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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION 2011 MAR 16 A 11:24

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TERESA A. KELLY,

Defendant.

Civil Action File No.

1:11 cv 268

LMB/TRJ

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

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

SUMMARY

1. From approximately March 2002 through August 2009, Defendant Teresa A. Kelly (“Kelly”), together with Lee B. Farkas (“Farkas”), Catherine L. Kissick (“Kissick”), and Desiree E. Brown (“Brown”), engaged in a pattern of fraudulent conduct for the purpose of selling at least \$1.5 billion of fictitious and impaired residential mortgage loans from Farkas’ company, Taylor, Bean and Whitaker Mortgage Corp. (“TBW”) to Colonial Bank, and for Colonial Bank, and its publicly traded parent company, The Colonial BancGroup, Inc. (“BancGroup”), to falsely record these fictitious and impaired mortgage loans as high quality assets.

2. Through her conduct, Defendant Kelly has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will

constitute violations of Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5 and 13b2-1 [17 C.F.R. §§ 240.10b-5 and 240.13b2-1] thereunder. Defendant Kelly has further 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 Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B), and 78m(b)(5)] and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13] thereunder.

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 Defendant Kelly 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. Defendant Kelly directly and indirectly, made use of the mails and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

6. 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 Defendant Kelly directly caused BancGroup to transmit and to file multiple false and misleading Forms 10-K, 10-Q and 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. Certain persons who purchased securities issued by BancGroup while it filed misleading Forms 10-K, 10-Q and 8-K with the Commission as a direct result of Defendant Kelly’s misconduct are residents of the Eastern District of Virginia.

7. Defendant Kelly, 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

8. **Teresa A. Kelly** is 35 years of age and is a resident of Ocoee, Florida. From 2000 until August 2009, Kelly was an employee of Colonial Bank, serving most recently as the operations supervisor of Colonial Bank’s Mortgage Warehouse Lending Division (the “MWLD”).

RELATED PERSONS AND ENTITIES

9. **Lee B. Farkas** is 58 years of age and is a resident of Ocala, Florida. Until August 2009, Farkas was the chairman and majority owner of TBW.

10. **Catherine L. Kissick** is 50 years of age and is a resident of Orlando, Florida. Until August 2009, Kissick was an officer and director of Colonial Bank, serving as the senior vice-president, assistant treasurer, and head of the MWLD.

11. **Desiree E. Brown** is 45 years of age and is a resident of Ocala, Florida. Brown is the former treasurer of TBW.

12. **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.

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

14. **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.

15. 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.

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

17. 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

Colonial Bank's Relationship with TBW

18. Colonial Bank's operating divisions consisted of its regional banking groups and the MWLD. The MWLD provided short-term funding to residential mortgage originators, who typically lacked sufficient assets of their own to fund the mortgage loans they originated. The MWLD has historically been a major income source for BancGroup, and between 2005 and 2009, accounted for no less than 21% of BancGroup's reported net income.

19. The MWLD's largest customer was TBW, a privately-held mortgage company based in Ocala, Florida and controlled by its majority owner and chairman, Farkas. In 2008, TBW was the nation's largest non-depository mortgage lender, originating more than \$30 billion in loans. TBW's primary business operations included the origination, acquisition, sale and servicing of residential mortgages. The bulk of the residential mortgage loans that TBW originated flowed from its contracted network of small, local mortgage brokers and banks.

20. TBW's most valuable asset, and one of its primary sources of revenue, consisted of its right to service the mortgages that it originated and typically sold to the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Agencies"). TBW typically valued these mortgage serving rights in excess of \$500 million on its financial statements.

21. As a loan servicer, TBW was required to collect and segregate principal, interest, and designated escrow amounts (such as insurance and property taxes) from the payments by the underlying mortgage borrower and to properly disburse such amounts to the ultimate investor in the mortgage loans, once the loans were sold. TBW's servicing rights entitled it to retain a portion of these amounts as fee for the services provided. In order to act as a loan servicer for

the Agencies and to retain the servicing fees, however, TBW was still contractually obligated to make all required payments to the ultimate investors until the event of default.

