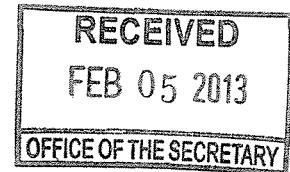


**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**



ADMINISTRATIVE PROCEEDING  
File No. 3-15168

**In the Matter of**

**JOHN J. AESOPH, CPA, and  
DARREN M. BENNETT, CPA**

Carol Fox Foelak  
Administrative Law Judge

**ANSWER AND AFFIRMATIVE DEFENSES  
OF RESPONDENT DARREN M. BENNETT  
TO ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE PROCEEDINGS**

Pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220, Respondent Darren M. Bennett, through counsel, respectfully answers the allegations of the Securities and Exchange Commission's (the "Commission") Order Instituting Public Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice (the "OIP"). To the extent the headings or subheadings in the OIP are construed as allegations, Mr. Bennett denies the same. Likewise, to the extent Mr. Bennett does not admit explicitly the allegations, all allegations are denied.

**Answer to Paragraph 1:**

Mr. Bennett admits that Mr. Aesoph and he, respectively, were the engagement partner and the senior manager on the KPMG engagement team that performed the 2008 Audit for TierOne Corporation, a holding company for TierOne Bank. Mr. Bennett denies the remaining allegations in Paragraph 1. Mr. Bennett avers that he performed his work as senior manager in accordance with applicable professional standards and that such work was the subject of review, supervision and concurrence by Mr. Aesoph. Mr. Bennett further avers that TierOne's Allowance for Loan and Lease Losses ("ALLL") estimate is inherently subjective and that he in

good faith believed he had a reasonable basis for the professional judgments he made regarding the ALLL estimate. Mr. Bennett further avers that, as the Commission has alleged, he was the victim of a collusive fraud by management and others that was designed to deceive him and Mr. Aesoph with respect to the reasonableness of TierOne's ALLL estimate. (*See, e.g.*, Complaints in *SEC v. Lundstrom*, 12-cv-00343 (D. Neb.) (asserting claim of "Deceit of Auditors – Rule 13b2-2 of the Exchange Act") and *SEC v. Langford*, 12-cv-00344 (D. Neb.) (same).)

**Answer to Paragraph 2:**

Mr. Bennett admits that the KPMG engagement team identified TierOne's ALLL as a significant account and critical audit area for the 2008 Audit, TierOne experienced a significant increase in non-performing loans during 2008, and TierOne's loan loss estimates for collateral-dependent loans accounted for under FAS 114 were based on management's estimates of collateral values. Mr. Bennett denies the remaining allegations in Paragraph 2. Mr. Bennett avers that the FAS 114 allowance is a portion of the overall ALLL estimate and that the KPMG engagement team employed appropriate scrutiny and professional skepticism in auditing the ALLL in accordance with applicable professional standards.

**Answer to Paragraph 3:**

Mr. Bennett admits that the KPMG engagement team in planning the 2008 Audit determined that TierOne's ALLL presented a risk of significant misstatement. Mr. Bennett denies the remaining allegations in Paragraph 3.

**Answer to Paragraph 4:**

Mr. Bennett denies the allegations in Paragraph 4 and avers that AU Sections 328 and 342 speak for themselves.

**Answer to Paragraph 5:**

Mr. Bennett denies the allegations in Paragraph 5 and avers that he exercised professional skepticism and obtained sufficient competent evidential matter to support the opinions.

**Answer to Paragraph 6:**

Mr. Bennett denies the allegations in Paragraph 6 and states that the Commission has not identified which alleged conduct is a supposed instance of highly unreasonable conduct.

**Answer to Paragraph 7:**

Mr. Bennett admits that Mr. Aesoph was the engagement partner on the 2008 Audit and remained the engagement partner until KPMG's resignation in April 2010. Mr. Bennett lacks personal knowledge regarding the remaining allegations in Paragraph 7.

**Answer to Paragraph 8:**

Mr. Bennett admits the allegations in Paragraph 8 and avers that he started at KPMG in January 2001 as an audit staff, and was promoted to audit senior, then to manager, and then to senior manager.

