenting and recording adjustments proposed during the closing process.

First Quarter 2017 Form 10-Q

50. Fulton's Form 10-Q for the first quarter of 2017, which was filed with the Commission on May 5, 2017, did not reflect either of the two explanations for the decision to retain the MSR valuation allowance, and did not accurately reflect the process that Fulton followed to arrive at the fair value of its MSRs and its decision to maintain \$1.3 million in the MSR valuation allowance.

51. For example, the notes to Fulton's financial statements provided that, "[f]air values are determined at the end of each quarter through a discounted cash flows valuation performed by a third-party valuation expert" and that "[b]ased on its fair value analysis, the Corporation determined that no adjustment to the valuation allowance was necessary for the three months ended March 31, 2017."

52. These statements in Fulton's Form 10-Q were misleading because they gave the misimpression that the third-party valuation expert's fair value analysis in the first quarter of 2017 indicated that Fulton's MSRs were still impaired. To the contrary, Fulton's valuation expert's analysis supported the conclusion that Fulton's MSRs were no longer impaired and reversal of the remaining \$1.3 million valuation allowance was necessary. Thus, Fulton did not base its decision

that “no adjustment to the valuation allowance was necessary” on the expert’s report through the process described in its disclosures.

Second Quarter 2017: MSR Valuation Allowance Reversed; EPS Consensus Estimates Met

53. In the second quarter of 2017, Fulton’s management expressed an interest in waiting until late in the closing process, when it would have a better understanding of its projected EPS, before determining whether to reverse the MSR valuation allowance.

54. Fulton did ultimately reverse the remaining \$1.3 million MSR valuation allowance in the second quarter of 2017, thereby increasing pre-tax income. The reversal was consistent with Fulton’s accounting policy and the valuation expert’s report. Without the benefit of the reversal of the remaining \$1.3 million allowance in the second quarter of 2017, Fulton would have missed consensus estimates by a penny.

55. Fulton’s earnings press release for the second quarter of 2017 noted that “[m]ortgage banking income increased \$1.5 million, or 33.6 percent, due primarily to a \$1.3 million reversal of the valuation allowance for [MSRs] in the current quarter,” but the press release did not disclose that the reversal was two quarters late.

Second Quarter 2017 Form 10-Q

56. Fulton’s Form 10-Q for the second quarter of 2017, which was filed with the Commission on August 4, 2017, did not disclose information regarding the process that resulted in the valuation allowance being maintained through the prior two quarters.

57. Fulton’s 10-Q stated that its “[m]ortgage servicing income increased \$3.4 million during the first half of 2017 compared to the same period in 2016 as a result of a \$1.3 million reduction to the [MSR] valuation allowance during the second quarter of 2017.” These disclosures, however, were misleading because they gave the misimpression that the reversal of the valuation allowance was timely, when, in fact, the reversal was two quarters late.

Fulton’s Misleading Public Disclosures

58. For the foregoing reasons, Fulton’s 2016 Form 10-K and Forms 10-Q for the first and second quarters of 2017 contain material misstatements and omissions regarding: (1) the process for determining the fair value of Fulton’s MSRs and the calculation of its valuation allowance; (2) the use of a third-party valuation expert’s report for determining fair value; (3) management’s involvement in determining the MSR valuation outcome; and (4) the timeliness of the reversal of the MSR valuation allowance in the second quarter of 2017.

59. During the Relevant Period, Fulton departed from its usual and stated practices with respect to MSR valuation. These departures included: (1) Fulton’s communications with the valuation expert that went beyond reviewing for reasonableness the inputs to the third-party expert’s discounted cash flow analysis, and instead reflected Fulton’s requested change to the

valuation; and (2) disregarding the valuation expert's report in the first quarter of 2017, which had the effect of lowering its MSR carrying value and providing a misimpression of continued impairment.

60. As a result, Fulton erroneously maintained a MSR valuation allowance that was not the product of its third-party expert's discounted cash flow analysis with inputs reviewed by management for reasonableness. Fulton reversed the valuation allowance in the second quarter of 2017 instead of the fourth quarter of 2016 when it should have been reversed under Fulton's disclosed valuation process.

61. Fulton's misleading disclosures created the appearance of consistent earnings trends across reporting periods and deprived investors of the ability to understand management's involvement in fair value calculations. Thus, Fulton violated its financial reporting obligations under the Exchange Act.

Fulton's Inaccurate Books and Records and Internal Accounting Control Failures

62. Over two consecutive quarters, Fulton recorded and then maintained an erroneous MSR valuation allowance which was not determined in accordance with Fulton's disclosed MSR valuation process, which caused its general ledger to not fairly and accurately reflect the value of the MSRs in reasonable detail.

63. In addition, Fulton failed to implement internal accounting controls that were sufficient to provide reasonable assurances that financial statements were accurately stated in accordance with generally accepted accounting principles.

64. While Fulton maintained certain internal accounting controls related to its MSR valuation allowance calculation, those controls did not provide for sufficient documentation and review of communications with the third-party valuation expert regarding Fulton management's review of the third-party expert's analysis.

65. Moreover, Fulton failed to devise and maintain internal accounting controls governing the completeness and accuracy of documentation related to proposed but unrecorded adjustments. Such controls would have assisted in providing reasonable assurances that documentation included sufficient detail for meaningful review of unrecorded adjustments, particularly those that have the potential impact to EPS.

Violations

66. As a result of the conduct described above, Fulton violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and

mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

67. As a result of the conduct described above, Fulton violated Section 13(b)(2)(A) of the Exchange Act, which 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.

68. As a result of the conduct described above, Fulton violated Section 13(b)(2)(B) of the Exchange Act, 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 generally accepted accounting principles.

Fulton's Remedial Efforts

69. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Fulton and cooperation afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Fulton 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, 13a-13 and 12b-20 thereunder.

B. Fulton shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1,500,000 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 Fulton 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 Anita Bandy, 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