22. TBW generally did not have sufficient capital to internally fund the mortgage loans it originated. TBW thus relied on various financing arrangements, primarily with Colonial Bank's MWLD, to fund such mortgage loans.

23. Pursuant to one of these financing arrangements, referred to as the "COLB" Agreement, Colonial Bank purchased a 99% interest in certain residential mortgage loans originated by TBW. When TBW sold these loans to Colonial Bank, it represented that they were of a certain quality and that there was a commitment from a third-party investor to ultimately purchase the loan. When that investor purchased the loan, the proceeds would be used to repay Colonial Bank for the funding advance. TBW represented that it typically re-sold loans financed under the COLB Agreement to a third-party within 90 days after the loan was originated.

24. Another financing arrangement was referred to as the Assignment of Trade or "AOT" Agreement. Pursuant to this arrangement, Colonial Bank purchased a 99% participation interest in a bundled group of mortgage loans, referred to as a "trade," that had been pre-certified as mortgage-backed securities that TBW would issue, market and re-sell to a third-party. These participation interests under the AOT Agreement constituted securities under the Securities Act and the Exchange Act.

25. TBW certified each trade as either an "Agency" trade (i.e., to be purchased by Fannie Mae or Freddie Mac) or a "private label" trade (i.e., to be purchased by a non-government-related institution). To sell a trade to Colonial Bank under the AOT Agreement, TBW had to provide evidence of a binding commitment from a third-party investor to purchase

the trade from Colonial Bank within a specified period of time, usually between 30 days (if certified as an Agency trade) or 60 days (if certified as a private label trade).

26. When Colonial Bank purchased a trade from TBW pursuant to the AOT Agreement, Colonial Bank's accounting systems no longer tracked or identified the individual mortgage loans that comprised that trade.

27. Loans that Colonial Bank purchased under the COLB Agreement were recorded in Colonial Bank's internal accounting records in the "COLB Account" and ultimately included as assets on BancGroup's balance sheet, in an account entitled "Loans Held for Sale."

28. Trades purchased under the AOT Agreement were recorded in Colonial Bank's internal accounting records in the "AOT Account" and ultimately reflected as assets on BancGroup's balance sheet as "Securities Purchased under Agreements to Resell." TBW was the only MWLD customer that utilized an AOT arrangement and, as a result, all of the assets listed in the AOT Account originated from TBW.

29. By 2007, the total amount of financing that Colonial Bank had outstanding to TBW, primarily under the COLB and AOT arrangements, was approximately \$3.5 billion, almost 82% of the \$4.3 billion in total MLWD assets that Colonial reported in its 2007 Form 10-K.

The Fraud to Alleviate TBW's Cash Flow Problems

30. Beginning in the first-quarter of 2002, TBW began to experience liquidity problems, primarily because the cash generated from the mortgage servicing rights was insufficient to cover its growing business.

31. Around this time, TBW began to overdraw its then limited warehouse line of credit with Colonial Bank by approximately \$15 million each day. Farkas, who controlled TBW, pressured Kissick to assist in concealing TBW's overdrafts.

32. With Kissick and Defendant Kelly's direct assistance, a pattern of "kiting" in TBW's accounts at Colonial Bank, whereby certain debits to TBW's warehouse line of credit were not entered until after credits due to the warehouse line of credit for the following day were entered. This kiting activity increased in scope such that by December 2003, TBW was overdrawing its accounts with Colonial Bank by approximately \$150 million on a nearly daily basis.

33. Recognizing the continued difficulty in concealing this initial fraudulent conduct, Farkas and Kissick devised a plan whereby TBW would create and submit fictitious loan information to Colonial under the COLB Agreement.

34. On or around December 11, 2003, Farkas, having brought Brown, TBW's treasurer, and Kissick, having brought Kelly, who was the MWLD's operations manager, into the scheme so as to assist in preparing the necessary documentation, arranged for TBW to submit approximately \$150 million in non-existent loans for funds advancement from the COLB Account. Internally, Farkas, Kissick, Brown and Defendant Kelly referred to these fictitious COLB loans as "Plan B."

