FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of:	)	NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, NOTICE OF ASSESSMENT OF A CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, and NOTICE OF HEARING
JEFFERY H. BELL, individually and as an institution-affiliated party of	)	
TRANSPORTATION ALLIANCE BANK, INC. OGDEN, UTAH	)	
(INSURED STATE NONMEMBER BANK)	)	FDIC-14-0278e FDIC-15-0012k

The Federal Deposit Insurance Corporation ("FDIC") has determined that Jeffery H. Bell ("Bell"), as an institution-affiliated party of Transportation Alliance Bank, Inc., Ogden, Utah ("TAB"), directly or indirectly participated or engaged in unsafe or unsound practices and/or acts, omissions or practices which constitute breaches of his fiduciary duty to TAB; that TAB has suffered financial loss or other damage; that the interests of its depositors have been prejudiced or could be prejudiced; and that such practices and/or breaches demonstrate Bell's personal dishonesty and/or his willful or continuing disregard for the safety or soundness of TAB.

Further, the FDIC determined that Bell's reckless unsafe or unsound practices and/or breaches of his fiduciary duty were part of a pattern of misconduct and/or caused or were likely to cause more than a minimal loss to TAB.

The FDIC, therefore, institutes this proceeding to determine whether an order should be issued against Bell under the provisions of section 8(e) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(e), prohibiting him from further participation in the conduct of the af-

fairs of the Bank, and any other insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of the FDIC and such other appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D).

The FDIC further institutes this proceeding for the purpose of determining whether an order should be issued against Respondent under the provisions of section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B), requiring Bell to pay a civil money penalty.

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION ("NOTICE TO PROHIBIT") pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e,) and this NOTICE OF ASSESSMENT OF A CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, and NOTICE OF HEARING ("NOTICE OF ASSESSMENT") pursuant to section 8(i) of the Act, 12 U.S.C. § 1818(i), and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. In support of the NOTICE TO PROHIBIT and NOTICE OF ASSESSMENT, the FDIC alleges as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Preliminary Allegations

1. At all times pertinent to this proceeding, TAB was a corporation existing and doing business under the laws of the State of Utah, having its principal place of business at Ogden, Utah.

2. TAB was, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1831y, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III; and the laws of the State of Utah.

3. At all times pertinent to the charges herein, Bell was an "institution-affiliated party" as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of sections 8(e)(7), 8(i) and 8(j) of the Act, 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

4. The FDIC has jurisdiction over TAB, Respondent and the subject matter of this proceeding pursuant to section 3(q)(2) of the Act, 12 U.S.C. § 1813(q)(2).

B. Factual Background

5. Flying J Inc. ("Flying J") was founded by O. Jay Call in Ogden, Utah, in 1968.

6. Flying J became one of the largest diesel fuel distributors and truck-stop operators in the United States.

7. Flying J established TAB as an industrial bank in 1998.

8. TAB originally specialized in accounts receivable ("A/R") financing for the transportation industry but later expanded to other products and industries.

9. Bell was a friend of the Call family and worked at Flying J as associate corporate counsel after graduating from law school in 1993.

10. While employed at Flying J, Bell helped prepare the charter and deposit insurance applications for TAB.

11. Bell joined TAB in 1998, and became a senior vice president and a member of the board of directors.

C. Stearns Bank, N. A.

12. In or about May 2003, Stearns Bank, N.A., St. Cloud, Minnesota ("Stearns") hired Bell away from TAB to establish and oversee a new asset based lending division that would focus on clients outside of the transportation industry.

13. Bell served as an executive vice president at Stearns for the next 6 years and built a $67 million portfolio that included more than 75 clients (the "Stearns Portfolio").

14. By early 2008, two of the largest clients in the Stearns Portfolio were student loan companies named NextStudent and Cology.

15. Both NextStudent and Cology were deeply in debt to Stearns. By early 2008, neither was operating profitable lines of business and both were insolvent.