**Answer to Paragraph 9:**

Mr. Bennett admits the allegations in Paragraph 9.

**Answer to Paragraph 10:**

Mr. Bennett admits the allegations in Paragraph 10.

**Answer to Paragraph 11:**

Mr. Bennett admits that TierOne operated as a community bank in the business of originating loans to customers in its primary market area of Nebraska, Iowa, and Kansas, began expanding its business in 2004 to originate and purchase loans in other geographical areas,

including Las Vegas, Florida, and Arizona, and had been in operation for approximately 100 years as of 2008. Mr. Bennett denies the remaining allegations in Paragraph 11.

**Answer to Paragraph 12:**

Mr. Bennett admits that TierOne experienced a significant increase in impaired loans during 2007 and 2008 and that TierOne reported FAS 114 impaired loan balances of \$3.8 million in 2006, \$125.9 million in 2007, and \$185.9 million in 2008. Mr. Bennett denies the remaining allegations in Paragraph 12 and avers that FAS 114 speaks for itself.

**Answer to Paragraph 13:**

Mr. Bennett avers that the 2008 OTS Report speaks for itself, and to the extent the allegations in Paragraph 13 differ, Mr. Bennett denies the allegations.

**Answer to Paragraph 14:**

Mr. Bennett admits that TierOne was required to estimate and report its ALLL in accordance with GAAP and that loan losses experienced by TierOne implicated its capital ratios. Mr. Bennett denies the remaining allegations in Paragraph 14 and avers that FAS 114 speaks for itself.

**Answer to Paragraph 15:**

Mr. Bennett admits that he was shown documents and provided other information that TierOne presented as complete and accurate evidence of TierOne's FAS 114 impairment determinations on a loan-by-loan basis. Mr. Bennett denies the remaining allegations in Paragraph 15.

**Answer to Paragraph 16:**

Mr. Bennett admits that in the fall 2009 TierOne reported approximately \$120.2 million in loan loss provisions and that TierOne was shut down by bank regulators on June 4, 2010 and

filed for bankruptcy later that month. Mr. Bennett denies the remaining allegations in Paragraph 16.

**Answer to Paragraph 17:**

Mr. Bennett admits that KPMG resigned as TierOne's auditor in April 2010. Mr. Bennett avers that KPMG's letter to the SEC stating the reasons why KPMG withdrew its opinions, attached as Exhibit 99.4 to TierOne's May 14, 2010 Form 8-K, speaks for itself. Mr. Bennett denies the remaining allegations in Paragraph 17.

**Answer to Paragraph 18:**

Mr. Bennett admits the allegations in Paragraph 18 and avers that the KPMG engagement team planned the 2008 Audit, including assessing risks of significant misstatement of Tier One's ALLL, in accordance with applicable professional standards. Mr. Bennett denies the remaining allegations in Paragraph 18.

**Answer to Paragraph 19:**

Mr. Bennett admits that TierOne's ALLL consisted of both an allowance for specific loans considered to be impaired under FAS 114 and an allowance for losses that were probable and reasonably estimable with respect to groups of loans under FAS 5 and that the KPMG engagement team assessed the risk of significant misstatement of the ALLL at year-end 2008 with respect to inherent risk as significant and control risk as low. Mr. Bennett denies the remaining allegations in Paragraph 19.

**Answer to Paragraph 20:**

Mr. Bennett admits that Mr. Aesoph and he, as well as a concurring review partner, reviewed and approved key planning documents for the 2008 Audit. Mr. Bennett denies the

remaining allegations in Paragraph 20 and avers that the audit planning document speaks for itself.

**Answer to Paragraph 21:**

Mr. Bennett denies the allegations in Paragraph 21.

**Answer to Paragraph 22:**

Mr. Bennett admits he authored a memorandum regarding the 2008 OTS Report. His memorandum and the 2008 OTS report speak for themselves. Mr. Bennett denies the remaining allegations in Paragraph 22.

