

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9930 / September 28, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75997 / September 28, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3706 / September 28, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16837

In the Matter of

**TRINITY CAPITAL
CORPORATION,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER AND
PENALTIES**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Trinity Capital Corporation (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Penalties (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

This proceeding results from Trinity Capital Corporation and its wholly-owned subsidiary, Los Alamos National Bank (collectively, "Trinity" or "the Bank"), failing to account properly for the Bank's loan portfolio during 2010, 2011 and the first two quarters of 2012 (the "Relevant Periods"), and failing to account properly for its other real estate owned ("OREO") in 2011.

As the New Mexico economy declined during the financial crisis, the Bank experienced an increase in problem loans and a decrease in the collateral values supporting its loan portfolio and 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 loan delinquencies and declining collateral values and to hide the true nature of its loan portfolio. This conduct resulted in the Bank materially misstating its provision for loan losses and its allowance for loan and lease losses ("ALLL") during the Relevant Periods, including in its quarterly and annual filings with the Commission during 2010, 2011, and the first two quarters of 2012, and understating its OREO losses in 2011. 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 overriding of internal accounting controls by certain employees and former members of management.

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%).² Additionally, in 2011, Trinity's OREO losses were understated by \$364,000 (10%).

Respondent

1. 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

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

² The overstatement stemmed from the Office of the Comptroller of the Currency's ("OCC") 2012 examination, which uncovered numerous accounting errors and resulted in the Bank improperly recording losses in the second quarter of 2012, rather than in prior periods.

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

Relevant Accounting Guidance and Bank Policies

2. Banks carry loans on their balance sheets as assets and generally record interest income on the loans on their income statements. According to Generally Accepted Accounting Principles ("GAAP"), estimated loan losses must be accrued when it is probable that losses have been incurred and the amount of the loss can be reasonably estimated.³ These loan losses are recorded on the balance sheet as the ALLL. The Bank's ALLL includes two components: (1) the allowance required for loans not individually assessed for impairment, which is based on grouping by loan grade and type and collectively evaluating the pools for impairment; and (2) the allowance required for individually impaired loans, which is based on an individual loan level measurement of impairment. Any increase in the ALLL must be accompanied by the recording of a provision for loan losses on the income statement, thereby increasing reported losses.

3. GAAP requires that OREO be valued upon receipt at fair value less costs to sell and on an ongoing basis measured at the lower of its carrying amount or fair value less cost to sell.⁴ GAAP and Rule 9-04 Item 14(d) of Regulation S-X required the Bank to record on its income statement any loss on OREO.

The Bank Failed To Measure Collective Impairments Properly

4. The Bank's material misstatements regarding the first component of the ALLL primarily stemmed from the Bank failing to properly grade hundreds of loans. During the Relevant Periods, the Bank's loan policy provided for seven loan grades: pass1, pass2, pass3, special mention, substandard, doubtful, and loss. Throughout the Relevant Periods, the Bank's loan portfolio included numerous loans that were graded as pass, but should have been downgraded to special mention or substandard. These grading errors resulted in the Bank understating its ALLL because lower graded loans carry a higher loan loss estimate, thereby increasing the first component of the ALLL.

5. Pursuant to the Bank's loan policy, loans were to be graded special mention when they had potential weaknesses that deserved management's close attention. Loans were to be graded substandard when they demonstrated well defined weakness. Internal Bank training further elaborated on the characteristics of substandard loans, including those that are seriously

³ See ASC 450-20-25-2.

⁴ See ASC 310-40-40-3.

past due (60 days or more) and those with inadequate future cash flow potential, insufficient cash flow, unprofitable operations and/or inadequate debt service coverage, questionable repayment source, and advances to fund interest payments.

6. During the Relevant Periods, the Bank's loan department operated under a culture that discouraged downgrading loans to special mention or substandard. Loan officers were under pressure from certain members of management to avoid having any "bad loans" in their loan portfolios, including any loans that were graded below pass and loans that were more than 30 days past due. As a result, the Bank's loan department ignored and hid loan weaknesses that required downgrades and waited as long as possible to downgrade loans below pass, which sometimes included waiting until the loan was at or over 90 days past due, or until the loan was selected for review by a third party and was therefore at risk for being identified as a grade "miss."

7. The Bank's loan department undertook steps to prevent downgrades on certain loan relationships, including authorizing checking account overdrafts and the extension of additional credit to borrowers who were unable to make their required principal and interest payments on their existing debt. Sometimes this additional credit would be granted using loans referred to as "ABC Loans," which stood for "Additional Balance Club Loans." The additional credit was used to make required payments on the existing debt, which would result in the borrower appearing current on loan payments when, in fact, the Bank was not actually making any collections from the borrower.