35. Additional drains on TBW's cash arose when Agencies or individual third-party investors occasionally determined that certain mortgage loans they had purchased from TBW did not qualify under their respective purchase agreements with TBW. When this occurred, TBW was required to refund the investor, but was still obligated to repay Colonial Bank for advancing the funds to make these now unmarketable, aged and/or impaired loans. These loans, along with significantly aged loans (which were also likely impaired in value), foreclosed loans and real estate owned by virtue of foreclosure sales (which were also significantly impaired), along with paid-in-full loans (which had no value whatsoever since there was no future payment stream)

were referred to internally by Farkas, Kissick, Brown and Defendant Kelly as the “Crap,” and were sold by TBW to Colonial Bank pursuant to the COLB arrangement.

36. As a direct result of Farkas, Kissick, Brown and Defendant Kelly’s misconduct, fictitious Plan B loans and significantly impaired Crap loans purchased by Colonial Bank were typically represented as high-quality assets on BancGroup’s financial statements and carried at par value.

37. In 2004, as the Plan B and Crap loans in Colonial Bank’s COLB Account began to increase in number and to age further, Farkas, Kissick, Brown and Defendant Kelly devised a plan to conceal these loans. They created fictitious trades that consisted of Plan B or Crap loans and rolled these loans from the COLB Account to trades on the AOT Account. Once on the AOT Account, Colonial Bank’s accounting systems could not identify the individual loans, or the age of those loans, within that trade.

38. Because the fictitious trades containing Plan B or Crap loans could not readily be sold to third-party investors, Farkas, Kissick, Brown and Defendant Kelly utilized several manipulative and deceptive devices to conceal these trades as they aged on the AOT Account. For example, from approximately 2004 onward, Defendant Kelly, with significant assistance from Farkas, Kissick and Brown, altered Colonial Bank’s accounting records to “reset” the commitment dates on certain trades and modify the identifying trade numbers, making it appear that Colonial Bank had only recently purchased those trades and their third-party commitments had not expired. On other occasions, Defendant Kelly, with significant assistance from Farkas, Kissick and Brown, “refreshed” trades, by re-entering trades on the AOT Account that had recently been sold to a third-party and then back-filling these re-entered trades with Plan B or Crap loans.

39. TBW's cash flow problems intensified in or around 2007, when a private label purchaser reneged on its obligation to purchase an approximately \$600 million trade held in the AOT Account (the "Failed Trade"). TBW was unable to immediately repackage and resell the Failed Trade and therefore was unable to repay its contractual obligations to Colonial Bank for advancing the funds necessary to make the underlying loans in the first place. TBW ultimately sub-divided the Failed Trade into smaller trades and individual loans and was able to timely sell a portion of the Failed Trade. Farkas, Kissick, Brown and Defendant Kelly thereafter recycled the remaining portion of the Failed Trade, approximating \$300 million of now aged loans, into smaller Crap trades on the AOT Account.

40. By the end of 2007, and continuing through 2009, Colonial Bank's AOT account had approximately \$500 million in completely unsecured Plan B loans and an additional approximately \$1 billion in Crap loans.

The Fraud Causes BancGroup to Misstate Its Assets

41. As of BancGroup's last Form 10-Q filed with the Commission, via the EDGAR system, for the period ended March 31, 2009, Colonial reported \$26 billion of total assets, including MWLD assets of \$4.9 billion. The MLWD assets consisted primarily of \$2.7 billion in Loans Held for Sale (COLB) and \$1.6 billion in Securities Purchased under Agreements to Resell (AOT). At the time of filing this Form 10-Q, the entirety of the AOT Account (\$1.6 billion) was comprised of trades consisting primarily of fictitious Plan B and Crap loans.

42. At the time of Colonial Bank's seizure in August of 2009, most if not all of the trades in the AOT Account, representing assets of \$1.6 billion on BancGroup's financial statements, failed to contain the underlying collateral to either support the values entered into Colonial Bank's accounting systems by the MWLD or be capable of being sold to either the Agencies or any third-party.

43. BancGroup's disclosures on mortgage warehouse assets in its filings with the Commission contained numerous material misrepresentations as a direct result of the fraudulent conduct of Farkas, Kissick, Brown and Defendant Kelly. Farkas, Kissick, Brown and Defendant Kelly knew that their conduct would cause BancGroup's false and misleading statements within its financial statements and reports filed with the Commission via the EDGAR system.

44. Specifically, BancGroup's 2007 to 2009 annual, quarterly and current reports filed with the Commission, as a result of Farkas, Kissick, Brown and Defendant Kelly's fraudulent conduct, wrongly represented at various points that:

(1) The MWLD assets are "secured by high quality mortgage loans";

(2) Securities Purchased Under Agreements to Resell (AOT) "represent mortgage backed securities which have been securitized by [TBW] and are under agreements to be sold to third-party investors";

(3) The MWLD's customers "are experiencing no difficulty in selling their production in a timely fashion"; and

(4) The MWLD is "has not had any credit or other loss ... since the initiation of the unit in 1998."

45. BancGroup also frequently referenced the significance of the MWLD in various press releases and referenced the "excellent credit quality" of the real estate assets within the MWLD. Farkas, Kissick, Brown and Defendant Kelly's fraudulent conduct directly resulted in BancGroup's misrepresentations regarding the credit quality of the MWLD.

46. During a fourth quarter 2008 earnings call with analysts, senior BancGroup officers emphasized the company's commitment to the mortgage warehouse business, noting that it had "strong profitability even during . . . a very difficult mortgage market." Also, a January

27, 2009 press release announcing the company's 2008 financial results stated that "Colonial's support of warehouse lending is essential to the [housing] industry.... The division is highly profitable with minimal credit losses." Farkas, Kissick, Brown and Defendant Kelly's fraudulent conduct directly resulted in BancGroup's misrepresentations regarding the MWLD's profitability.

47. Farkas, Kissick, Brown and Defendant Kelly's fraudulent conduct also caused BancGroup to materially understate its allowance for loan losses ("Loss Allowance"), and therefore, overstate its reported net income. Farkas, Kissick, Brown and Defendant Kelly's fraudulent conduct further caused BancGroup to record the advances to TBW as assets that would be quickly sold to third-parties, rather than either unsecured loans to a company with severe liquidity problems (Plan B loans) or secured loans for which the underlying collateral might be impaired (Crap loans). BancGroup did not record any increases to the Loss Allowance in connection with these assets. Reclassifying the MWLD assets in an appropriate fashion would have impacted BancGroup's Loss Allowance and earnings in a material fashion.

Fraudulent Misreporting of Sales Proceeds

48. As Colonial Bank did not track the underlying collateral comprising a trade, when a trade from Colonial Bank's AOT account was sold, Colonial Bank relied on TBW to identify the specific pay-down information.

49. TBW, at the direction of Farkas and Brown, routinely provided inaccurate pay-down information to Colonial Bank, in the form of spreadsheets prepared by Brown and given to Kissick and Defendant Kelly, that identified loans unrelated to the specific trade sold. These spreadsheets identified older, unmarketable loans, and correspondingly older trades, that the

MWLD was to record as sold, while the new loans that had actually been sold remained on Colonial Bank's accounting records.

50. Farkas and Brown prepared these spreadsheets for the express purpose of defrauding Colonial Bank and Kissick and Defendant Kelly assisted, fully knowing that the loans within the trades that had been sold did not match the spreadsheets provided to her by Brown.

COUNT I — FRAUD
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]

51. Paragraphs 1 through 50 are hereby realleged and are incorporated herein by reference.

52. From at least March 2002 through at least August 2009, Defendant Kelly, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

53. Defendant Kelly knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business.

In engaging in such conduct, Defendant Kelly acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

54. By reason of the foregoing, Defendant Kelly, directly and indirectly, has violated and, unless enjoined, will continue to violate 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].

COUNT II — AIDING AND ABETTING FRAUD
Aiding and Abetting of Violations by BancGroup 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]

55. Paragraphs 1 through 50 are hereby realleged and are incorporated herein by reference.

56. BancGroup 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]. The underlying violations by BancGroup occurred when it made repeated material misrepresentations of fact in its Forms 10-K, 10-Q, 8-K and related press releases concerning the nature, value, and liquidity of the assets of Colonial Bank's MWLD.

57. Through the conduct described above, Defendant Kelly 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].

COUNT III — INTERNAL ACCOUNTING CONTROLS
Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1
thereunder [17 C.F.R. §§ 240.13b2-1]

58. Paragraphs 1 through 50 are hereby realleged and are incorporated herein by reference.

59. Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any accounting book, record, or account required by Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

60. Rule 13b2-1 of the Exchange Act [17 C.F.R. §§ 240.13b2-1] prohibits any person from directly or indirectly falsifying or causing the falsification of any such accounting books, records or accounts.

61. Through the conduct described above, Defendant Kelly violated, directly and indirectly, and, unless restrained and enjoined, will continue to violate Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

COUNT IV — AIDING AND ABETTING
INTERNAL ACCOUNTING CONTROLS

**Aiding and Abetting of Violations by BancGroup of
Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]**

62. Paragraphs 1 through 50 are hereby realleged and are incorporated herein by reference.

63. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(B)] requires issuers such as BancGroup to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles and to maintain accountability for assets.

64. Through the conduct described above, BancGroup violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

65. Through the conduct described above, Defendant Kelly knowingly provided substantial assistance and aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

COUNT V — AIDING AND ABETTING
BOOKS AND RECORDS VIOLATIONS

**Aiding and Abetting of Violations by BancGroup of
Sections 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]**

66. Paragraphs 1 through 50 are hereby realleged and are incorporated herein by reference.

67. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers such as BancGroup to make and keep accounting books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of their assets.

68. Through the conduct described above, BancGroup violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

69. Through the conduct described above, Defendant Kelly knowingly provided substantial assistance and aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act.

COUNT VI — AIDING AND ABETTING
REPORTING VIOLATIONS

**Aiding and Abetting of Violations by BancGroup of
Section 13(a) of the Exchange Act [15 U.S.C. § 78m(b)(5)]
and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder
[17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13]**

70. Paragraphs 1 through 50 are hereby realleged and are incorporated herein by reference.

71. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13]

thereunder require issuers of securities registered with the Commission pursuant to Section 12 of the Exchange Act to file with the Commission factually accurate annual, current and quarterly reports.

72. Through the conduct described above, BancGroup violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13].

73. Through the conduct described above, Defendant Kelly knowingly provided substantial assistance and aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13].

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 the Defendant Kelly named herein committed the violations alleged herein.

II.

Issue a permanent injunctions enjoining Defendant Kelly and her 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:

- (a) 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;
- (b) from aiding and abetting violations of 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;
- (c) from violating Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1];
- (d) from aiding and abetting violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)]; and
- (e) from aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. §§ 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13].

III.

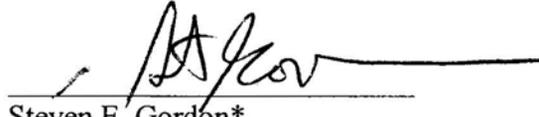
An order pursuant to Section Exchange Act [15 U.S.C. 78u(d)(3)] imposing civil penalties against Defendant Kelly.

IV.

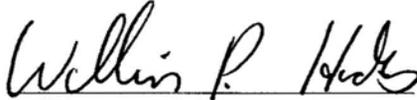
Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated this 15th day of March, 2011.

Respectfully submitted,



Steven E. Gordon*
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3817
Steve.Gordon@usdoj.gov



William P. Hicks, Associate Regional Director**
M. Graham Loomis, Regional Trial Counsel**
Aaron W. Lipson, Assistant Regional Director**
Yolanda L. Ross, Senior Staff Attorney**
Securities and Exchange Commission
3475 Lenox Road, N.E. Ste. 500
Atlanta, Georgia 30326-1232
Tel: (404) 842-7600

COUNSEL FOR PLAINTIFF

* Local Counsel

** Pro Hac Vice Admission Pending