**Answer to Paragraph 23:**

Mr. Bennett admits that TierOne prepared spreadsheets analyzing more than fifty borrower relationships at year-end 2008 that TierOne presented as complete and accurate evidence of TierOne's FAS 114 impairment determinations. Mr. Bennett further admits that third-party market data indicated decline in property values in Las Vegas, Nevada and Phoenix, Arizona, and management applied discounts where it deemed appropriate to appraisals in estimating the fair value of collateral on a loan-by-loan basis. Mr. Bennett denies the remaining allegations in Paragraph 23.

**Answer to Paragraph 24:**

Mr. Bennett admits that the OTS and KPMG engagement team recommended that TierOne obtain updated appraisals for certain collateral underlying the bank's FAS 114 loans. Mr. Bennett denies the remaining allegations in Paragraph 24.

**Answer to Paragraph 25:**

Mr. Bennett admits that TierOne obtained new appraisals in 2008 for collateral securing certain FAS 114 loans, including those listed in footnote 2. Mr. Bennett denies the remaining allegations in Paragraph 25.

**Answer to Paragraph 26:**

Mr. Bennett denies the allegations in Paragraph 26..

**Answer to Paragraph 27:**

Mr. Bennett admits that TierOne prepared a memorandum, "Allowance for Credit Losses, Discussion of 4th Quarter 2008 Adequacy Analysis," explaining the bank's ALLL estimation methodology and that he reviewed the memorandum, which was included in the audit work papers. Mr. Bennett denies the remaining allegations in Paragraph 27 and avers that the memorandum speaks for itself.

**Answer to Paragraph 28:**

Mr. Bennett admits that TierOne's designated unallocated ALLL was approximately \$2.4 million in the first quarter of 2008, \$7.7 million in the second quarter of 2008, \$6.8 million in the third quarter of 2008, and \$3.9 million at year-end 2008. Mr. Bennett denies the remaining allegations in Paragraph 28.

**Answer to Paragraph 29:**

Mr. Bennett denies the allegations in Paragraph 29 and avers that FRR No. 28 and SAB 102 speak for themselves.

**Answer to Paragraph 30:**

Mr. Bennett denies the allegations in Paragraph 30 and avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 31:**

Mr. Bennett admits that the KPMG engagement team established a materiality for planning purposes of \$1.9 million. Mr. Bennett denies the remaining allegations in Paragraph 31.

**Answer to Paragraph 32:**

Mr. Bennett admits that the OTS-mandated core capital ratio and risk-based capital ratio, respectively, were 8.5% and 11%, TierOne's core and risk-based capital ratios at December 31, 2008, were 8.9% and 11.6%, respectively, and TierOne reported net interest income after provision for loan losses of \$2.9 million at year-end 2008, \$48 million at year-end 2007 and \$119.8 million at year-end 2006. Mr. Bennett denies the remaining allegations in Paragraph 32 and avers that TierOne's 2008 Form 10-K speaks for itself.

**Answer to Paragraph 33:**

Mr. Bennett denies the allegations in Paragraph 33 and avers that the PCAOB standards regarding auditor responsibility speak for themselves.

**Answer to Paragraph 34:**

Mr. Bennett avers that Paragraph 34 does not contain allegations to which a response is required.

**Answer to Paragraph 35:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 36:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.



**Answer to Paragraph 37:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 38:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves. Mr. Bennett otherwise denies allegations in Paragraph 38.

**Answer to Paragraph 39:**

Mr. Bennett admits the allegations in Paragraph 39 and avers he reported regularly to Mr. Aesoph and his work was closely supervised and subject to review by Mr. Aesoph and others.

**Answer to Paragraph 40:**

Mr. Bennett admits that he performed his role as senior manager under the supervision of Mr. Aesoph in accordance with professional standards by, among other things, participating in the planning of the 2008 Audit, the design of tests of controls, and the design and implementation of substantive procedures, reviewing audit work papers and supervising junior professionals on the KPMG engagement team, and making professional judgments regarding the sufficiency of audit evidence regarding the ALLL, including with respect to FAS 114 loans. Mr. Bennett denies the allegations in Paragraph 40 to the extent they purport that he solely was responsible for executing the audit. Mr. Bennett avers that the citation to *In the Matter of Robert M. Harbrecht, CPA and Brian R. Spires*, does not require a response.