8. Certain former members of the Bank's management and loan department employees circumvented and ignored internal accounting controls by failing to downgrade troubled loan relationships. For example, one instance, a former member of the Bank's management backdated documents to make it appear as if additional credit had been extended prior to Trinity's internal audit department downgrading a loan relationship to substandard. In other instances, credit was extended to borrowers without the required credit analyses being completed. In one instance a borrower's loans were downgraded from pass to substandard by the internal audit department in late March 2011, were then updated 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.

9. In the case of one borrower and his associated entities, approximately \$8.8 million in loans were improperly graded as pass during nearly all of the Relevant Periods. In connection with these loans, certain former members of the Bank's management established a practice, followed by loan department employees, of using a variety of techniques to ignore and hide the borrower's troubled financial situation, including granting additional credit to the borrower for the purpose of making payments on existing loans and modifying the loans and granting the borrower concessions without downgrading the loans or evaluating them as Troubled Debt Restructurings ("TDRs").⁵ Members of the Bank's management did not follow up on

⁵ Pursuant to GAAP, a restructuring of a debt constitutes a TDR if the creditor grants a concession to the debtor due to the debtor's financial difficulties. See ASC 310-40-15-5.

employees' concerns regarding the manner in which the Bank was managing and accounting for these loans. Further, certain former members of the Bank's management and loan department employees undertook efforts to prevent the OCC, the Board, and other Bank personnel from reviewing this borrower's loans and discovering the troubled nature of the borrower.

10. In another instance, throughout the Relevant Periods, a borrower had numerous loan extensions that delayed the borrower's repayment of the loans. The borrower's financial situation and payment history clearly indicated that he was struggling to make his payments in accordance with the terms of his notes; nonetheless, at the direction of a former member of the Bank's management, the loan officer continued to extend additional credit to make interest payments and to provide renewals and extensions to prevent the borrower from appearing on the Bank's past due list. Under the direction of a former member of the Bank's management, this borrower's loans were not handled in accordance with the Bank's internal policies and procedures. Further, in at least one instance, the loan department provided the borrower additional funds in the name of his entity so it would not be readily apparent that a loan payment was made through the extension of additional credit.

The Bank Failed To Identify Troubled Debt Restructurings And Other Individually Impaired Loans

11. The Bank's failure to identify individually impaired loans, including TDRs, led to material misstatements regarding the second component of the ALLL. GAAP provides that a loan is impaired when it is probable that the creditor will be unable to collect all the contractual interest and principal payments as scheduled in the loan agreement.⁶ When loans are changed, for example by a restructure, extension or other modification, GAAP requires the transaction be evaluated to determine if the change constitutes a TDR.⁷ If a loan is determined to be a TDR, GAAP considers the loan individually impaired and requires the amount of the impairment to be measured based on the individual impairment guidance.

12. During the Relevant Periods, the Bank failed to identify hundreds of individually impaired loans, understating the loans that should have been considered individually impaired by more than \$50 million or more than 70% during the Relevant Period. Many of the newly identified impaired loans were also TDRs.⁸ In identifying impaired loans, the Bank's loan department ignored GAAP and failed to identify certain loans as impaired until all potential means of repayment, were exhausted which in certain cases included the Bank granting

⁶ See ASC 310-10-35-16.

⁷ See ASC 310-40-15-9(c).

⁸ Regulation S-K Item 303(a) requires discussion in the MD&A sections of public filings, any "information that the registrant believes to be necessary to an understanding of its financial condition." Bank holding companies are directed to SEC Industry Guide 3, which requests that bank holding companies discuss the policy for placing loans on nonaccrual and state the aggregate of loans in the following categories: nonaccrual, accruing loans which are contractually past due 90 days or more, and other loans that are TDRs. Because the Bank failed accurately to report loans that were contractually past due 90 days or more and TDRs, its 2010 and 2011 Forms 10-K also contained false disclosures regarding these items.

numerous concessions to the borrower. In some instances, the Bank's internal loan documents were intentionally drafted to avoid triggering a review of the transaction as a TDR.

The Bank Failed To Measure Individual Loan Impairments Properly

13. The Bank also made material errors regarding the second component of the ALLL by failing to measure properly the loss for individually impaired loans. If a loan is individually impaired, the amount of impairment must be measured and recorded as an expense with a corresponding amount recorded to the ALLL. GAAP permits the impairment to be measured using the fair value of the underlying collateral if the loan is collateral dependent, which is the method the Bank typically utilized.⁹ GAAP requires that the best information available in the circumstances be used to determine fair value.