16. Rather than recognizing the losses to Stearns from the loans to these two companies, Bell decided to keep funding their monthly operating expenses in the hope that they could develop new lines of business and return to profitability.

17. Bell took this action without the knowledge or approval of Stearns's senior management or board of directors.

18. Between approximately early 2008 and early 2010, Bell funded the operating costs of the two companies by making unsecured loan advances to them. Bell directed Stearns employees to create fictitious A/R invoices, which Bell used to make the advances appear to be secured.

19. When, after 90 days, an unsecured advance became due, Bell would direct employees of Stearns to create new fictitious A/R invoices in larger amounts that would allow repayment of the earlier advances, plus interest and fees.

20. Bell also directed certain employees to manipulate the internal control systems of Stearns to ensure that the problems with the NextStudent and Cology accounts were not reported to other members of senior management or the board of directors.

21. NextStudent and Cology were not successful in turning around their businesses. Their obligations to Stearns ballooned to $22 million, most of which were unsecured and uncollectable.

D. Stearns Portfolio Acquisition

22. In February 2010, TAB rehired Bell to serve as its President.

23. Shortly after Bell resigned from Stearns, senior management at Stearns discovered the NextStudent and Cology lending scheme and the multimillion dollar loss embedded in the Stearns Portfolio.

24. Stearns did not recognize the losses or report the fraud to authorities. Instead, Stearns' Chief Executive Officer approached Bell about selling the Stearns Portfolio to TAB.

25. Bell agreed to work with Stearns to facilitate the purchase by TAB, which included discussions about how best to hide the true exposure from NextStudent and Cology.

26. Stearns charged off $10 million on debt related to NextStudent and Cology; Bell did not disclose this charge-off TAB's board of directors ("Board").

27. Bell convinced TAB's Board to allow him and another employee to conduct the due diligence on the Stearns Portfolio instead of an independent third party.

28. During the due diligence process, Bell altered documents obtained from Stearns, including the watch list and the client concentration sheets, in order to hide the true exposure from NextStudent and Cology.

29. Bell failed to disclose to TAB that most of the A/R balances owed by NextStudent and Cology were unsecured and uncollectible.

30. Based on Bell's misrepresentations and omissions, TAB's Board authorized the purchase of the Stearns Portfolio on May 1, 2010, for approximately $57 million, which was the face value of the portfolio (after deducting the $10 million charge-off taken by Stearns).

E. Lending Scheme at TAB

31. After the purchase of the Stearns Portfolio, Bell caused TAB to book the A/R balances owed by NextStudent and Cology—which, due to the Stearns's charge-off, had been reduced from $22 million to $12 million—as performing credits, secured by valid A/R, even though they were not.

32. Bell continued, at TAB as he had at Stearns, to make unsecured loan advances to the two companies to fund their monthly operating costs. He acted without the knowledge or approval of TAB's senior management or Board.

33. The advances were nominally secured by fictitious A/R invoices created by TAB employees at the direction of Bell, most of whom had been hired from the Stearns asset based lending division in connection with the acquisition of the Stearns Portfolio.

34. When an advance secured by fictitious A/R came due after 90 days, Bell directed TAB employees to fabricate new A/R invoices in larger amounts that would allow repayment of the earlier advance, plus interest and fees.

F. Term Notes

35. Five months after TAB's acquisition of the Stearns Portfolio, Bell began transferring obligations of NextStudent and Cology from their A/R borrowing lines into term notes. Ultimately Bell transferred $11 million into five such notes.

36. Bell apparently did this in order to open up the A/R lines of NextStudent and Cology for additional borrowing.

37. Bell backdated the term notes to May 1, 2010, which was the date of TAB's acquisition of the Stearns Portfolio.

38. Three of the 5 term notes, totaling $6 million, were booked in the names of related entities of NextStudent and Cology. These entities had no existing relationship with TAB and very limited operations.

39. Bell used the names of related entities apparently to hide the extent of TAB's exposure to NextStudent and Cology.

40. Bell put the term notes into place without the knowledge or approval of TAB's Board.

41. The amount of each term note exceeded Bell's personal lending authority.

42. Bell kept the term notes current by directing TAB employees to internally transfer proceeds from the A/R lending scheme to the term notes on a monthly basis.

G. TAB Charge-offs

43. Bell perpetrated his lending scheme at TAB for almost two full years after the acquisition of the Stearns Portfolio by TAB.

44. From May 2010 to April 2012, Bell made more than $10 million in A/R advances to NextStudent and Cology that were mostly secured by fictitious A/R invoices created by TAB employees at his direction.

45. By the time the scheme was finally reported to other members of senior management by an employee in April 2012, Bell had allowed the balances owed to TAB by NextStudent and Cology to balloon to approximately $27 million. TAB eventually charged off more than $27 million in debt from the two companies.

H. Watch List

46. TAB produced monthly watch loan reports, the purpose of which was to identify credit relationships that warranted the special attention from the Board and/or senior management.

47. Despite the substantial indebtedness of NextStudent and Cology (most of which was unsecured and uncollectable), and the severely distressed financial condition of the two companies, Bell never included NextStudent and Cology on TAB's monthly watch loan report.

48. Bell's omission prevented TAB's Board and senior management from monitoring these credits and understanding the true risks posed to TAB by NextStudent and Cology.

I. Burn Rate Reports

49. As the lending scheme grew larger and more difficult to monitor, Bell directed certain TAB employees to prepare so-called "burn-rate reports" for the two companies on at least a monthly basis. The burn-rate reports helped Bell determine whether the two companies were experiencing any success with their new product lines.

50. The burn-rate reports tracked, among other things, the difference between the amounts advanced to the company each month versus the amount of valid A/R and collections received from the company during the same period. The difference between the two amounts was called the burn rate.

51. The burn-rate reports showed that the new product lines of the two companies were not producing significant revenue and that TAB's exposure to the two companies from the unsecured A/R advances was rapidly escalating, but Bell never disclosed the reports to TAB's senior management or Board.

J. External Audits

52. Tanner LLC ("Tanner") is an accounting firm located in Salt Lake City, Utah.

53. Tanner conducted external audits of TAB in December 2010, February 2011, and November 2011.

54. In all three audits, Tanner requested to review certain large A/R invoices that TAB had supposedly purchased from NextStudent and Cology.

55. The A/R invoices were part of the A/R lending scheme, and did not exist.

56. In each case, Bell directed TAB employees to contact NextStudent and Cology and request fake invoices from the two companies.

57. In each case, NextStudent and Cology provided fake invoices, which TAB employees then submitted to the Tanner auditors at Bell's direction.

58. Due to the Bell's actions, Tanner was unable to detect that the A/R invoices from NextStudent and Cology provided by TAB were in fact fake, which allowed Bell to perpetuate the lending scheme.

K. Grounds for Section 8(e) Prohibition Order

59. By reason of Bell's foregoing acts, omissions and/or practices, Bell has engaged and/or participated in unsafe or unsound practices in connection with TAB.

60. By reason of Bell's foregoing acts, omissions and/or practices, Bell has breached his fiduciary duty to TAB.

61. By reason of the foregoing unsafe or unsound practices and breaches of fiduciary duty, TAB has suffered losses in excess of $27 million.

62. By reason of the foregoing unsafe or unsound practices and breaches of fiduciary duty, the interests of the TAB's depositors have been or could have been prejudiced.

63. The acts, omissions and/or practices of Bell alleged herein evidence personal dishonesty or demonstrate a willful or continuing disregard for the safety or soundness of TAB.

L. Grounds for Assessment of a Civil Money Penalty

64. As a result of the foregoing facts and conclusions, Bell recklessly engaged in unsafe or unsound practices in conducting the affairs of TAB.

65. As a result of the foregoing facts and conclusions, Bell breached his fiduciary duty to TAB.

66. As a result of the foregoing facts and conclusions, Bell's reckless unsafe or unsound practices and/or breaches of fiduciary duty were part of a pattern of misconduct.

67. Further, as a result of the foregoing facts and conclusions, Bell's reckless unsafe or unsound practices and/or breaches of fiduciary duty caused more than a minimal loss to TAB.

ORDER TO PAY

By reason of the reckless unsafe or unsound practices and/or breaches of fiduciary duty set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Bell pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2). After taking into account the appropriateness of the penalties with respect to the size of financial resources and good faith of Bell, the gravity of the reckless unsafe or unsound practices and/or breaches of fiduciary duty, and such other matters as justice may require, it is:

ORDERED, that by reason of the reckless unsafe or unsound practices and/or breaches of fiduciary duty set forth above, a penalty of $180,000 be, and hereby is, assessed against Bell pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2).

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed until 20 days after the date of receipt of the NOTICE OF ASSESSMENT by Bell, during which time he may file an answer and request a hearing pursuant to section 8(i)(2)(H) of the

Act, 12 U.S.C. § 1818(i)(2)(H), and section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19.

If Bell fails to file a request for a hearing within 20 days of receipt of this NOTICE OF ASSESSMENT, the penalty assessed against him, pursuant to the ORDER TO PAY, will be final and shall be paid within 60 days after the date of receipt of this NOTICE OF ASSESSMENT.

PRAYER FOR RELIEF

The FDIC prays that an Order of Prohibition pursuant to 12 U.S.C. § 1818(e) be issued against Bell and, unless the penalty assessed against Bell by the foregoing ORDER TO PAY becomes final and unappealable pursuant to 12 U.S.C. § 1818(i)(2)(E)(ii), that an Order to Pay a Civil Money Penalty in the amount of $180,000 be issue against Bell pursuant to 12 U.S.C. § 1818(i).

NOTICE OF HEARING

IT IS FURTHER ORDERED, that, if Bell requests a hearing with respect to the charges alleged in this NOTICE TO PROHIBIT and NOTICE OF ASSESSMENT, the hearing shall commence sixty (60) days from the date of receipt of this NOTICE TO PROHIBIT and NOTICE OF ASSESSMENT, at Salt Lake City, Utah, or at such other date or place upon which the parties to this proceeding and the Administrative Law Judge may agree. The purpose of the hearing will be for the taking of evidence on the charges, findings and conclusions stated herein in order to determine: (1) whether a permanent order should be issued to prohibit Bell from further participation in the conduct of the affairs of TAB and any insured depository institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior permission of the FDIC and the appropriate Federal financial institutions regulatory agency, as that

term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D); and (2) whether the FDIC's ORDER TO PAY should be sustained.

The hearing will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831u, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The exact time and precise location of the hearing will be determined by the Administrative Law Judge.

In the event Bell requests a hearing, Bell is hereby directed to file an answer to this NOTICE TO PROHIBIT and NOTICE OF ASSESSMENT within 20 days from the date of service as provided by section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19.

An original and one copy of the answer, any such request for a hearing, and all other documents in this proceeding must be filed in writing with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, Virginia, 22226-3500, pursuant to section 308.10 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.10. Also, copies of all papers filed in this proceeding shall be served upon the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; A. T. Dill III, Assistant General Counsel, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; and upon Joseph J. Sano, Regional Counsel, San Francisco Regional Office, Federal Deposit Insurance Corporation, 25 Jessie Street at Ecker Square, Suite 1400, San Francisco, California 94105.

Pursuant to delegated authority.

Dated at Washington, D.C., this 22nd day of September, 2015.

/s/
Christopher J. Newbury
Associate Director
Division of Risk Management Supervision