**Answer to Paragraph 41:**

Mr. Bennett admits the allegations in Paragraph 41 and avers that the 2008 Completion Document and remainder of KPMG's work papers speak for themselves.

**Answer to Paragraph 42:**

Mr. Bennett denies the allegations in Paragraph 42.

**Answer to Paragraph 43:**

Mr. Bennett admits that the KPMG engagement team performed an integrated audit of TierOne. Mr. Bennett denies the remaining allegations in Paragraph 43 and avers that the AICPA Codification of Statements on Auditing Standards and the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 44:**

Mr. Bennett denies the allegations in Paragraph 44 and avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 45:**

Mr. Bennett avers that the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 46:**

Mr. Bennett avers that the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 47:**

Mr. Bennett avers that the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 48:**

Mr. Bennett avers that the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 49:**

Mr. Bennett avers that the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 50:**

Mr. Bennett avers that the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 51:**

Mr. Bennett avers that the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 52:**

Mr. Bennett denies the allegation in Paragraph 52.

**Answer to Paragraph 53:**

Mr. Bennett admits that both he and Mr. Aesoph reviewed and approved audit work papers involving the evaluation and testing of TierOne's internal controls over the ALLL and avers that these work papers and others speak for themselves. Mr. Bennett denies the remaining allegations in Paragraph 53.

**Answer to Paragraph 54:**

Mr. Bennett denies the allegations in Paragraph 54.

**Answer to Paragraph 55:**

Mr. Bennett denies the allegations in Paragraph 55.

**Answer to Paragraph 56:**

Mr. Bennett denies the allegations in Paragraph 56.

**Answer to Paragraph 57:**

Mr. Bennett avers that TierOne's Lending Policy, amended February 2009, speaks for itself. Mr. Bennett otherwise denies the allegations in Paragraph 57.

**Answer to Paragraph 58:**

Mr. Bennett admits that TierOne's lending policy was not in itself a control. Mr. Bennett denies the remaining allegations in Paragraph 58 and avers that the KPMG engagement team obtained sufficient competent evidential matter to support the opinions.

**Answer to Paragraph 59:**

Mr. Bennett denies the allegations in Paragraph 59 and avers that the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 60:**

Mr. Bennett admits that as the senior manager on the 2008 Audit, and under the supervision of Mr. Aesoph, he was directly involved in, among other things, FAS 114 test work, including but not limited to the review of FAS 114 worksheets that TierOne presented as complete and accurate evidence of its FAS 114 impairment determinations and other supporting documentation, meeting with management to discuss their fair value estimates, communicating with the KPMG Credit Specialist who reviewed certain Tier One loans, and directing and reviewing the audit activities of more junior professionals on the KPMG engagement team. Mr. Bennett avers that he reported his work to Mr. Aesoph and others for review. Mr. Bennett denies the remaining allegations in Paragraph 60.

**Answer to Paragraph 61:**

Mr. Bennett admits that TierOne's loss reserve with respect to FAS 114 loans was an estimate. Mr. Bennett denies the remaining allegations in Paragraph 60 and avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 62:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 63:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 64:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 65:**

Mr. Bennett admits that the KPMG engagement team assessed the risk of significant misstatement of the ALLL at year-end 2008 with respect to inherent risk as significant and control risk as low. Mr. Bennett denies the remaining allegations in Paragraph 65 and avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 66:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves and otherwise denies the allegations in Paragraph 66.

**Answer to Paragraph 67:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 68:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 69:**

Mr. Bennett avers that the PCAOB Auditing Standards speak for themselves.

**Answer to Paragraph 70:**

Mr. Bennett denies the allegation in Paragraph 70.

**Answer to Paragraph 71:**

Mr. Bennett admits he was shown documentation that was represented to document TierOne's FAS 114 impairment determinations on a loan-by-loan basis and that the KPMG engagement team reviewed the documentation in the course of evaluating the reasonableness of management's estimates. Mr. Bennett denies the remaining allegations in Paragraph 71.

**Answer to Paragraph 72:**

Mr. Bennett admits that the KPMG engagement team, among other things, obtained and reviewed FAS 114 worksheets in the course of evaluating the reasonableness of management's estimates that TierOne presented as complete and accurate evidence of TierOne's FAS 114 impairment determinations. Mr. Bennett denies the remaining allegations in Paragraph 72.

**Answer to Paragraph 73:**

Mr. Bennett admits that the KPMG engagement team, among other things, obtained and reviewed FAS 114 worksheets that TierOne presented as complete and accurate evidence of TierOne's FAS 114 impairment determinations and corresponding appraisals and performed audit tests in accordance with applicable professional standards, including but not limited to making inquiries of management. Mr. Bennett further admits that he reviewed each FAS 114 template with Mr. Aesoph, who asked questions and ultimately was satisfied with the KPMG engagement team's conclusions, including that based on the entirety of audit procedures "the FAS 114 calculations appear to be properly prepared and adequately supported at 12/31/08." Mr. Bennett denies the remaining allegations in Paragraph 73 and Footnote 5.

**Answer to Paragraph 74:**

Mr. Bennett admits that certain properties that served as collateral were under development and in varying stages of completion. Mr. Bennett denies the remaining allegations

in Paragraph 74 and avers that TierOne's Lending Policy, amended February 2009, speaks for itself.

**Answer to Paragraph 75:**

Mr. Bennett denies the allegations in Paragraph 75.

**Answer to Paragraph 76:**

Mr. Bennett denies the allegations in Paragraph 76.

**Answer to Paragraph 77:**

Mr. Bennett denies the allegations in Paragraph 77.

**Answer to Paragraph 78:**

Mr. Bennett avers that the PCAOB standards regarding audit documentation speak for themselves and otherwise denies the allegations in Paragraph 78.

**Answer to Paragraph 79:**

Mr. Bennett admits that the FAS 114 templates that TierOne presented as complete and accurate evidence of TierOne's FAS 114 impairment determinations contained a variety of information evidencing the bases for management's fair value estimates. Mr. Bennett denies the remaining allegations in Paragraph 79.

**Answer to Paragraph 80:**

Mr. Bennett denies the allegation in Paragraph 80.

**Answer to Paragraph 81**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 82:**

Mr. Bennett admits that the KPMG engagement team was required to assess the risk of management bias and avers that the KPMG engagement team appropriately planned the 2008 Audit, including with respect to the assessment of risk of management bias, in accordance with applicable professional standards. Mr. Bennett avers that the 2008 Completion Document and remainder of KPMG's work papers and the PCAOB standards speak for themselves.

**Answer to Paragraph 83:**

Mr. Bennett denies the allegations in Paragraph 83.

**Answer to Paragraph 84:**

Mr. Bennett denies the allegation in Paragraph 84.

**Answer to Paragraph 85:**

Mr. Bennett avers that the AICPA Codification of Statements on Auditing Standards speak for themselves.

**Answer to Paragraph 86:**

Mr. Bennett denies the allegations in Paragraph 86.

**Answer to Paragraph 87:**

Mr. Bennett denies the allegations in Paragraph 87.

**Answer to Paragraph 88:**

Mr. Bennett denies the allegations in Paragraph 88.

**Answer to Paragraph 89:**

Mr. Bennett denies the allegations in Paragraph 89.



**Answer to Paragraph 90:**

Mr. Bennett denies the allegations in Paragraph 90 and states that the Commission has not identified which alleged conduct is a supposed instance of highly unreasonable conduct.

**DEFENSES AND AFFIRMATIVE DEFENSES**

Mr. Bennett asserts the following affirmative defenses.

**First**

(Failure to State a Cause of Action)

The allegations of the Order fail to state a cause of action under the cited provisions of Rule 201.102(e)(1)(ii).

**Second**

(Failure to Provide Fair Notice)

The text of the Order fails to honor the mandate, set forth in Rule 200(b), 17 C.F.R. § 201.200(b), that where an answer is required by the Commission, the order “shall set forth the factual and legal basis alleged therefore in such detail as will permit a specific response thereto”

**Third**

(Due Process/Retroactivity)

The Order denies Mr. Bennett due process and fair notice as provided in the Fifth Amendment to the United States Constitution and the Administrative Procedures Act because the Order seeks to retroactively apply new interpretations of the plain language of applicable rules and professional standards existing at the time Mr. Bennett performed the work that is the subject of the OIP.