14. It was the Bank's practice to order annual appraisals on loans graded special mention, substandard, or worse. Among other things, these appraisals were used to value the Bank's collateral that was used to measure the loss on impaired collateral-dependent loans. The Bank's appraisal department used a standard engagement letter that required appraisers to value properties in their current state ("as-is").¹⁰ On properties still under construction and completed properties generating income, the Bank also ordered appraisals that would provide the value of a property at the time construction was complete ("as-completed") or when the property reached stabilized net operating income ("as-stabilized"). For purposes of measuring the impairment on a collateral dependent loan, the Bank was required to consider the current condition of the property, which can be accomplished by using an "as-is" appraisal value. However, in at least two instances, certain former members of the Bank's management directed the use of the higher "as stabilized" or "as completed" values in measuring impairment losses when an as-is appraisal should have been used.

15. One example involved a \$4.2 million loan that was substandard and impaired during the Relevant Periods. In 2010, at the direction of a former member of management, the Bank canceled an "as-is" appraisal on the property collateralizing the loan, resulting in the appraisal only providing an "as-stabilized" value after construction of the project was completed and operating profitably. The Bank then calculated its own "as-is" value by subtracting the cost-to-complete as provided by the borrower from the as-completed value. In the second half of 2011, the Bank obtained updated cost estimates that, if utilized, would have resulted in an impairment loss of approximately \$1 million; however, the Bank ignored those updated cost-to-complete estimates. In the second quarter of 2012, the Bank finally received an appraisal that included an "as-is" value; however, utilizing the as-is appraisal value would have required an impairment loss of approximately \$3.7 million. The Bank "rejected" the appraisal, deleted it from the Bank's electronic loan file, and continued to use the 2010 internally calculated "as-is" value based upon the as stabilized appraisal less the outdated cost to complete numbers in

⁹ See ASC 310-10-35-23.

¹⁰ ASC 820-10-20 defines fair value as the price that would be received to sell an asset in an orderly transaction between market participants as of the measurement date. The as-is appraisal considers the conditions of the property as of the measurement date, while the as-completed and as-stabilized appraisals do not.

measuring the impairment for the second quarter of 2012. The resulting improper valuations on this loan resulted in the Bank avoiding approximately \$3.7 million in impairment losses throughout 2011 and in the first two quarters of 2012.

16. In another instance, the Bank ignored an appraisal valuing the collateral supporting an \$8.9 million loan that was substandard and impaired. Throughout 2011 and the first two quarters of 2012, the Bank measured the loan's impairment by relying on a February 2011 appraisal that valued the property at approximately \$15.9 million. In March 2012, the Bank was notified that the property had been appraised in January 2012 in connection with foreclosure litigation. The January 2012 appraisal would have resulted in an impairment loss of approximately \$3 million. The Bank then disregarded the January 2012 appraisal, ordered another appraisal from a different appraiser, and continued to solely rely on the outdated February 2011 appraisal in accounting for the loan for the year-end 2011 and in the first two quarters of 2012, thereby avoiding recognizing loan losses totaling approximately \$3 million.

17. In another example, the Bank participated in a \$20.5 million loan that was substandard and impaired throughout the Relevant Periods. In calculating the impairment throughout the Relevant Periods, the Bank used the "as-stabilized" value of \$32 million from a January 2010 appraisal and \$27.4 million from a January 2011 appraisal. These "as-stabilized" values significantly overstated the fair value of the collateral, however, because they assumed significant changes to the property's operations, none of which occurred during the Relevant Periods.

18. In connection with that same loan, the Bank also ignored other material information relevant to the property's value that indicated that the loan required a significant impairment loss, including a listing agreement that listed the property for sale at a price that was millions of dollars below the appraised "as-stabilized" values, the Bank responding to inquiries of multiple potential purchasers that it was willing to accept a sales price that was millions of dollars below the appraised "as-stabilized" values, the Bank learning that another bank with an interest in the property was accounting for the loan based on a collateral value of \$13 million, and an internal analysis that showed that the property could be worth \$14 to \$15 million assuming some improvements to the property's operating condition. By failing to measure the impairment on this loan properly, the Bank avoided recording approximately \$8.9 million of loan losses throughout the Relevant Periods.

19. Similarly, on another loan for \$2.7 million, the Bank avoided a \$1.1 million impairment loss in 2011 by ignoring clear evidence of a lower collateral value. In February 2012, the Bank consented to a letter of intent for the sale of a loan's collateral so long as the Bank obtained \$1.65 million from the sale. In accounting for the loan in the first quarter of 2012, however, the Bank ignored the letter of intent and instead used the outstanding loan balance of \$2.7 million as the collateral value.¹¹

¹¹ In fact, the Bank should have used the \$1.65 million value in measuring the impairment for year-end 2011 because the value was known to the Bank prior to the filing of its 2011 Form 10-K and therefore,

The Bank Failed To Take Appropriate Losses On OREO

20. During the Relevant Periods, it was the Bank's practice to order appraisals on properties that were moving into OREO and annual appraisals on properties that remained in OREO. In 2011, the Bank failed to properly value and account for impairments to its OREO by not using appraisals that indicated that the value of OREO properties had decreased and that a decrease in the net carrying amount of OREO was required. Additionally, subsequent event appraisals received after the end of a quarterly or annual period, but before the financial statements were filed, that provided a better estimate of the fair value of the OREO at the end of the prior period end, were not always used, as required by GAAP, in the Bank's OREO accounting.¹²

The Bank failed to Devise and Maintain a System of Internal Accounting Controls

21. The material misstatements and the conduct by certain former members of Bank management was facilitated by the intentional circumvention of internal accounting controls, but were also aided by the Bank's failure to devise and maintain a system of internal accounting controls.

22. During the Relevant Periods, the Bank lacked sufficient internal accounting controls over the periodic review of loans to ensure loans were accurately graded and to identify troubled and impaired loans. Further, the Bank's internal audit department was not independent from management and, as a result, 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.

23. The Bank also lacked sufficient internal accounting controls over the use of ABC Loans and the analysis of TDRs. For example, the Bank's internal loan approval and credit review processes failed to require an analysis of whether a loan modification or extension was a TDR. 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. Further, during the Relevant Periods, TDRs were rarely discussed within the loan department, and employees were not properly instructed as to how and when to analyze modifications as potential TDRs. Finally, numerous loans should have been evaluated as TDRs because a new loan was provided to pay interest or principal due on an existing loan. The Bank's loan policy failed to consider whether this situation resulted in a "concession."

24. The Bank lacked sufficient internal accounting controls over its accounting for impaired loans in conformity with GAAP. Loan department personnel calculating the impaired loan losses did not possess sufficient accounting expertise and there was not adequate

pursuant to GAAP, it constituted a subsequent event that should have been recognized in the Bank's year-end financial statements.

¹² See ASC 855-10-25 and ASC 450-20-25-2.

involvement or review by the accounting department. As a result, errors occurred in the calculation of impaired loan losses.

25. The Bank also lacked sufficient internal accounting 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. The accounting department was not automatically notified when appraisals were received, which meant that they were not always aware of appraisals relevant to impairment measurements or OREO write downs.

26. Additionally, appraisals received after the balance sheet date were not always considered, as required by GAAP, in the Bank's loan and OREO impairment accounting. The Bank was aware of this internal control issue by at least 2009 when the Bank's outside auditor found a \$2.2 million subsequent event accounting error. Nonetheless, the Bank 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 that had not been factored into the Bank's accounting.

27. The Bank also lacked sufficient internal accounting controls 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 inadequacies, 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.

Violations

28. As a result of the conduct described above, Trinity violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

29. As a result of the conduct described above, Trinity violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

30. As a result of the conduct described above, Trinity violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act 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.

31. As a result of the conduct described above, Trinity violated 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.

32. As a result of the conduct described above, Trinity violated Section 13(b)(2)(B), 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.

Respondent's Remedial Efforts

33. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

Respondent undertakes to:

34. **Provide Ongoing Cooperation.** Respondent agrees to cooperate fully with the Commission with respect to this action and any judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party relating to the matters in this Order. Respondent's cooperation shall include, but is not limited to:

- a. **Production of Information.** At the Commission's request on reasonable notice and without a subpoena, Respondent shall truthfully and completely disclose information and documents reasonably requested by Commission staff in connection with the Commission's related investigation, litigation, or other proceedings. Respondent will have no obligation to provide information voluntarily that it is not legally permitted to provide without a subpoena.
- b. **Production of Cooperative Personnel.** At the Commission's request on reasonable notice, and without a subpoena, Respondent shall use reasonable efforts to secure the attendance and truthful statements or testimony of any current officer, director, principal, agent, or employee of Respondent, at any meeting, interview, testimony, deposition, trial or other legal proceeding. Persons providing testimony will have no obligation to provide information voluntarily that he or she is not legally permitted to provide without a subpoena.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Trinity's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Trinity cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent Trinity cease and desist from committing or causing any violations and any future violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, and 13a-13 thereunder.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1,500,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Trinity as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas J. Krysa, Associate Regional

Director, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary