

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75999 / September 28, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3708 / September 28, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16839

In the Matter of

**Daniel R. Bartholomew and
Karl I. Hjelvik,**

Respondents.

**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 AND NOTICE OF
HEARING**

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 Daniel R. Bartholomew and Karl I. Hjelvik (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent 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 and Notice of Hearing (“Order”), as set forth below.

III.

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

Summary

As the New Mexico economy declined during the financial crisis, Trinity Capital Corporation and its wholly-owned subsidiary, Los Alamos National Bank (collectively, "Trinity" or "the Bank"), experienced an increase in problem loans and a decrease in the collateral values supporting its loan portfolio and other real estate owned ("OREO"). In response, certain former members of the Bank's management caused the Bank to engage in false and misleading accounting and reporting that concealed the Bank's delinquencies and declining collateral values and to hide the true nature of its loan and OREO portfolio. This conduct resulted in the Bank materially misstating its provision for loan losses and its allowance for loan and lease losses ("ALLL"), included in quarterly and annual filings with the Commission during 2010, 2011 and the first two quarters of 2012. This conduct by certain former members of the Bank's management was aided by the Bank's deficient internal accounting controls over loan and OREO accounting, as well as the circumventing internal accounting controls by certain employees and former members of management.

While serving as the Bank's Chief Financial Officer, Daniel Bartholomew failed to implement adequate internal controls over, among other areas, impaired loan loss calculations, troubled debt restructurings ("TDRs"), subsequent events, OREO, and appraisals. In some instances, Bartholomew was also a cause of Trinity's false books and records and the submission of inaccurate reports because he was on notice of certain transactions that failed to comply with generally accepted accounting principles ("GAAP"), but he failed to correct the accounting errors.

While serving as the Bank's head of Internal Audit, Karl Hjelvik was directly responsible for testing the Bank's internal accounting controls and compliance with GAAP. When Hjelvik became aware of issues in the way in which loans were accounted for under the direction of the Bank's management, he failed to report his concerns to the Bank's audit committee, and in some instances, he failed to take action to remedy inaccurate reports and books and records as required by the Bank's policies and procedures. Hjelvik also failed to ensure that effective internal controls were in place over impaired loan loss calculations, TDRs, subsequent events, OREO, and appraisals.

Respondents

1. Daniel Bartholomew is a 49-year-old resident of Los Alamos, New Mexico. Bartholomew served as the Bank's chief financial officer ("CFO") from 2003 until September 2014. He has never been a certified public accountant.

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

2. Karl Hjelvik is a 53-year-old resident of Los Alamos, New Mexico. Hjelvik has served as the Bank's head of internal audit since 1997 and has held the title of Vice President of Internal Audit since 2007. Hjelvik has never been a certified public accountant.

Related Entity

3. Trinity Capital Corporation is a New Mexico corporation headquartered in Los Alamos, New Mexico. Trinity is the holding company of Los Alamos National Bank, a national banking organization with \$1.4 billion in assets. Trinity's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act; however, its stock is not listed on any automated quotation system or securities exchange and no firm makes a market in its stock. In 2010, Trinity issued common stock under a registration statement filed on Form S-8 (Registration No. 333-126980, filed July 28, 2005). In 2012, Trinity awarded Restricted Stock Units to certain personnel under the same registration statement. The registration statement incorporated by reference subsequent filings, including Trinity's 2010 Forms 10-Q and 10-K, 2011 Forms 10-Q and 10-K, and 2012 Forms 10-Q.

Facts

4. During 2010, 2011 and the first two quarters of 2012 (the "Relevant Periods"), Trinity failed to properly account for the Bank's loan portfolio and failed to properly account for its OREO in 2011. As a result, the Bank filed inaccurate periodic reports with the Commission in 2010, 2011, and the first two quarters of 2012.

5. On December 12, 2014, Trinity filed its Form 10-K for the year ended December 31, 2013, which included the restatement of Trinity's consolidated financial data for the year ended December 31, 2011 and the quarterly periods ended March 31, 2012 and June 30, 2012, and the restated, unaudited, selected consolidated financial data for the year ended December 31, 2010. According to its restatement, Trinity's provision for loan losses was understated by \$6.8 million (25%) in 2010, \$22.3 million (73%) in 2011, and \$4.5 million (68%) in the first quarter of 2012. Trinity overstated its provision for loan losses for the second quarter of 2012 by \$2.3 million (31%). Additionally, in 2011, Trinity's OREO losses were understated by \$364,000 (10%). The restatement also noted that these failures were caused in part by the override of controls by certain former members of management because of Trinity's insufficient internal accounting controls, including controls in the loan department, internal audit, and loan accounting. The restatement also identified material weaknesses in Trinity's internal control over financial reporting.