**Fourth**

(Due Process/Vagueness)

The Order contravenes Mr. Bennett’s right to due process as provided in the Fifth Amendment to the United States Constitution because it seeks to enforce vague and overbroad

laws based on rules and professional standards, or interpretations thereof, that are unduly vague and subjective.

**Fifth**  
(Due Process/Procedure)

The Order and these proceedings contravene Mr. Bennett's rights to due process as provided in the Fifth Amendment to the United States Constitution because the proceedings do not afford an adequate opportunity to defend the charges and deprive Mr. Bennett of access to information and evidence relevant to his defense.

**Sixth**  
(Arbitrary and Capricious)

The Commission's authorization of these proceedings was arbitrary and capricious in that the allegations in the Order lack support either in the record or in applicable rules and professional standards, and are contrary to allegations made by the Division in related proceedings.

**Seventh**  
(Penalties)

The penalties sought violate the Eighth Amendment of the United States Constitution and Mr. Bennett's right to due process as provided in the Fifth Amendment to the United States Constitution because the standards of improper professional conduct and the standards for determining resulting penalties are unduly vague and subjective, and permit arbitrary, capricious, excessive, and disproportionate punishment that serves no legitimate governmental interest.

**Eighth**  
(Fraud/Audit Interference)

Mr. Bennett was the victim of a collusive fraud by management and others that was designed to deceive him and the KPMG engagement team with respect to the adequacy of

TierOne's ALLL, which acted to defeat audit procedures reasonably designed to afford Mr. Bennett and Mr. Aesoph a reasonable basis for the KPMG audit opinions issued.

**Ninth**  
(Estoppel/Fraud Allegations)

The Commission is estopped from finding that Mr. Bennett engaged in improper professional conduct because the Commission itself has charged TierOne management—Gilbert Lundstrom, Jim Laphen, and Don Langford—with fraud on the auditors in the very same accounting matter at issue here and has adopted positions contrary to those asserted in this proceeding.

**Tenth**  
(Estoppel/Federal Regulatory Proceedings)

The Commission is estopped from finding that Mr. Bennett engaged in improper professional conduct to the extent that a federal banking regulator's conclusions regarding the bank's allowance for loan losses and related internal controls in 2008 were consistent with those reached by Mr. Bennett during the same period.

**Eleventh**  
(Due Process/Federal Regulatory Findings)

The Order and these proceedings contravene Mr. Bennett's rights to due process as provided in the Fifth Amendment to the United States Constitution to the extent that Mr. Bennett made conclusions consistent with those reached by federal banking regulators regarding the bank's allowance for loan losses and related internal controls in 2008.

**Twelfth**  
(Due Process/"Age of Case" Principles)

The allegations of the Order concern an audit and audit procedures conducted some four to five years ago. As such, the Order's entry as of January 9, 2013, violates fundamental notions of fairness and due process in that the Commission has unjustifiably delayed issuance of its

Order until such a significant amount of time has elapsed that Mr. Bennett's ability to summon witnesses and produce testimony is significantly and adversely affected. Given the age of events in this matter, it is "inherently unfair" and violative of due process to proceed against Mr. Bennett.

**Thirteenth**  
(Enforcement Action Deadline)

The Order is untimely under 15 U.S.C. § 78d-5, and the Commission's approval of the institution of these proceedings was therefore arbitrary, capricious and contrary to law.

**Fourteenth**  
(Additional Defenses)

Mr. Bennett expressly and specifically reserves the right to amend this Answer to add, delete, and/or modify defenses based upon legal theories, facts, and circumstances that may or will be divulged through discovery and/or further legal analysis of the Division's position in this litigation. Mr. Bennett adopts and incorporates by reference any and all other defenses asserted or to be asserted by any other respondent to this action to the extent Mr. Bennett may share in such defense.

Dated: February 4, 2013

Respectfully Submitted:



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