

FILED

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION 2011 JUN 17 A 9:41

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	Civil Action File No.
	:	
v.	:	1:11CV657
	:	LMB/JFA
PAUL R. ALLEN,	:	
	:	
Defendant.	:	
_____	:	

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff, Securities and Exchange Commission (“Commission”), files this Complaint and alleges as follows:

**SUMMARY**

1. From approximately February 2009 through July 2009, Defendant Paul R. Allen (“Allen”) aided-and-abetted the fraudulent efforts of Lee B. Farkas (“Farkas”) to deceive The Colonial BancGroup, Inc. (“BancGroup”), BancGroup’s shareholders, and the U.S. Department of the Treasury’s Trouble Asset Relief Program (“TARP”). Defendant Allen knowingly provided substantial assistance to Farkas in misrepresenting to BancGroup and others that Taylor, Bean and Whitaker Mortgage Corp. (“TBW”) – of which Farkas was chairman and Allen was chief-executive officer – had secured a \$300 million equity investment in BancGroup that would allow BancGroup and its wholly owned subsidiary, Colonial Bank, to qualify for approximately \$550 million in TARP funds (the “Capital Infusion”). The Capital Infusion, however, was a sham orchestrated by Farkas, in part with the assistance of Allen. Contrary to

Farkas and Allen's representations, TBW had never secured financing or sufficient investors to fund the Capital Infusion. Farkas and Allen's misleading statements were disseminated in Forms 8-K that BancGroup publicly filed with the Commission as well as in press releases issued by BancGroup and TBW. The effect of their false statements was to materially inflate the price of BancGroup's publicly traded securities.

2. Through his conduct, Allen has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute aiding and abetting violations of the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### **JURISDICTION AND VENUE**

3. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], to enjoin Allen from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for disgorgement with prejudgment interest thereon, civil penalties and for other relief.

4. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

5. Allen directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

6. Allen is a resident of the Eastern District of Virginia.

7. Certain of the transactions, acts, practices, and courses of business constituting violations of the Exchange Act occurred in the Eastern District of Virginia. The fraudulent conduct of Allen directly caused BancGroup to transmit and to file multiple false and misleading Forms 8-K to the Commission's electronic data gathering, analysis and retrieval system ("EDGAR"), the servers of which are physically located within the Eastern District of Virginia.

8. Allen unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

#### **DEFENDANT**

9. **Paul R. Allen** is 55 years of age and is a resident of Oakton, Virginia. Until August 2009, Allen was the chief-executive officer of TBW.

#### **RELATED PERSON AND ENTITIES**

10. **Lee B. Farkas** is 57 years of age and is a resident of Ocala, Florida who is currently remanded into federal custody while awaiting his criminal sentencing. Until August 2009, Farkas was the chairman and majority owner of TBW.

11. **Taylor, Bean & Whitaker Mortgage Corp.**, is a privately-held Florida corporation organized in 1982 and headquartered in Ocala, Florida. TBW expanded rapidly, and by 2008, was the largest non-depository mortgage lender in the United States.

12. On August 24, 2009, TBW filed a voluntary Chapter 11 bankruptcy petition, operating as a debtor-in-possession.

13. **The Colonial BancGroup, Inc.**, is a Delaware corporation organized in 1974 as a bank holding company and is currently head-quartered in Montgomery, Alabama. Colonial Bank is a wholly-owned subsidiary of BancGroup and was its primary operating division. As of

August 14, 2009, Colonial Bank had approximately 350 bank branches, located in Alabama, Florida, Georgia, Texas and Nevada, customer deposits of approximately \$18 billion, and total assets of approximately \$23 billion – making it one of the fifty largest banks in the United States. On August 14, 2009, the Alabama State Banking Department seized Colonial Bank and appointed the Federal Deposit Insurance Corp. (the “FDIC”) as receiver.

14. Subsequent to the closure, an unrelated financial holding company assumed substantially all of Colonial Bank’s deposits and purchased approximately \$22 billion of Colonial Bank’s assets in a transaction facilitated by the FDIC.

15. Following Colonial Bank’s seizure and sale, BancGroup filed a voluntary Chapter 11 bankruptcy petition, operating as a debtor-in-possession.

16. During the relevant period, BancGroup’s securities were registered pursuant to Section 12(b) of the Exchange Act and were listed on the New York Stock Exchange (“NYSE”) under the symbol “CNB” until the NYSE suspended trading on August 17, 2009. BancGroup’s common stock was thereafter registered with the Commission pursuant to Section 12(g) of the Exchange Act. Effective December 20, 2010, pursuant to Section 12(j) of the Exchange Act, the Commission revoked the registrations of all classes of securities of BancGroup.

#### FACTS

17. Farkas and Allen employed a series of manipulative and deceptive devices that resulted in BancGroup misrepresenting publicly that TBW had obtained commitments for the \$300 million Capital Infusion, which was a prerequisite for Colonial Bank to receive TARP funds.

18. Colonial Bank applied for TARP funds in advance of the U.S. Department of the Treasury’s November 14, 2008 initial deadline. On December 2, 2008, two hours before trading closed, BancGroup issued a press release, thereafter attached to a Form 8-K, in which it

announced that it had obtained preliminary approval to receive \$550 million of TARP funds. BancGroup's stock price jumped 54% in the remaining two hours of trading, representing the largest one-day price increase since 1983.

19. On January 27, 2009, BancGroup issued a press release, and thereafter filed a Form 8-K with the Commission attaching the press release, announcing that Colonial Bank's receipt of TARP funds was conditioned upon increasing its equity by \$300 million.

20. The success of the Capital Infusion was critically important to both BancGroup and TBW, as ongoing capital issues had become the largest issue at Colonial Bank. Farkas went as far as to say that TBW would go bankrupt if Colonial Bank, which TBW relied on as its primary source of operating capital, did not obtain TARP funds.

21. In early February 2009, Farkas approached Colonial Bank with an offer to organize an investment group to raise the entire \$300 million Capital Infusion.

22. Though not disclosed publicly at the time, the initial break-down for the investor group was to be as follows: (a) TBW would contribute \$150 million; (b) two private equity or investment firms solicited by TBW would each contribute \$50 million; and (c) a "friends and family" investor group consisting of Colonial Bank's Mortgage Warehouse Lending Division customers and several of TBW's correspondent mortgage network lenders (the "Friends and Family") would contribute a combined \$50 million. The Friends and Family investor group was jointly solicited by Farkas and an officer at Colonial Bank.

23. TBW's ability to participate in the Capital Infusion was a sham led by Farkas and substantially assisted by Allen. Farkas repeatedly misrepresented to BancGroup, and directed Allen to misrepresent to BancGroup, that a foreign held investment bank (the "Investment Bank") had committed to finance TBW's equity investment in Colonial Bank, when it had not.

24. Allen, operating at Farkas' direction, further misrepresented to BancGroup that TBW had secured all the necessary commitments from third-parties to invest \$300 million in Colonial Bank. TBW delivered to BancGroup, on March 31, 2009, a stock purchase agreement to consummate the Capital Infusion (the "Stock Purchase Agreement"). Farkas signed the agreement on behalf of TBW and its investor group, knowing that the representations therein regarding investor commitments were false. Allen knew at the time he communicated to BancGroup that all of the necessary third-party funding commitments had been obtained that such statements were false.

25. Within the Stock Purchase Agreement, TBW misrepresented that it had obtained commitments from two private equity sources (the "\$50 Million Investors") that it identified by name within Schedule 1 to the Stock Purchase Agreement, to each invest \$50 million in the Capital Infusion. TBW specifically warranted to BancGroup the identity of each investor and the amount each investor had agreed to invest. In truth, neither of the \$50 Million Investors were private equity investors and neither ever agreed to participate in the Capital Infusion. While knowing the \$50 Million Investors had not agreed to participate in the Capital Infusion, Allen communicated to BancGroup that they were confirmed participants in the Capital Infusion.

26. The Stock Purchase Agreement required each investor to "deposit[] into an escrow account an amount equal to ten percent of such [investor's commitment]." The escrow account was maintained at Platinum Community Bank, a thrift that was wholly-owned by TBW. Before issuing any public announcement regarding the Capital Infusion, BancGroup's senior management reviewed the escrow account to ensure that the investors had complied with this obligation. In an effort to convince BancGroup and Colonial Bank's regulators that TBW had obtained sufficient commitments, Farkas instructed the commencement of what was referred to

internally as “Project Squirrel” – designed to secretly divert money from other sources to the Capital Infusion escrow account. Further pursuant to Project Squirrel and at Farkas’ direction, Allen, while knowing the same to be false, provided BancGroup with a summary of escrow deposits, which misrepresented that all investors, including the \$50 Million Investors, had each deposited the requisite funds into the escrow account. Neither of the \$50 Million Investors, however, ever agreed to participate in the Capital Infusion or made such escrow deposits.

27. Based on the fraudulent conduct of Farkas as substantially assisted by Allen, BancGroup executed the Stock Purchase Agreement late in the day of March 31, 2009 and issued a press release that same day announcing its entry into a “definitive agreement” with the TBW-led investor group. Farkas reviewed and approved BancGroup’s press release before it was disseminated.

28. Farkas and TBW also issued their own press release on March 31 regarding the Capital Infusion. The caption of TBW’s release stated “[TBW] leads investor group in signing definitive agreement for a \$300 million investment in Colonial BancGroup” [sic]. TBW’s release quoted Farkas as saying “We view this as a unique opportunity and TBW is delighted to be able to participate in this important transaction with Colonial.”

29. The market responded aggressively to the news, with shares of BancGroup trading 20% higher the next trading day. BancGroup filed a Form 8-K with the Commission on April 1, 2009, via the EDGAR system, which contained the press release and the Stock Purchase Agreement signed by Farkas.

30. The Stock Purchase Agreement contained a financing contingency, which made the investors’ obligation to participate in the Capital Infusion dependent on their ability to obtain financing.

31. By May 2009, Farkas had advised BancGroup that TBW would not rely on the Investment Bank to finance its share of the Capital Infusion and that TBW would fund its share of the Capital Infusion by liquidating several derivative securities that involved hedges of TBW's mortgage servicing rights. Allen assisted in disseminating this information. This statement was false, and Farkas and Allen knew that it was false, in that TBW did not have the ability to fund its share of the Capital Infusion internally.

32. Based on Farkas and Allen's representations, BancGroup and TBW amended the Stock Purchase Agreement to delete the financing contingency and BancGroup filed a Form 8-K on May 4, 2009 announcing this amendment to the Stock Purchase Agreement. Farkas reviewed and approved the Form 8-K before it was filed.

33. In response to the news that the financing contingency had been removed from the Stock Purchase Agreement, BancGroup's share price rose approximately 10%, while trading volume jumped almost 68% over the average trading volume during the prior five trading days.

34. On July 31, 2009, after trading closed, BancGroup and TBW mutually announced the termination of the Stock Purchase Agreement, essentially signaling the end of Colonial Bank's pursuit of TARP funds. BancGroup's stock declined 20% that day to \$0.49, and has not been above \$0.77 since that date.

**COUNT I — AIDING AND ABETTING FRAUD**  
**Aiding and Abetting Violations by Farkas of**  
**Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]**  
**and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

35. Paragraphs 1 through 34 are hereby realleged and are incorporated herein by reference.

36. Through the conduct described above, Farkas violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].



37. Through the conduct described above, Allen knowingly provided substantial assistance and aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Commission respectfully prays that the Court:

**I.**

Make findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendant Allen named herein committed the violations alleged herein.

**II.**

Issue a permanent injunction enjoining Allen and his agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

**III.**

Issue an order pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)] imposing civil penalties against Allen.

IV.

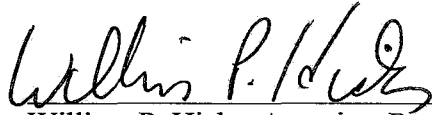
Order such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated this 16<sup>th</sup> day of June, 2011.

Respectfully submitted,



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