6. Certain former members of the Bank's management, directly and through instructions to lower-level employees, caused the Bank to materially misstate its ALLL and loan loss provision by: (1) failing to downgrade troubled loans; (2) failing to identify loans as individually impaired – including hundreds of TDRs; (3) failing to measure the impairment on impaired loans properly; and (4) making various misrepresentations to the Respondents and other third parties. In 2011, certain former members of the Bank's management also caused the Bank to improperly value its OREO.

7. In furtherance of the scheme, and to avoid downgrading loans to special mention or substandard, certain former members of the Bank's management established a practice, followed by loan department employees, of using a variety of "extend and pretend" tactics to ignore and hide a borrower's troubled financial situation, such as extending additional credit to troubled borrowers so that interest payments could be made and borrowers would remain off the past due list; instructing employees to keep certain borrowers "off the radar" of the Office of the Comptroller of the Currency ("OCC") and other third parties; and delaying, ignoring, and improperly rejecting appraisals. The scheme was motivated, at least in part, by a desire to have the Bank released from a Formal Agreement with the OCC, which was in place from January 2010 to April 2012.

8. Hjelvik and the internal audit department he headed were directly responsible for ensuring: that risk was assessed, monitored and managed; that internal accounting controls existed and functioned properly; that GAAP was followed; that an effective internal audit program was developed and maintained; that audit results were reported to the audit committee each quarter; and that internal audit's independence was maintained. However, the Bank's internal audit department was not independent from management, internal controls either did not exist or did not function properly, GAAP was not always followed, an effective internal audit program was not maintained, and the Bank's audit committee was not always provided with complete and independent audit findings. The Bank's internal audit department also lacked a formalized risk assessment process and, as a result, did not sufficiently consider risks in financial reporting in establishing audit procedures.

9. During the Relevant Periods, the Bank lacked sufficient internal accounting controls for the periodic review of loans to ensure loans were accurately graded and to identify troubled and impaired loans. Bartholomew and Hjelvik reviewed all internal control flow charts annually and were aware that they lacked sufficient controls over identification of loans for impairment and collateral fair value determination. Bartholomew and Hjelvik also repeatedly saw quarterly grade change reports that indicated loans were not being downgraded timely.

10. In one specific instance, Hjelvik informed management within the loan department that a loan should be impaired; however, the loan department refused to impair the loan and Hjelvik never reported the incorrect loan classification to the audit committee or outside auditors. In another example, a borrower's loans were downgraded from pass to substandard by the internal audit department in late March 2011, were then upgraded to pass at the direction of former members of management in early April 2011, and were then again downgraded to substandard in May 2011 when the borrower appeared on a list of loans to be reviewed by a third party. Other than flagging these loans for testing by the third party reviewer, Hjelvik did not report the loan department's attempted override of internal controls or bank policies to the audit committee though Hjelvik was required by the Bank's policies and procedures to report such problems to the audit committee, and once a year was asked by the audit committee in executive session to report his concerns.

11. In response to another red flag, Bartholomew took no action when he was "dis-invited" from attending loan department meetings where problem loans were discussed, even though he suspected that he was dis-invited because he thought the loan department wanted to keep

information from the accounting department. Hjelvik was also aware that senior members of the accounting department were dis-invited from these meetings but took no action in response.

12. The Bank also lacked sufficient internal accounting controls over the use of overdraft loans and the analysis of TDRs. For example, the Bank's internal loan approval and credit review documents failed to require an analysis of whether a loan or a modification was a TDR. Bartholomew and Hjelvik were both aware that the Bank might not be identifying all TDRs and that the Bank's systems were not able to run reports that would identify TDRs. Similarly, in some instances, feedback and working papers from independent, third-party loan reviews indicated that a TDR analysis should be performed on specific loans; however, there were no controls in place to confirm that this feedback was reviewed, noted, and acted upon. Bartholomew and Hjelvik were aware that none of Trinity's internal control flow charts addressed TDRs and they failed to take action to put sufficient controls in place.

13. The Bank failed to devise and maintain internal accounting controls sufficient to provide reasonable assurances that its accounting for impaired loans was in conformity with GAAP. Bartholomew, Hjelvik, and loan department personnel involved in calculating and reviewing the impaired loan loss calculations did not possess sufficient accounting expertise. As a result, errors occurred in the calculation of impaired loan losses by the loan department that were not remediated by Bartholomew or Hjelvik during their review of the calculations. For example, Bartholomew and Hjelvik were aware of loans that relied upon stale appraisals and collateral values improperly based on "as-stabilized" valuations. They were also aware of other indications of value – including listing agreements and negotiated sales prices – that suggested fair value was substantially below the Bank's dated appraised value used for its impairment calculation. Nevertheless, Bartholomew and Hjelvik failed to take action to ensure that the impairment measurements considered updated and accurate "as-is" values or to notify the audit committee of any concerns. Further, in one example, neither of them followed up to ensure that an appraisal was being handled properly when they were made aware that the appraisal had been deleted out of a Bank database.

14. The Bank also lacked sufficient processes and controls over appraisals. While the appraisal process was to be separate and independent from the loan department, in practice, loan department employees were charged with determining when appraisals would be ordered on classified loans and OREO properties. Further, at the direction of certain former members of the Bank's management and loan department, appraisals were sometimes not ordered timely, delayed, or ordered without the standard request for an "as-is" fair value. Neither the internal audit nor accounting departments were automatically notified when appraisals were received, which meant that they were not always aware of appraisals relevant to impairment measurements or OREO write downs. During the Relevant Periods, Bartholomew and Hjelvik were both aware of these appraisal irregularities in connection with loans and yet they took no action to increase controls over the appraisal process.

15. Additionally, appraisals received in the subsequent event period were not always considered, as required by GAAP, in the Bank's loan and OREO impairment accounting. Bartholomew and Hjelvik were aware of this by at least 2009 when the Bank's outside auditor found a material accounting error. They were also aware of instances of the loan department

failing to properly account for subsequent events throughout 2010 and 2011. Nonetheless, Bartholomew and Hjelvik failed to implement controls to adequately address this issue and, throughout the Relevant Periods, the Bank's internal audit and accounting departments continued to stumble across appraisals received in the subsequent event period that had not been considered in the Bank's accounting.

16. Bartholomew and Hjelvik were also aware that sufficient controls were lacking over the Bank's processes and computerized systems that housed appraisals and loan information. Controls were inadequate to ensure all received appraisals were preserved in the Bank's database. Numerous employees, including loan officers, had edit rights to these systems allowing them to alter or delete data about loans, appraisals, collateral values, and customers. Because of these internal control weaknesses, employees could delete appraisals or change collateral values without documenting why the alterations were made. When appraisals and collateral values were deleted, the result was that information was not made available to the OCC and other third parties, as well as other Bank employees.

17. Bartholomew signed Trinity's 10-K and 10-Q filings, including certifications, as well as management representation letters to the outside auditors that included representations on GAAP, internal controls, and any suspected fraud. Hjelvik signed Trinity's 2011 internal control representation letter to the external auditor and signed sub-certifications to Trinity's 2010 Form 10-K, 2011 Form 10-K, and the 2012 first quarter 10-Q, knowing that their purpose was to bring up issues that could affect the filings. Notwithstanding the facts described above, Bartholomew and Hjelvik signed these representations, while also failing to adequately address concerns raised by Bank employees about how certain significant loans were being risk rated and accounted for by the Bank.

Violations

18. As a result of the conduct described above, Bartholomew and Hjelvik were a cause of Trinity's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to 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.

19. As a result of the conduct described above, Bartholomew and Hjelvik were a cause of Trinity's violations of 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 reflect their transactions and dispositions of their assets.

20. As a result of the conduct described above, Bartholomew and Hjelvik were a cause of Trinity's violations of 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; and prohibit persons from knowingly circumventing or knowingly failing to implement a system of internal accounting

controls, knowingly falsifying any book, record, or account, and directly or indirectly falsifying or causing to be falsified any book, record, or account.

IV.

Respondents acknowledge that the Commission is not at this time imposing a civil penalty based upon their agreement to cooperate in a related enforcement action. However, pursuant to this Order, Respondents agree to additional proceedings in this proceeding to determine what, if any, civil penalties pursuant to Section 21B(a) of the Exchange Act against Respondents are in the public interest. In connection with such additional proceedings: (a) Respondents agree that they will be precluded from arguing that they did not violate the federal securities laws described in this Order; (b) Respondents agree that they may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings of the Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents Bartholomew and Hjelvik 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 12b-20, 13a-1, and 13a-13 thereunder.

B. IT IS FURTHER ORDERED pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party, that a public hearing for the purpose of taking evidence on the questions set forth in Section IV hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110, following the entry of a final judgment against the last remaining defendant(s) in *Securities and Exchange Commission v. Jill D. Cook and Mark C. Pierce*, Civil Action No. 15-cv-00864 (D.N.M., filed September 28, 2015 (the "Related Actions")).

If Respondents fail to appear at a hearing after being duly notified, Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.221(f), and 201.310.

The Order shall be served forthwith upon Respondents personally or by certified mail.

C. IT IS FURTHER ORDERED pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party, that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of the entry of a final judgment in the Related Actions.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary